

## **Appendix 2**

In this appendix, the CIR module presented herein does not indicate the amendments to the previous version of the module in the usual manner, by underlining or striking through text as the module herein is a replacement module.



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# **The DFSA Rulebook**

## **Collective Investment Rules**

### **(CIR)**

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## Contents

The contents of this module are divided into the following chapters, sections and appendices:

<b>1</b>	<b>INTRODUCTION</b>	<b>6</b>
1.1	Application.....	6
1.2	Interpretation .....	7
1.3	Overview of CIR module .....	7
 <b>PART 1 – COLLECTIVE INVESTMENT FUNDS GENERALLY</b>		 <b>9</b>
2	Arrangements amounting to Collective Investment	9
2.1	Application	9
2.2	Definition of a collective investment fund	9
2.3	Arrangements not constituting a Fund	9
 <b>3 MARKETING AND TRANSACTIONS INVOLVING FUNDS</b>		 <b>12</b>
3.1	Application and interpretation	12
3.2	Availability of Prospectus of a Domestic Fund	12
3.3	Domestic Private Funds	13
3.4	Access to Foreign Funds and availability of Prospectus	13
3.5	Designated Foreign Funds	15
3.6	Non-Designated Foreign Funds	16
3.7	Foreign Property Funds	18
3.8	Periodic Information to DFSA	18
3.9	Record keeping	19
 <b>4 FUND ADMINISTRATION</b>		 <b>20</b>
4.1	Application	20
4.2	Compliance with the AML Rules	20
4.3	Client Money and Assets	20
4.4	Delegation and service level agreements	21
4.5	Record keeping	22
 <b>PART 2 –CORE RULES RELATING TO DOMESTIC FUNDS</b>		 <b>23</b>
<b>5</b>	<b>CONSTITUTION</b>	<b>23</b>
5.1	Application	23
5.2	Instrument constituting the fund	23
5.3	Name of the fund	24
5.4	Alterations to the constitution	25



## COLLECTIVE INVESTMENT RULES (CIR)

---

<b>6</b>	<b>OPERATION AND ADMINISTRATION OF THE FUND</b>	<b>26</b>
6.1	Application	26
6.2	General management duties	26
6.3	Duties in relation to the Fund Property	27
6.4	Conflicts of interest	28
6.5	Valuation of fund	30
6.6	Determination of single price	31
6.7	Issue and redemption of Public Fund Units	32
6.8	Unitholder register	32
6.9	Meetings of governing body and Unitholders	33
6.10	Approvals and notifications	37
6.11	Maintenance of records	37
6.12	Capital	38
<b>7</b>	<b>DELEGATION AND OUTSOURCING</b>	<b>39</b>
7.1	Application	39
7.2	General	39
7.3	Delegation of activities by an Operator or Trustee	40
7.4	Delegation process and requirements	41
7.5	Outsourcing process and requirements	42
7.6	Systems and controls	42
7.7	Review	42
<b>8</b>	<b>ACCOUNTING STANDARDS</b>	<b>44</b>
8.1	Application	44
8.2	Accounting standards for Funds	44
8.3	Accounting records	44
<b>9</b>	<b>PERIODIC REPORTS</b>	<b>46</b>
9.1	Application	46
9.2	Annual and interim reports	46
9.3	Interim report	48
9.4	Contents of the annual report	48
9.5	Operator's report	49
9.6	Comparative table	50
9.7	Oversight report	51
9.8	Report of the auditor	52
9.9	Annual report table	53
<b>10</b>	<b>CHARGES AND EXPENSES</b>	<b>54</b>
10.1	Application	54
10.2	Charges, levies and payments	54
10.3	Remuneration and reimbursement of expenses	55
10.4	Promotional payments, performance fees and set up costs	55

---

10.5	Allocation of payments to capital or income	55
10.6	Payments of liabilities on transfer of assets	56
<b>11</b>	<b>RESPONSIBILITY FOR PROSPECTUS</b>	<b>57</b>
11.1	Application	57
11.2	Prescribed persons	57
11.3	Exceptions from liability	58
11.4	Experts	59
<b>12</b>	<b>AUDITORS</b>	<b>60</b>
12.1	Application	60
12.2	Appointment and termination of auditors	60
12.3	Co-operation with auditors	61
12.4	Function of the auditor	62
<b>13</b>	<b>SPECIALIST FUNDS</b>	<b>63</b>
13.1	Islamic Funds	63
13.2	Fund of Funds	67
13.3	Feeder Funds	68
13.4	Private Equity Funds	69
13.5	Property Funds	70
13.6	Hedge Funds	81
<b>PART 3 – PUBLIC FUNDS</b>		<b>88</b>
<b>14</b>	<b>REGISTRATION OF PUBLIC FUNDS</b>	<b>88</b>
14.1	Application	88
14.2	The application for registration	88
14.3	Requirements for registration	89
14.4	Rejection of an application	90
14.5	Granting registration	90
14.6	Withdrawal of registration	90
14.7	Reinstatement	90
<b>15</b>	<b>PUBLIC FUND PROSPECTUS</b>	<b>91</b>
15.1	Application	91
15.2	Drawing up and availability of Prospectus	91
15.3	Drawing up a Prospectus – mandatory statement	93
15.4	[Deleted][RM56/08][VER09/07-08]	94
15.5	Drawing up a Prospectus for Islamic Funds	94
15.6	Drawing up a Prospectus for a Feeder Fund	94
15.7	Drawing up a Prospectus for a Property Fund	95
15.8	Drawing up a Prospectus for a Private Equity Fund	97
15.9	Drawing up a Prospectus for a Hedge Fund	97



## COLLECTIVE INVESTMENT RULES (CIR)

---

<b>16</b>	<b>INVESTMENT AND BORROWING POWERS</b>	<b>98</b>
16.1	Application	98
16.2	Spread of risk and protection of Fund Property	98
16.3	Investment in other Funds	98
16.4	Transactions in derivatives	99
16.5	Stock lending and borrowing	99
16.6	Borrowing	99
16.7	Investment in real property	100
<b>17</b>	<b>OVERSIGHT ARRANGEMENTS</b>	<b>101</b>
17.1	Application	101
17.2	General	101
17.3	Permitted arrangements	101
17.4	General oversight duties	103
17.5	Proceedings	103
17.6	Principles and disclosure of interests	104
17.7	Management systems and controls	105
17.8	[Deleted][RM56/08][VER09/07-08]	107
17.9	Criteria for appointment of individuals	107
17.10	Persons appointed to oversee	108
17.11	Record keeping	109
<b>PART 4 – PRIVATE FUNDS</b>		<b>110</b>
<b>18</b>	<b>PRIVATE FUNDS</b>	<b>110</b>
18.1	Application	110
18.2	Notification	110
18.3	Criteria to be classified as a Private Fund	110
18.4	Arrangements by Operator with other Authorised Firms	111
18.5	Umbrella Funds	111
<b>19</b>	<b>PRIVATE FUND PROSPECTUS</b>	<b>112</b>
19.1	Application	112
19.2	Drawing up and availability of a Short Form Prospectus	112
19.3	Drawing up a Prospectus – mandatory statement	114
19.4	Contents of Short Form Prospectus	115
19.5	Drawing up a Prospectus for Islamic Funds	116
19.6	Drawing up a Prospectus for a Feeder Fund	116
19.7	Drawing up a Prospectus for a Property Fund	117
19.8	Drawing up a Prospectus for Private Equity Fund	118
19.9	Drawing up a Prospectus for a Hedge Fund	118

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<b>PART 5 – GENERAL PROVISIONS</b>	<b>119</b>
<b>20 SUSPENSION AND TERMINATION</b>	<b>119</b>
20.1 Application	119
20.2 Suspension of dealings	119
20.3 Winding up a fund	120
20.4 Funds that are not commercially viable	122
20.5 Transfer schemes	123
<b>App 1 .DELEGATION AND OUTSOURCING</b>	<b>125</b>
A1.1 Application	125
A1.2 Mandatory provisions	125
A1.3 Provisions relating to Eligible Custodians	126
A1.4 Provisions relating to fund administration	127
<b>APP 2 .APPROVALS AND NOTIFICATIONS</b>	<b>128</b>
A 2.1 Fundamental change requiring prior approval by Unitholder meeting	128
A 2.2 Significant change requiring pre-event notification to the Unitholders	129
A 2.3 Pre event or post - event notifiable changes to Unitholders	130
<b>APP 3 .GUIDANCE ON ASSET VALUATION AND PRICING</b>	<b>131</b>
<b>App 4 .CONSTITUTION OF A DOMESTIC FUND</b>	<b>136</b>
A4.1 Contents of Constitution	136
<b>App 5 .GUIDANCE ON FITNESS AND PROPRIETY FOR OVERSIGHT FUNCTIONS</b>	<b>140</b>
<b>App 6 PUBLIC FUND PROSPECTUS DISCLOSURE</b>	<b>142</b>
A6.1 Mandatory contents of a Prospectus of a Public Fund	142
<b>App 7 .ADDITIONAL PROSPECTUS DISCLOSURES FOR ISLAMIC FUNDS</b>	<b>148</b>
A7.1 Shari'a approval process statement for offers of Domestic Funds from the DIFC .....	148
A7.2 Shari'a approval process statement for offers of Foreign Funds in or from the DIFC ...	148

## **1 INTRODUCTION**

### **1.1 Application**

**1.1.1** The Rules in this module (CIR) are made for the purposes of the Collective Investment Law 2006 and the Investment Trust Law 2006.

**1.1.2** CIR applies to every Person who carries on, or intends to carry on, in or from the DIFC the Financial Services of:

- (a) Operating a Collective Investment Fund;
- (b) Providing Fund Administration;
- (c) Providing Custody in relation to Fund Property; or
- (d) Acting as the Trustee of a Fund.

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

- (a) an Operator;
- (b) a member of the Governing Body;
- (c) an Eligible Custodian;
- (d) a Trustee;
- (e) undertaking an oversight function; and
- (f) the Auditor

of a Domestic Fund.

**1.1.4** CIR also applies to an Authorised Firm that:

- (a) provides a Financial Service; or
- (b) undertakes a Transaction in or from the DIFC;

in relation to a Domestic Fund or Foreign Fund.

**1.1.5** (1) CIR also applies to an Investment Undertaking even where it does not have a separate legal personality.

- (2) Where a Rule prescribes a requirement on an Investment Undertaking, each Director, Partner or other Person charged with the management or oversight of that Undertaking must take all reasonable steps within its control to secure compliance with the requirement by the Undertaking.

- (3) Where a Rule prescribes a requirement relating to a Director, Partner or Employee of an Investment Undertaking:
- (a) the Director, Partner or Employee, as the case may be, is bound to take all reasonable steps within his control to secure compliance with the requirement; and
  - (b) the Investment Undertaking must take all reasonable steps to ensure compliance with the requirement by the Director, Partner or Employee.

**Guidance**

1. The Rules in this module (CIR) establish a regime to regulate Domestic Funds, which may be either Public Funds or Private Funds
2. CIR also applies to marketing and selling of Units of Foreign Funds in or from the DIFC and to the provision of a Financial Service to a Foreign Fund where any such activity is undertaken by an Authorised Firm. In that regard, the COB Rules also apply to the provision of Financial Services by an Authorised Firm.
3. If a Domestic Fund or Foreign Fund intends to list its Units on an Authorised Market Institution (AMI), it will need to comply with the relevant Rules in the OSR module and the AMI's listing Rules in respect of Domestic Funds. Private Funds cannot be listed unless they convert to Public Funds.
4. A Public Property Fund is required to be a closed-ended and Listed Fund and to be structured as an Investment Company or an Investment Trust.

**1.2 Interpretation**

- 1.2.1** Any references to “the Law” or to “Articles” are to be construed as references to the Collective Investment Law 2006 and to Articles in that law.

**1.3 Overview of CIR module****Guidance**

1. As aforementioned, CIR applies to a Person in respect of a Domestic Fund (that is a Fund which is established or domiciled in the DIFC) and also in respect of the marketing and selling of Units of a Foreign Fund in or from the DIFC by an Authorised Firm (that is, undertaking a Transaction in respect of a Unit of a Foreign Fund). A Foreign Fund is a Fund that is not established or domiciled in the DIFC.
2. The substantial part of these Rules apply in relation to Domestic Funds, of which there are two classes, Public Funds and Private Funds.



3. The essential characteristics of a Public Fund are that the Units may be Offered to any Persons or Clients (Retail Clients and Professional Clients). There are no limits placed on the number of Unitholders and the investment vehicle may be an Investment Company, an Investment Partnership or an Investment Trust. Public Funds attract a greater level of regulation than Private Funds, principally by way of being required to establish and maintain independent oversight arrangements and being required to manage the assets within the parameters of the investment and borrowing Rules.
  4. The essential characteristics of a Private Fund are that the Units may only be issued and sold by means of Private Placement with Professional Clients. See Rules 3.3.1 and 18.3.1 in relation to the requirement to issue and sell Units by Private Placement, and also Article 18(1) of the Collective Investment Law 2006 which restricts such activity to be undertaken in or from the DIFC by an Authorised Firm. Participation is limited to 100 Unitholders and the investment vehicle may be an Investment Company, an Investment Partnership or an Investment Trust.
  5. All Domestic Funds are required, among other things, to appoint an Auditor and arrange for the legal title of the Fund's assets to be placed with an Eligible Custodian for safekeeping. However, this latter requirement does not apply to a Fund structured as an Investment Trust where the Trustee holds Fund Property, and to Property Funds and Private Equity Funds where alternative arrangements are permitted.
  6. There are a number of types of specialist Domestic Funds such as Property Funds, Islamic Funds, Hedge Funds and Private Equity Funds which have bespoke Rules to regulate their particular operations.
  7. Operators and, where applicable, Trustees of Domestic Funds are permitted, within certain parameters, to delegate certain activities and to outsource functions to a Service Provider. These activities and functions may be conducted outside the DIFC by such a Person.
  8. This module is divided into 5 parts:
    - a. Part 1 applies to both Domestic and Foreign Funds. It sets out arrangements which amount to collective investment and those that do not, supplements COB with provisions governing the conduct of an Authorised Firm in the marketing and selling of Funds and in relation to the activity of Fund Administration.
    - b. Part 2 consists of core rules which apply in relation to Domestic Funds whether they are Public or Private Funds. These Rules provide the basic framework for a Fund and include additional provision for specialist Funds. The core Rules also deal with Auditors and liability for statements in a Prospectus.
    - c. Part 3 applies in relation to Public Funds and deals with Prospectus registration, investment and borrowing and oversight arrangements.
    - d. Part 4 concerns Private Funds and prescribes the criteria to be met on a continuing basis and specific Short Form Prospectus requirements.
    - e. Part 5 consists of general provisions relating to transfer schemes and winding up.
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## PART 1 – COLLECTIVE INVESTMENT FUNDS GENERALLY

### 2 ARRANGEMENTS AMOUNTING TO COLLECTIVE INVESTMENT

#### 2.1 Application

2.1.1 This chapter applies to every Person to whom this module applies in accordance with Section 1.1.

#### 2.2 Definition of a collective investment fund

##### Guidance

A Collective Investment Fund is defined in Article 15 of the Law. The definition under Article 15 is very wide and the Law, under Article 16, enables the DFSA to make Rules excluding certain arrangements or types of arrangements from constituting a Fund. These excluded arrangements are set out below in section 2.3.

#### 2.3 Arrangements not constituting a Fund

2.3.1 Pursuant to Article 16 of the Law, the DFSA prescribes under the Rules in this section certain arrangements or types of arrangements which do not, for the purposes of the Law, amount to a Collective Investment Fund.

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.

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

- (a) the arrangements are arrangements under which the rights or interests of the participants are represented by the following:
    - (i) Debentures which are issued by a single Body Corporate which is not an open-ended investment company or which are issued by a single issuer which is not a Body Corporate and are guaranteed by the government of any country or territory;
    - (ii) Debentures falling within (i) which are convertible into or exchangeable for Shares provided that those Shares are issued by the same Person as issued the Debentures falling within (i) or issued by a single other issuer;
    - (iii) Debentures issued by the same government or public authority in (i) and (ii); or
    - (iv) Warrants which are issued otherwise than by a Collective Investment Fund and which confer rights in respect of Shares or Investments, falling within (i), (ii) or (iii), issued by the same issuer; or
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- (b) the arrangements are arrangements which would fall within (a) were it not for the fact that the rights or interests of a participant (counterparty) whose ordinary business involves him engaging in activities which fall within GEN chapter 2 or would do so apart from any applicable exclusions or include rights or interests under a swap agreement, that is to say, arrangements the purpose of which is to facilitate the making of payments to participants whether in a particular amount or currency or at a particular time or rate of interest or all or any combination of those things, being arrangements under which:
  - (i) the counterparty is entitled to receive amounts, whether representing principal or interest, payable in respect of any property subject to the arrangement or sums determined by reference to such amount; and
  - (ii) the counterparty makes payments, whether or not all of the same amount and whether or not in the same currency as those referred in (i), which are calculated in accordance with agreed formula by reference to the amounts or sums referred to those amounts or sums.

**2.3.4** A Contract of Insurance does not, for the purposes of Article 15 of the Law amount to a Collective Investment Fund.

**2.3.5** (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.

**2.3.6** Arrangements do not, for the purposes of Article 15 of the Law, amount to a Collective Investment Fund if the arrangements constitute an account or portfolio which is a Profit Sharing Investment Account.

**2.3.7** Arrangements do not, for the purposes of Article 15 of the Law, amount to a Collective Investment Fund if the arrangements are managed under a Discretionary Portfolio Management Agreement as an individual portfolio or account.

**2.3.8** Arrangements do not, for the purposes of Article 15 of the Law, amount to a Collective Investment Fund if the arrangements are arrangements whereby every participant is a Close Relative. For these purposes, the defined term "Close Relative" includes grandchildren.

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## **3            MARKETING AND TRANSACTIONS INVOLVING FUNDS**

### **3.1            Application and interpretation**

- 3.1.1**        (1)        Subject to (2), this chapter applies to any Person who:
- (a)        markets or intends to market a Unit of a Fund by Offering it for issue or sale; or
  - (b)        undertakes or intends to undertake a Transaction in a Unit of a Fund.
- (2)        Unless expressly provided otherwise, this chapter does not apply:
- (a)        to an Operator in Operating a Collective Investment Fund;
  - (b)        where an Offer is made or directed by an Authorised Firm to a Market Counterparty; or
  - (c)        to an Authorised Firm where it undertakes a Transaction for the purpose of disposing of a Unit in a Fund for or on behalf of a Unitholder in that Fund.

#### **Guidance**

1.        Unless expressly disappplied, the Rules in this chapter supplement provisions of COB which also govern the carrying on of Financial Service activities by an Authorised Firm.
2.        Other Rules in CIR govern the issue and Offer of Units by an Operator. Operators should also be aware of Articles 12 to 14 of the Law which deal with Offers of the Units of a Fund, and Articles 18 and 19 containing further provisions relating to marketing of Units.
3.        Part 4 of OSR governs the listing of the Units of a Fund and continuous disclosure obligations for Listed Funds.

### **3.2            Availability of Prospectus of a Domestic Fund**

- 3.2.1**        (1)        Subject to (2), where an Authorised Firm Offers a Unit of a Domestic Fund for issue or sale to a Client or undertakes a Transaction in respect of such a Unit for or on behalf of a Client, it must make available to that Client a copy of the most recent Prospectus at the time of the Offer or before effecting the Transaction.

- (2) The requirement to provide a copy of the Prospectus does not apply to an Authorised Firm where it is:
  - (a) effecting an Execution-Only Transaction;
  - (b) effecting a Transaction for the purposes of a Discretionary Portfolio Management Agreement entered into with the Client; or
  - (c) effecting a Transaction with the Operator of a Fund for the purpose of redeeming a Unit of that Fund.
- (3) An Authorised Firm that makes an Offer or undertakes a Transaction as described in (1) must:
  - (a) maintain at its place of business in the DIFC copies of the relevant Prospectus for inspection by Clients and by the DFSA during normal business hours; or
  - (b) be able to advise readily of a location in the DIFC where copies of the Prospectus are available.

**Guidance**

1. In relation to Rule 3.2.1(3)(a), copies of the Prospectus may be stored electronically so long as Clients and the DFSA have ready and immediate access.
2. In relation to Rule 3.2.1(3)(b), see the obligations of the Operator under Rule 15.2.2 (in relation to a Public Fund) and Rule 19.2.2 (in relation to a Private Fund).

**3.3 Domestic Private Funds**

- 3.3.1** An Authorised Firm must not make an Offer or undertake a Transaction in relation to the Units of a Domestic Fund which is a Private Fund where it is aware that this would result in a breach of the limitations under Rule 18.3.1(2)(a) and (b).

**Guidance**

Rule 18.3.1 sets out the criteria for classification of a Private Fund. In particular, the Rule stipulates that Units in a Private Fund may only be Offered for issue or sale by means of Private Placement with Professional Clients, and in a manner which does not result in the Fund having more than 100 Unitholders.

**3.4 Access to Foreign Funds and availability of Prospectus**

- 3.4.1** The requirements in this section do not apply where an Authorised Firm undertakes an Execution-Only Transaction.
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- 3.4.2** An Authorised Firm must not Offer a Unit of a Foreign Fund for issue or sale to a Client or undertake a Transaction for or on behalf of a Client in respect of such a Unit unless:
- (a) the Fund meets the criteria either for a Designated Fund in section 3.5 or for a non-Designated Fund in section 3.6;
  - (b) in the case of a Transaction in respect of such Units with or for a Retail Client, the Units satisfy the requirements that govern the sale of such Units to retail investors in the Fund's home jurisdiction; and
  - (c) the additional requirements set out in this chapter are satisfied.
- 3.4.3**
- (1) Subject to (2), where an Authorised Firm Offers a Unit of a Foreign Fund for issue or sale to a Client, or undertakes a Transaction in such a Unit for or on behalf of a Client, it must make available to the Client a copy of the most recent Prospectus which complies with the additional requirements in Rule 3.4.4 at the time of the Offer or before effecting the Transaction.
  - (2) The requirement to provide a copy of the Prospectus does not apply to an Authorised Firm where it is:
    - (a) effecting a Transaction for the purposes of a Discretionary Portfolio Management Agreement entered into with the Client; or
    - (b) effecting a Transaction with the Operator of a Fund for the purpose of redeeming a Unit of that Fund.
- 3.4.4**
- (1) The Prospectus of a Foreign Fund made available by an Authorised Firm must be in the English language.
  - (2) The Prospectus must contain in a prominent position, or have attached to it, a statement that clearly:
    - (a) describes the foreign jurisdiction and the legislation in that jurisdiction that applies to the Fund;
    - (b) states the name of the relevant Financial Services Regulator in that jurisdiction;
    - (c) describes the regulatory status accorded to the Fund by that Regulator;
    - (d) includes the following warning:

“This Prospectus relates to a Fund which is not subject to any form of regulation or approval by the Dubai Financial Services Authority (“DFSA”).

The DFSA has no responsibility for reviewing or verifying any Prospectus or other documents in connection with this Fund. Accordingly, the DFSA has not approved this Prospectus or any other associated documents nor taken any steps to verify the information set out in this Prospectus, and has no responsibility for it.

The Units to which this Prospectus relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers should conduct their own due diligence on the Units.

If you do not understand the contents of this document you should consult an authorised financial adviser.”;

and

- (e) if the Offer is not directed to Retail Clients, includes a prominent statement to that effect to be incorporated within the warning in (d).
- (3) In respect of an Islamic Fund which is specified in section A7.2 of App 7, the Prospectus must contain in a prominent position or have attached to it the statement prescribed in that section.

**3.4.5** An Authorised Firm which makes an Offer or undertakes a Transaction as described in Rule 3.4.3(1) must maintain at its place of business or other designated location in the DIFC copies of the relevant Prospectus for inspection by Clients and by the DFSA during normal business hours.

**Guidance**

In relation to Rule 3.4.5, copies of the Prospectus may be stored electronically so long as Clients and the DFSA have ready and immediate access.

## **3.5 Designated Foreign Funds**

**3.5.1** An Authorised Firm may make an Offer or undertake a Transaction for or on behalf of a Client in respect of a Unit of a Foreign Fund where:

- (a) the Fund is a Designated Fund in a Recognised Jurisdiction; and
- (b) if the Fund is a Property Fund, the requirements in Rule 3.7.1 are satisfied.

**Guidance**

In relation to the requirements of Rules 3.5.1 and 3.6.1, in respect of Recognised Jurisdictions and Designated Funds, the DFSA has issued and published a Recognised Jurisdictions Notice on its website which sets out the list of Recognised Jurisdictions and which also specifies the Designated Funds.



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## **3.6 Non-Designated Foreign Funds**

- 3.6.1** (1) An Authorised Firm may make an Offer or undertake a Transaction for or on behalf of a Client in respect of a Unit of a Foreign Fund where:
- (a) one or more of the following apply:
    - (i) the custodian of the Fund meets one of the requirements in (4) and the investment manager of the Fund meets one of the requirements in (5);
    - (ii) both the custody and investment management activities of the Fund are performed by a Person who meets the requirements in (6); or
    - (iii) the Fund has been rated in accordance with the requirement in (7);
- and
- (b) if the Fund is a Property Fund, the requirements in Rule 3.7.1 are satisfied.
- (2) For the purposes of (1)(a), the “custodian” is a Person who is retained by the Fund, the Operator of the Fund or the Fund’s Directors or Partners under a commercial arrangement which is not an employee contract of service to safeguard the Fund’s assets.
- (3) For the purposes of (1)(a), the “investment manager” is a Person who is retained by the Fund, the Operator of the Fund or the Fund’s Directors or Partners under a commercial arrangement which is not an employee contract of service to manage the Fund’s assets.
- (4) For the purposes of (1)(a), the custodian must be:
- (a) an Eligible Custodian;
  - (b) a member of a Group that is subject to consolidated supervision by a Financial Services Regulator in a Recognised Jurisdiction and the activities of the custodian are included within the scope of that supervision;
  - (c) appointed under an agreement by a Person who is subject to supervision by a Financial Services Regulator in a Recognised Jurisdiction and the agreement is in accordance with the requirements of that Regulator; or

- (d) a Person as to whom the Authorised Firm is satisfied has adequate custody and asset safety arrangements in respect of the Foreign Fund after performing due diligence taking into consideration each of the following factors:
    - (i) whether the Person providing custody is authorised and supervised by a Financial Services Regulator for the purposes of providing custody;
    - (ii) the extent of segregation of assets;
    - (iii) independence and management of conflicts of interests;
    - (iv) the terms of the safe custody agreement; and
    - (v) periodic reporting requirements.
  
  - (5) For the purposes of (1)(a), the investment manager must be a Person who is:
    - (a) authorised and supervised by the DFSA or a Financial Services Regulator located in a Recognised Jurisdiction;
    - (b) a member of a Group that is subject to consolidated supervision by a Financial Services Regulator in a Recognised Jurisdiction and the activities of the investment manager are included within the scope of the supervision; or
    - (c) appointed under an agreement by another Person who is subject to supervision by a Financial Services Regulator in a Recognised Jurisdiction and the agreement is in accordance with the requirements of the Regulator.
  
  - (6) For the purposes of (1)(b), the Person carrying out both the custody and investment management activities of the Fund must be a Person who is:
    - (a) authorised and supervised by the DFSA or a Financial Services Regulator located in a Recognised Jurisdiction in respect of both of its custody and investment management activities;
    - (b) a member of a Group that is subject to consolidated supervision by a Financial Services Regulator in a Recognised Jurisdiction and its custody and investment management activities are included within the scope of that supervision; or
    - (c) appointed under an agreement by another Person who is subject to supervision by a Financial Services Regulator in a Recognised Jurisdiction and the agreement is in accordance with the requirements of that Regulator.
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- (7) The requirement in (1)(c) in respect of the Foreign Fund is that the Fund has been rated or graded as at least “investment grade” by Moody’s, Fitch or Standard & Poor’s or such other international rating agency as may be recognised by the DFSA.

### **3.7 Foreign Property Funds**

**3.7.1** 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.

#### **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.

### **3.8 Periodic Information to DFSA**

- 3.8.1** (1) An Authorised Firm must submit to the DFSA, within four months of the end of the Authorised Firm’s financial year, a report regarding any Offer or Transaction in respect of a Unit of any Domestic Fund or Foreign Fund which has been made during the preceding financial year.
- (2) The report required under (1) must include details of:
- (a) the name of the Fund and its Operator; and
  - (b) if the Fund is a Foreign Fund:
    - (i) whether it is a Designated Fund and, if so, in which Recognised Jurisdiction it is authorised or approved; and
    - (ii) if it is not a Designated Fund, the criteria met under Rule 3.6.1 to enable a Transaction to be undertaken in respect of the Fund’s Units.

**3.9 Record keeping**

- 3.9.1**
- (1) Without limiting any requirements under COB, an Authorised Firm must keep records of the relevant Prospectus and documentary evidence of the provision of a copy of the Prospectus and, if applicable, disclosure of the mandatory statement referred to in sections 15.3 and 19.3.
  - (2) The records in (1) must be maintained for a minimum of six years.

## **4 FUND ADMINISTRATION**

### **4.1 Application**

- 4.1.1** (1) Subject to (2), this chapter applies to an Authorised Firm which is a Fund Administrator.
- (2) This chapter does not apply to an Operator or Trustee to the extent that it carries on an activity of Providing Fund Administration within the Financial Services of Operating a Collective Investment Fund or of Acting as the Trustee of a Fund.

### **4.2 Compliance with the AML Rules**

- 4.2.1** The AML module applies to the activities of a Fund Administrator in Providing Fund Administration for a Domestic Fund or Foreign Fund as if each reference in AML to “customer” is a reference to “Unitholder” or “prospective Unitholder” as appropriate to the context.

### **4.3 Client Money and Assets**

- 4.3.1** A Fund Administrator, in Providing Fund Administration for a Domestic Fund or Foreign Fund, must not hold or control monies or assets belonging to third parties in connection with such administration except in the following circumstances:
- (a) holding cheques to the order of a Fund’s bank account, provided such cheques are securely held for a maximum of three business days prior to being deposited into the relevant Fund’s bank account or returned to the drawer of the cheque; or
- (b) where a mandate over a Fund’s or other third parties bank account is granted to a Fund Administrator and the mandate has been agreed in writing with the bank concerned, and transfers out of the relevant bank account may be made only in circumstances where the mandate restricts instructions to make such payments to being made solely in accordance with the payment of invoiced fees and expenses, made in accordance with the relevant Fund’s Constitution and Prospectus and are not remitted to the account of the Fund Administrator except by express instructions of the Fund’s Operator.

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## **4.4 Delegation and service level agreements**

**4.4.1** A Fund Administrator of a Domestic Fund for which it is Providing Fund Administration must have a Delegation Agreement with the Operator or Trustee in accordance with the requirements in App1.

### **Guidance**

Section 7.3 of these Rules governs the delegation of activities by an Operator or Trustee.

- 4.4.2**
- (1) A Fund Administrator of a Foreign Fund for which it is Providing Fund Administration must have a service level agreement with the Operator of the Fund setting out the functions and service standards that will be applied to the provision of such administration.
  - (2) The agreement in (1) must ensure that the Fund Administrator cannot in turn delegate the activities and functions delegated to it by the Operator unless the sub-delegate has been approved by the Operator.
  - (3) The agreement in (1) must also require the Fund Administrator to retain any relevant work or record relating to the delegated activities and functions should the contract be terminated by the Operator.

### **Guidance**

The DFSA would expect any agreement required under Rule 4.4.2 to include as a minimum the following provisions:

- a. unambiguous descriptions and definitions of the activities and functions to be provided by the Fund Administrator and the duties to be performed by both parties;
- b. an agreed standard in respect of resources and services supported as necessary by performance measures in accordance with the applicable legislation;
- c. the requirement for regular detailed reporting to a specified frequency from the Fund Administrator in respect of its duties and activities;
- d. provisions relating to the reporting of relevant events such as technological changes or error reporting and, in particular, any event which undermines the ability of the Fund Administrator to fulfil its duties;
- e. the requirement for an annual review (at a minimum) of the performance of the functions by the Fund Administrator; and
- f. provisions relating to records and adequate access by the Operator, the Fund's auditor, any Persons providing oversight of the Fund, and the DFSA.

## **4.5 Record keeping**

**4.5.1** A Fund Administrator must maintain records which are sufficient to show and explain transactions in relation to each of the specific activities and functions which are being provided to each Operator in relation to the relevant Fund, Unitholders or potential Unitholders of the Fund as appropriate.

**4.5.2** The records required to be held under Rule 4.5.1 must be:

- (a) maintained by the Fund Administrator such as to enable the Fund's Governing Body to ensure that any accounts prepared comply with relevant CIR Rules and any other applicable legislation;
- (b) retained by the Fund Administrator for at least 6 years from the date to which they relate;
- (c) at all reasonable times, open to inspection by the DFSA, the Fund's Auditor and any Person providing oversight functions for the relevant Fund; and
- (d) if requested by the DFSA, capable of reproduction within a reasonable period not exceeding 3 days, in hard copy and in English.

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## PART 2 –CORE RULES RELATING TO DOMESTIC FUNDS

### 5 CONSTITUTION

#### 5.1 Application

**5.1.1** This chapter applies to an Operator and Trustee in relation to a Domestic Fund.

#### 5.2 Instrument constituting the fund

**5.2.1** (1) Pursuant to Article 21(1) of the Law, every Fund must have a written Constitution which contains the statements and disclosures prescribed in the table in App4.

(2) The Operator of a Fund must ensure that the requirements of (1) are met and in the case of an Investment Trust the Trustee must also ensure that those requirements are met.

(3) The Operator and in the case of a Fund structured as an Investment Trust, both the Operator and the Trustee, is responsible for maintaining the Constitution and for making necessary alterations to it in accordance with applicable legislation.

(4) If the Fund is a Public Property Fund, the Constitution of the Fund must include provisions that deal with:

(a) the manner in which the issue and redemption of Units of the Fund will be made to ensure that the Fund is closed ended; and

(b) if applicable, the circumstances in which any Private Placements may be made.

**5.2.2** (1) An Operator may issue, and in the case of an Investment Trust, may instruct the Trustee to issue, such classes of Unit as are set out in the Constitution provided the rights of any class are not unfairly prejudicial to the interests of the Unitholders of any other class of Units in that Fund.

(2) Units whose issue may be limited can be issued by an Operator if permitted by the Constitution and if in accordance with the conditions set out in the Prospectus and provided that such issue will not materially prejudice any existing Unitholders in the Fund.



- (3) In the case of an Investment Trust, the Trustee must take reasonable measures to ensure, before carrying out the Operator's instructions, that those instructions comply with the requirements referred to in (1) and (2).

### **5.3 Name of the fund**

- 5.3.1**
- (1) The Operator of a Fund must ensure that neither the name of the Fund nor, if applicable, a Sub-Fund is undesirable, misleading or conflicts with the name of another Fund.

- (2) The Operator of a Fund must ensure that the name of any class of Unit is not undesirable, misleading or conflicts with the name of another Fund.

- (3) If the Fund is structured as an Investment Trust, the Trustee of the Fund must also ensure compliance with the requirements in (1) and (2).

- (4) In relation to (1) and (2), the DFSA, when deciding whether to make a direction under Article 21(7) of the Law and this Rule, will have taken into account, among other matters, whether the name of the Fund:

- (a) implies that the Fund has merits which are not, or might not be, justified;
- (b) is inconsistent with the Fund's investment objectives or policy;
- (c) might mislead Unitholders or prospective Unitholders into thinking that a Person other than the Operator is responsible for the Fund or a part of the Fund;
- (d) is substantially similar to the name of another Collective Investment Fund in the DIFC or elsewhere; or
- (e) is in the opinion of the DFSA likely to offend the public.

- 5.3.2**
- (1) For the name of a Fund to include the words "guaranteed", "protected" or any other words with a similar meaning implying a degree of security in relation to capital or income, the DFSA will require the Operator to demonstrate to the satisfaction of the DFSA the matters set out in (2) and (3).

- (2) The Operator, for the purposes of (1) must demonstrate that the guarantor has the authority and resources to honour the terms of the guarantee.

- (3) The Operator, for the purposes of (1) must demonstrate that all the terms of the guarantee and the credentials of the guarantor are clearly set out in detail in the Prospectus and that any exclusions such as force majeure are highlighted.
- (4) The DFSA will also take into account whether the degree of security implied by the name fairly reflects the nature of the arrangements for providing that security.
- (5) An Operator must not include the term “REIT” or “Real Estate Investment Trust” to refer to a Public Property Fund unless the requirements in Rules 13.5.26 – 13.5.29 are met in respect of the Fund. If at any time during the operation of the Fund the requirements are not met, the Operator, and, where relevant the Trustee, must immediately notify the DFSA and the exchange of the failure to meet the requirements in these Rules and what measures have been or will be taken to remedy the breach.

## **5.4 Alterations to the constitution**

### **Guidance**

Article 58 and 59 of the Law govern the process of making alterations to a Constitution.

**6 OPERATION AND ADMINISTRATION OF THE FUND****6.1 Application**

**6.1.1** This chapter applies to an Operator, Trustee and Fund Administrator in relation to a Domestic Fund.

**6.2 General management duties**

- 6.2.1**
- (1) An Operator must operate a Fund in accordance with:
    - (a) the Constitution;
    - (b) the most recently issued Prospectus; and
    - (c) the Law and the CIR Rules.
  - (2) An Operator must carry out such duties and functions in relation to the Fund as are necessary to ensure compliance with the Law and CIR Rules that impose obligations on the Operator.
  - (3) An Operator must make decisions as to the constituents of the Fund Property that are in accordance with the investment objectives and policy stated in the Prospectus.
  - (4) An Operator must take all steps and execute all documents to ensure that transactions are properly entered into for the account of the Fund.
  - (5) An Operator must establish and maintain risk management systems and controls to enable it to identify, assess, mitigate, control and monitor risks in relation to any Fund it operates.
- 6.2.2**
- (1) In relation to a Hedge Fund, the Operator must demonstrate functional separation and independence between:
    - (a) the functions of Fund valuation and asset pricing; and
    - (b) the investment management process.
  - (2) Where the Operator is unable to demonstrate adequate separation and independence in accordance with (1), the DFSA may require the Operator to appoint an independent suitably competent and experienced Fund Administrator to perform the functions specified in (1)(a).

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## **6.3 Duties in relation to the Fund Property**

- 6.3.1**
- (1) In the case of an Investment Company or an Investment Partnership the Operator is responsible to the Unitholders for the safekeeping of the Fund Property.
  - (2) In the case of an Investment Trust:
    - (a) the Trustee holds the Fund Property in trust for the Unitholders and accordingly is responsible to the Unitholders for the safekeeping of the Fund Property;
    - (b) the legal title of the Fund Property must be registered with the Trustee except in the case of a Real Property Fund where the Trustee has made adequate alternative arrangements that are in accordance with Rule 6.3.2; and
    - (c) the Operator may give instructions to the Trustee in accordance with the agreement creating the Investment Trust, the Fund's Constitution, and the Prospectus.

### **Guidance**

Chapter 7 of these Rules governs the power of an Operator or Trustee to delegate certain of their Financial Service activities, and to outsource their functions. Note that in relation to an Investment Company or Investment Partnership, section 7.3 requires an Operator to appoint an Eligible Custodian to hold Fund Property.

- 6.3.2**
- (1) In the case of a Property Fund, the Operator or, in the case of an Investment Trust, the Trustee, for the purpose of meeting the legal or regulatory requirements in relation to the ownership of Real Property applicable in the jurisdiction in which the Real Property is situated, may implement alternative arrangements for safekeeping where the arrangements:
    - (a) in the case of an Investment Trust, enable the Trustee to continue to control the Fund Property; and
    - (b) in all cases:
      - (i) do not enable the Operator to have unfettered control of the Fund Property; and
      - (ii) are in accordance, where applicable, with the requirements in Rules 13.5.7 to 13.5.12.
  - (2) If the Operator or, in the case of an Investment Trust, the Trustee, implements arrangements in accordance with (1) it must satisfy the DFSA that the arrangements have the effect specified in (1) and are legally effective in the DIFC and in the jurisdiction where the Real Property is situated.

**Guidance**

1. Rule 6.3.2 enables Operators and Trustees to find suitable alternative arrangements to those mandated under Rule 6.3.1 (1) and (2) for the safekeeping of Real Property in circumstances where, for example, the Trustee of an Investment Trust cannot by reason of the applicable Law hold the legal title to Real Property in a GCC country. In such situations appropriate use of declarations of trust, indemnities and resolutions may produce an acceptable alternative. The DFSA has previously permitted such alternative arrangements by way of waiver and modification to earlier provisions preceding the enactment of Rule 6.3.2.
2. Note that in relation to an Investment Company or Investment Partnership, section 7.3 requires an Operator to delegate the activity of Providing Custody to an Eligible Custodian. In relation to Investment Trust, section 7.3 also permits a Trustee to delegate the activity of Providing Custody to an Eligible Custodian.
3. For the purpose of satisfying the DFSA under Rule 6.3.2(2), the DFSA may require the Operator or Trustee to provide a legal opinion as to the legal effect of the proposed arrangements.

**6.4 Conflicts of interest**

- 6.4.1**
- (1) The Operator and, if it is a Fund structured as an Investment Trust, the Trustee, must take reasonable steps to ensure that in any dealing in relation to the Fund Property such dealings do not give rise to a conflict of interest.
  - (2) Where a conflict of interest arises, whether in dealings with Affected Persons or otherwise, the Operator and, if appointed, the Trustee must disclose to the Unitholders the nature of the conflict and how the conflict will be managed.
  - (3) An Operator must ensure that any transaction in respect of the Fund Property undertaken with an Affected Person is on terms at least as favourable to the Fund as any comparable arrangement on normal commercial terms negotiated at arm's length with an independent third party and in any event in accordance with this Rule.
  - (4) The Operator must obtain Unitholders' prior approval by Special Resolution in respect of Affected Person transactions where the total consideration or value of the transaction is 5% or more of the latest net asset value of the Fund, as disclosed in the latest published audited accounts of the Fund.
  - (5) Announcements must be made by the Operator for all Affected Person transactions. Details of the transactions must be disclosed by the Operator by way of a circular to Unitholders.

- (6) Where Unitholder approval is required, a notice must be issued to Unitholders providing details of the result of the Unitholders' voting at the general meeting. Subsequently, a brief summary of the transactions shall be included in the Fund's next published interim or annual report.
- (7) Where Affected Person transactions are carried out in relation to the Fund Property, a summary disclosure of the total value of such transactions, their nature and the identities of the Affected Persons must be made in the annual report of the Fund. Where there is no such transaction conducted during the financial year covered by the annual report, an appropriate negative statement to that effect must be made in the annual report.
- (8) Without limiting the generality of the obligations of the Operator including those in (1) – (7), the Operator must have policies and procedures in place which are designed to ensure that:
  - (a) when executing or procuring execution of trades for or on behalf of the Fund, the transactions are executed:
    - (i) as soon as reasonably practicable after a decision to effect a transaction has been made; and
    - (ii) on the best terms available at the time of dealing;
  - (b) where the Operator undertakes investment transactions for or on behalf of a Fund which it operates and one or more other Funds or Clients, there is timely and fair allocation of trades to each Fund and Client;
  - (c) trading of the investment portfolio forming part of the Fund Property is not excessive in light of the Fund's investment objective as stated in its Constitution and the most recently issued Prospectus; and
  - (d) any underwriting arrangements it undertakes are carried out in the best interest of the Fund.

**Guidance**

1. For the purposes of (8)(a), an Operator's procedures should take into account matters such as the market in which the trade is to be executed, the kind and size of the transaction concerned and type of services provided by the executing broker that has been selected. An Operator's procedures should be adequate to demonstrate that when the transaction was executed, it was done at the best price available. For this purpose, an Operator may require a print out of a computer screen containing information about the price available at the time of the execution to be maintained.
  2. For the purposes of (8)(b), an Operator should have a policy in place which demonstrates how it achieves timely and fair allocation of trades. For example, where an Operator places an order on behalf of a number of Funds it operates, its policy should state the basis of allocation of trades to each Fund and, where any deviation from that policy occurs, record the reasons for such deviations.
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3. For the purposes of (8)(c), an Operator's policies and procedures should encompass requirements such as maintenance of sufficient records to demonstrate that any brokerage, commissions or other benefits directly or indirectly derived from any transactions it has undertaken on behalf of the Fund are not unusual, when considered in light of industry practice. However, where there are other requirements relating to disclosure of benefits, an Operator should comply with those requirements separately, as maintenance of records for the purposes of this Rule may not be sufficient to discharge those obligations.
4. For the purposes of (8)(d), where an Operator seeks to underwrite or participate in an initial public offering, its policies should ensure that it does not do so in a manner that is in any way detrimental to the Fund. The Operator will also need to ensure that the best execution obligations under (8)(a) are met.

## **6.5 Valuation of fund**

- 6.5.1** (1) An Operator must:
- (a) ensure that the Fund Property is valued at regular intervals appropriate to the nature of the Fund, except where such valuation is suspended in any circumstances that are set out in the Fund's Constitution or Prospectus;
  - (b) prepare a valuation in accordance with (3) for each relevant type of Unit at each relevant valuation point; and
  - (c) if the Fund is a Public Fund, as soon as practicable after each valuation point, both publish and make available to the Unitholders and prospective Unitholders of the Fund, the price of the Units of the Fund.
- (2) The value of the Fund Property is the net value of the Fund Property after deducting any expenses and outstanding borrowings including any capital outstanding on a mortgage of any Real Property.
  - (3) The value of the Fund Property must, save as otherwise provided in this section, be determined in accordance with the provisions of the Constitution and the Prospectus, as appropriate.
  - (4) For the purposes of (2), any charges that were paid, or would be payable, on acquiring or disposing of the asset must be excluded from the value of that asset.

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- 6.5.2** (1) An Operator must:
- (a) ensure that at each valuation point there are at least as many Units in issue of any class as there are Units registered to Unitholders of that class; and
  - (b) not do, or omit anything that would, or might confer on itself a benefit or advantage at the expense of a Unitholder or prospective Unitholder.
- (2) Where an Operator has not complied with (1) or there is any other valuation error, it must correct the error as soon as possible and must reimburse the Fund any costs it may have incurred in correcting the position, subject to any reasonable minimum level for such reimbursement as set out in the Prospectus.
- (3) If the Fund is structured as an Investment Trust:
- (a) the Operator must notify the Trustee of the matters specified in (2);
  - (b) the Trustee must also take reasonable steps to ensure that the Operator complies with the matters specified in (1) and (2); and
  - (c) provide any other notification required under these Rules.

**Guidance**

Appendix 3 (App3) contains guidance on asset valuation and pricing.

**6.6 Determination of single price**

- 6.6.1** (1) An Operator has a duty to take all reasonable steps and exercise due diligence, to ensure that the Units in the Fund are correctly priced in accordance with the applicable accounting procedures to ascertain an accurate single price for a Unit.
- (2) The price of a Unit must be calculated on the basis of the valuation in Rule 6.5.1 in a manner that is fair and reasonable as between Unitholders.
- 6.6.2** (1) An Operator has a duty to take immediate action to rectify any breach of Rule 6.6.1 where such breach relates to the incorrect pricing of Units.
- (2) In (1), unless the incorrect pricing in respect of issue is of minimal significance, the Operator must inform the DFSA, the Trustee and the Eligible Custodian or other Persons providing oversight functions in relation to the Fund of such rectification.



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## **6.7 Issue and redemption of Public Fund Units**

- 6.7.1**
- (1) An Operator of a Public Fund must, at all times during the dealing day, be willing to issue and effect the sale of Units in the Fund to any eligible Client within any conditions in the Constitution and the Prospectus which must be fair and reasonable as between all Unitholders and prospective Unitholders for whom the Operator does not have reasonable grounds to refuse such sale.
  - (2) An Operator must, at all times during the dealing day, effect a redemption on the request of any prospective Unitholder within any conditions in the Constitution and the Prospectus of Units owned by that Unitholder, unless the Operator has reasonable grounds to refuse such redemption.
  - (3) On agreeing to a redemption of Units within (2), the Operator must pay the full proceeds of the redemption to the Unitholder within any reasonable period specified in the Constitution or the Prospectus, unless it has reasonable grounds for withholding payment.
  - (4) Payment of proceeds on redemption must be made by the Operator in any manner provided for in the Prospectus which must be fair and reasonable as between redeeming Unitholders and continuing Unitholders.
  - (5) If Fund is a closed ended Public Fund, the Operator must have in place arrangements to ensure that the issue, sale and redemption of Units of the Fund is consistent with the closed ended nature of the Fund. The Operator may also make provision for the issue of Units of the Fund through Private Placement, provided those provisions are not inconsistent with the closed ended nature of the Fund.

### **Guidance**

The maximum period between dealing days for a Fund will depend on the reasonable expectations of the target investor group and the particular investment objectives and policy of the Fund.

## **6.8 Unitholder register**

- 6.8.1**
- (1) Subject to (5), an Operator must maintain a register of Unitholders.
  - (2) The register must contain:
    - (a) the name and address of each Unitholder;
    - (b) the number of Units including fractions of a Unit of each class held by each Unitholder; and

- (c) the date on which the Unitholder was registered in the register for the Units standing in his name.
- (3) An Operator must take all reasonable steps and exercise all due diligence to ensure that the register is kept complete and up to date.
- (4) An Operator must make the register in electronic or hard copy form available for inspection by Unitholders during normal business hours at the Operator's place of business in the DIFC or otherwise in a designated location in the DIFC.
- (5) Where a Fund is structured as an Investment Trust, the Trustee must maintain the register of Unitholders in accordance with the requirements in the Investment Trust Law 2006 and make the register in electronic or hard copy form available for inspection by Unitholders during normal business hours at the Trustee's place of business in the DIFC or otherwise in a designated location in the DIFC.

## **6.9 Meetings of governing body and Unitholders**

- 6.9.1** (1) An Operator must hold at least two meetings of the Governing Body of every Fund it operates which has such a Body every 12 month period from the date of registration with the DFSA or, in the case of a Private Fund, the date of notification to the DFSA.
- (2) For the purposes of (1), the two meetings referred to above must be held in the DIFC and the periodic reports required under chapter 9 must be presented at those meetings.
- (3) An Operator must also hold an annual meeting of Unitholders, of every Fund it operates, in every 12 month period from the date of registration or, in the case of a Private Fund, the date of issue of the initial Units and the annual report required under chapter 9 must be presented at that meeting.
- (4) If the Fund is an Investment Trust, the Trustee or the Operator may convene a meeting of Unitholders at anytime but the responsibility to convene meetings in accordance with this Rule rests with the Operator failing which, with the Trustee.
- (5) The Operator must on receipt of a request in writing of the Unitholders which complies with (6) immediately call a meeting of the Unitholders.
- (6) The request in (5) must be signed by the Unitholders who, at that date, are registered as the Unitholders of Units representing not less than one-tenth in value of all of the Units in the Fund then in issue.

- (7) A meeting of Unitholders of a Fund duly convened and held in accordance with the Law and Rules is competent by Special Resolution to require, authorise or approve any act, matter or document in respect of which any such resolution is required. Such a resolution has no other powers or effect.
- (8) Where no Special Resolution is specifically required or permitted by the Law or Rules, any resolution of Unitholders required under the Rules is passed by a simple majority of the votes validly cast for and against the resolution at a general meeting of Unitholders.

**Unitholder meetings procedures for Private Funds**

**6.9.2** An Operator of a Private Fund must set out in the Fund's Constitution the procedures for holding Unitholder meetings and the conduct of such meetings including but not limited to, the following matters:

- (a) voting rights;
- (b) right to demand a poll;
- (c) proxies;
- (d) minutes; and
- (e) variation of class rights and class meetings.

**Unitholder meetings procedures for Public Funds**

**6.9.3** (1) An Operator of a Public Fund must produce and maintain a procedures manual in respect of Unitholder meetings covering the matters set out under this section and also including, but not limited to, the following matters:

- (a) voting rights;
  - (b) right to demand a poll;
  - (c) proxies;
  - (d) minutes; and
  - (e) variation of class rights and class meetings.
- (2) The Operator must distribute the meetings procedures manual to all Unitholders.
- (3) If the Fund is structured as an Investment Trust, the Operator must obtain the prior approval of the Trustee in respect of the meetings procedures set out in the manual before its distribution to Unitholders.

- 6.9.4**
- (1) In the case of a Fund which is structured as an Investment Trust, the Trustee must nominate in writing a Person to be the chairman of a meeting of Unitholders and such Person must be a Unitholder other than the Operator.
  - (2) If no such chairman is nominated or if at any meeting the Person nominated is not present within 15 minutes after the time appointed for holding the meeting, the Unitholders present must choose another chairman.
  - (3) In the case of an equality of votes cast whether on a show of hands or on a poll in respect of a resolution put to a meeting of the Unitholders, any chairman appointed in accordance with the Constitution or under these Rules is entitled to a casting vote in addition to any other vote the chairman may have.
- 6.9.5**
- (1) Unitholders of a Public Fund must be given at least 14 days written notice or any longer period of notice specified for the purpose in the Constitution or these Rules, inclusive of the date on which the notice is first served and the day of the meeting.
  - (2) The notice must specify the place, day and hour of meeting and the terms of the resolutions to be proposed.
  - (3) In the case of an Investment Trust, unless the Trustee has convened the meeting, a copy of the notice must be sent to the Trustee no later than the time at which it is sent to the Unitholders.
  - (4) The accidental omission to give notice to, or the non-receipt of notice by, any of the Unitholders does not invalidate the proceedings at any meeting.
  - (5) Notice of any adjourned meeting of Unitholders must be given to Unitholders and if relevant, to the Trustee.
- 6.9.6**
- (1) In the case of an Investment Trust, the quorum at a meeting of Unitholders is the Unitholders present in person or by proxy or, in the case of a body corporate, by a duly authorised representative, of one-tenth in value or any proportion more than one-tenth in value specified for this purpose in the Trust Deed of all the Units in issue.
  - (2) In the case of an Investment Company, the quorum at a meeting of Unitholders is two Unitholders, present in Person or by proxy or, in the case of a Body Corporate, by a duly authorised representative.
  - (3) Business must not be transacted at any meeting unless the requisite quorum is present at the commencement of business.
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- (4) If within half an hour from the time appointed for the meeting, a quorum is not present, the meeting:
  - (a) if convened on the requisition or request of Unitholders, must be dissolved; and
  - (b) if any other case, must stand adjourned to:
    - (i) a day and time which is seven or more days after the day and time of the meeting; and
    - (ii) a place to be appointed by the chairman if a chairman has been appointed in accordance with the Constitution or otherwise by the Operator.
- (5) If, at an adjourned meeting under (4)(b), a quorum is not present within 15 minutes from the time appointed for the meeting, one person entitled to be counted in a quorum present at the meeting is a quorum.
- (6) Notice of any adjourned meeting of Unitholders must be given to Unitholders. That notice must state that one or more Unitholders present at the adjourned meeting whatever their number and whatever the number of Units held by that Unitholder or Unitholders will form a quorum.

**6.9.7**

- (1) No Operator, or other member of the Governing Body of the Fund is entitled to be counted in the quorum of, and no Operator or other member of the Governing Body of the Fund nor any associate of such a Person is entitled to vote at, any meeting of the Fund.
- (2) The prohibition in (1) does not apply to the exercise of voting rights attaching to any Units which the Operator or other member of the Governing Body of the Fund or its associate holds on behalf of, or jointly with, another Person who is not subject to the prohibition in (1) and from whom the Operator or other member of the Governing Body of the Fund or its associate, as the case may be, has received voting instructions.
- (3) Therefore, for the purpose of Rule 6.9.5, Units held, or treated as held, by any Operator or other member of the Governing Body of the Fund, must not, except as mentioned in (2), be regarded as being in issue.

## **6.10 Approvals and notifications**

- 6.10.1** An Operator must comply with the provisions in App2 in regard to:
- (a) fundamental changes requiring prior approval of the Unitholders;
  - (b) significant changes requiring pre-event notification to the Unitholders; and
  - (c) notifiable changes, that is, a change other than one in (a) or (b) which requires notification to the Unitholders.

## **6.11 Maintenance of records**

- 6.11.1** (1) An Operator must make and retain accounting and other records that are necessary:
- (a) to enable it to comply with Rules in this module; and
  - (b) to demonstrate at any time that such compliance has been achieved.
- (2) An Operator must make and retain for a period of six years a record of the Units held, acquired or disposed of, by it, including the classes of such Units, and of the balance of any acquisitions and disposals.
- (3) An Operator must make the record available for inspection by the DFSA in the DIFC and, if applicable, the Trustee appointed Eligible Custodian free of charge at all times during ordinary office hours and must supply a copy of the record or any part of it.
- (4) Except when the policy of an Operator stated in the Prospectus is neither to require a dilution levy nor to make a dilution adjustment, it must make and retain for a period of six years from the date each record is made a record of:
- (a) how it calculates and estimates dilution;
  - (b) its policy and method for determining the amount of any dilution levy or dilution adjustment.
- (5) In (4) “dilution levy” is a charge of such amount or at such rate as is determined by an Operator of a Fund to be made for the purpose of reducing the effect of dilution, that is, the amount of dealing costs incurred, or expected to be incurred, by an Operator to the extent that these costs may reasonably be expected to result, or have resulted from the acquisition or disposal of Investments by the Operator as a consequence (whether or not immediate) of the increase or decrease in the cash resources of the Fund resulting from the issue or cancellation of Units over a period.
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- (6) For the purposes of (5), dealing costs include both the costs of dealing in an Investment, professional fees incurred, or expected to be incurred, in relation to the acquisition or disposal of Real Property and, where there is a spread between the buying and selling prices of the Investment, the indirect cost resulting from the differences between those prices.

## **6.12 Capital**

- 6.12.1** (1) If, at any time after the size of the Fund's capital has reached the minimum size provided in its Constitution and the size of that capital falls below that minimum size, the Operator must immediately notify the DFSA of that fact.
- (2) The notification under (1) must also:
- (a) state the Operator's grounds for believing that the Fund is still commercially viable and the purpose of the Fund can still be accomplished; and
  - (b) be accompanied by the relevant Unitholders' resolution supporting the Operator's views in (1); or
  - (c) state what steps the Operator has taken or will take to wind up the Fund.

## **7 DELEGATION AND OUTSOURCING**

### **7.1 Application**

**7.1.1** This chapter applies to the Operator and where appointed the Trustee in relation to a Domestic Fund.

### **7.2 General**

#### **Guidance**

1. In accordance with the Law and the Investment Trust Law 2006, an Operator or where appointed the Trustee may, subject to any restriction in the Constitution of the Domestic Fund and any provisions of the Rules, delegate any of its Financial Service activities or outsource any of its functions to another Person, whether that Person is located in or outside the DIFC.
2. In this chapter, a Person to whom the Operator or Trustee has delegated a Financial Service activity (as defined in GEN), or to whom a function is outsourced, is referred to as a Service Provider.
3. The Rules in this chapter require an Operator of an Investment Company or Investment Partnership to delegate the activity of Providing Custody to an Eligible Custodian. They also govern the circumstances in which an Operator or Trustee may otherwise delegate or outsource.
4. An Operator or Trustee outsources a function relating to the operation of the Fund where the function, whether or not relating to a Financial Service activity, is contracted to be performed by a Service Provider. Where the extent of any such function or functions is such that they effectively constitute the carrying on of a Financial Service activity, the DFSA will consider this to comprise a delegation of the Financial Service.
5. If the Operator or the Trustee delegates any activities or outsources any functions, the Operator or the Trustee remains liable to the Unitholders for any acts or omissions of the Service Provider as if they were the acts or omissions of the Operator or Trustee.
6. The Rules permitting the use of a Service Provider do not relieve the Operator or the Trustee from their obligations including any restrictions on delegation or outsourcing arising from the Fund's Constitution or Prospectus.
7. GEN Rules 5.3.21 and 5.3.22 also govern outsourcing of functions and activities by an Authorised Firm. Those Rules are not disapplied by this chapter.



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## **7.3 Delegation of activities by an Operator or Trustee**

### **Operator**

- 7.3.1**
- (1) Subject to (2) and the Rules in section 7.4, an Operator of an Investment Company or Investment Partnership must delegate the Financial Service activity of Providing Custody to a Service Provider who is an Eligible Custodian.
  - (2) The requirement in (1) does not apply to:
    - (a) a Real Property Fund where the Operator has made adequate alternative arrangements that are in accordance with Rule 6.3.2; or
    - (b) a Private Equity Fund where the Operator has made adequate alternative arrangements.
  - (3) In accordance with the Delegation Agreement, the Operator:
    - (a) must register the legal title of the Fund Property with the Eligible Custodian; and
    - (b) may give instructions to the Eligible Custodian to deal with the Fund Property.
- 7.3.2**
- (1) Subject to the Rules in section 7.4, an Operator may delegate one or both of the Financial Service activities of Providing Fund Administration and Managing Assets to a Service Provider.
  - (2) For the purposes of (1), and in relation to Providing Fund Administration for a Public Fund, the Service Provider must be:
    - (a) a Person authorised by the DFSA to carry on the activity of Providing Fund Administration; or
    - (b) a Person who is lawfully entitled in a Zone 1 jurisdiction or Recognised Jurisdiction to carry on in that jurisdiction the activities of:
      - (i) asset pricing and Fund valuation;
      - (ii) issuing and redemption of Units; and
      - (iii) record keeping and maintaining the Unitholders register.
  - (3) For the purposes of (1), and in relation to Managing Assets, the Service Provider must be:
    - (a) a Person authorised by the DFSA to carry on the activity of Managing Assets; or
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- (b) a Person who is authorised by a Financial Services Regulator in a Zone 1 jurisdiction or Recognised Jurisdiction to carry on an equivalent activity in that jurisdiction.

**Guidance**

As Rule 7.3.2(2) only applies in relation to a Public Fund, an Operator of a Private Fund may make other appropriate arrangements in respect of the provision of Fund Administration, whereas, the requirement in Rule 7.3.2(3) applies to an Operator in relation to both Public and Private Funds.

**Trustee**

- 7.3.3**
- (1) Subject to the Rules in section 7.4, a Trustee may, with the prior written consent of the Operator, delegate one or both of the Financial Service activities of Providing Fund Administration and Providing Custody to a Service Provider.
  - (2) For the purposes of (1), and in relation to Providing Fund Administration for a Public Fund, the Service Provider must be:
    - (a) a Person authorised by the DFSA to carry on the activity of Providing Fund Administration; or
    - (b) a Person who is lawfully entitled in a Zone 1 jurisdiction or Recognised Jurisdiction to carry on in that jurisdiction the activities of:
      - (i) asset pricing and Fund valuation;
      - (ii) issuing and redemption of Units; and
      - (iii) record keeping and maintaining the Unitholders register.
  - (3) For the purposes of (1), and in relation to Providing Custody, the Service Provider must be an Eligible Custodian.

**7.4 Delegation process and requirements**

**7.4.1** An Operator or Trustee must carry out due diligence on a proposed Service Provider to ensure eligibility prior to effecting a delegation of a Financial Services activity.

**7.4.2** An Operator or Trustee must comply with the requirements in chapter 5 of GEN and App1 and ensure that any delegation is made in a written Delegation Agreement as prescribed in App1.

**7.4.3** Delegation to a Service Provider does not relieve the Operator or Trustee from accountability for the proper conduct of a delegated activity.

- 7.4.4** The DFSA may, as a condition on an Operator's or Trustee's Licence, require the delegation of one or more specified Financial Service activities to a Service Provider.

**Guidance**

The DFSA may impose a condition under Rule 7.4.4 when, for example, it considers that an Operator is unable to conduct the activity under its own Licence.

## **7.5 Outsourcing process and requirements**

- 7.5.1** When an Operator or Trustee as the case may be outsources any function to a Service Provider, it must:

- (a) comply with any relevant requirements in chapter 5 of GEN;
- (b) enter into an Outsourcing Agreement which complies with the requirements in App1; and
- (c) before entering into such agreement, carry out due diligence on the proposed Service Provider to conclude on reasonable grounds that the Person is suitable to perform the relevant functions.

## **7.6 Systems and controls**

- 7.6.1** If an Operator or the Trustee delegates any activity or outsources any function under this chapter, it must take reasonable steps to ensure that it implements and maintains systems and controls to monitor the Service Provider.

**Guidance**

This Rule supplements the requirements under GEN section 5.3

## **7.7 Review**

- 7.7.1** (1) An Operator or the Trustee, which has delegated any Financial Service activities or outsourced any functions, must conduct a review of the carrying out of the relevant activities or functions and present the findings of the review to either:
- (a) the Fund's Governing Body every 6 months at the Fund's board meeting in the DIFC; or
  - (b) in the case of a Fund structured as an Investment Trust, to the Trustee or the Operator as the case may be.

- (2) Notwithstanding the requirement in (1), if an Operator or the Trustee discovers non-compliance in regard to a term of the Delegation Agreement or Outsourcing Agreement, the Operator or the Trustee as the case may be must take immediate action to remedy the matter and also notify the DFSA and as applicable its Governing Body or the Trustee forthwith.
- (3) For the purposes of (2), the Operator or the Trustee must notify the DFSA only where the non-compliance is material.

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## **8 ACCOUNTING STANDARDS**

### **8.1 Application**

**8.1.1** This chapter applies to every Operator and is relevant to every Auditor of a Fund.

### **8.2 Accounting standards for Funds**

- 8.2.1**
- (1) An Operator must in respect of a Fund prepare and maintain all financial accounts and statements in accordance with USGAAP or in accordance with IFRS as supplemented by the Statement of Recommended Practice (SORP) issued from time to time by the United Kingdom's Investment Managers Association (IMA), where appropriate, unless (2) or (3) applies.
  - (2) If a Fund is an Islamic Fund the Operator must prepare and maintain all financial accounts and statements in accordance with the accounting standards of the Accounting and Auditing Organisation for Islamic Financial Institutions AAOIFI FAS 14.
  - (3) If the Operator of an Umbrella Fund operates one or more Islamic Sub-Funds it must prepare and maintain all financial accounts and statements in accordance with the IFRS, as supplemented by AAOIFI FAS14.

#### **Guidance**

AAOIFI FAS 14 sets out the accounting rules for recognising, measuring and presenting the assets managed and funds mobilised on the basis of Islamic Shari'a rules and principles in the financial accounts and statements of conventional financial institutions that offer Islamic financial services, as well as the income generated from these services. The standard also determines the necessary disclosures related to these services.

### **8.3 Accounting records**

- 8.3.1** Every Operator must keep accounting records which 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.

**8.3.2** Accounting records must be maintained by an Operator such as to enable the Governing Body and, if appointed, the Trustee or any Persons providing oversight of the Fund to ensure that any accounts prepared by the Operator in relation to the Fund comply with the legislation applicable in the DIFC.

**8.3.3** The accounting records must be:

- (a) retained by the Operator 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 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 PERIODIC REPORTS**

### **9.1 Application**

**9.1.1** This chapter applies to:

- (a) the Operator;
- (b) the Trustee;
- (c) the Auditor;
- (d) a Person providing oversight functions; and
- (e) a Person appointed to the investment committee of a Domestic Fund.

### **9.2 Annual and interim reports**

**9.2.1** In order to provide the Unitholders with relevant and up-to-date information about the progress of a Fund, an Operator must produce one interim report and one annual report in respect of each Fund it operates in accordance with the Rules in this chapter.

- 9.2.2**
- (1) An Operator 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), an Operator may, subject to the prior approval of the DFSA, produce the Fund's reports and accounts in accordance with the Operator's reporting periods.
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- (4) For the purposes of (1), an interim accounting period is the period covering:
  - (a) 6 months after the date on which the Fund was registered by the DFSA, or in the case of an Private Fund, notified to the DFSA; 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 Operator must:
  - (a) obtain written confirmation from its 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 Operator must prepare an interim report for each Sub-Fund, but this is not necessary for the Umbrella Fund as a whole.
- (7) The Operator must prepare the annual and interim reports of the Fund in accordance with Rule 8.2.1(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.

**9.2.3** The Operator must take reasonable steps to ensure that the interim and annual reports for a Fund or the Sub-Funds of an Umbrella Fund are clear, complete and true and contain for the relevant period:

- (a) the name of the Fund or Sub-Fund, its stated investment objectives, the policy of achieving those objectives and, a brief assessment of its risk profile;
  - (b) a review of the Fund's or Sub-Fund's investment activities and investment performance during the period;
  - (c) sufficient information to enable Unitholders to form a view on where the portfolio is invested at the end of the period and the extent to which that has changed over the period; and
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- (d) any other significant information which would reasonably enable Unitholders to make an informed judgment on the activities of the Fund or Sub-Fund during the period and the results of those activities at the end of the reporting period.

### **9.3 Interim report**

**9.3.1** The Operator must produce an interim report which must include the reports and matters set out in Rule 9.5.1 and:

- (a) the total expense ratio at the end of the period;
- (b) particulars of any material issues raised by the Eligible Custodian and, if applicable, the Trustee, the investment committee or any Person providing oversight in relation to the Fund; and
- (c) if applicable, the Shari'a review interim report by the Shari'a Supervisory Board.

### **9.4 Contents of the annual report**

**9.4.1** An annual report on a Fund, other than a Fund which is an Umbrella Fund, must contain:

- (a) the full audited accounts for the annual accounting period;
- (b) the report of the Auditor in accordance with Rule 9.8.1;
- (c) the report of the Operator in accordance with Rule 9.5.1; and
- (d) if the Fund is a Public Fund, the comparative table in accordance with Rule 9.6.1; 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 report in accordance with Rule 9.7.1 of the Person providing oversight of the Fund;
- (g) if the Fund is an Islamic Fund, the report specified in Rule 13.1.11(2); and
- (h) if the Fund in an Investment Trust, the report of the Trustee in accordance with Rule 9.7.1.

- 9.4.2** An annual report on a Fund which is an Umbrella Fund must contain:
- (a) for each Sub-Fund:
    - (i) the full audited accounts for the annual accounting period;
    - (ii) the report of the Operator in accordance with Rule 9.5.1; and
    - (iii) if the Fund is a Public Fund, the comparative table in accordance with Rule 9.6.1; 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 required by (a)(i) for each Sub-Fund;
  - (c) the report of the Auditor in accordance with Rule 9.8.1; and
  - (d) if the Fund is a Public Fund, the report in accordance with Rule 9.7.1 of the Person providing oversight of the Fund.

- 9.4.3**
- (1) Where a Fund is required to appoint an investment committee, 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.

**9.4.4** The Operator must ensure that the accounts 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.

## **9.5 Operator's report**

- 9.5.1** The matters set out in (a) to (h) must be included in any Operator's report, except where otherwise indicated:
- (a) a restatement of the investment objectives of the Fund;
  - (b) a restatement of the policy for achieving those objectives;
  - (c) a review of the investment activities, including in relation to (a) and (b), during the period to which the report relates;
  - (d) particulars of any fundamental change requiring prior approval by Unitholder meeting, made since the date of the last report;
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- (e) particulars of any significant change requiring pre-event notification since the date of the last report;
- (f) any other information which would enable Unitholders to make an informed judgement on the development of the activities of the Fund during this period and the results of those activities as at the end of that period;
- (g) for a report on an Umbrella Fund the information required in (a) to (h) must be given for each Sub-Fund, if it would vary from that given in respect of the Umbrella Fund as a whole; and
- (h) for a Fund which invests a substantial proportion of its assets in other Funds, a statement as to the maximum proportion of management fees charged to the Fund itself and to other Funds in which that Fund invests.

## **9.6 Comparative table**

### **Guidance**

In presenting past performance information, the DFSA recommends that Operators follow the Global Investment Performance Standards (GIPS) issued by Institute of Chartered Financial Analysts of the USA.

### **9.6.1** The comparative table for the annual report for a Public Fund must set out:

- (a) the performance record over the last five calendar years, or if the Fund has not been in existence during the whole of that period, over the whole period in which it has been in existence, showing:
  - (i) the highest and the lowest price of a Unit of each class in issue during each of those years; and
  - (ii) the net income distributed or, for accumulation Units, allocated for a Unit of each class in issue during each of those years, taking account of any sub-division or consolidation of Units that occurred during that period;
- (b) as at the end of each of the last three annual accounting periods or all of the Fund's annual accounting periods, if less than three:
  - (i) the total net asset value of the Fund Property at the end of each of those years;
  - (ii) the net asset value per Unit of each class; and
  - (iii) for a report of the directors of an Investment Company, the number of Units of each class in issue; or

- (iv) for a report of the Operator of any other Fund, the number of Units of each class in existence or treated as in existence; and
- (c) if, in the period covered by the table:
  - (i) the Operator has been the subject of any event such as a transfer scheme having a material effect on the size of the Fund, but excluding any issue or cancellation of Units for cash; or
  - (ii) there have been changes in the investment objectives of the Fund;

an indication, related in the body of the table to the relevant year in the table, of the date of the event or change in the investment objectives and a brief description of its nature.

## **9.7 Oversight report**

- 9.7.1** (1) The Trustee, Eligible Custodian or other Persons providing oversight of a Public Fund must make a report to Unitholders of the Fund which must be included in the annual report.
- (2) The report must contain:
  - (a) a description, which may be in summary form, of the duties of the Trustee, Custodian or other Persons carrying out oversight functions and in respect of the safekeeping of the Fund Property; and
  - (b) a statement whether, in any material respect:
    - (i) the issue, sale, redemption and cancellation, and calculation of the price of the Units and the application of the Fund's income, have not been carried out in accordance with the Rules and, the Constitution; and
    - (ii) the investment and borrowing powers and restrictions applicable to the Fund have been exceeded.

**9.8 Report of the auditor**

**9.8.1** The Operator must ensure that the report of the Auditor to the Unitholders, for inclusion in the annual report, must include a statement:

- (a) 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;
- (b) whether, in the Auditor's opinion, the accounts give a true and fair view of 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 that period;
- (c) whether the Auditor is of the opinion that proper accounting records for the Fund or, as the case may be, Sub-Fund have not been kept or whether the accounts are not in agreement with those records;
- (d) 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
- (e) whether the Auditor is of the opinion that the information given in the report of the directors or in the report of the Operator for that period is consistent with the accounts.

## 9.9 Annual report table

### Guidance

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

Type of Report	CIR Ref	Public Funds	Private Funds
Audited Accounts	9.2.2(2)(a); 9.4	✓	✓
Operator's Report	9.5	✓	✓
Report of the Audit	9.8	✓	✓
Oversight Report	9.7	✓	Not applicable
Comparative Table	9.6	✓	Performance Statement (9.4.1(e))
Eligible Custodian Report	9.4.3(2)	Hedge Funds only	Hedge Funds only
Independent Committee	9.4.3(1)	Private Equity Funds, Property Funds and where appropriate	Private Equity Funds, Property Funds and where appropriate
Shari'a Supervisory Board Report	9.4.1(g)	Islamic Funds only	Islamic Funds only
Trustee's Report	9.7	Investment Trusts only	Investment Trust only

## **10 CHARGES AND EXPENSES**

### **10.1 Application**

**10.1.1** This chapter applies to an Operator and Trustee of a Domestic Fund.

### **10.2 Charges, levies and payments**

- 10.2.1**
- (1) An Operator must not make any charge or levy in connection with the issue or sale of Units except in accordance with the Constitution and Prospectus.
  - (2) A preliminary or redemption charge must not be made by the Operator unless:
    - (a) it is permitted by the Constitution; and
    - (b) it is expressed either as a fixed amount or calculated as a percentage of the price of a Unit.
  - (3) The preliminary charge must not exceed the amount or rate stated in the current Prospectus in respect of any class of Units.
- 10.2.2**
- (1) No payment may be made, or benefit given, to the Operator out of the Fund Property whether by way of remuneration for its services, reimbursement of expenses or otherwise, unless it is permitted by the Constitution and the Prospectus specifies how it will be calculated, accrued, when it will be paid and the maximum and current rates or amount of such remuneration.
  - (2) The Operator must give not less than 90 days written notice of any increase proposed within the parameters of the Constitution and Prospectus.
- 10.2.3** An Operator must not introduce a new category of remuneration for its services or make any increase in the current rate or amount of its remuneration payable out of the Fund Property unless the Operator has given not less than 90 days written notice of that introduction or increase and of the date of its commencement to the Unitholders and to the Persons providing oversight of the Fund and the Unitholders approve such new category by Special Resolution.

**10.3 Remuneration and reimbursement of expenses**

- 10.3.1** (1) An Operator must take reasonable steps to ensure that no payment is to be made to a Trustee, an Eligible Custodian or Persons providing oversight out of the Fund Property, whether by way of reimbursement of expenses or otherwise, except:
- (a) remuneration in respect of services provided and in respect of which the following have been stated in the Prospectus:
    - (i) the actual amount or rate of the remuneration together with the current maximum or how these are determined;
    - (ii) the periods in respect of which the remuneration is to be paid;
    - (iii) how the remuneration is to accrue; and
    - (iv) when the remuneration is to be paid; and
  - (b) reimbursement of expenses properly incurred by the Trustee, Eligible Custodian or Persons providing oversight functions for performing such functions conferred on the Trustee, Eligible Custodian or other Persons by the Rules.
- (2) Payment under (1)(a) must not be made unless permitted by the Constitution.

**10.4 Promotional payments, performance fees and set up costs**

**10.4.1** No promotional payment, performance fee or benefit may be made out of or given at the expense of the Fund Property to the Operator unless it is permitted by the Constitution and specified in the Prospectus.

**10.4.2** Costs of the registration, exemption and incorporation of a Fund and of its initial Offer or issue of Units including Units in respect of a Sub-Fund may, be amortised over a period not exceeding five years.

**10.5 Allocation of payments to capital or income**

- 10.5.1** (1) The Operator and the Trustee or the Persons providing oversight arrangements may agree that all or any part of any permitted payments, charges and expenses of the Fund may be treated as a capital expense or income expense and allocated to the capital account or income account respectively.



- (2) The Operator must ensure that any agreement in (1) is permitted by the Constitution and specified in the Prospectus in sufficient detail for a Unitholder or a prospective Unitholder to make an informed decision in relation to the allocation of such charges and expenses to be paid from the capital property or the income property as the case may be.

## **10.6 Payments of liabilities on transfer of assets**

**10.6.1** Where the property of a Body Corporate or of another Fund is transferred to a Fund or to the Operator for the account of the Fund or to the Trustee to hold on trust for the Unitholders in consideration of the issue of Units in the Fund to Unitholders in that Body Corporate or in that other Fund, Rule 10.6.2 applies.

**10.6.2** The Operator or in the case of an Investment Trust the Trustee, as the successor in title to the property transferred, may pay out of the Fund Property any liability arising after the transfer which, had it arisen before the transfer, could properly have been paid out of the property transferred, but only if:

- (a) there is nothing in the Constitution of the Fund expressly forbidding the payment; and
- (b) the Operator is of the opinion that proper provision was made for meeting such liabilities as were known or could reasonably have been anticipated at the time of the transfer.

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## **11 RESPONSIBILITY FOR PROSPECTUS**

### **11.1 Application**

**11.1.1** This chapter applies to every Person to whom Part 6 of the Law applies.

#### **Guidance**

1. Every Domestic Fund, pursuant to Article 41(1) of the Law, must produce a Prospectus. The requirements for a Public Fund are set out under chapter 15 and those for a private class Fund are set out under chapter 19.
2. Article 45 (Liability for misleading statements) of the Law provides a remedy of compensation in the event of untrue, deceptive or misleading statements and of omissions in a Prospectus.

### **11.2 Prescribed persons**

- 11.2.1** (1) For the purposes of Article 45(2) of the Law, the following Persons are prescribed as being responsible for a Prospectus:
- (a) the Operator;
  - (b) where the Fund is a Body Corporate, each Person who is a Director of that Body Corporate at the time when the Prospectus is filed;
  - (c) where the Fund is an Investment Undertaking, each Person who is authorised to be named, and is named, in the Prospectus as a Director, General Partner or member of the Governing Body or as having agreed to become such a Person of that Fund either immediately or at a future time;
  - (d) each Person who accepts, and is stated in the Prospectus as accepting responsibility for, or for any part of, the Prospectus;
  - (e) each Person who is deemed to accept responsibility for any part of a Prospectus under these Rules; and
  - (f) each Person not falling within any of the foregoing paragraphs who has authorised the contents of, or of any part of, the Prospectus.
- (2) A Person who has accepted responsibility for, or authorised, only part of the contents of any Prospectus, is responsible only for that part and only if it is included in, or substantially in, the form and context to which he has agreed.

- (3) Nothing in (1) makes a Person responsible for any part of a Prospectus by reason only of giving advice as to its contents in a professional capacity to a Person specified in (1)(a) to (f).

### **11.3 Exceptions from liability**

**11.3.1** The circumstances set out in the Rules in this section are prescribed for the purposes of Article 45(2) of the Law.

**11.3.2** (1) A Person, with the exception of the Operator, will not incur any liability under Article 45(1) of the Law for any loss in respect of Units caused by any such statement or omission if, at the time when the Prospectus was filed for registration or the notification to the DFSA, pursuant to Article 56, was given he believed on reasonable grounds, having made any enquiries as were reasonable, that the statement was true and not misleading or that the matter whose omission caused the loss was properly omitted and:

- (a) he continued in that belief until the time when the Units were acquired;
- (b) they were acquired before it was reasonably practicable to bring a correction to the attention of Persons likely to acquire the Units in question;
- (c) before the Units were acquired he had taken all such steps as it was reasonable for him to have taken to secure that a correction was promptly brought to the attention of Persons likely to acquire the Units in question; or
- (d) the Units were acquired after such a lapse of time that he ought in the circumstances to be reasonably excused.

(2) A Person will not incur any liability under Article 45(1) of the Law for any loss in respect of Units caused by a statement purporting to be made by or on the authority of another Person as an expert which is, and is stated to be, included in the Prospectus with that other Person's consent at the time when the Prospectus was filed for registration or the notification to the DFSA pursuant to Article 56, was given, if he believed on reasonable grounds that the other Person was competent to make or authorise the statement and had consented to its inclusion in the form and context in which it was included and:

- (a) he continued in that belief until the time when the Units were acquired;
  - (b) they were acquired before it was reasonably practicable to bring the fact that the expert was not competent or had not consented to the attention of Persons likely to acquire the Units in question;
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- (c) before the Units were acquired he had taken all such steps as it was reasonable for him to have taken to secure that that fact was promptly brought to the attention of Persons likely to acquire the Units in question; or
  - (d) the Units were acquired after such a lapse of time that, in the circumstances, he ought reasonably to be excused.
- (3) Without prejudice to (1) and (2), a Person will not incur any liability under Article 45(1) of the Law for any loss in respect of any Units caused by any such statement or omission as is there mentioned if:
  - (a) before the Units were acquired a correction or, where the statement was such as is mentioned in (2), the fact that the expert was not competent or had not consented had been published in a manner calculated to bring it to the attention of Persons likely to acquire the Units in question; or
  - (b) he took all such steps as it was reasonable for him to take to secure such publication and believed on reasonable grounds that such publication had taken place before the Units were acquired.
- (4) A Person will not incur any liability under Article 45(1) of the Law for any loss resulting from a statement made by an official Person or contained in a public official document which is included in the Prospectus if the statement is accurately and fairly reproduced.
- (5) A Person will not incur any liability under Article 45(1) of the Law if the Person suffering the loss acquired the Units in question with knowledge:
  - (a) that the statement was false or misleading;
  - (b) of the omitted matter or of the change; or
  - (c) of the new matter or inaccuracy.

## **11.4 Experts**

**11.4.1** For the purposes of Article 45 of the Law, an expert is prescribed as accepting responsibility for any statement or report reproduced (in whole or in part) in a Prospectus with his written consent.

**11.4.2** An Operator must:

- (a) keep a record of any consent received under Rule 11.4.1; and
  - (b) include a statement in the Prospectus that the expert has consented to the reproduction of his statement or report.
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## **12 AUDITORS**

### **12.1 Application**

**12.1.1** This chapter applies to an Operator, Trustee and an Auditor of a Domestic Fund.

### **12.2 Appointment and termination of auditors**

**12.2.1** An Operator must:

- (a) notify the DFSA of the appointment of an Auditor to the Fund, 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 Auditor, take reasonable steps to ensure that the Auditor has the required skills, resources and experience to audit the type of Fund for which the Auditor has been appointed; and
- (c) ensure that the 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 contain provisions in respect of registration and qualifications of Auditors.

**12.2.2** An Operator must notify the DFSA immediately if the appointment of the Auditor is or is about to be terminated, or on the resignation of the Fund's Auditor, giving the reasons for the cessation of the appointment.

**12.2.3** An Operator must appoint an Auditor to fill any vacancy in the office of Auditor and ensure that the replacement Auditor can take up office at the time the vacancy arises or as soon as reasonably practicable.

- 12.2.4**
- (1) An Operator must take reasonable steps to ensure that the relevant audit staff of the Auditor are independent of and not subject to any conflict of interest with respect to the Operator, the Trustee or the Fund.
  - (2) An Operator or Trustee must notify the DFSA if it becomes aware, or has reason to believe, that the relevant audit staff of the Auditor are no longer independent of the Operator, the Trustee or 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.
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**Guidance**

1. The relevant staff of an Auditor are independent if their appointment or retention by an Operator is not contrary to any applicable ethical guidance issued by the professional supervisory body.
2. Consideration should be given to rotating the appointed relevant staff of the Auditor every five years to ensure that the relevant staff of the Auditor remain independent.

**12.2.5** Where an Auditor appointed by an Operator is not suitable in the opinion of the DFSA, or where an Auditor has not been appointed, the DFSA may direct an Operator to replace or appoint an Auditor to the Fund in accordance with the requirements in this chapter.

**12.3 Co-operation with auditors**

- 12.3.1** (1) An Operator must take reasonable steps to ensure that it and the Fund's Employees:
- (a) provide such assistance as the Auditor reasonably requires to discharge its duties;
  - (b) give the Auditor right of access at all reasonable times to relevant records and information;
  - (c) do not interfere with the Auditor's ability to discharge its duties;
  - (d) do not provide false or misleading information to the Auditor; and
  - (e) report to the Auditor any matter which may significantly affect the financial position of the Fund.
- (2) A Trustee must take reasonable steps to ensure that it and its Employees act in compliance with (1)(a)-(e).

**12.3.2** An Operator must, in writing, require any Person to whom the Operator has delegated or outsourced any functions to co-operate with the Fund's Auditor in accordance with the provisions specified in Rule 12.3.1(a) to (e).

**12.4 Function of the auditor**

**12.4.1** An Operator, as applicable, must in writing require the Fund's Auditor to:

- (a) conduct an audit of the Fund's accounts in accordance with the requirements of the relevant standards published by the International Auditing and Assurance Standards Board (IAASB) in respect of conventional financial business and the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) in respect of any Islamic Funds; and
- (b) produce a report on the audited accounts which states:
  - (i) whether, in the Auditor's opinion, the accounts have been properly prepared in accordance with the requirements imposed by this chapter;
  - (ii) in particular, whether the accounts give a true and fair view of the financial position of the Fund at the end of the annual accounting period; and
  - (iii) any other matter or opinion relating to the requirements of this chapter.

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## **13 SPECIALIST FUNDS**

### **13.1 Islamic Funds**

- 13.1.1** (1) This section applies to an Operator and Trustee of a Domestic Fund which is an Islamic Fund and to an Operator and Trustee of a Domestic Fund which is an Umbrella Fund which has one or more Islamic Sub-Funds in relation to these Sub-Funds.
- (2) Section 13.2 to 13.6 also apply to an Islamic Fund described in (1) where the Fund is of the specified type dealt with under those sections.

#### **Systems and controls**

- 13.1.2** (1) The Operator of a Fund must establish and maintain systems and controls which ensure that its management of the Fund and the Fund Property is Shari'a compliant.
- (2) The Operator must ensure that its Fund's Constitution and Prospectus are, and remain, approved by the Fund's Shari'a Supervisory Board.

#### **Guidance**

Responsibility for ensuring that an Authorised Firm complies with Shari'a ultimately rests with the senior management. The systems and controls required by Rule 13.1.2 will assist senior management to ensure that there is such compliance.

#### **Policies and procedures manual**

- 13.1.3** The Operator of a Fund must implement and maintain an Islamic Financial Business policy and procedures manual for the Fund which addresses the following matters:
- (a) the manner in which the compliance function will be undertaken, in respect of Shari'a compliance;
  - (b) the manner in which the Shari'a Supervisory Board will oversee and advise in regard to the Islamic Financial Business conducted by the Operator;
  - (c) the manner in which Shari'a Supervisory Board fatwas, rulings and guidelines will be recorded, disseminated and implemented and the internal Shari'a review undertaken;
  - (d) the manner in which disputes between the Shari'a Supervisory Board and the Operator in respect of Shari'a compliance will be addressed;



- (e) the process for approving those internal systems and controls which are in place to ensure not only that the Islamic Financial Business is carried out in compliance with Shari'a, but that information is disseminated to Unitholders in an appropriate manner; and
- (f) the manner in which conflicts of interest will be identified and managed, including as prescribed in Rule 13.1.7.

**Appointment and operation of a Shari'a Supervisory Board**

**13.1.4** When the Operator of a Fund appoints a Shari'a Supervisory Board to its Fund, it must ensure that:

- (a) the Shari'a Supervisory Board has at least three members;
- (b) the members appointed to the Shari'a Supervisory Board are competent to perform their functions as Shari'a Supervisory Board members;
- (c) any appointments, dismissals or changes in respect of members of the Shari'a Supervisory Board are approved by the Governing Body of the Fund; and
- (d) no member of the Shari'a Supervisory Board is a director or Controller of the Fund or its Operator.

**Guidance**

1. Pursuant to Article 13 of the Law Regulating Islamic Financial Business 2004 and Article 30(2) of the Law, an Operator undertaking Islamic Financial Business must appoint a Shari'a Supervisory Board.
2. For the purposes of Rule 13.1.4, a Fund should consider the previous experience and qualifications of the proposed Shari'a Supervisory Board members to assess whether the proposed Shari'a Supervisory Board member is competent to advise on the Islamic Financial Business to be undertaken by the Fund.

**13.1.5** The Operator of a Fund must document the Fund's policy in relation to:

- (a) how appointments, dismissals or changes will be made to the Shari'a Supervisory Board;
- (b) the process through which the suitability of Shari'a Supervisory Board members will be considered; and
- (c) the remuneration of the members of the Shari'a Supervisory Board.

- 13.1.6** The Operator of a Fund must establish and retain, for six years, records of:
- (a) its assessment of the competency of the Shari'a Supervisory Board members;
  - (b) the agreed terms of engagement of each member of the Shari'a Supervisory Board; and
  - (c) the matters in Rules 13.1.4(c) and 13.1.5.

**Guidance**

The records of the assessment of competency of Shari'a Supervisory Board members should clearly indicate, at least:

- a. the factors that have been taken into account when making the assessment of competency;
- b. the qualifications and experience of the Shari'a Supervisory Board members;
- c. the basis upon which the Operator has deemed that the proposed Shari'a Supervisory Board member is suitable; and
- d. details of any other Shari'a Supervisory Boards of which the proposed Shari'a Supervisory Board member is, or has been, a member.

- 13.1.7** (1) The Islamic Financial Business policy and procedures manual must provide that:
- (a) a member of the Shari'a Supervisory Board is obliged to notify the Operator of any conflict of interest that such member may have with respect to the Fund or Operator, or in the case of an Investment Trust, the Trustee; and
  - (b) the Operator will take appropriate steps to manage any such conflict of interest so that the Islamic Financial Business is carried out appropriately and in compliance with Shari'a, the interest of a Unitholder is not adversely affected and all Unitholders are fairly treated and not prejudiced by any such interests.
- (2) If an Operator is unable to manage a conflict of interest as provided above, it must dismiss or replace the member as appropriate.

- 13.1.8** The Operator of a Fund must provide the DFSA at its request with information on the qualifications, skills, experience and independence of the individuals who are appointed or proposed to be approved as members of the Shari'a Supervisory Board.

- 13.1.9** (1) The Operator of a Fund must take reasonable steps to ensure that the Operator's and the Fund's Employees:
- (a) provide such assistance as the Shari'a Supervisory Board reasonably requires to discharge its duties;
  - (b) give the Shari'a Supervisory Board right of access at all reasonable times to relevant records and information;
  - (c) do not interfere with the Shari'a Supervisory Board's ability to discharge its duties; and
  - (d) do not provide false or misleading information to the Shari'a Supervisory Board.
- (2) The Trustee must take reasonable steps to ensure that its Employees comply with (1)(a)-(d).

#### **Shari'a reviews**

**13.1.10** The Operator must ensure that all Shari'a reviews are undertaken by the Shari'a Supervisory Board in accordance with AAOIFI GSIFI No 2.

**13.1.11** (1) The Operator must commission an interim and an annual report from the Shari'a Supervisory Board which complies with AAOIFI GSIFI No 1.

- (2) The Operator must deliver a copy of the annual interim report to the Unitholders in accordance with Rule 9.3.1 and must include the report of the Shari'a Supervisory Board in the annual report required under Rule 9.4.1.

#### **Internal Shari'a review**

**13.1.12** The Operator must perform an internal Shari'a review to assess the extent to which the Fund complies with fatwas, rulings and guidelines issued by the Fund's Shari'a Supervisory Board.

**13.1.13** The Operator must perform the internal Shari'a review in accordance with AAOIFI GSIFI No. 3.

**13.1.14** The Operator of an Umbrella Fund which has an Islamic Sub-Fund must, to the extent possible, perform the internal Shari'a review in accordance with AAOIFI GSIFI No. 3 and must document the manner in which it will conduct that part of the internal Shari'a review that is not conducted in accordance with AAOIFI GSIFI No. 3.

**Guidance**

GSIFI No. (3) (Internal Shari'a Review) establishes standards and provides guidance on the internal Shari'a review in institutions that conduct business in conformity with Shari'a. The standard covers the following:

- a. Objectives;
- b. Internal Shari'a Review;
- c. Independence and objectivity;
- d. Professional proficiency;
- e. Scope of work;
- f. Performance of the Internal Shari'a Review work;
- g. Management of the Internal Shari'a Review;
- h. Quality assurance; and
- i. Elements of an effective Internal Shari'a Review control system.

- 13.1.15** The Operator must ensure that the internal Shari'a review is performed by the internal audit function of the Fund or the compliance function of the Fund and that the individuals or departments involved in performing the review are competent and sufficiently independent to assess compliance with Shari'a.

**Guidance**

For the purposes of assessing competency of personnel or departments which perform the internal Shari'a review, Operators should consult AAOIFI GSIFI No. 3 paragraphs 9 to16 inclusive.

**13.2 Fund of Funds**

- 13.2.1** This section applies to an Operator of a Domestic Fund which is a Fund of Funds.

- 13.2.2** (1) A Fund of Funds may not invest in:
- (a) another Fund of Funds;
  - (b) a Feeder Fund;
  - (c) any Fund which is dedicated to investment in a number of Funds;
  - (d) any Fund which is dedicated to investment in a single Fund or in a single investment trust; and

- (e) any Sub-Fund of an Umbrella Fund or Sub-Fund of any other Fund which is equivalent to a Fund within (a) to (d).
- (2) Not more than 25% in value of the Fund Property is to consist of Units in any one Fund.
- (3) For the purpose of (1) and (2), each Sub-Fund of an Umbrella Fund and of an equivalent Fund is to be treated as if it were a separate Fund.

### **13.3 Feeder Funds**

**13.3.1** This section applies to an Operator of a Domestic Fund which is a Feeder Fund.

#### **Feeder Funds and Master Funds**

- 13.3.2**
- (1) An Operator must ensure that the Fund Property of a Feeder Fund, except where otherwise provided in the Rules in this chapter, only consists of:
    - (a) Units or Debentures of a single Master Fund; or
    - (b) in the case of a Feeder Fund which is a Public Fund, Units or Debentures of an eligible Master Fund.
  - (2) A Master Fund is eligible for the purposes of (1)(b) only if:
    - (a) the borrowing of the Master Fund does not exceed 200% of the net asset value of the Master Fund or the market value of the Units of the Master Fund at the mid-value share price;
    - (b) the Units in or Debentures of the Master Fund are regularly Offered for purchase and sale by at least three market makers who are recognised or registered as members of an Exchange or an exchange regulated by a Financial Services Regulator;
    - (c) the Feeder Fund owns not more than 20% of the Units (or of any class of Units in or of the Debentures or of any class of Debentures) of the Master Fund; and
    - (d) the Master Fund has no limit on its duration.

- 13.3.3** An Operator must ensure that a Feeder Fund invests in a Master Fund only if:
- (a) the Operator of the Master Fund is regulated by a Financial Services Regulator;
  - (b) the Master Fund is itself registered or authorised by a Financial Services Regulator and is itself subject to independent oversight;
  - (c) the investment objectives of the Master Fund have been disclosed in detail in the Prospectus of the Feeder Fund;
  - (d) the Operator of the Feeder Fund has made available to prospective Unitholders in the Feeder Fund copies of the Prospectus and the last audited annual reports and accounts of the Master Fund; and
  - (e) the Operator of the Master Fund has waived any initial charges which it is otherwise entitled to charge in relation to the acquisition of Units in its Fund.

- 13.3.4** Where the Feeder Fund invests in a Master Fund managed by the same management company or by an associated or related company, the Operator of the Master Fund in which the investment is being made may not charge subscription or redemption fees on account of the investment; and commission or rebates received by the Operator of the Feeder Fund, by virtue of the investment into the Master Fund must be paid into the property of the Feeder Fund.

## **13.4 Private Equity Funds**

- 13.4.1** This section applies to an Operator of a Domestic Fund which is a Private Equity Fund.

### **Investment committee**

- 13.4.2**
- (1) An Operator of a Private Equity Fund must call a meeting of Unitholders to vote on the election of at least three experts who are independent of the Operator to sit on an investment committee of the Fund.
  - (2) The committee members in (1) must not involve themselves in the day to day management of the Fund but are appointed to review investment opportunities.

### **Guidance**

1. The DFSA expects Operators of Private Equity Funds to have proper regard to best practice standards or guidance issued by the DFSA as well as leading international trade bodies in relation to such Funds.

2. Experts are persons whose profession, expertise or reputation gives authority to a statement or opinion made by that person in relation to the subject matter of the statement or opinion.

**13.4.3** An Operator of a Private Equity Fund must ensure that:

- (a) unless the purpose of the Fund is to invest in a single venture or undertaking, it does not invest more than 25% of the Fund in one such venture or undertaking; and
- (b) it does not invest in companies which are Affected Persons in relation to the Fund or the Operator, except where it does so in compliance with the requirements in section 6.4.

**13.4.4** Where the Operator of a Private Equity Fund intends to invest in any venture the Operator must ensure that it makes adequate arrangements for the undertaking of due diligence in respect of that venture including investigating its corporate governance standards.

**13.4.5** If an Operator of a Private Equity Fund has placed a Person on the board of the Undertaking in which it is investing, it must take reasonable steps to ensure that it manages conflicts and follows good corporate governance.

## **13.5 Property Funds**

### **Application**

**13.5.1** This section, applies to an Operator and, if appointed, the Trustee, of a Domestic Fund which is a Property Fund.

### **Guidance**

The Operator, of a Public Property Fund which is to be a REIT or which is held out as being a REIT, is required in addition to the general Rules applying to Public Property Funds to also comply with Rules 13.5.26 to 13.5.29.

### **Permitted Investment Vehicles and Listing**

- 13.5.2**
- (1) An Operator of a Domestic Fund which is a Property Fund must use only a closed-ended legal structure for the investment vehicle.
  - (2) If the Fund in (1) is a Public Fund, then the Operator must use either an Investment Company or Investment Trust as the investment vehicle.
  - (3) If the Fund in (1) is a Public Fund, then the Operator must ensure that it is listed and traded on an Authorised Market Institution or is listed and traded on an exchange in a Recognised Jurisdiction.

**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. Therefore, Unitholders of such Funds do not have a redemption right. Instead, if the Fund is listed and traded, Unitholders are able to sell their Units or buy Units on exchange, however, a Fund using a closed ended structure can issue new Units to new Unitholders (or effect a buyback) subject to the applicable laws and where permitted under its own constitution.

**Investment Committee**

- 13.5.3**
- (1) An Operator of a Property Fund must, subject to (2), call a meeting of Unitholders to vote on the election of at least three experts who are independent of the Operator to sit on an investment committee of the Fund.
  - (2) An Operator of a Fund which is constituted as an Investment Trust need not appoint an investment committee.
  - (3) The committee members in (1) are appointed to review investment opportunities and must not involve themselves in the day to day management of the Fund.

**Investments**

- 13.5.4**
- (1) An Operator must, subject to (2), ensure that a Property Fund, except where otherwise provided in the Rules in this section, consist only of any or all of:
    - (a) Real Property;
    - (b) Property Related Assets; or
    - (c) Units in another Property Fund; and
    - (d) up to a maximum of 40% of cash, government and public Securities.
  - (2) The requirements in (1) do not apply to an Operator during the initial 6 month period of the Fund's operation and in any case, will be subject to any other time period set out in the Prospectus or as approved by a Special Resolution of the Unitholders.
  - (3) An Operator must ensure that:
    - (a) Property Related Assets of a Property Fund are listed and traded on an Exchange which is provided for in the Constitution of the Fund; and
    - (b) the Property Fund does not grant any Person an option to acquire any property included in the Fund.



- (4) The Operator or, where appointed, the Trustee, must ensure that the Fund holds good marketable legal and beneficial title in all its Real Property, whether directly or via Special Purpose Vehicles controlled by the Fund. The Fund may hold such title as joint tenants or tenants-in-common with one or more third parties provided that the Fund must hold majority interest and control and have the freedom to dispose of its interest.
- (5) The Operator and, if appointed, the Trustee must take all reasonable care to ensure that the Operator arranges adequate property insurance and public liability insurance coverage in relation to the Real Property of a Fund.

**13.5.5** [Deleted][RM56/08][VER09/07-08]

### **Borrowing**

- 13.5.6**
- (1) The Operator of a Public Property Fund may borrow either directly or through its Special Purpose Vehicle for financing investment or operating purposes but aggregate borrowings must not at any time exceed 80% of the total net asset value of the Fund.
  - (2) The Operator of a Private Property Fund may borrow either directly or through its Special Purpose Vehicle for financing investment or operating purposes but aggregate borrowings must not at any time exceed 100% of the total net asset value of the Fund.
  - (3) The Operator of a Fund may pledge the Fund's assets to secure borrowings under (1) and (2).
  - (4) In the event that the borrowing limit under (1) and (2) is exceeded, the Operator must inform the Trustee (if appointed), the Unitholders and the DFSA of the magnitude of the breach, the cause of the breach, and the proposed method of rectification. The Operator must use its best endeavours to reduce as soon as reasonably possible the excess borrowings.
  - (5) All borrowings by the Fund must be conducted at arm's length.
  - (6) Borrowings by any Special Purpose Vehicles held by the Fund must be aggregated for the purpose of calculating borrowing.

### **Joint Ownership Arrangement**

- 13.5.7** The Operator must ensure that when a joint ownership arrangement is entered into the Fund has a majority stake or holding in respect of that arrangement, that is, more than 50% ownership and control in each property at all times.

- 13.5.8** (1) In making any joint ownership investment under Rule 13.5.7, the Operator must comply with the following conditions:
- (a) the Operator must be able to demonstrate that the arrangement, including the decision of owning less than a 100% interest in the property, is in the interests of the Unitholders; and
  - (b) the Operator must obtain a legal opinion in accordance with (2).
- (2) The legal opinion referred to in (1) (b) must include:
- (a) a description of the significant terms of the joint ownership arrangement;
  - (b) a statement whether the Fund will have a good and marketable legal and beneficial interest in the property;
  - (c) a description of the equity and profit sharing arrangements of the parties to the agreement; and
  - (d) a statement that the relevant contract and joint ownership arrangements are legal, valid, binding and enforceable under applicable law;
  - (e) a statement that all necessary licences and consents required in the location where the subject property is located have been obtained by the Fund or its Special Purpose Vehicle;
  - (f) any restriction on divestment by the Fund of its interest, in whole or in part, in the property; and
  - (e) if applicable, the implication of foreign rules and regulations that may prohibit full ownership of the property by the Fund.

- 13.5.9** The Operator must ensure that:
- (a) proper due diligence is conducted in identifying restrictions and constraints that may limit a Fund's direct ownership of a 100% interest in a property; and
  - (b) the liability of, or assumed by, the Fund does not exceed the percentage of its interest in the joint ownership arrangement and there is to be no assumption of unlimited liability by the Fund.

**13.5.10** The Operator must disclose to Unitholders;

- (a) the ownership structure of the property interest and the material terms thereof, including restrictions on divestments and the impact or implication of such restrictions on the divestment value of the interest in the property;
- (b) the identity, background and ownership of the remaining legal and beneficial owners in the property, transactional history of these owners with the Fund in relation to the property.
- (c) financial, remuneration, fee-sharing or other material arrangements that have been or will be entered into between the Fund and the other owners of that property or their associates;
- (d) a summary of the contents of the legal opinion in 13.5.8(1)(b) relation to the property;
- (e) where appropriate:
  - (i) the nature of restrictions on foreign ownership and the duration of them, and the impact of such restrictions on the operations and financial position of the Fund as a whole;
  - (ii) the Independent Valuer's opinion and evaluation of the impact of such prohibitions on the value of the property; and
  - (iii) any other information which may reasonably be relevant to a Unitholder.

**Use of Special Purpose Vehicles**

- 13.5.11**
- (1) The Operator of a Property Fund may hold Real Property for the Fund through a Special Purpose Vehicle, subject to (2) and (3), only if the Fund has majority ownership and control of the Special Purpose Vehicle.
  - (2) A Special Purpose Vehicle set up by the Operator of a Fund under (1) may itself hold Real Property through another Special Purpose Vehicle (the second Special Purpose Vehicle) for the sole purpose of directly holding Real Property for the Fund or arranging financing for the Fund but the second Special Purpose Vehicle must not hold Real Property for the Fund through another Special Purpose Vehicle.
  - (3) The Operator of the Fund must ensure that:
    - (a) neither the Constitution of any Special Purpose Vehicle nor the organisation, transactions or activities of such vehicles must under any circumstance contravene any requirements of the Rules in this section;
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- (b) the board of directors of each of the Special Purpose Vehicles must be appointed by the Operator in agreement with the Trustee or Persons performing oversight functions of the Fund and where elected, the investment committee; and
- (c) both the Fund and the Special Purpose Vehicles must appoint the same Auditor and adopt the same accounting principles and policies.

**Guidance**

Under 13.5.11, additional Special Purpose Vehicles may be permitted by the DFSA by waiver or modification under limited circumstances, such as where the Operator could demonstrate to the satisfaction of the DFSA that the arrangement is necessary for the purpose of meeting the legal or regulatory requirements of another jurisdiction.

**13.5.12** If the Fund acquires Real Property through the acquisition of a Special Purpose Vehicle, the following matters must be complied with by the Operator for the purpose of the purchase:

- (a) a report made by the Fund's Auditor must be prepared on:
  - (i) the profit and loss of the Special Purpose Vehicle for each of the three years preceding the transaction or any shorter period as is relevant if the Special Purpose Vehicle was in existence for less than three years; and
  - (ii) the assets and liabilities of the Special Purpose Vehicle as at the last date, no more than 6 months old from the date of the report to which the accounts of the Special Purpose Vehicle were prepared;
- (b) the report required under (a) must:
  - (i) indicate how the profits and losses of the Special Purpose Vehicle would, in respect of the Shares to be acquired, have affected the Fund, if the Fund had at all material times held the Shares to be acquired; and
  - (ii) where the Special Purpose Vehicle has subsidiaries, deal with the profits or losses and the assets and liabilities of the Special Purpose Vehicle and its subsidiaries, either as a whole, or separately; and
- (c) a valuation report in respect of the Special Purpose Vehicle's interest in Real Property must be prepared in accordance with the requirements set out in Rules 13.5.19 to 13.5.23.

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**Transactions with Affected Persons****Guidance**

Operators are required pursuant to Rule 6.4.1 to obtain the agreement of Unitholders by way of Special Resolution before undertaking an Affected Person transaction where the total consideration or value of the transaction is 5% or more of the net asset value of the Fund.

- 13.5.13** (1) The following information in relation to Affected Person transactions must be disclosed to Unitholders and where appointed the Trustee, by the Operator of the Fund:
- (a) any beneficial interests of the Affected Person, and any changes thereof, in the Fund; and
  - (b) any potential conflicts of interests involving the Affected Person and the measures implemented to address such conflicts.
- (2) If the Operator operates more than one Fund and a transaction involves two or more of the Funds operated by the Operator, such transactions between the Funds will be Affected Person transactions for each of the Funds involved in the transactions.
- 13.5.14** (1) Where any Affected Person has an interest in an Undertaking which competes or is likely to compete, either directly or indirectly, with the Fund's activities, the Operator must disclose to Unitholders and where appointed the Trustee, the following:
- (a) a description of the Undertaking of the Affected Person and its management, to enable Unitholders to assess the nature, scope and size of such business, with an explanation as to how such Undertaking may compete with the Fund;
  - (b) where applicable, a statement from the relevant Affected Person that it is capable of performing, and shall perform, its duty in relation to the Fund independently of its related business and in the best interests of the Fund and its holders; and
  - (c) a statement as to whether the Fund may acquire any of the related business or assets of the Affected Person.
- (2) If there is any change in information required under (1) after initial disclosure, the Operator must disclose such changes to the Unitholders and where appointed the Trustee.

- 13.5.15** Where an Affected Person has, for the purpose of the establishment of the Fund, agreed to sell Real Property to the Fund, the Operator must disclose the following in the Prospectus:
- (a) a valuation report by an independent valuer of the Real Property that the Affected Person has agreed to sell; and
  - (b) the price to be paid by the Fund for the Real Property and other material terms of the transaction.
- 13.5.16**
- (1) The Operator must ensure that if any cash forming part of the Fund's assets is deposited with an Affected Person (being an institution licensed to accept deposits), interest must be paid on the deposit at a rate not lower than the prevailing commercial rate for a deposit of that size and term.
  - (2) The Operator must ensure that in the event of borrowing from an Affected Person (being an institution licensed to lend money), interest charged on the borrowing is at a rate not higher than the prevailing commercial rate for a borrowing of that size and term.
- 13.5.17** The Operator must ensure that any Affected Person transactions in the nature of services provided relating to the Real Property of the Fund in the ordinary and usual course of estate management, including renovation and maintenance work, are contracted on normal commercial terms and subject to the prior approval of the Trustee or other oversight function.
- 13.5.18** The Operator and, if appointed, the Trustee must not engage Affected Persons as property agents for rendering services to the Fund, including advisory or agency services in property transactions.

#### **Appointment and retirement of an Independent Valuer**

- 13.5.19**
- (1) The Operator of a Property Fund must, subject to the approval of the Trustee or other Person providing oversight function, appoint an Independent Valuer in accordance with the Rules in this section.
  - (2) The Operator must ensure that the Independent Valuer appointed under (1) values each Real Property prior to its acquisition and disposal.
  - (3) The Operator must commission the Independent Valuer to produce a valuation report of the Property Fund each year in accordance with Rule 13.5.23. The net asset value of the Fund following this valuation must be reported in the annual report of the Fund.
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- 13.5.20** (1) An Independent Valuer for the purpose of Rule 13.5.19 is a Person who carries on the business of valuing Real Property and who:
- (a) is or has key personnel who are fellow or associate members of a recognised professional body of surveyors or property valuers and who are qualified to perform property valuations;
  - (b) is determined by the Operator on reasonable grounds to have the relevant expertise, that is, knowledge of and experience in the valuation of property of the relevant kind in the relevant area where the property is situated;
  - (c) the Operator has verified to have robust internal controls and checks and balances to ensure the integrity of valuation reports and that these reports are properly and professionally prepared in accordance with international best practice;
  - (d) has adequate professional insurance to cover its usual risks;
  - (e) is independent of the Operator, the Trustee, the Custodian or any other Person providing oversight and each General Partner or member of the Fund's Governing Body; and
  - (f) has not engaged himself or any of his associates in relation to the finding of the Real Property for the Fund.
- 13.5.21** (1) An Operator must ensure that any valuation by the Independent Valuer is on the basis of an 'open market value' as defined in the Constitution and Prospectus.
- (2) The valuation report under (1) must confirm that if the Real Property was acquired for the Property Fund it could be disposed of at that valuation within a reasonable period.
- 13.5.22** The Operator must ensure that the property is acquired within a reasonable time from the date of the report and in any event not later than six months from the date of valuation and at a price no more than 5% above the valuation price.

**Guidance**

The DFSA would expect the Operator to define 'open market value' to be based on an authoritative text such as the Royal Institute of Chartered Surveyors' Appraisal and Valuation Standards (fifth edition) ("Red Book"); or similar practitioners text used by surveyors; or International Valuation Standards issued from time to time by the International Valuation Standards Committee

**Valuation Report of the Independent Valuer**

- 13.5.23** An Operator must ensure that any valuation report prepared by the Independent Valuer:
- (a) includes all material details in relation to the basis of valuation and the assumptions used;
  - (b) describes and explains the valuation methodologies adopted;
  - (c) outlines the overall structure and condition of the relevant market including an analysis of the supply and demand situation, the market trend and investment activities;
  - (d) includes a brief description of the property, its location, the nature of the interest the Fund holds in the property, existing use, any encumbrances concerning or affecting the property, lease expiry profile, the capital value in existing state at the date the valuation was performed, net monthly income from the property, and any other matters which may affect the property or its value;
  - (e) confirms the independent status of the valuer and that the valuation report is prepared on a fair and unbiased basis; and
  - (f) explains the rationale for choosing the particular valuation method if more than one method is adopted.
- 13.5.24** An Operator must ensure that whenever a valuation report is prepared for the Fund, the date of the valuation report must be:
- (a) the date the Fund is valued, if such report is prepared for the purpose of calculating the net asset value of the Fund; or
  - (b) a date which is not more than three months before the date on which:
    - (i) an offering document is issued;
    - (ii) a circular is issued, if the circular relates to a transaction that requires Unitholders' approval; or
    - (iii) a sale and purchase agreement or other agreement to transfer legal title is signed, if the transaction does not require Unitholder approval.



**Retirement of Independent Valuer**

- 13.5.25**
- (1) An Operator must ensure that where an Independent Valuer has conducted valuations of the Real Property for the Fund for five consecutive years, the Independent Valuer is retired.
  - (2) The Independent Valuer in (1) must not be appointed by the Operator to perform Fund valuation unless a period of two years has elapsed from the date of the retirement of the Independent Valuer.
  - (3) The Independent Valuer is subject to removal by notice in writing from the Operator or, if appointed, the Trustee in any of the following events:
    - (a) the Independent Valuer goes into liquidation, becomes bankrupt or has a receiver appointed over its assets; or
    - (b) for good and sufficient reason, the Operator or the Trustee states in writing that a change in the Independent Valuer is desirable in the interests of the Unitholders; or
    - (c) an ordinary resolution is passed by the Unitholders to dismiss the Independent Valuer.
  - (4) Upon the retirement or dismissal of the Independent Valuer, the Operator subject to agreement of the Trustee or other Person providing oversight function must appoint a new Independent Valuer that meets the qualification requirements specified in this section.

**Real Estate Investment Trusts (REITs)**

- 13.5.26**
- (1) An Operator must ensure that it does not call, or otherwise hold out, a Fund as being a Real Estate Investment Trust or as being a REIT unless it is a Public Property Fund which is constituted in accordance with (2).
  - (2) A REIT is a Public Property Fund which:
    - (a) is constituted either as an Investment Company or as an Investment Trust;
    - (b) is primarily aimed at investments in income generating Real Property; and
    - (c) distributes to the Unitholders at least 80% of its audited annual net income.

- 13.5.27** (1) An Operator of a REIT must ensure that it distributes to the Unitholders as dividends each year an amount not less than 80% of its audited annual net income.
- (2) The Persons providing oversight functions in respect of the Fund must determine if any;
- (a) revaluation surplus credited to income, or
  - (b) gains on disposal of Real Property,
- shall form part of net income for distribution to Unitholders.

**13.5.28** Where a REIT holds any Real Property via one or more Special Purpose Vehicles, the Operator must ensure that each Special Purpose Vehicle distributes to the Fund all of its income as permitted by the laws and regulations of the jurisdiction where the Special Purpose Vehicle is established.

- 13.5.29** (1) An Operator of a REIT must ensure, subject to (2), that any investment made in respect of property under development whether on its own or in a joint venture is undertaken only where the REIT intends to hold the developed property upon completion.
- (2) The total contract value of the property under development in (1) must not exceed 30% of the net asset value of the Fund Property of the REIT.

**Guidance**

For the purposes of Rule 13.5.29, the DFSA would not consider property development activities to include refurbishment, retrofitting and renovation.

**13.5.30** An Operator of a REIT may borrow either directly or through its Special Purpose Vehicle up to 70% of the total net asset value of the Fund.

## **13.6 Hedge Funds**

**13.6.1** This section applies to an Operator of a Domestic Fund which is a Hedge Fund.

**Guidance**

A Fund of Hedge Funds is a Fund dedicated to investing in a number of Hedge Funds or Sub-Funds of one or more Hedge Funds (or both).

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**Risk management, prime brokers, and net asset value calculation process**

- 13.6.2** An Operator of a Hedge Fund must ensure that the risks inherent in the operation of a Hedge Fund are adequately addressed, with due regard to the nature of strategies and investment process employed by the Operator and the role of Fund Administrators and Custodians and where appointed, prime brokers.

**Guidance**

A prime broker is a Person who provides to a Fund a range of services including custody and depository services, trading and execution services, clearing and settlement services and financing to support the Fund's investment activities. Such financing activities generally include stock lending and borrowing. The restrictions in Rules A1.3.1(c) and (f) of Appendix 1 (App 1) prevent an Operator of a Hedge Fund from authorising a prime broker to commingle the assets of the Fund with any other assets held by or available to the prime broker and use those assets as collateral to support the prime broker's cross lending and borrowing activities involving Funds to which it acts as the prime broker. However, the restrictions in A1.3.2(c) and (f) do not apply if an Operator of a Hedge Fund can comply with the requirements relating to the use of prime brokers set out in Rule 13.6.3.

- 13.6.3** An Operator of a Hedge Fund may only grant to a prime broker authority to combine the assets of the Fund with any other assets held by or available to the prime broker as collateral for any financing activities to be undertaken by the prime broker where, and so long as, all the following conditions are met:

- (a) the Fund is a Private Fund;
- (b) the Prospectus of the Fund contains, in addition to the disclosure required under chapter 19, the following mandatory disclosure and warnings:
  - (i) the identity and profile of the prime broker, including where it is located and how it is regulated;
  - (ii) the services which the prime broker provides to the Fund and the nature and extent to which the prime broker has the power and authority to combine the assets of the Fund with any other assets held by or available to the prime broker as collateral for any financing activities undertaken by the prime broker; and
  - (iii) a prominent health warning in the Prospectus to alert prospective Unitholders to the facts that:
    - (A) the Fund's appointed prime broker has the power and authority to use as collateral the assets of the Fund in conjunction with any other assets held by or available to the prime broker; and

- (B) where the prime broker uses Fund assets as collateral pursuant to the above power, the Unitholders may lose all the assets of the Fund in the event of the insolvency of the prime broker;
- (c) the Person appointed as the prime broker qualifies as an Eligible Custodian;
- (d) the agreement between the prime broker and the Operator contains mandatory contractual provisions that:
  - (i) prohibit the prime broker from using as collateral the assets of the Fund to an extent exceeding 140% of the Fund's indebtedness to the prime broker at any given time; and
  - (ii) create an irrevocable right in favour of the Fund that enables any indebtedness of the Fund to the prime broker to be set off against any amounts that are owing by the prime broker to the Fund, including in the event of the insolvency of the prime broker; and
- (e) the Operator has in place adequate valuation procedures to mark positions to market daily in order to meet on an ongoing basis the restriction referred to in (d)(i) relating to the limit to which the prime broker may use as collateral the assets of the Fund.

**Guidance**

If the prime broker holds the legal title to the Fund assets, the prime broker must, in any event, qualify as an Eligible Custodian. However, even if a prime broker does not hold the legal title to the Fund assets, Rule 13.6.3(c) requires it to meet the Eligible Custodian requirements in certain circumstances. This is where it has the power to use Fund assets as collateral for its financing activities (e.g. by having a charge over the Fund assets) in conjunction with any other assets held by or available to it.

- 13.6.4** An Operator must ensure adequate segregation of duties in the net asset value determination process. The net asset value of the Fund must be produced by parties who are not involved in the investment process of the investment management entity. The Governing Body, Trustee or General Partner of the Fund must ensure independence in practice, which may be achieved by delegating the calculation, determination and production of the net asset value to a suitably competent and experienced third party Fund Administrator.

**Guidance**

1. In relation to the matters referred to in Rules 13.6.2 and 13.6.4 and in relation to management of Hedge Fund investment, the DFSA expects Operators of Hedge Funds to have proper regard to best practice standards or guidance issued by the DFSA as well as leading international trade bodies in relation to Hedge Funds. The DFSA expects Operators to pay particular attention to the following guidance notes.

**Risk management process**

2. Risk management is an important part of management of the Fund Property and should be used to help reduce the likelihood of capital loss and failure.
3. The Hedge Fund Operator's risk governance policy should be related to the nature of the Fund's investment and strategy and regularly used by the Hedge Fund Operator and the Hedge Fund Investment Manager to manage and monitor risk. The risk management process should deal with both normal and exceptional conditions and the Operator and the Fund Investment Manager should:
  - a identify and understand the sources of risks inherent in their investment styles or process. The Operator should translate such risks into relevant, measurable risk factors;
  - b take into account the interaction between different types of risk when considering risk;
  - c consider risk factors such as market risk, credit risk, liquidity risk, concentration, and counterparty risk;
  - d define their attitude towards risk by documenting investment restrictions and where appropriate, quantitative risk measure limits should also be provided.
  - e monitor risk on regular basis; and
  - f inform the investment decision makers on a timely basis about the current level of risk in the portfolio.

**Valuation and pricing**

4. A Hedge Fund Operator should establish a pricing and valuation policy which includes a practical escalation and resolution procedures for the management of exceptions and should ensure:
  - a that investment management and portfolio valuation are not undertaken by the same entity;
  - b explicit clarification of the role of the Hedge Fund Operator, the Investment Manager, the Fund Administrator, the prime broker and any other party in the valuation process.
  - c the policy is adequately described in the Prospectus; and
  - d that valuation statements are provided to every Unitholder on at least a quarterly basis.

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**Investment strategy and process**

5. The investment strategy to be applied by the Hedge Fund Operator or Investment Manager should be clearly articulated to Unitholders and prospective Unitholders. This requires adequate disclosure and explanation of how Funds are to be invested, what factors will influence investment performance and what risks are to be associated with a particular investment strategy. The Operator should:
  - a set out the investment objectives of the strategy;
  - b identify any constraints the strategy imposes, e.g. types of products traded, size, amount of leverage, geographical and market limitations, position and risk limits;
  - c identify the main risks and evaluate how such risks should be managed (i.e. avoidance, hedging or decision to accept that risk);
  - d identify how regulatory and other internal constraints affect the execution of the investment strategy;
  - e have due regard to the Prospectus issued in connection with the relevant Hedge Fund and meet the legal or regulatory requirements imposed by the Hedge Fund itself;
  - f communicate material changes to the investment strategy to Unitholders on a timely basis;
  - g have a defined investment decision making process which imposes an investment management discipline and identifies who has responsibility for making investment decisions and any limits on such authority; overseeing the investment decision process; and monitoring investment decisions against any internally or externally defined limits; and
  - h ensure the investment strategy is documented and kept up to date.
6. In its investment strategy and Fund management investment process, the Hedge Fund Operator should disclose to Unitholders a detailed description of each strategy, the intended outcome of the strategy, identification of potential risks in that strategy and how the identified risks will be managed.

**Banking arrangements and operational controls**

7. A Hedge Fund Operator should ensure that adequate systems and controls are put in place to address the banking arrangements of a Hedge Fund. Controls are critical to the overall control of non-trading activities undertaken by the Fund. The Hedge Fund Operator would normally use Fund Administrators and prime brokers for their cash processing. However, there are key controls that are required to be established by the Operator to enable non-trading controls to be securely handled.
8. In relation to the above, adequate controls will need to be maintained in respect of the following key activities:
  - a bank account opening;
  - b transaction authorisation; and
  - c bank account reconciliations

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**Evaluation of prime brokers**

9. A Hedge Fund Operator should understand the role of the prime broker and should consider the following factors in evaluating a prime broker and its documentation:
- a the services the prospective prime broker will provide, including value added services and how the prime broker will deliver those services.
  - b the extent to which processes of delivery between the Investment Manager and the prime broker are automated;
  - c interest rate and fee structure;
  - d the cost, financing and securities lending structure;
  - e material provisions of the prime brokerage documentation such as margin calls, synthetic products trading, segregation of assets and events of default;
  - f the prime broker's familiarity with and appropriate internal resources to service the investment strategy;
  - g the amount of leverage the prime broker is prepared to provide and the basis on which this is provided, e.g. the use of a risk based system;
  - h the extent of segregation and ownership of assets; and
  - i the credit worthiness of the prime broker.

**Fund of hedge funds investments**

10. The Operator of a Fund of Hedge Funds should undertake due diligence procedures on the underlying Hedge Funds prior to investing in them. In this regard, the Operator should ensure that the underlying Hedge Fund:
- a is domiciled in a jurisdiction which in the Fund Operator's opinion provides adequate regulatory safeguards;
  - b is subject to independent audit in accordance with generally accepted international auditing standards;
  - c has arrangements in place such that all assets are held by a party or parties independent of the Operator of the Hedge Fund;
  - d in its Prospectus includes specific information in respect of the following:
    - i the investment policies and the relevant risks associated with those policies;
    - ii the levels of leverage employed by the Hedge Fund;
    - iii levels of fees charged by the underlying Hedge Fund and how those fees are calculated;
    - iv potential liquidity problems;
    - v valuation policies and potential valuation difficulties;



## COLLECTIVE INVESTMENT RULES (CIR)

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- vi an explanation, including a glossary of terms if necessary, of the alternative investment strategies which the underlying Hedge Fund may employ;
- e issues valuation statements to Unitholders at regular intervals; and
- f has redemption policies which are transparent and provide for reasonable time period between submission of redemption requests and payment of settlement proceeds.



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## **PART 3 – PUBLIC FUNDS**

### **14 REGISTRATION OF PUBLIC FUNDS**

#### **14.1 Application**

**14.1.1** This chapter applies to an Operator and Trustee of a Domestic Fund which is a Public Fund:

- (a) which it is seeking to register; or
- (b) which is registered.

**14.1.2** References to “Operator” or “Trustee” in this chapter include a reference to a Person proposing to be the Operator or Trustee of a Fund.

#### **14.2 The application for registration**

**14.2.1** (1) An application pursuant to Article 47 of the Law for the registration of a Public Fund must be made to the DFSA by the Body Corporate which is to be the Operator of the Domestic Fund. If the Fund is an Investment Trust, then the Trustee and Operator must jointly apply.

(2) The Operator and, if applicable, the Trustee must complete and submit the appropriate form or forms in AFN.

(3) In addition to the requirements of Article 47(2) of the Law, the application must be accompanied by certification by the Fund’s legal advisers to the effect that:

- (a) the Constitution of the Fund complies with the requirements prescribed under the Law and under these Rules; and
- (b) the Prospectus complies with the requirements prescribed under the Law and under these Rules.

**14.2.2** The DFSA may require the Operator and, if applicable, the Trustee to provide additional information, regarding the Fund, as reasonably required for the DFSA to be able to make a decision with respect to the application for registration.

**14.2.3** If at any time after the filing of the application for registration, the Operator or, if applicable the Trustee becomes aware of a material change reasonably likely to be relevant to the application for registration under consideration, it must inform the DFSA in writing of such change without delay.

- 14.2.4** In assessing an application for registration, the DFSA may:
- (a) make any enquiries which it considers appropriate including enquiries independent of the Operator and Trustee; or
  - (b) require the Operator or Trustee to provide further information.

### **14.3 Requirements for registration**

**14.3.1** Subject to the provisions of these Rules, a Fund will only be registered if it satisfies the following conditions:

- (a) the Fund is constituted as one of the following legal structures:
  - (i) an Investment Company;
  - (ii) an Investment Partnership; or
  - (iii) an Investment Trust;
- (b) the Fund is incorporated or registered with the DIFC Registrar of Companies;
- (c) the Fund has appointed an Operator which is authorised by the DFSA under its Licence to carry on the the Fund has appointed an Operator which is authorised by the DFSA under its Licence to carry on the Financial Service of Operating a Collective Investment Fund;
- (d) the Fund, if an Investment Trust, has a Trustee which is authorised by the DFSA under its Licence to Act as the Trustee of a Fund;
- (e) the Operator has made satisfactory arrangements in accordance with the Law and CIR in relation to oversight and delegation of the activity of Providing Custody; and
- (f) the name of the Fund is not undesirable or misleading and its purpose is reasonably capable of being successfully carried into effect.

**14.3.2** A Fund will only be registered if the Operator has appointed an Auditor of the Fund who complies with the requirements of chapter 12.

#### **Guidance**

In relation to the requirements for registration under this section, note that:

- a. an Operator must delegate the activity of Providing Custody pursuant to Rule 7.3.1; and
  - b. the DFSA may require the Operator or Trustee to delegate one or more Financial Service activities pursuant to Rule 7.4.4.
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## **14.4 Rejection of an application**

### **Guidance**

1. The DFSA may in its absolute discretion refuse to grant an application for the registration of a Fund.
2. Upon refusing to grant registration, the DFSA will without undue delay inform the Operator and, if applicable, the Trustee in writing of such refusal and, where requested by the Operator, the reasons for such refusal.

## **14.5 Granting registration**

### **Guidance**

1. Once the DFSA grants registration to a Fund, it will without undue delay inform the relevant applicant in writing of:
  - a. such decision; and
  - b. the date on which the registration shall be deemed to take effect.
2. The DFSA maintains a list of Public Funds which have been registered on its Public Register.

## **14.6 Withdrawal of registration**

### **Guidance**

Under Article 52 of the Law, the DFSA may withdraw the registration of a Fund in specified circumstances.

## **14.7 Reinstatement**

### **Guidance**

The DFSA may reinstate the registration of a Fund that it is satisfied should not have been deregistered or if the defect that led to registration being withdrawn has been remedied.

## **15 PUBLIC FUND PROSPECTUS**

### **15.1 Application**

- 15.1.1** (1) This chapter applies to an Operator of a Domestic Fund which is a Public Fund.
- (2) This chapter also applies to the Governing Body of a Public Fund.

#### **Guidance**

See also the requirements in chapter 3 relating to Transactions in Units by an Authorised Firm.

### **15.2 Drawing up and availability of Prospectus**

- 15.2.1** (1) An Operator of a Public Fund must ensure a Prospectus of the Fund is drawn up in accordance with Part 6 of the Law and contains the statements or information specified in (3) and:
- (a) section 15.3;
  - (b) if applicable, any one or more of sections 15.5 to 15.9; and
  - (c) App 6.
- (2) The Prospectus must not contain any provision which is unfairly prejudicial to the interests of Unitholders generally or to the Unitholders of any class of Units.
- (3) The information referred to in (1) is material information which is within the knowledge of Operator, or which the Directors or partners of the legal entity constituting the Fund would have obtained by the making of reasonable enquiries, which prospective Unitholders and their professional advisers, would reasonably require, and reasonably expect to find in the Prospectus, for the purpose of making an informed judgment about the merits of investing in the Fund and the extent and characteristics of the risks accepted by so participating.
- (4) The Prospectus must be in the English language.
- (5) The expiry date of a Prospectus must be no later than 12 months after the date of the Prospectus.

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**Guidance**

1. In relation to the obligations under (3), an Operator must give particular regard to the information which would be required and expected by a Retail Client in order to make an informed about the merits of investing and the extent and characteristics of risk.
2. An Operator should note the requirements of Article 41(1) of the Law. Accordingly, a Prospectus drawn up pursuant to Rule 15.2.1 should be made available to prospective Unitholders for as long as the Offer is open and once the Offer is closed, the Operator's obligation to make the Prospectus available would cease.

**15.2.2** An Operator of a Fund must make the Fund's most recent Prospectus available free of charge to any Unitholder and to any Person who is eligible to invest in the Fund prior to entering into a Transaction relating to any Units with that Person.

- 15.2.3**
- (1) For the purpose of Article 42(3) of the Law, a Supplementary Prospectus of a Public Fund may be issued as a supplementary or replacement document.
  - (2) Where the Supplementary Prospectus is issued as a supplement, the Operator must:
    - (a) clearly identify in the Supplementary Prospectus the Prospectus that it supplements, the revisions to that Prospectus, the date of any material change or new matter giving rise to any revision, and the date of the document which must be the date of filing with the DFSA;
    - (b) file a copy with the DFSA;
    - (c) provide a copy to each Person or Unitholder who applied for Units under the previous Prospectus after the earliest date of any material change or new matter giving rise to the revision; and
    - (d) ensure the Supplementary Prospectus is made available in the same media and through the same channels as, and together with, the previous Prospectus.
  - (3) Where the Supplementary Prospectus is issued as a replacement, the Operator must:
    - (a) clearly state in the Supplementary Prospectus that it is a replacement document, and identify the Prospectus that it replaces, the date and nature of any material change or new matter giving rise to the replacement, the expiry date, and the date of the document which must be the date of filing with the DFSA;
    - (b) file a copy with the DFSA; and
-

- (c) provide a copy to each prospective Unitholder who applied for Units under the previous Prospectus after the earliest date of any material change or new matter giving rise to the replacement.
- (4) The expiry date of a Supplementary Prospectus must be the same as that of the Prospectus it supplements.

**15.2.4** Unless the context otherwise provides, any reference in these Rules to a Prospectus must be read as including a Supplementary Prospectus.

**15.2.5** When a Supplementary Prospectus of a Public Fund has been filed with the DFSA and made available in accordance with Rule 15.2.3, the Operator must:

- (a) inform any Person who applied for Units on the basis of the previous Prospectus after the earliest date of a material change or new matter giving rise to the issue of the Supplementary Prospectus of their right to confirm or retract any application made on the basis of that Prospectus and to obtain a refund of monies paid, and the manner in which to do so; and
- (b) allow any such Person a period of at least seven days from the date of receipt of the Supplementary Prospectus in which to so confirm or retract his application.

### **15.3 Drawing up a Prospectus – mandatory statement**

**15.3.1** An Operator of a Public Fund must state in the Fund's Prospectus the following statement displayed prominently on its front page:

"This Prospectus relates to a DIFC Fund in accordance with the Collective Investment Law 2006 and Rules of the Dubai Financial Services Authority ("DFSA").

The DFSA has no responsibility for reviewing or verifying any Prospectus or other documents in connection with this Domestic Fund. Accordingly, the DFSA has not approved this Prospectus or any other associated documents nor taken any steps to verify the information set out in this Prospectus, and has no responsibility for it.

The Units to which this Prospectus relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the Units offered should conduct their own due diligence on the Units.

If you do not understand the contents of this document you should consult an authorised financial adviser."

**15.4** [Deleted][RM56/08][VER09/07-08]

## **15.5 Drawing up a Prospectus for Islamic Funds**

**15.5.1** An Operator of an Islamic Fund must state in the Fund's Prospectus:

- (a) that all the operations in relation to the Fund will be conducted in accordance with Shari'a;
- (b) the names of the members of the Shari'a Supervisory Board and their qualifications and experience;
- (c) the manner and frequency of Shari'a reviews ;
- (d) the disclosures required by AAOIFI FAS 14; and
- (e) the additional disclosure, if applicable, prescribed under section A7.1 of App 7.

### **Guidance**

1. An Operator should consider providing additional information to support the statement under Rule 15.5.1 (a) as indicated in 2 and 3 below.
2. The Operator should provide sufficient details setting out the basis upon which the Fund has been approved and certified as Shari'a compliant by its Shari'a Supervisory Board. Such details should include the basis of the underlying principles, i.e. the fatwas or rulings, including reference to any relevant ijthad, ijma, qiyas or other. Where applicable, reference should be made to any Islamic indices to be used. In addition, where applicable, the screening process and any filters used should be identified.
3. The Operator should set out each of the key features of the Fund and explain the rationale for determining why each of these features are considered Shari'a compliant by the Fund's Shari'a Supervisory Board.

## **15.6 Drawing up a Prospectus for a Feeder Fund**

**15.6.1** An Operator of a Feeder Fund must ensure that the Fund's Prospectus discloses:

- (a) a prominent risk warning to alert prospective Unitholders to the fact that they will be subject to higher fees arising from the layered investment structure;
- (b) the fees arising at the level of:
  - (i) the Feeder Fund itself;
  - (ii) if applicable, the Master Fund of the Feeder Fund; and
  - (iii) if applicable, any underlying Funds into which the Master Fund invests, to the extent known.

**15.7 Drawing up a Prospectus for a Property Fund**

**15.7.1** An Operator of a Property Fund must ensure that the following information is disclosed in the Fund's Prospectus:

- (a) the nature of the commitment which prospective Unitholders will enter into;
- (b) the risks involved in this type of Fund;
- (c) the prominent risk warning which makes reference to circumstances in property markets which can cause difficulties in meeting redemptions;
- (d) details of the Property Fund's appointed Independent Valuer;
- (e) in a prominent position in the Prospectus, the redemption procedures;
- (f) the dividend or income distribution policy;
- (g) the insurance arrangement for the Fund;
- (h) a statement with respect to any material policy regarding real property activities;
- (i) details of transactions or agreements entered into with Affected Persons;
- (j) full particulars of the nature and extent of the interest, if any, of Affected Persons, in the property owned or proposed to be acquired by the Fund;
- (k) details of significant holders and the number of units held and deemed to be held by each of them;
- (l) details of principal taxes levied on the Fund's income and capital, including tax, if any, deducted on distribution to Unitholders;
- (m) a statement to explain the standards according to which the property valuations are conducted; and
- (n) if applicable, the Fund is a REIT and whether the investment vehicle is an Investment Company or an Investment Trust.



**15.7.2** An Operator of a Property Fund must also disclose in the Fund's Prospectus, in addition to the standard disclosure requirements, in respect of investment limits, the following information:

- (a) what percentage of the Property Fund's net assets may consist of property related assets which are not traded in or dealt on markets provided for in the Constitution;
- (b) unless the Constitution and the Prospectus state that the Fund invests in a single property, the maximum percentage of the Fund's net assets which may be invested in any single property or, if applicable, disclose the conditions under which the Fund may derogate from this restriction;
- (c) the maximum percentage of the Property Fund's net assets which may be invested in properties which are vacant, in the process of development or requiring development; and
- (d) the maximum percentage of the Property Fund's net assets which may be invested in properties which are subject to a mortgage.

**15.7.3** Without limiting any other disclosure obligations of the Operator under these Rules, an Operator of a Property Fund that invests in a single property must prominently disclose in the Prospectus of the Fund:

- (a) that the Fund invests in a single property;
- (b) details relating to the single property such as whether the property comprises individual properties or buildings, whether there are different types of uses of or businesses conducted in the property, and proportions of anticipated income to be derived from the types of uses or occupants of the property; and
- (c) any risks associated with the investment in the single property, including risks arising from or affecting income to be derived from the uses or occupants of the property.

**Guidance**

A Fund may be considered to invest in a single property if the Fund Property (apart from cash or other assets held for management purposes) comprises a single building (or a single building with ancillary or adjacent buildings) managed by or on behalf of the Operator of the Fund as a single enterprise.

**15.8 Drawing up a Prospectus for a Private Equity Fund**

**15.8.1** If a Fund is a Private Equity Fund the Operator must provide the following in the Fund's Prospectus:

- (a) a description of the arrangements in place for the safekeeping of monies raised from Unitholders but not yet invested in the proposed undertaking or venture; and
- (b) a description of the exit arrangements for Unitholders.

**15.9 Drawing up a Prospectus for a Hedge Fund**

**15.9.1** A Hedge Fund Operator must prominently disclose to prospective Unitholders in the Prospectus and any other financial promotions relating to the Fund, the following Mandatory Hedge Fund Disclosure Statement:

"When considering investment in a Hedge Fund you should consider the fact that some Hedge Fund products use leverage and other speculative investment practices that may increase the risk of investment loss, can be illiquid, may involve complex tax structures often charge high fees, and in many cases the underlying investments are not transparent and are known only to the Hedge Fund Investment Manager.

Returns from Hedge Funds can be volatile and you may lose all or part of your investment. With respect to single manager products the manager has total trading authority and this could mean a lack of diversification and higher risk. The Hedge Fund may be subject to substantial expenses that are generally offset by trading profits and other income. A portion of those fees is paid to the Hedge Fund Manager and Operator."

**16 INVESTMENT AND BORROWING POWERS****16.1 Application**

**16.1.1** This chapter applies to the Operator of a Domestic Fund which is a Public Fund, an Eligible Custodian and, where appropriate, a Trustee, and Persons appointed to perform oversight functions.

**16.2 Spread of risk and protection of Fund Property**

**16.2.1** An Operator must take reasonable steps to ensure that the Fund Property of a Public Fund provides a spread of risk that is consistent with the investment objectives and policy of the Fund as stated in the most recently published Prospectus, and in particular, any investment objectives as regards return to the Unitholders whether through capital appreciation or income or both.

- 16.2.2**
- (1) An Operator must avoid the Fund Property being used or invested contrary to any provision in this chapter.
  - (2) On becoming aware of any breach of a Rule in this chapter, an Operator must take action, at its own expense, to rectify that breach.
  - (3) An Operator must take the action in (2) immediately, except in circumstances where doing so would not be in the best interests of Unitholders, in which case the action must be taken as soon as such circumstances cease to apply.
  - (4) An Operator must not postpone taking action in accordance with (2) unless the Persons providing oversight functions have given their consent.

**16.3 Investment in other Funds**

- 16.3.1**
- (1) A Fund may invest in Units of another Fund only where the Operator, except in relation to a Master Fund which is a Fund of Funds, has taken reasonable care to determine that:
    - (a) the other Fund is the subject of an independent annual audit conducted in accordance with IFRS or US GAAP or if an Islamic Fund in accordance with AAOIFI;
    - (b) the other Fund has mechanisms in place to enable Unitholders to redeem their Units within a reasonable time; and

- (c) the other Fund is prohibited from having more than 20% of its value in the Units of Funds.
- (2) The Operator must also have ascertained that there is a proper and disclosed basis for asset valuation and the pricing before investing in Units in another Fund.

## **16.4 Transactions in derivatives**

- 16.4.1** (1) The total exposure of a Fund to Derivatives may not exceed the net asset value of the Fund Property.
- (2) The Operator must have adequate risk management processes which enable it to monitor and measure as frequently as appropriate the risk of a Fund's Derivative positions and their contribution to the overall risk profile of the Fund.

## **16.5 Stock lending and borrowing**

- 16.5.1** (1) Subject to the Constitution and the Prospectus, the Operator, or the Eligible Custodian or Trustee at the request of the Operator, may enter into:
  - (a) stock lending arrangements in respect of any Securities forming the Fund Property; and
  - (b) stock borrowing arrangements.
- (2) The Operator must ensure that the value of any collateral for the stock lending arrangement is at all times at least equal to the value of the Securities transferred.

## **16.6 Borrowing**

- 16.6.1** (1) Subject to the Constitution and the Prospectus, the Operator, or the Eligible Custodian on the instructions of the Operator, may borrow money for the use of the Fund on terms that the borrowing is to be repayable out of the Fund Property.
  - (2) The Operator must ensure, except in the case of a Property Fund, that the Fund's borrowing does not, on any day, exceed 20% of the net asset value of the Fund Property and must take reasonable care to ensure that arrangements are in place that will enable borrowings to be repaid to ensure such compliance.
  - (3) Where the limit in (2) is breached, the Operator must take immediate action to deal with that breach.
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- (4) In this Rule "borrowing" also includes any arrangement including a combination of Derivatives to achieve a temporary injection of money into the Fund Property in the expectation that the sum will be repaid.

## **16.7 Investment in real property**

**16.7.1** An Operator of a Fund other than a Property Fund must before investing in Real Property appoint an Independent Valuer with relevant expertise with the approval of the Eligible Custodian or other Persons providing oversight and likewise upon any vacancy to ensure that any property in the Fund Property is expertly valued.

- 16.7.2**
- (1) The Operator must ensure that the Independent Valuer appointed under Rule 16.7.1 procures the proper valuation of all the property held within the Fund Property, on the basis of a full valuation with physical inspection including, where the property is or includes a building, internal inspection at least once a year.
  - (2) For the purposes of (1), any inspection in relation to adjacent properties of a similar nature and value may be limited to that of only one such representative property.
  - (3) The Operator must, subject to (4), ensure that the Independent Valuer values the property, on the basis of a review of the last full valuation, at least every 6 months.
  - (4) If any event occurs which may on reasonable grounds have a material effect on the valuation of the relevant property the Operator must consult with the Independent Valuer with a view to arranging a fresh valuation before any Units in the Fund are issued or redeemed after the date of the event.
  - (5) Any valuation by the Independent Valuer must be on the basis of an 'open market value' as defined in the Constitution and Prospectus.

### **Guidance**

The DFSA would expect the Operator to define 'open market value' to be based on an authoritative text such as the Royal Institute of Chartered Surveyors' Appraisal and Valuation Standards (fifth edition) ("Red Book") or similar practitioners text used by surveyors for the valuation to be a proper valuation under Rule 16.7.2(5).

## **17 OVERSIGHT ARRANGEMENTS**

### **17.1 Application**

**17.1.1** This chapter applies to a Person in accordance with the application provisions under Chapter 1 but only in relation to a Domestic Fund which is a Public Fund.

### **17.2 General**

#### **Guidance**

1. The Collective Investment Law 2006 sets out the general requirements to establish oversight arrangements by the appointment of Persons to provide oversight of the operation of the Fund.
2. The Rules in this chapter provide further detail in respect of these general requirements but also provide several options for Operators in regard to the types of permitted arrangements.

### **17.3 Permitted arrangements**

#### **Investment Company**

- 17.3.1** (1) An Operator of a Public Fund which is an Investment Company must implement and maintain one of the following oversight arrangements:
- (a) a panel consisting of the independent non-executive members of the Fund's board of Directors;
  - (b) a supervisory board consisting of the independent non-executive Directors who supervise the activities of the Fund's board of Directors; or
  - (c) an Eligible Custodian.
- (2) In (1) (a) and (b) the number of independent non-executive board members must form a simple majority:
- (a) on the board; or
  - (b) on the supervisory board;
- as the case may be.

- (3) A Person is independent of the Operator for the purposes of this Rule if that Person meets the requirements in Article 34 of the Law.

**Investment Partnership**

- 17.3.2** (1) An Operator of a Public Fund which is an Investment Partnership must implement and maintain one of the following oversight arrangements:
  - (a) a committee consisting of at least two Limited Partners each of whom is not a General Partner and is independent of the Operator; or
  - (b) an Eligible Custodian.
- (2) In (1) (a) the number of independent Limited Partners serving on the committee must exceed the number of General Partners serving on the committee in the Investment Partnership.
- (3) A Person is independent of the Operator for the purposes of this Rule if that Person meets the requirements in Article 34 of the Law.

**17.3.3** [Deleted][RM56/08][VER09/07-08]

**Investment Trust**

- 17.3.4** (1) An Operator of a Public Fund which is an Investment Trust must ensure that the Fund oversight function is carried out through one of the following arrangements:
  - (a) by the Trustee of the Fund; or
  - (b) by having a majority of independent Directors on the Operator's board.
- (2) A Person is independent of the Operator for the purposes of this Rule if that Person meets the requirements in Article 34 of the Law.

**Independence**

- 17.3.5** (1) An Operator must take reasonable steps to ensure that the relevant Persons providing Fund oversight functions are independent of the Operator as provided in Article 34 of the Law and not subject to any conflict of interest with respect to the Operator.

- (2) An Operator must notify the DFSA if it becomes aware, or has reason to suspect, that a Person providing Fund oversight functions is no longer independent of the Operator, or has a conflict of interest which may affect his judgement in respect of the Operator and what corrective action it has taken.
- (3) An Operator of an Investment Trust must also notify the Trustee of the matters in (2) in circumstances where the Trustee does not provide the oversight function.

## **17.4 General oversight duties**

**17.4.1** The Persons providing oversight functions must take reasonable care to ensure on a continuing basis the proper carrying out by the Operator of the management of the Fund in accordance with the CIR Rules in respect of single pricing and dealing, income, investment and borrowing and also the matters specified in chapter 9 in relation to the matters which need to be addressed in the required reports.

**17.4.2** In relation to monitoring the Operator's activities in relation to investment and borrowing, the Persons providing the oversight functions must take reasonable steps and exercise due diligence to ensure on a continuing basis that:

- (a) the Fund Property is being used or invested by the Operator in accordance with the CIR Rules covering investment and borrowing; and
- (b) the Operator takes the steps necessary to ensure a restoration of compliance with the relevant Rules as soon as reasonably practicable having regard to the interests of Unitholders.

**17.4.3** The Persons providing oversight functions must take reasonable care to ensure that the Fund is managed without infringement of any provision of the Constitution or Prospectus.

## **17.5 Proceedings**

**17.5.1** The Persons providing oversight functions may regulate proceedings relating to oversight functions as such Persons see fit in order to comply with the requirements of the Law and this chapter, and in the case of a Trustee, the requirements in the Investment Trust Law 2006.



- 17.5.2**
- (1) The Persons providing oversight functions must hold in the DIFC at least two meetings during every annual accounting period.
  - (2) If the Fund is an Investment Company or an Investment Partnership, at least two of the meetings referred to in (1) must be held in the DIFC at the same time as the Fund's Governing Body meets.
  - (3) The Person providing oversight functions must keep:
    - (a) minutes of its meetings; and
    - (b) records of its reports and recommendations.
  - (4) The records in (3) must be kept for a minimum of six years.

**17.5.3** The Persons providing oversight functions must appoint a chairman from amongst themselves to manage and direct the meetings.

## **17.6 Principles and disclosure of interests**

**17.6.1** The six principles for Individuals appointed to carry out oversight functions for a Fund set out in this section apply to every such individual in respect of every oversight function including independent Directors referred to in Rule 17.3.4(1)(b).

### **Guidance**

1. The principles do not apply to an individual in respect of any other functions he may carry out, although his conduct in those functions may be relevant to his fitness and propriety.
2. Breaching a principle makes an individual liable to disciplinary action and may indicate that he is no longer fit and proper to perform an oversight function and the DFSA may consider exercising its power under Article 30(5) or 31(3) of the Law to object to the appointment and require the Operator to appoint a replacement.
3. The onus will be on the DFSA to show that he is culpable, taking into account the standard of conduct required under the principle in question. In determining whether or not the particular conduct of an individual complies with the principles, the DFSA will take into account whether that conduct is consistent with the requirements and standards relevant to an individual's role and the information available to him.

**Principle 1 - Integrity**

- 17.6.2** An individual must observe high standards of integrity and fair dealing in carrying out every oversight function and disclose to the panel, committee or supervisory board any direct or indirect pecuniary interest that he has in a matter being considered, or about to be considered by the panel, committee or supervisory board if his interest could conflict with the proper performance of his duties in relation to the consideration of the matter.

**Principle 2 – Due skill, care and diligence**

- 17.6.3** An individual must act with due skill, care and diligence in carrying out every oversight function.

**Principle 3 – Market conduct**

- 17.6.4** An individual must observe proper standards of conduct in financial markets in carrying out every oversight function.

**Principle 4 – Relations with the DFSA**

- 17.6.5** An individual must deal with the DFSA in an open and co-operative manner and must disclose appropriately any information of which the DFSA would reasonable be expected to be notified.

**Principle 5 – Management, systems and control**

- 17.6.6** An individual who has been appointed chairman of the panel, committee or supervisory board must take reasonable care to ensure that the oversight of the Operator for which he and the other appointees are responsible is organised so that it can be managed and controlled effectively.

**Principle 6 - Compliance**

- 17.6.7** An individual who has been appointed chairman of the panel, committee or supervisory board must take reasonable care to ensure that he and the other Persons carry out their duties and functions in accordance with the Collective Investment Law 2006 and Rules.

**17.7 Management systems and controls**

- 17.7.1**
- (1) The Operator must establish and maintain systems and controls that ensure that the Persons providing oversight functions can effectively monitor the operation of the Fund.
  - (2) The Persons providing oversight functions must be consulted on and approve the systems and controls in (1).

- (3) The Operator must ensure that its Compliance Officer has unrestricted access to the relevant records and to the Persons providing oversight functions.
- (4) The Operator must establish and maintain monitoring and reporting processes and procedures to ensure that any compliance breaches in relation to the operation of the Fund are readily identified and reported to, and promptly acted upon to the satisfaction of, the Persons providing oversight functions.
- (5) The monitoring and reporting processes and procedures in (4) must be approved by the Persons providing oversight functions before implementation.
- (6) The Operator must document the monitoring and reporting processes and procedures as well as keep records of any breaches of legislation applicable in the DIFC.

**Guidance**

The nature and extent of the systems and controls will depend upon a variety of factors including the nature, size and complexity of the Fund's operations. While all Operators and appointees, irrespective of size, legal structure or organisation need to comply with this chapter, the DFSA will take into account these factors and the differences that exist between Funds when assessing the adequacy of an Operator's systems and controls. Nevertheless, neither these factors nor the differences relieve an Operator or appointees from compliance with their regulatory obligations.

- 17.7.2**
- (1) The Persons appointed to perform oversight functions must report to the Operator in relation to the appropriateness and effectiveness of the systems and controls for oversight at least quarterly at a board meeting unless there is reason to report more often.
  - (2) The Operator must ensure that the Persons appointed to perform oversight functions have unrestricted access to all relevant records and recourse, when needed, including to the Operator's Governing Body or any relevant committee, established by that Governing Body.
  - (3) Where an Eligible Custodian has been appointed, or there is a Trustee, the Operator must provide the Eligible Custodian, the Trustee and the Fund's Governing Body with the Fund's internal audit report and any compliance report.

- 17.7.3**
- An Operator must establish and maintain arrangements to provide the Persons appointed to perform oversight functions with the information necessary to organise and control their activities and to comply with legislation applicable in the DIFC. The information must be relevant, accurate, comprehensive, timely and reliable.

- 17.7.4** An Operator must take reasonable steps to ensure that it and its Employees and those of the Fund:
- (a) provide such assistance as the Persons providing oversight functions reasonably require to discharge their duties;
  - (b) give the Persons providing oversight functions' right of access at all reasonable times to relevant records and information;
  - (c) do not interfere with the Persons providing oversight functions' ability to discharge their duties;
  - (d) do not provide false or misleading information to the Persons providing oversight functions; and;
  - (e) report to the Persons providing oversight functions any matter which may significantly affect the financial position of the Fund or which is a breach of the Law or CIR Rules.

**17.8** [Deleted][RM56/08][VER09/07-08]

## **17.9 Criteria for appointment of individuals**

- 17.9.1** (1) An Operator must ensure that any individual it appoints to oversee the operation of the Fund is, and continues to be:
- (a) suitably qualified;
  - (b) fit and proper; and
  - (c) independent,
- in accordance with this chapter.
- (2) In the case where a Fund has oversight arrangements referred to in Rule 17.3.4(1)(b), the Operator must ensure that each independent Director meets the criteria for individuals performing oversight functions.
- (3) If requested by the DFSA, an Operator must provide the DFSA with information on any Person it has appointed or intends to appoint to oversee the Fund.

### **Guidance**

The guidance under Appendix 5 (App 5) sets out matters which an Operator should take into account when assessing the fitness and propriety of an individual who is to be appointed to carry out oversight functions.

- 17.9.2** (1) An Operator must not appoint an individual to perform oversight functions unless that Person has been assessed by the Operator as competent to perform that function.
- (2) In assessing the competence of a prospective appointee, an Operator must:
- (a) obtain details of the knowledge and skills of the individual in relation to the knowledge and skills required for the role;
  - (b) take reasonable steps to verify the relevance, accuracy and authenticity of any information acquired;
  - (c) determine whether the individual holds any relevant qualifications with respect to the functions to be performed; and
  - (d) determine the individual's relevant experience.

**17.9.3** An Operator must ensure that the Persons providing oversight functions have access to sufficient resources, to perform their duties objectively and independently of the Operator.

## **17.10 Persons appointed to oversee**

- 17.10.1** (1) If a Person appointed to provide oversight functions for the Fund, is unable to fulfil his duties in regard to oversight functions or is no longer fit and proper, the Operator must within 21 days of the event causing such inability dismiss and replace that Person unless the circumstances in (3) apply.
- (2) If a Person appointed to provide oversight functions for the Fund, resigns for any reason or a vacancy occurs, the Operator must within 60 days of the event causing the vacancy appoint another Person to the role provided unless the circumstances in (3) apply.
- (3) The circumstances mentioned in (1) or (2) are that the panel, supervisory board or committee, as the case may be, of the Fund still has a simple majority of independent members after the loss of the appointee in (1) or (2).
- (4) Where the Fund has oversight arrangements referred to in Rule 17.3.4(1)(b), the Operator must ensure that it has the ability to comply, and comply, with the requirements in (1) – (3) in respect of the dismissal and replacement of an independent Director.

- 17.10.2** (1) An Operator must ensure that there is a written agreement appointing an Eligible Custodian or individual to carry out oversight functions.
- (2) The agreement must provide that the appointee agrees to be subject to and bound by the Law and the CIR Rules where such Law or Rules place an obligation on the appointee.
- (3) The provision of the agreement must facilitate efficient oversight of the Fund in accordance with the Law and the CIR Rules.
- 17.10.3** An Authorised Person must notify the DFSA, and if the Person providing oversight function is not the Trustee, the Trustee, immediately if the appointment of a Person providing oversight function is or is about to be terminated, or on the resignation of such a Person giving the reasons for the cessation of the appointment.

## **17.11 Record keeping**

- 17.11.1** (1) An Operator must keep records of the verification process undertaken for each individual appointed to the Fund's panel, committee, or supervisory board or the Operator's board for the purposes of Rule 17.3.4(1)(b) including any documents which evidence competence and fitness and propriety.
- (2) The records must include the analysis undertaken, the reason for the Operator concluding that the individual is suitably qualified to undertake the functions of his appointment.
- (3) In relation to the verification process undertaken for an Eligible Custodian, the Operator must keep sufficient records which evidence the Operator's due diligence in accordance with the requirements of this chapter in relation to eligibility.

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## **PART 4 – PRIVATE FUNDS**

### **18 PRIVATE FUNDS**

#### **18.1 Application**

- 18.1.1** (1) The Chapter applies to an Operator of a Domestic Fund which is a Private Fund.
- (2) References to “Operator” in this chapter include a reference to a Person proposing to be the Operator of a Domestic Fund which is a Private Fund.

#### **18.2 Notification**

- 18.2.1** An Operator of a Private Fund must, when notifying the DFSA pursuant to Article 56, also include:
- (a) a general description of the Fund including the nature of its investments and the intended size of the Fund in monetary terms.
- (b) if it is a Hedge Fund and has a prime broker appointed with authority to use as collateral the assets of the Fund in conjunction with any other assets held by or available to the prime broker:
- (i) the details relating to the identity of the prime broker and its Regulator; and
- (ii) a legal certification that all the requirements in Rule 13.6.3 relating to the use of prime brokers have been fully complied with by the Operator.

#### **18.3 Criteria to be classified as a Private Fund**

- 18.3.1** (1) A Fund may be classified as a Private Fund if it fulfils the conditions specified in (2) as applicable at inception and on an on-going basis.
- (2) The conditions mentioned in (1) are as follows:
- (a) the Units in the Fund are Offered for sale or issue only:
- (i) by means of Private Placement with Professional Clients; and

- (ii) in a manner which does not result in the Fund having more than 100 Unitholders.
- (b) the Fund is constituted as an:
  - (i) Investment Company;
  - (ii) Investment Partnership; or
  - (iii) Investment Trust;
- (c) the Fund has a Fund Operator which is authorised by the DFSA under its Licence to carry on the Financial Service of Operating a Collective Investment Fund;
- (d) the Fund, if an Investment Trust, has a Trustee which is authorised by the DFSA under its Licence to Act as the Trustee of a Fund;
- (e) the name of the Fund is not undesirable, misleading or conflicts with the name of any other Fund and the Fund's purpose is reasonably capable of being successfully carried into effect;
- (f) the Operator has appointed an Auditor of the Fund who complies with the requirements of chapter 12; and
- (g) the Operator of the Fund has produced and made available to prospective Unitholders a Short Form Prospectus in accordance with the requirements of chapter 19.

## **18.4 Arrangements by Operator with other Authorised Firms**

- 18.4.1** If an Operator makes arrangements with other Authorised Firms or Persons in other jurisdictions, to issue or sell the Units, then it must take reasonable steps to ensure that those Authorised Firms or other Persons do not issue or sell the Units in a manner that would result in a breach of the limitations applicable under Rule 18.3.1(2)(a).

## **18.5 Umbrella Funds**

- 18.5.1** An Operator of a Private Fund which is an Umbrella Fund must ensure that none of its Sub-Funds invests in another of its Sub-Funds.



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## **19 PRIVATE FUND PROSPECTUS**

### **19.1 Application**

- 19.1.1**
- (1) This chapter applies to an Operator of a Domestic Fund which is a Private Fund.
  - (2) This chapter also applies to the Governing Body of an Investment Undertaking.

#### **Guidance**

See also the requirements in chapter 3 relating to Transactions in Units by an Authorised Firm.

### **19.2 Drawing up and availability of a Short Form Prospectus**

- 19.2.1**
- (1) An Operator of a Private Fund must ensure that a Short Form Prospectus of the Fund is drawn up in accordance with Part 6 of the Law and contains the statements or information specified in (3) and (4) and:
    - (a) sections 19.3 and 19.4; and
    - (b) if applicable, any one or more of sections 19.5 to 19.9.
  - (2) The Short Form Prospectus must not contain any provision which is unfairly prejudicial to the interests of Unitholders generally or to the Unitholders of any class of Units.
  - (3) The information referred to in (1) is material information which is within the knowledge of Operator, or which the Directors or partners of the legal entity constituting the Fund would have obtained by the making of reasonable enquiries, which prospective Unitholders and their professional advisers would reasonably require, and reasonably expect to find in the Short Form Prospectus, for the purpose of making an informed judgment about the merits of investing in the Fund and the extent and characteristics of the risks accepted by so participating.
  - (4) If the Fund is permitted by its Constitution and the Rules to borrow money in excess of 200% of the net asset value of the Fund full details of the manner in which the risk posed by such borrowing is to be managed must be set out.
  - (5) The Short Form Prospectus must be in the English language.
  - (6) The expiry date of a Short Form Prospectus must be no later than 12 months after the date of the Short Form Prospectus.
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**Guidance**

An Operator should note the requirements of Article 41(1) of the Law. Accordingly, a Short Form Prospectus drawn up pursuant to Rule 19.2.1 should be made available to prospective Unitholders for as long as the Offer by means of private placement is open and once the Offer is closed, the Operator's obligation to make the Short Form Prospectus available would cease.

**19.2.2** An Operator of a Fund must make the Fund's most recent Short Form Prospectus available free of charge to any Unitholder and to any Person who is eligible to invest in the Fund prior to the purchase of any Units.

**19.2.3** (1) For the purpose of Article 42(3) of the Law, a Supplementary Prospectus of a Private Fund may be issued as a supplementary or replacement document.

(2) Where the Supplementary Prospectus is issued as a supplement, the Operator must:

(a) clearly identify in the Supplementary Prospectus the Short Form Prospectus that it supplements, the revisions to that Short Form Prospectus, the date of any material change or new matter giving rise to any revision, and the date of the document;

(b) provide a copy to each Person or Unitholder who applied for Units under the previous Short Form Prospectus after the earliest date of any material change or new matter giving rise to the revision; and

(c) ensure the Supplementary Prospectus is made available in the same media and through the same channels as, and together with, the previous Short Form Prospectus.

(3) Where the Supplementary Prospectus is issued as a replacement, the Operator must:

(a) clearly state in the Supplementary Prospectus that it is a replacement document, and identify the Short Form Prospectus that it replaces, the date and nature of any material change or new matter giving rise to the replacement, the expiry date, and the date of the document; and

(b) provide a copy to each prospective Unitholder who applied for Units under the previous Short Form Prospectus after the earliest date of any material change or new matter giving rise to the replacement.

(4) The expiry date of a Supplementary Prospectus must be the same as that of the Short Form Prospectus it supplements.

**19.2.4** Unless the context otherwise provides, any reference in these Rules to a Short Form Prospectus must be read as including a Supplementary Prospectus.

**19.2.5** When a Supplementary Prospectus has been made available in accordance with Rule 19.2.3, the Operator must:

- (a) inform any Person who applied for Units on the basis of the previous Short Form Prospectus after the earliest date of a material change or new matter giving rise to the issue of the Supplementary Prospectus of their right to confirm or retract any application made on the basis of that Prospectus and to obtain a refund of monies paid, and the manner in which to do so; and
- (b) allow any such Person a period of at least seven days from the date of receipt of the Supplementary Prospectus in which to so confirm or retract his application.

### **19.3 Drawing up a Prospectus – mandatory statement**

**19.3.1** An Operator of a Private Fund must state in the Prospectus the following statement displayed prominently on its front page:

“This Prospectus relates to a Private Fund in accordance with the Collective Investment Law 2006 and Rules of the Dubai Financial Services Authority (“DFSA”).

This Prospectus is intended for distribution only to Professional Clients as specified in those Rules and must not, therefore, be delivered to, or relied on by, a Retail Client.

The DFSA has no responsibility for reviewing or verifying any Prospectus or other documents in connection with this Fund. Accordingly, the DFSA has not approved this Prospectus or any other associated documents nor taken any steps to verify the information set out in this Prospectus, and has no responsibility for it.

The Units to which this Prospectus relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the Units offered should conduct their own due diligence on the Units.

If you do not understand the contents of this document you should consult an authorised financial adviser.”

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## **19.4 Contents of Short Form Prospectus**

**19.4.1** For the purposes of rule 19.2.1(1), a Short Form Prospectus must contain the following information:

- (a) the name of the Fund;
- (b) particulars of the Operator and, if applicable the Trustee and its regulatory status;
- (c) details of the Eligible Custodian, any independent investment committee or other similar arrangements in respect of the Fund;
- (d) a detailed description of the Fund, its investment objectives and policy, and the nature of its investments;
- (e) particular risks to a prospective Unitholder associated with the type of Fund and its investments;
- (f) particulars of management of the Fund and other service providers including:
  - (i) the name of any Service Provider;
  - (ii) which Financial Services Regulator regulates that Person; and
  - (iii) details of the arrangements;
- (g) any applicable charges and the basis upon which such charges will be calculated;
- (h) details of dealing and redemption or other exit arrangements and any costs to the Unitholders as a result thereof;
- (i) details of investment and borrowing powers;
- (j) a statement that this document is the Prospectus of the Private Fund valid as at a particular date which shall be the date of the Prospectus;
- (k) a statement that no Units will be issued on the basis of the Prospectus after the expiry date specified in the Prospectus; and
- (l) if the Fund is an Umbrella Fund, information relating to its Sub-Funds and any costs or restrictions relating to switching between Sub-Funds.

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## **19.5 Drawing up a Prospectus for Islamic Funds**

**19.5.1** An Operator of an Islamic Fund must state in the Fund's Prospectus:

- (a) that all the operations in relation to the Fund will be conducted in accordance with Shari'a;
- (b) the names of the members of the Shari'a Supervisory Board and their qualifications and experience;
- (c) the manner and frequency of Shari'a reviews ;
- (d) the disclosures required by AAOIFI FAS 14; and
- (e) the additional disclosure, if applicable, prescribed under section A7.1 of App 7.

### **Guidance**

1. An Operator should consider providing additional information to support the statement under Rule 19.5.1(a) as indicated in 2 and 3 below.
2. The Operator should provide sufficient details setting out the basis upon which the Fund has been approved and certified as Shari'a compliant by its Shari'a Supervisory Board. Such details should include the basis of the underlying principles, i.e. the fatwas or rulings, including reference to any relevant ijthad, ijma, qiyas or other. Where applicable, reference should be made to any Islamic indices to be used. In addition, where applicable, the screening process and filters used should be identified.
3. The Operator should set out each of the key features of the Fund and explain the rationale for determining why each of these features are considered Shari'a compliant by the Fund's Shari'a Supervisory Board.

## **19.6 Drawing up a Prospectus for a Feeder Fund**

**19.6.1** An Operator of a Feeder Fund must ensure that the Fund's Prospectus discloses:

- (a) a prominent risk warning to alert prospective Unitholders to the fact that they will be subject to higher fees arising from the layered investment structure; and
- (b) the fees arising at the level of:
  - (i) the Feeder Fund itself;
  - (ii) if applicable, the Master Fund into which the Feeder Fund invests; and
  - (iii) if applicable, any underlying Funds into which the Master Fund invests, to the extent known.

**19.7 Drawing up a Prospectus for a Property Fund**

**19.7.1** An Operator of a Property Fund must ensure that the following information is disclosed in the Fund's Prospectus:

- (a) the nature of the commitment which Unitholders will enter into;
- (b) the risks involved in this type of Fund;
- (c) a prominent risk warning which makes reference to circumstances in property markets which can cause difficulties in meeting redemptions;
- (d) details of the Property Fund's appointed Independent Valuer;
- (e) in a prominent position in the Prospectus, the redemption procedures;
- (f) the dividend or income distribution policy;
- (g) the insurance arrangement for the Fund Property;
- (h) a statement with respect to any material policy regarding real property activities;
- (i) details of transactions or agreements entered into with Affected Persons;
- (j) full particulars of the nature and extent of the interest, if any, of Affected Persons, in the property owned or proposed to be acquired by the Fund;
- (k) details of significant holders and the number of units held and deemed to be held by each of them;
- (l) details of principal taxes levied on the Fund's income and capital, including tax, if any, deducted on distribution to Unitholders; and
- (m) a statement to explain the standards according to which the property valuations are conducted.

**19.7.2** An Operator of a Property Fund must also disclose in the Fund's Prospectus, in addition to the standard disclosure requirements, in respect of investment limits, the following information:

- (a) what percentage of the Property Fund's net assets may consist of property related assets which are not traded in or dealt on markets provided for in the Constitution;

- (b) unless the Constitution and the Prospectus state that the Fund invests in a single property, the maximum percentage of the Fund's net assets which may be invested in any single property or, if applicable, disclose the conditions under which the Fund may derogate from this restriction;
- (c) the maximum percentage of the Property Fund's net assets which may be invested in properties which are vacant, in the process of development or requiring development;
- (d) the maximum percentage of the Property Fund's net assets which may be invested in properties which are subject to a mortgage; and
- (e) a statement that borrowing may not exceed 100% the value of the net assets of the Property Fund, which borrowing may be generally secured on the properties of the Fund.

## **19.8 Drawing up a Prospectus for Private Equity Fund**

**19.8.1** If a Fund is a Private Equity Fund the Operator must provide the following in the Fund's Prospectus:

- (a) a description of the arrangements in place for the safekeeping of monies raised from Unitholders but not yet invested in the proposed undertaking or venture; and
- (b) a description of the exit arrangements for Unitholders.

## **19.9 Drawing up a Prospectus for a Hedge Fund**

**19.9.1** A Hedge Fund Operator must prominently disclose to Unitholders in the Prospectus and any other financial promotions relating to the Fund, the following Mandatory Hedge Fund Disclosure Statement:

"When considering investment in a Hedge Fund you should consider the fact that some Hedge Fund products use leverage and other speculative investment practices that may increase the risk of investment loss, can be illiquid, may involve complex tax structures often charge high fees, and in many cases the underlying investments are not transparent and are known only to the Hedge Fund Investment Manager.

Returns from Hedge Funds can be volatile and you may lose all or part of your investment. With respect to single manager products the manager has total trading authority and this could mean a lack of diversification and higher risk. The Hedge Fund may be subject to substantial expenses that are generally offset by trading profits and other income. A portion of those fees is paid to the Hedge Fund Manager and Operator."

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## PART 5 – GENERAL PROVISIONS

### 20 SUSPENSION AND TERMINATION

#### 20.1 Application

**20.1.1** This Chapter applies to an Operator and, where appointed, the Trustee of a Domestic Fund, a member of the Fund's Governing Body, the Fund's Eligible Custodian, Persons appointed to oversee the Fund and the Fund's Auditor.

#### 20.2 Suspension of dealings

##### Guidance

Pursuant to Article 69 of the Law an Operator may suspend the issue, sale and redemption of Units in a Fund, where due to exceptional circumstances it is in the interest of the Unitholders in the Fund.

- 20.2.1**
- (1) An Operator may within any parameters which are fair and reasonable in respect of all Unitholders in the Fund and which are set out in the Prospectus, suspend dealings in Units of the Fund, a Sub-Fund or a class.
  - (2) Any suspension in (1) must only be where the Operator has determined on reasonable grounds that there are good and sufficient reasons in the interests of Unitholders, or prospective Unitholders, and the Operators must have regard to the interests of all Unitholders in the Fund in reaching such a determination.
  - (3) Any suspension in (1) must only be implemented in the case of an Investment Trust with the prior approval by the Trustee.
  - (4) At the commencement of suspension under (1), the Operator must immediately inform the DFSA, the Eligible Custodian or other Persons appointed to provide oversight of the Fund and the Auditor of the Fund of the suspension and the reasons for it.
  - (5) The suspension of dealings in Units must, subject to (7), cease within 28 days of its commencement or, if earlier, as soon as (2) no longer applies.
  - (6) An Operator must inform the DFSA immediately of the resumption of dealings.
  - (7) The DFSA may, on request by the Operator or on its own initiative, extend the period referred to in (5) by written notice.



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## **20.3 Winding up a fund**

### **Guidance**

Part 10 of the Law sets out all the provisions relating to transfer schemes and the winding up of Funds. Article 61(c) enables the DFSA to prescribe additional circumstances to those contained in the Law in relation to when a Fund may be wound up. This section contains such Rules.

**20.3.1** Pursuant to Article 61(c) of the Law, the DFSA prescribes in this chapter the additional circumstances in which a Domestic Fund may be wound up.

**20.3.2** (1) Upon the happening of any of the events specified in (2) and not otherwise, the Operator and, if applicable, the Trustee must cease to issue, sell, cancel or redeem Units in the Fund or to invest or borrow for the Fund and proceed to wind up the Fund in accordance with the Law and this section.

(2) The events referred to in (1) are:

- (a) in response to a request to the DFSA by the Trustee, Operator or other member of its Governing Body for the removal of a Fund from the list of registered Funds, the DFSA has agreed, albeit subject to there being no material change in any relevant factor, that, on the conclusion of the winding up of the Fund, the DFSA will accede to that request;
- (b) the Fund is not commercially viable or the purpose of the Fund cannot be accomplished;
- (c) the expiration of any period specified in the Constitution as the period at the end of which the Fund is to terminate;
- (d) the effective date of a duly approved transfer scheme, which is to result in the Fund that is subject to the transfer scheme being left with no property; or
- (e) in the case of a Private Fund, the Fund is failing, or has failed, to satisfy the criteria specified in chapter 18 of these Rules to remain classified as a Private Fund, unless the Fund is applying for registration as a Public Fund.

**20.3.3** (1) In a case falling within Rule 20.3.2(2)(d), the Operator or, if the Fund is an Investment Trust, the Trustee must wind up the Fund in accordance with the approved transfer scheme.

(2) In any other case falling within Rule 20.3.2 or specified in Part 10 of the Law:

- (a) the Operator or Trustee must, as soon as practicable after the Fund falls to be wound up, realise the Fund Property;

- (b) after paying therefrom or retaining adequate provision for all liabilities properly so payable and for the costs of the winding up, the Operator must distribute the proceeds of that realisation to the Unitholders (upon production by them of such evidence as the Operator may reasonably require as to their entitlement thereto) proportionately to their respective interests in the Fund as at the date of the relevant event referred to in Rule 20.3.2; and
  - (c) any unclaimed net proceeds or other cash (including unclaimed distribution payments) held by the Operator or Trustee after the expiration of twelve months from the date on which they became payable must be paid by the Operator or Trustee into court, subject to the Operator or Trustee having a right to retain any expenses incurred by it relating to that payment.
- (3) Where the Operator or Trustee and one or more Unitholders agree, the requirement of (2) to realise the Fund Property does not apply to that part of the property proportionate to the entitlement of that or those Unitholders. The Operator or Trustee may distribute that part in the form of property, after making adjustments or retaining provisions as appears to the Operator or Trustee appropriate for ensuring that, that or those Unitholders bear a proportional share of the liabilities and costs.
- (4) The Operator or Trustee must as soon as practical after the winding up or termination has commenced:
  - (a) if the Unitholders have not initiated the winding up under Article 63 of the Law, inform the Unitholders of the winding up or termination; and
  - (b) publish a notice of the winding up or termination in one English and one Arabic language national newspaper and if the Fund has a website, on the Fund's website.
- (5) On completion of the winding up in respect of the events referred to in Rule 20.3.2(2)(b), (c) or (d), the Operator or Trustee must notify the DFSA in writing of that fact and at the same time the Operator or Trustee must require the DFSA to revoke the relevant registration.

#### **Accounting and Reports during winding up**

- 20.3.4**
- (1) Subject to any order of the court, and subject to (2) and (3), while a Fund is being wound up, whether under Rule 20.3.3 or otherwise:
    - (a) the annual and half-yearly accounting periods continue to run;

- (b) the provisions concerning annual and interim allocation of income continue to apply; and
  - (c) annual and half-yearly reports continue to be required.
- (2) Where, for any annual or half-yearly accounting period, the Operator, after consulting the Auditor and the DFSA, has taken reasonable care to determine that timely production of an annual or half-yearly report is not required in the interests of the Unitholders or the DFSA, the Operator or Trustee may direct that immediate production of the report by the Auditor may be dispensed with.
- (3) The period in question in (2) must be reported on together with the following period in the next report prepared for the purposes of (1) or (4).
- (4) At the conclusion of the winding up, the accounting period then running is regarded as the final annual accounting period.
- (5) Within two calendar months after the end of the final accounting period, the annual reports of the Operator must be published and sent to each Person who was a Unitholder immediately before the end of the final accounting period.

## **20.4 Funds that are not commercially viable**

- 20.4.1**
- (1) If the Operator of a Fund believes on reasonable grounds that the Fund is not commercially viable or the purpose of the Fund cannot be accomplished, the Operator must notify the DFSA and include the information specified in (2).
  - (2) The information referred to in (1) is:
    - (a) name of the Fund;
    - (b) size and type of Fund;
    - (c) number of Unitholders;
    - (d) whether dealing in the Fund's Units has been suspended;
    - (e) why the request is being made;
    - (f) what consideration has been given to the Fund entering into a transfer scheme with another Fund and the reasons why a transfer scheme is not possible;
    - (g) (i) whether Unitholders have been informed of the intention to seek winding up or revocation; and

- (ii) if not, when they will be informed;
  - (h) details of any proposed preferential switching rights offered or to be offered to Unitholders;
  - (i) details of any proposed rebate of charges to be made to Unitholders who recently purchased Units;
  - (j) where the costs of winding-up will fall;
  - (k) a statement from the Trustee or Eligible Custodian or other Persons providing oversight if the Fund is a Public Fund or a statement from the Auditor if the Fund is a Private Fund:
    - (i) that the Operator, having taken reasonable care in considering the matter, is certain that a transfer scheme is not practical;
    - (ii) an explanation of what steps have been considered that would result in the Fund not needing to wind up;
    - (iii) confirmation that the Operator has carried out its function and duties in accordance with the Law and Rules; and
    - (iv) whether the Fund's investment and borrowing powers have been exceeded;
  - (l) the preferred date for the commencement of the winding up; and
  - (m) any additional information considered relevant to the DFSA's consideration.
- (3) The DFSA may request further information after receipt of the notification.

## **20.5 Transfer schemes**

### **Guidance**

1. Pursuant to Part 9 of the Regulatory Law 2004, a Fund may be transferred in whole or in part to another body in accordance with that Part.
2. The DFSA may make Rules for the purposes of that Article pursuant to the power conferred under Article 113 of the Regulatory Law 2004.

- 20.5.1** Pursuant to Article 113 of the Regulatory Law 2004, the DFSA prescribes, in Rule 20.5.2, the modification to Part 9 of that Law necessary for the purposes of transferring a Fund's property or liability to another Fund.

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- 20.5.2**
- (1) Article 108 (4) of the Regulatory Law 2004 is to be read and, to have effect, as if it were subject to the provisions set out in this rule.
  - (2) Where, for the purpose of a transfer scheme, it is proposed that the property of a Fund should become the property of another Fund or the property of a Sub-Fund of an Umbrella Fund, the proposal must not be implemented without the sanction of a Special Resolution of the Unitholders in the Fund, unless (3) applies.
  - (3) Where, for the purposes of a transfer scheme, it is proposed that Fund Property attributable to a Sub-Fund of an Umbrella Fund should become the property of another Fund or of another Sub-Fund of a Fund, whether or not of that Umbrella Fund, the proposal must not be implemented without the sanction of:
    - (a) a Special Resolution of the Unitholders in the Sub-Fund of that Umbrella Fund; and
    - (b) unless implementation of the transfer scheme is not likely to result in any material prejudice to the interests of the Unitholders in any other Sub-Fund of that Umbrella Fund a Special Resolution of the Unitholders of Units in that Umbrella Fund.
  - (4) If it is proposed that a Fund or a Sub-Fund of an Umbrella Fund should receive property, other than its first property, as a result of a transfer scheme, or an arrangement equivalent to a scheme of arrangement, which is entered into by some other Fund or Sub-Fund, or by a Body Corporate, the proposal must not be implemented without the sanction of an Special Resolution of the Unitholders in the Fund, or as the case may be, of the class or classes of Units related to the Sub-Fund unless (5) applies.
  - (5) In (4), if the Operator and Trustee or other Persons providing oversight functions for the Fund or the Auditor of the Fund agree that the receipt of the property concerned for the account of the Fund:
    - (a) is not likely to result in any material prejudice to the interest of the Unitholders of the Fund;
    - (b) is consistent with the objectives of the Fund or Sub-Fund of an Umbrella Fund; and
    - (c) could be affected without any breach of a Rule in chapter 16;

then the transfer may be effective and the issue of Units in exchange for assets as part of a transfer scheme may be undertaken.

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**APP 1 DELEGATION AND OUTSOURCING****A1.1 Application**

**A1.1.1** This Appendix (App 1) applies to an Operator and Trustee in relation to every:

- (a) Delegation Agreement; and
- (b) Outsourcing Agreement.

made or entered into, pursuant to these Rules.

**A1.2 Mandatory provisions**

**A1.2.1** (1) An Operator or Trustee must ensure that any agreement specified in Rule A1.1.1:

- (a) sets out the functions or activities and service standards that will be applied to the carrying out of such functions or activities;
- (b) provides that the Service Provider cannot in turn, delegate any activities delegated to it, or outsource any functions outsourced to it, without prior approval of the Operator or Trustee as applicable;
- (c) requires the Service Provider to:
  - (i) maintain records to show and explain transactions in relation to each activity or function performed in relation to the Fund;
  - (ii) maintain such records in a manner to enable the Operator or Trustee to prepare accounts in compliance with these Rules and any other applicable legislation;
  - (iii) retain the records for at least six years from the date to which they relate;
  - (iv) keep the records, at all reasonable times, open to inspection by the DFSA, the Fund's Auditor and any Person providing oversight functions for the Fund; and
  - (v) ensure that the records are, if requested by the DFSA, capable of reproduction within a reasonable period not exceeding 3 days, in hard copy and in English.

- (2) An Operator or Trustee must ensure that a Delegation Agreement contains an undertaking by the Service Provider to:
  - (a) comply with any DFSA Rules applicable to the activity; and
  - (b) disclose to the DFSA and to the Operator or Trustee, as the case may be, any material information that it would disclose to its Financial Services Regulator, if relevant, in relation to the conduct of the activity.
- (3) An Operator or Trustee must maintain records of all agreements, and any instructions given to a Service Provider under the terms of an agreement, for at least six years.

**Guidance**

1. Other Rules may also impact on the contents of a Delegation Agreement or Outsourcing Agreement. For instance, consideration should be given to GEN Rule 5.3.21 and accompanying Guidance.
2. Without limiting the application of any Rules, the DFSA expects that any agreement would include as a minimum.
  - a. unambiguous descriptions and definitions of the activities or functions to be provided by the Service Provider and the duties of both parties;
  - b. an agreed standard between the parties or resources and services supported as necessary by performance measures in accordance with the applicable Rules;
  - c. the requirement for regular detailed reporting to a specified frequency from the Service Provider in respect of its duties and activities;
  - d. provisions relating to the reporting of relevant events such as technological changes or error reporting and, in particular, any event which undermines the ability of the Service Provider to fulfil its duties;
  - e. the requirement for an annual review (at a minimum) of the performance of the Service Provider.

**A1.3 Provisions relating to Eligible Custodians**

- A1.3.1** An Operator or Trustee must ensure that a Delegation Agreement in relation to Providing Custody will:
- (a) require that the title of any account of the Eligible Custodian to hold Fund Property sufficiently distinguishes that account from any account containing Investments belonging to the Eligible Custodian, and is in the form requested by the Operator or Trustee;

- (b) require that the Fund's Investments will only be credited and withdrawn in accordance with the instructions of the Operator or Trustee;
- (c) subject to Rule A1.3.2, require that the Eligible Custodian will hold the Fund's Investments separately from assets belonging to the Eligible Custodian;
- (d) set out the arrangements for recording and registering the Funds, claiming and receiving dividends and other entitlements and interest and the giving and receiving of instructions;
- (e) require the Eligible Custodian to deliver a statement to the Operator or Trustee (including the frequency of such statement), which details the Fund's Investments deposited to the account;
- (f) subject to Rule A1.3.2, require that all the Investments standing to the credit of the account are held by the Eligible Custodian as the agent of the Operator or the Trustee and the Eligible Custodian is not entitled to combine the account with any other account or to exercise any charge, mortgage, lien, right of set-off or counterclaim against Investments in that account in respect of any sum owed to the Eligible Custodian on any other account of the Operator, Trustee or any other Person; and
- (g) detail the extent of liability of the Eligible Custodian in the event of default.

**A1.3.2** An Operator, and if appointed a Trustee, is not required to meet the requirement in Rule A1.3.1(c) and (f), where either the Eligible Custodian or any other Person acting as the prime broker of the Fund does so in compliance with the requirements in Rule 13.6.3.

## **A1.4 Provisions relating to fund administration**

**A1.4.1** An Operator or Trustee must ensure that a Delegation Agreement in relation to Providing Fund Administration requires that the Service Provider must not hold or control monies or assets belonging to third parties in connection with such administration except in the following circumstances:

- (a) holding cheques to the order of a Fund's bank account, provided such cheques are securely held for a maximum of three business days prior to being deposited into the relevant Fund's bank account or returned to the drawer of the cheque; or
  - (b) where the Service Provider has control over bank accounts kept for the purposes of the Fund, the accounts must be conducted strictly in accordance with the Operator's instructions and any agreed mandate with the bank.
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**APP 2 APPROVALS AND NOTIFICATIONS****A 2.1 Fundamental change requiring prior approval by Unitholder meeting**

- A 2.1.1**
- (1) An Operator must, by way of a Special Resolution, obtain prior approval from the Unitholders for any proposed change to a Domestic Fund which is a fundamental change.
  - (2) In addition to the specific fundamental changes in relation to a Fund prescribed under Article 58(1) of the Law and also under Rules 6.4.1(4), 10.2.3, 13.5.4(2) and 20.5.2, a “fundamental change” under (1) is a change or event which:
    - (a) changes the purpose or nature of the Fund;
    - (b) may materially prejudice a Unitholder;
    - (c) alters the risk profile of the Fund; or
    - (d) introduces any new type of payment out of Fund Property.
  - (3) Notwithstanding (2) above, any change may be fundamental depending on its degree of materiality and effect on the Fund and its Unitholders. Consequently the Operator must determine whether in each case a particular change is fundamental in nature and, if the Fund is an Investment Trust, obtain the Trustee’s agreement to the outcome of the determination.

**Guidance**

For the purpose of this section, a fundamental change to a Fund is likely to include:

- a. any proposal for a scheme of arrangement;
- b. a change in the investment policy to achieve capital growth from investment in one country rather than another;
- c. a change in the investment objective or policy to achieve capital growth through investment in fixed interest rather than equity investments;
- d. a change in the investment policy to allow the Fund to invest in derivatives as an investment strategy which increases its volatility;
- e. a change to the characteristics of a Fund to distribute income annually rather than monthly;
- f. the introduction of limited redemption arrangements; or
- g. a change of the custodian, trustee or other oversight arrangement.

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**A 2.2 Significant change requiring pre-event notification to the Unitholders**

- A 2.2.1**
- (1) An Operator is expected to give prior written notice to Unitholders in respect of any proposed change to the operation of a Fund where the change constitutes a significant change.
  - (2) A “significant change” in (1) is a change or event which is not a fundamental change under Rule A 2.2.1 but:
    - (a) affects a Unitholder's ability to exercise his rights in relation to his investment; or
    - (b) would reasonably be expected to cause the Unitholder to reconsider his participation in the Fund;
    - (c) results in any increased payments out of the Fund Property to the Operator the Trustee or any other director or an associate of either; or
    - (d) materially increases other types of payment out of Fund Property.
  - (3) Changes may be significant depending in each case on their degree of materiality and effect on the Fund and its Unitholders. Consequently the Operator will need to determine whether in each case a particular change is significant in nature or not and if the Fund is an Investment Trust obtain the Trustee’s agreement of the outcome of the determination.

**Guidance**

1. The notice period required for a pre-event notification to the Unitholder should be of a reasonable length, which is expected to be at least 30 days.
2. For the purpose of this section a significant change is likely to include:
  - a. a change in the method of price publication;
  - b. a change in any operational policy such as dilution policy or allocation of payments policy; or
  - c. an increase in the preliminary charge where Units are purchased through a group savings plan.

**A 2.3 Pre event or post - event notifiable changes to Unitholders**

- A 2.3.1** (1) An Operator must to inform Unitholders in an appropriate manner and timescale of any notifiable changes that are reasonably likely to affect, or to have affected, the operation of the Fund.
- (2) A notifiable change in (1) is a change or event, other than a fundamental change or a significant change specified in this Appendix, which a Unitholder must be made aware of unless the Operator concludes that the change is insignificant.

**Guidance**

1. The circumstances causing a notifiable change may or may not be within the control of the Operator.
2. For the purpose of this section, a notifiable change might include:
  - a. a change of a named investment manager where the Fund has been marketed on the basis of that investment manager's involvement;
  - b. a significant political event which impacts on the Fund or its operation;
  - c. a change to the time of the valuation point;
  - d. the introduction of limited issue arrangements; or
  - e. or a change in the name of the Fund.
3. The appropriate manner and timescale of notification in this section would depend on the nature of the change or event. Consequently the Operator will need to assess each change or event individually.
4. An appropriate manner of notification could include:
  - a. sending an immediate notification to the Unitholder;
  - b. publishing the information on a website; or
  - c. the information being included in the next long report of the Fund.

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**APP 3 GUIDANCE ON ASSET VALUATION AND PRICING****Guidance****General**

1. This guidance relates to the calculation of a single price and net asset value in accordance with the CIR Rules. Under those Rules, the Operator should take all reasonable steps, and exercise due diligence, to ensure that the Property of the Fund is valued in accordance with the Law, the CIR Rules and its provisions of its Constitution.
2. This guidance sets out minimum standards of control in relation to the valuation of the Fund Property to which the Operator, the Trustee and oversight arrangement should have regard in determining whether they have met their obligations under the applicable Rules and the Fund's Constitution.
3. The Operator should take action forthwith to rectify any breach in respect of valuation. Where the breach relates to the incorrect pricing of Units, rectification should extend to the reimbursement or payment of money by the Operator to Unitholders, former Unitholders or to the Investment Undertaking.
4. The Trustee or the Persons performing oversight functions may direct that rectification need not extend to reimbursement where it appears that the incorrect pricing is of minimal significance. This would only be appropriate where the Operator has adequate controls in place.
5. The price of a Unit of any class should be calculated by valuing the Fund Property attributable to Units of that class and dividing that value by the number of Units of the class in issue. All the Fund Property should be valued at each valuation point and any part of the Fund Property which is not an Investment should be valued at fair value. The DFSA expects an Operator to agree its methodology for valuing the Fund Property with the Trustee or Eligible Custodian, or other Persons providing oversight functions and that the methodology in place is applied consistently.
6. In respect of Securities quoted on an Exchange:
  - a. the Fund's Constitution should set out the valuation policy that will be adopted by the Operator where a single price for buying and selling a Security is quoted; and also where separate buying and selling prices are quoted on an Exchange. Either the official mid-market price or the last trade price should provide an appropriate basis of valuation for the Fund. The Operator should, however, document the choice of methodology and ensure that the procedures are applied consistently and fairly; and
  - b. where there has been no recent trade in the Security concerned, or no reliable price exists, an Investment should be valued at a price which, reflects a fair and reasonable price for that investment. For example, an Operator may obtain a valuation from three experienced brokers and average the value. In such cases, the Operator is required to document the reasons for his decision and should be prepared to justify any assumptions made.

7. Where instances of incorrect pricing occur, the de minimis provisions set out in this guidance should apply only where the Operator and Trustee or the Person providing oversight functions are able to meet the standards set out in this guidance. Evidence of persistent or repetitive errors, or errors consistently in the Operator's favour, are likely to make it more difficult for the Operator to demonstrate that he is able to meet the standards in this guidance.

#### **Pricing controls by the Operator**

8. Unit prices and currency rates used in Fund valuations should be up to date and from a reputable source. The mere use of a source for prices and rates does not amount to delegation under the GEN module and CIR Rules. Although it should not be necessary to carry out significant substantive checking, the reliability of the source of prices and rates should be kept under regular review, and doubtful prices or rates should be followed up.
9. The mere use of a source for prices and rates does not amount to delegation under the GEN module and CIR Rules. However, the use of a third party to carry out the pricing function., whether it is an Associate of the Operator, or the Trustee or any Associate of the directors of the company or Persons providing oversight functions, or to any independent third party, amounts to outsourcing. In this case the Operator still retains its operating responsibilities and duties and, remains liable for the acts and omissions of that third party in performing the pricing functions as if they were the acts or omissions of the Operator. The Operator should ensure that the third party contracts to provide the service on a basis which takes account of the Operator's responsibilities which require the Fund to be priced in accordance with the applicable Rules and the Fund's Constitution.
10. Where the pricing function is outsourced, the Operator is required, in accordance with the Rules, to satisfy himself that the pricing agent remains competent to carry out the function, and that he has taken reasonable care to ensure that the pricing agent has carried out his duties in a competent manner.
11. The Operator should seek assurance that the pricing agent's system is robust and will produce accurate results. The Operator should review the outputs from the system at least annually, and on any significant system change. In addition, if the pricing agent is also responsible for calculation of dealing prices of Units, the Operator should ensure that this system is reviewed to his satisfaction at least annually.
12. Unless the valuation and record keeping systems are integrated, the valuation output should be agreed with the Operator's records of a Fund at each valuation point. In addition, the Operator's records, including debtors and creditors, should be agreed with a Custodian's records of stocks and both capital and income cash at least monthly, with reconciling items followed up promptly, and debtors reviewed for recoverability.
13. Systems should be in place whereby all transactions are confirmed in writing or by electronic means to the Operator or to a pricing agent as quickly as possible. It is desirable that all deals to which the Fund is committed, which have been notified at most one hour before a valuation, are included in that valuation, at estimated prices if necessary. Unless, however, there is likely to be significant movement in a price of a Unit, it is more important that an accurate cut-off procedure is in place to ensure that omissions or duplications do not take place, than it is to ensure that estimates are included in a valuation.

14. Where prices are obtained otherwise than from the main pricing source (e.g. unquoted, suspended, or illiquid stocks) the Operator should maintain a record of the source and basis for the value placed on the investment. These should be regularly reviewed.
15. A system should be in place to ensure that investment and borrowing powers which are contained in the CIR Rules, where applicable and in the Fund's Constitution and Prospectus are not breached, and that if breaches occur they are identified and rectified.
16. A system should be in place to ensure that dividends are accounted for as soon as stocks are quoted ex-dividend, unless, as with some foreign stocks, it is prudent to account for them only on receipt. Fixed interest dividends and interest should be accrued at each point unless the level of materiality makes a longer interval appropriate. Similar considerations apply to the expenses of the Fund.
17. The Operator should ensure periodically that any charge which is levied on the Unitholder for dilution has been calculated in accordance with the methodology which has been disclosed in the Constitution or Prospectus.
18. The Operator should set a percentage or absolute limit for certain key elements of the valuation, such that any movement outside these limits is investigated. The investigation and its outcome should be in writing and evidenced by an appropriate signature. These key elements could, where relevant, include the movement of the overall price of the Fund against relevant markets, the movement of the prices and values of individual stocks, changes in currency rates, and accrual figures for income, expenses, and tax. In addition, prices which appear not to have changed after a fixed period of time should be investigated, since this may be the result of a price movement having been missed.
19. Cash should be reconciled to the bank account regularly, with outstanding items promptly followed up, and a full reconciliation sent to the trustee or depositary monthly.
20. Controls should be in place to ensure that the correct number of Units in issue is recorded at each valuation point. This should be reconciled with the Unitholder register at least monthly.
21. A copy of the valuation should be sent to the Fund's Investment Manager, if applicable at least weekly. He should specifically check that the correct securities are recorded.

**Pricing and valuation checks by oversight arrangement**

22. The Persons providing oversight functions have a duty under the Rules to ensure that the Operator's pricing methodology and operation is properly controlled. Its main emphasis should be to ensure that the Operator keeps its controls and systems for pricing under review and to obtain evidence from the Operator's systems that Unit prices are calculated correctly. This would also apply where the Operator has outsourced some or all of its pricing functions to a Service Provider. The following paragraphs set out the minimum checks which DFSA expects any Person providing oversight functions to carry out to be satisfied with the Operator's pricing methodology and operation, to ensure that the likelihood of incorrect prices will be minimised.

23. The Persons providing oversight functions should carry out a thorough review of the Operator's overall system for pricing. This should include an analysis of the controls in place to determine the extent to which reliance can be placed on them. This review should be carried out at the start of the appointment of a Person who will provide oversight functions and also when major changes are made by the Operator to its system. On an ongoing basis, the systems should be kept under review to ensure that a series of minor changes do not, over a period of time, have a significant effect on the integrity of the systems.
24. The Persons providing oversight functions should conduct a review at least annually to confirm that the Operator's systems and controls are satisfactory. This will be more frequent where the oversight arrangement knows or suspects that the Operator's systems and controls are weak and unsatisfactory. The Persons providing oversight functions should ensure that any issues which are identified are properly followed up and resolved. Additionally, the Persons providing oversight functions should carry out a review of the valuation of the property of each Fund for which it is responsible, at least annually, which verifies, on a sample basis if necessary, the assets, liabilities, accruals, Units in issue, and any other relevant matters, for example an accumulation factor or a currency conversion factor.
25. Where the Operator's systems are manual, or have been installed or amended recently and are therefore unproven, the level of checking will need to be increased accordingly. This will also be necessary where a number of instances of incorrect pricing have previously been identified.

**Incorrect pricing**

26. The Operator should record each instance where the Unit price is incorrect and, as soon as the error is discovered, report the fact to the Persons providing oversight functions together with details of the action taken, or to be taken, to avoid repetition.
27. The Operator and the Persons providing oversight functions should report material instances of incorrect pricing to the DFSA forthwith. Materiality should be determined by taking into account a number of factors, including whether the Operator has followed the pricing controls set out in this guidance.
28. The significance of any breakdown in management controls or other checking procedures should also be taken into account. The significance of any failure of systems should be considered. This may include situations where inadequate back-up arrangements exist. The duration of an error should also be taken into account; the longer an error persists, the more likely that it will have a material effect on a price.
29. The level of compensation paid to Unitholders, and the Operator's ability (or otherwise) to meet claims for compensation in full, may also be relevant.
30. The Operator should also report to the DFSA forthwith any instance of incorrect pricing where the error is greater than 0.5% of the price of a Unit, but where the Operator and the oversight arrangement believe that compensation is inappropriate and should not be paid by the Operator.

31. The Trustee or the Persons providing oversight functions, in their reports should summarise the number of instances of incorrect pricing during a particular period. This should include the number of errors which were greater than 0.5% of the price of a Unit and the number of errors which were less than 0.5% of the price of a Unit where the Trustee or the Persons providing oversight functions did not consider the Operator's controls to be adequate.

**Action to be taken as regards compensation for incorrect pricing.**

32. Prices found to be incorrect by less than 0.5%
- a. Where the dealing price of any Unit of a Fund is found to be incorrect by less than 0.5% of the price of a Unit of a Fund, compensation to Unitholders will not normally be required, unless the Custodian decides otherwise.
  - b. Where an issue or cancellation of Units has taken place at a price which is incorrect by less than 0.5% of the price of a Unit of a Fund, compensation to or from the Fund will not normally be required, unless the oversight arrangement decides otherwise.
33. Where the dealing price of any Unit of a Fund is found to be incorrect by 0.5% or more of the price of a Unit of a Fund, compensation to Unitholders will normally be required. If, exceptionally, the Trustee or the Persons providing oversight functions consider that compensation is inappropriate, he will need to report the matter to the DFSA, together with his recommendation and justification.



## APP 4 CONSTITUTION OF A DOMESTIC FUND

### A4.1 Contents of Constitution

**A4.1.1** A Constitution of a Domestic Fund must contain the information prescribed in the following table.

<b>A</b>	<b>General Information</b>
	<p>The following information:</p> <ol style="list-style-type: none"> <li>(1) The name of the Fund.</li> <li>(2) The Operator's and, if the Fund is structured as an Investment Trust, the Trustee's name and the principal place of business in the DIFC as recorded by the Registrar of Companies.</li> <li>(3) That the Fund is a Domestic Fund, the Constitution of which is governed by the laws of the DIFC.</li> <li>(4) That the Fund is a Public Fund or a Private Fund, as the case may be.</li> <li>(5) The legal form of the Fund and whether it is open or closed ended.</li> <li>(6) If applicable, that the Fund is an Islamic Fund and consequently the Fund's entire business operations are conducted in accordance with Shari'a.</li> </ol>
<b>B</b>	<b>General Statements</b>
	<p>The following information:</p> <ol style="list-style-type: none"> <li>(1) The Operator is responsible, pursuant to the Law, for all operations concerning the Fund and may from time to time delegate activities or outsource functions, but not the responsibility for conducting those activities and functions, to another Person in accordance with the CIR Rules.</li> <li>(2) <ol style="list-style-type: none"> <li>(a) The Fund Property is entrusted to the Operator and the Operator remains responsible for the property even when an Eligible Custodian holds the legal title to the Fund Property; or</li> <li>(b) The Fund Property is held on trust by the Fund's Trustee as the case may be.</li> </ol> </li> </ol>

	<ul style="list-style-type: none"> <li>(3) Whether the duration of the Fund is limited and, if so, for how long.</li> <li>(4) That fees, charges and other expenses of the Fund may be taken out of Fund Property and the basis for determination of the quantum of such fees, charges and other expenses.</li> <li>(5) The maximum and minimum sizes of the Fund's capital, if any.</li> <li>(6) That the Unitholders are not liable for the debts of the Fund, unless the applicable legislation prescribes otherwise and, if so, those circumstances.</li> <li>(7) That a Unitholder is not liable to make any further payment after he has paid the price of his Units and that no further liability can be imposed on him in respect of the Units he holds.</li> <li>(8) That payments to the Operator, Trustee, any Eligible Custodian, or Person appointed to carry out an oversight function (including a Shari'a Supervisory Board) by way of remuneration are authorised to be paid (in whole or in part) out of the Fund Property.</li> </ul>
<b>C</b>	<b>Where the Fund is a Trust</b>
	<p>The following information:</p> <ul style="list-style-type: none"> <li>(1) The Trust Deed is made under and governed by the Investment Trust Law 2006 and: <ul style="list-style-type: none"> <li>(a) is binding on each Unitholder as if he had been a party to it and that he is bound by its provisions; and</li> <li>(b) authorises and requires the Operator and the Trustee to do the things required or permitted of them by its terms and the Investment Trust Law 2006 and the Law.</li> </ul> </li> <li>(2) Subject to the provisions of these Rules: <ul style="list-style-type: none"> <li>(a) the Fund Property (other than sums held to the credit of the distribution account) is held by the Trustee on trust for the Unitholders according to the number of Units held by each Unitholder or, where relevant, according to the number of individual shares in the Fund Property represented by the Units held by each Unitholder; and</li> <li>(b) the sums standing to the credit of any distribution account are held by the Trustee on trust to distribute or apply in accordance with these Rules relating to income.</li> </ul> </li> </ul>

<b>D</b>	<b>Investment Objectives</b>
	<p>(1) Information covering the investment objectives of the Fund and in particular:</p> <p>(a) whether the aim of the Fund is to spread investment risks and, if a Property Fund, whether the Fund invests in a single property;</p> <p>(b) the types of Investments or assets in which it and (where applicable) each Sub-Fund may invest; and</p> <p>(c) the class of Fund.</p> <p>(2) Details of any investment, borrowing or stock lending restrictions or, in the event that there are no such restrictions, a statement to that effect.</p>
<b>E</b>	<b>Units in the Fund</b>
	<p>A statement specifying:</p> <p>(a) the classes of Units which the Fund may issue, indicating, for a Fund which is an Umbrella Fund, which class or classes may be issued in respect of each Sub-Fund; and</p> <p>(b) the rights attaching to Units of each class (including any provisions for the expression in two or more denominations of such rights).</p>
<b>F</b>	<b>Limitations</b>
	<p>Details as to:</p> <p>(a) the provisions relating to any restrictions on the right to redeem Units in any class; and</p> <p>(b) the circumstances in which the issue of the Units of any particular class may be limited.</p>
<b>G</b>	<b>Income and distribution</b>
	<p>(1) Details of who is carrying out the calculation, transfer, allocation and distribution of income for any class of Unit issued and outstanding during the accounting period.</p> <p>(2) Information regarding the provision for the payment of income, if any, and the date on which such distribution shall be made.</p>
<b>H</b>	<b>Base currency</b>
	A statement specifying the base currency of the Fund.

<b>I</b>	<b>Meetings</b>
	Details of the procedures for the convening of meetings and the procedures relating to resolutions, voting and the voting rights of Unitholders.
<b>J</b>	<b>Oversight arrangements</b>
	Details of the oversight arrangements, and if the Fund is an Islamic Fund details of its Shari'a Supervisory Board.
<b>K</b>	<b>Termination and suspension</b>
	Details as to:  (a) the grounds under which the Operator may initiate a suspension of the Fund and any associated procedures; and  (b) the methodology for determining the rights of Unitholders to participate in the Fund Property on winding up.
<b>L</b>	<b>Modification of the Constitution documents</b>
	Details of the manner in which alterations to the Constitution may be made.
<b>M</b>	<b>Responsibility statement</b>
	A statement that nothing in the Constitution has the effect of exempting the Fund Operator and, if the Fund is structured as an Investment Trustee, the Trustee, from any liability to Unitholders imposed under DIFC law.
<b>N</b>	<b>Other relevant matters</b>
	Details of those matters which enable the Fund, Fund Operator or any Person providing oversight functions of the Fund to obtain any privilege or power conferred by the Rules in CIR which is not otherwise provided for in the Constitution.

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## APP 5 GUIDANCE ON FITNESS AND PROPRIETY FOR OVERSIGHT FUNCTIONS

### Guidance

#### General

1. The guidance in this Appendix is intended to assist Operators when making appointments in accordance with Rule 17.9.1 in respect of oversight functions.

#### Integrity

2. The Operator may have regard to matters including, but not limited to, the following.
  - a. the propriety of an individual's conduct whether or not such conduct may have resulted in the commission of a criminal offence, the contravention of a law or the institution of legal or disciplinary proceedings of whatever nature;
  - b. a conviction or finding of guilt in respect of any offence, other than a minor road traffic offence, by any court of competent jurisdiction;
  - c. whether the individual has ever been the subject of disciplinary proceedings by a government body or agency or any recognised self regulatory organisation or other professional body;
  - d. a contravention of any provision of financial services legislation or of rules, regulations, statements of principle or codes of practice made under or by a recognised self regulatory organisation, Authorised Market Institution, regulated exchange or regulated clearing house or Financial Services Regulator;
  - e. a refusal or restriction of the right to carry on a trade, business or profession requiring a licence, registration or other authority;
  - f. a dismissal or a request to resign from any office or employment;
  - g. whether the individual has been or is currently the subject of or has been concerned with the management of a Body Corporate which has been or is currently the subject of an investigation into an allegation of misconduct or malpractice;
  - h. an adverse finding in a civil action by any court of competent jurisdiction of fraud, misfeasance or other misconduct, whether in connection with the formation or management of a corporation or otherwise;
  - i. an adverse finding or an agreed settlement in a civil action by any court or tribunal of competent jurisdiction resulting in an award against an individual in excess of \$10,000 or awards that total more than \$10,000;
  - j. an order of disqualification as a director or to act in the management or conduct of the affairs of a corporation by a court of competent jurisdiction or regulator;

- k. whether the individual has been a director, or concerned in the management of, a Body Corporate which has gone into liquidation or administration whilst that individual was connected with that Body Corporate or within one year of such a connection;
- l. whether the individual has been a partner or concerned in the management of a partnership where one or more partners have been made bankrupt whilst that individual was connected with that partnership or within a year of such a connection;
- m. whether the individual has been the subject of a complaint in connection with a financial service, which relates to his integrity, competence or financial soundness;
- n. whether the individual has been censured, disciplined, publicly criticised by or the subject of a court order at the instigation of any DFSA, or any officially appointed inquiry, or Financial Services Regulator; or
- o. whether the individual has been candid and truthful in all his dealings with the Operator.

**Financial soundness**

- 3. In determining the financial soundness of the individual, the Operator may have regard to any factors including, but not limited to, the following:
  - a. whether the individual is able to meet his debts as they fall due; or
  - b. whether the individual has been adjudged bankrupt, been the subject of a receiving or administration order, had a bankruptcy petition served on him, had his estate sequestrated, entered into a deed of arrangement (or any contract in relation to a failure to pay due debts) in favour of his creditors or, within the last 10 years, has failed to satisfy a judgement debt under a court order, whether in the U.A.E. or elsewhere.

## APP 6 PUBLIC FUND PROSPECTUS DISCLOSURE

### A6.1 Mandatory contents of a Prospectus of a Public Fund

**A6.1.1** A Prospectus for a Public Fund must contain the information prescribed in the following table.

<b>1</b>	<b>Document Status</b>
	A statement that this document is the Prospectus of the Public Fund valid as at a particular date which shall be the date of the Prospectus.
<b>2</b>	<b>Description of the Fund</b>
	<p>Information detailing:</p> <ul style="list-style-type: none"> <li>(a) the name of the Fund and that the Fund is a Public Fund established in the DIFC;</li> <li>(b) the effective date of commencement of operations and, if the duration of the Fund is not unlimited, when it will or may terminate;</li> <li>(c) the legal structure of the Fund, the type or category of Fund and whether it is a Listed Fund or intends to be Listed;</li> <li>(d) the basis upon which Persons are eligible to participate in the Fund and, where applicable, the minimum initial investment;</li> <li>(e) that the Unitholders are not liable for the debts of the Fund, unless the applicable legislation prescribes otherwise and, if so, a statement specifying those circumstances;</li> <li>(f) the base currency of the Fund and where relevant, the maximum and minimum sizes of the Fund's capital;</li> <li>(g) the circumstances in which the Fund may be wound up under the Law and CIR Rules and a summary of the procedure for, and the rights of Unitholders under, such a winding up; and</li> <li>(h) that no Units will be issued on the basis of the Prospectus after the expiry date specified in the Prospectus.</li> </ul>

<b>3</b>	<p><b>Investment objectives and policy</b></p> <p>(1) Sufficient information to enable a Unitholder or prospective Unitholder to ascertain:</p> <ul style="list-style-type: none"> <li>(a) the investment objectives of the Fund and its investment policy for achieving those investment objectives, including: <ul style="list-style-type: none"> <li>(i) the general nature of the portfolio and any intended specialisation;</li> <li>(ii) the policy for the spreading of risk in the Fund Property including an explanation of any potential risks identified;</li> <li>(iii) the policy in relation to the exercise of borrowing powers; and</li> <li>(iv) the policy in relation to using Derivatives for speculations or hedging purposes;</li> </ul> </li> <li>(b) a description of any restrictions in the assets in which investment may be made; and</li> <li>(c) the extent (if any) to which that investment policy does not envisage remaining fully invested at all times.</li> </ul> <p>(2) For investment in Real Property:</p> <ul style="list-style-type: none"> <li>(a) the countries or territories in which the Fund may invest;</li> <li>(b) the types of Real Property including the policy in relation to encumbrances and lease periods; and</li> <li>(c) the policy of the Operator in relation to insurance of Real Property forming part of the Fund Property.</li> </ul> <p>(3) If intended, whether the Fund Property may consist of Units in Funds which are managed by or operated by the Operator or by one of its associates and a statement specifying:</p> <ul style="list-style-type: none"> <li>(a) the basis of the maximum amount of the charges in respect of transactions in the Fund invested in; and</li> <li>(b) the extent to which any such charges will be reimbursed to the Fund.</li> </ul> <p>(4) In the case of a Hedge Fund, an explanation of the types of strategy to be employed by the Fund's Operator and the associated risks.</p>
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<b>4</b>	<b>Distribution and accounting period</b>
	<p>Relevant details of accounting and distribution period and a description of the procedures:</p> <p>(a) for determining and applying income (including how any distributable income is paid); and</p> <p>(b) relating to unclaimed distributions.</p>
<b>5</b>	<b>The characteristics of Units in the Fund</b>
	<p>Information as to:</p> <p>(a) the names of the classes of Units in issue or available for issue and the rights attached to them in so far as they vary from the rights attached to other classes;</p> <p>(b) how Unitholders may exercise their voting rights and what these are; and</p> <p>(c) the circumstances where a mandatory redemption, cancellation or conversion of Unit from one class to another may be required.</p>
<b>6</b>	<b>The Operator</b>
	<p>The following particulars of the Operator:</p> <p>(a) its name, whether the Operator is incorporated in the DIFC or elsewhere and the date of such incorporation;</p> <p>(b) the address of its registered office in the DIFC;</p> <p>(c) if it is a subsidiary, the name of its ultimate Holding Company and the country or territory in which that holding company is incorporated;</p> <p>(d) the amount of its issued share capital and how much of it is paid up; and</p> <p>(e) a summary of the material provisions of the contract between the Fund and its Operator which may be relevant to Unitholders including provisions relating to termination, compensation on termination and indemnity.</p>
<b>7</b>	<b>Directors and Partners of an Investment Undertaking</b>
	<p>Other than for the Operator:</p> <p>(a) for an Investment Company, the names and positions in the Investment Company of the Directors;</p> <p>(b) for an Investment Partnership, the names of the other General Partners or any other partners who manage the affairs of the Fund on a day to day basis; and</p> <p>(c) the manner, amount and calculation of the remuneration of the Directors or Partners in (1) or (2) as the case may be.</p>

<b>8</b>	<b>Oversight Arrangement</b>
	In relation to a Public Fund, the details of the Persons providing Oversight Functions for the Fund including their remuneration.
<b>9</b>	<b>Service Providers and Advisers</b>
	If an Operator delegates any activities or outsources any functions to a Service Provider or if an investment adviser is retained in connection with the business of the Fund:
	(a) its name;
	(b) which Financial Services Regulator authorises that Person; and
	(c) details of the arrangements.
<b>10</b>	<b>The Auditor and Custodian and Trustee</b>
	The name of the Auditor and of the Eligible Custodian of the Fund. If applicable the name of the Trustee of the Fund.
<b>11</b>	<b>The Register of Unitholders</b>
	Details of the address in the DIFC where the register of Unitholders is kept and can be inspected by Unitholders of the Fund.
<b>12</b>	<b>Payments out of the Fund Property</b>
	The payments that may be made out of the Fund Property to any Person whether by way of remuneration for services, or reimbursement of expenses. For each category of remuneration or expense, the following should be specified in a manner which is clear, concise and understandable for Retail Clients where the Fund is to be so offered:
	(a) the current rates or amounts of such remuneration;
	(b) how the remuneration will be calculated and accrue and when it will be paid;
	(c) how notice will be given to Unitholders of the Operator's intention to:
	(i) introduce a new category of remuneration for its services;
	(ii) increase the basis of any current charge;
	(iii) change the basis of the treatment of a payment from the capital property ; and
	(iv) particulars of that introduction or increase and when it will take place;
	(d) the types of any other charges and expenses that may be taken out of the Fund Property; and
	(e) if, in accordance with the relevant provisions of these Rules, all or part of the remuneration or expense are to be treated as a capital charge:
	(i) that fact; and
	(ii) the basis of the charge which may be so treated.

<b>13</b>	<b>Dealing</b>
	<p>Details of:</p> <ul style="list-style-type: none"> <li>(a) the dealing days and times in the dealing day on which the Operator will receive requests for the sale and redemption of Units;</li> <li>(b) the procedures for effecting: <ul style="list-style-type: none"> <li>(i) the issue, sale and redemption of Units; and</li> <li>(ii) the settlement of transactions;</li> </ul> </li> <li>(c) the steps required to be taken by a Unitholder in redeeming Units before he can receive the proceeds including any relevant notice periods and the circumstances and periods in which a deferral of payment may be applied.</li> <li>(d) the circumstances in which the redemption of Units may be suspended;</li> <li>(e) details of the minimum number or value of each type of Unit in the Fund which: <ul style="list-style-type: none"> <li>(i) any one Person may hold; and</li> <li>(ii) may be the subject of any one transaction of issue, sale or redemption by the Operator;</li> </ul> </li> <li>(f) the circumstances in which the Operator may arrange for, and the procedure for, a redemption of Units in specie; and</li> <li>(g) the circumstances in which the further issue of Units in any particular class may be limited and the procedures relating to this.</li> </ul>
<b>14</b>	<b>Valuation of the Fund Property</b>
	<p>Details as to:</p> <ul style="list-style-type: none"> <li>(a) how frequently and at what times of the day the Fund Property will be regularly valued to determine the price at which Units in the Fund may be purchased from or redeemed by the Operator and a description of any circumstance where the Fund Property may be specially valued;</li> <li>(b) in relation to each purpose for which the Fund Property must be valued, the basis on which it will be valued;</li> <li>(c) how the single price of Units of each class will be determined, including whether a forward or historic price basis is to be applied;</li> <li>(d) details as to how the prices of Units will be published following each valuation; and</li> <li>(e) if valuation is to be suspended under certain circumstances, details of such circumstances.</li> </ul>

<b>15</b>	<b>Sale and Redemption Charges</b>
	If the Operator makes any charges on sale or redemption of Units details of the charging structure and how notice will be provided to Unitholders of any change in the relevant charge.
<b>16</b>	<b>Financial Reports</b>
	<p>Details as to:</p> <p>(a) when annual and interim reports will be published; and</p> <p>(b) the address in the DIFC at which copies of the Constitution, any amending instrument and the most recent annual and interim reports may be inspected and from which copies may be obtained.</p>
<b>17</b>	<b>Information in respect of Umbrella Funds</b>
	<p>In the case of an Umbrella Fund, the following information:</p> <p>(a) that a Unitholder may exchange Units in one Sub-Fund for Units in another Sub-Fund and that such an exchange is treated as a redemption and sale;</p> <p>(b) what charges may be made on exchanging Units in one Sub-Fund for Units in other Sub-Funds;</p> <p>(c) the policy for allocating between Sub-Funds any assets of, or costs, charges and expenses payable out of, the Fund Property which are not attributable to any particular Sub-Fund;</p> <p>(d) in respect of each Sub-Fund, the currency in which the Fund Property allocated to it will be valued and the price of Units calculated and payments made, if this currency is not the base currency of the Umbrella Fund; and</p> <p>(e) that in the event of an Umbrella Fund being unable to meet liabilities attributable to any particular Sub-Fund out of the assets attributable to that Sub-Fund, the remaining liabilities may have to be met out of the assets attributable to other Sub-Funds i.e. that the Sub-Funds are not "ring fenced".</p>
<b>18</b>	<b>Other relevant information</b>
	If applicable, names and addresses of the banker, lawyer, registrar and any other Person undertaking any significant activities in relation to the Fund.

## **APP 7 ADDITIONAL PROSPECTUS DISCLOSURES FOR ISLAMIC FUNDS**

### **A7.1 Shari'a approval process statement for offers of Domestic Funds from the DIFC**

- A7.1.1** In respect of the Units of an Islamic Fund which are to be offered to prospective Unitholders in Malaysia, an Operator must ensure that the Prospectus set out in a prominent position the following statement:

“The Shari'a approval process which relates to this Fund has been carried out in accordance with the legislation applicable in the Dubai International Finance Centre (DIFC)”.

### **A7.2 Shari'a approval process statement for offers of Foreign Funds in or from the DIFC**

- A7.2.1** In respect of an Islamic Fund which is a Fund domiciled in Malaysia and which is a Designated Fund, an Authorised Firm must ensure that the Prospectus contains in a prominent position or has attached to it the following statement:

“This Prospectus relates to an Islamic Fund, the Shari'a approval process of which is regulated by the Securities Commission of Malaysia.”