

Appendix 3

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



The DFSA Rulebook

Collective Investment Rules

(CIR)

2 ARRANGEMENTS AMOUNTING TO COLLECTIVE INVESTMENT

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2.3 Arrangements not constituting a Fund

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- 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; or
- (j) the arrangements comprise a closed-ended Partnership or Body Corporate, unless on reasonable grounds the purpose or effect of such arrangements appears to be the investment management, in the exercise of discretion for a collective purpose, of Investments or Real Estate assets for the benefit of the shareholders or partners.

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2.3.5 ~~[Deleted] (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.~~

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2.3.9 Arrangements do not, for the purposes of Article 15 of the Law, amount to a Collective Investment Fund if the arrangements are arrangements under which the rights or interests of the participants are evidenced by sukuk certificates where the holders of the certificates are entitled to rely on the credit worthiness of:

- (a) the issuer of the sukuk certificates; or
- (b) any other Person who has assumed obligations under the sukuk certificates,

for obtaining their rights and benefits arising under the certificates.

- 2.3.10** (1) Arrangements do not amount to a Collective Investment Fund if the arrangements are for the purposes of enabling or facilitating the operation of an employee compensation or reward scheme and the arrangements meet the criteria in (2) and (3).
- (2) The compensation or reward is in the form of Securities made available only to:
- (a) an Employee or former Employee of the Issuer or of another member of the same Group as the Issuer; or
- (b) a Close Relative of any such Employee.
- (3) The arrangements must be operated by the Issuer or by a member of the same Group as the Issuer or by a trustee who, in pursuance of the arrangements, holds the Securities issued by the Issuer for the benefit of any eligible Persons referred to in (2) (a) or (b).
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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)(i), 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)(i), 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)~~ (a)(ii), 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.
- (7) The requirement in (1)~~(e)~~ (a)(iii) 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** (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.
- (2) For the purposes of (1), a “Property Fund” is a Foreign Fund in respect of which 60% or more of the Fund’s assets comprise Real Property, Property Related Assets or Units in another Property Fund.

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