

**Appendix 5**

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



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# The DFSA Rulebook

## Collective Investment Rules

(CIR)

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## PART 2: DEFINITIONAL PROVISIONS

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### **Bodies corporate not undertaking investment management**

- 2.1.10** An arrangement does not constitute a Collective Investment Fund if the arrangement comprises a closed-ended Partnership or Body Corporate, unless on reasonable grounds the purpose or effect of such an arrangement appears to be the investment management, in the exercise of discretion for a collective purpose, of Investments or Real Property ~~Estate assets~~ for the benefit of the shareholders or partners.

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## **3 SPECIALIST CLASSES OF FUNDS**

### **3.1 Specialist Funds**

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#### **Property Fund**

- 3.1.7** A Fund is a Property Fund if it is dedicated to investment in Real Property and in Securities issued by Bodies Corporate whose main activities are investing in, dealing in, developing or redeveloping Real Property.

#### **Real Estate Investment Trust (REIT)**

- 3.1.8** A Fund is a Real Estate Investment Trust (REIT) only if it meets the criteria in Rule 13.5.1(2).

#### **Guidance**

REITs are a subset of Property Funds. A REIT can only be a Public Fund (see Rule 13.5.1). As REITs are a subset of Public Property Funds, they must comply with applicable Rules in section 13.4 for Property Funds as well as Rules in section 13.5 for REITs.

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#### **Money Market Fund**

- 3.1.11** A Fund is a Money Market Fund if the Fund's investment objectives are to preserve the capital of the Fund and provide daily liquidity, while achieving returns that are in line with money market rates.

**Guidance**

1. Money market rates are interest rates on instruments that are normally traded on the money market, such as treasury bills, certificates of deposit and commercial paper.
2. A Fund may fall within the definition of a Money Market Fund even if it:
  - (a) is not described or marketed as such a Fund; or
  - (b) has objectives additional to those specified in the definition, provided that they are not inconsistent with the investment objectives in the definition.
3. Money market funds in other jurisdictions are structured as either variable net asset value Funds (VNAV Funds) or stable net asset value Funds (SNAV Funds). A VNAV Fund values its assets on a mark to market basis, allowing for changes in the value of Units. A SNAV Fund aims to maintain an unchanged face value (e.g. \$1 per Unit).
4. The combined practical effect of the valuation requirements in Rule 8.4.1 and the requirements for pricing of Units in Rule 8.5.1 prevents a Money Market Fund being established as a SNAV Fund in the DIFC. The DFSA would generally not waive those requirements to allow such a Fund to be established due to the additional systemic risks and risks to investors that a SNAV Fund can present.

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**PART 4: CORE RULES RELATING TO ESTABLISHMENT AND MANAGEMENT OF DOMESTIC FUNDS**

**7 CONSTITUTION**

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**Name of the Fund**

- 7.1.4** The Fund Manager, and if appointed the Trustee, of a Fund must ensure that the name of the Fund or any Sub-Fund or class of Units in the Fund or Sub-Fund, is not undesirable, misleading or in conflict with the name of another Fund or another Sub-Fund or class of Units in the Fund or Sub-Fund.

**Guidance**

1. Article 27(4) of the Law and this Rule give the DFSA the power to make a direction if a name of a Fund, Sub-Fund or class of Units in a Fund is undesirable, misleading or conflicts with a name used by another Fund, Sub-Fund or class of Units of a Fund.
2. In determining whether to make a direction under these powers, the matters that the DFSA may take into account include whether the name of the Fund, Sub-Fund or class of Units as the case may be:
  - a. implies that the Fund, Sub-Fund or class of Units 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 Fund Manager is responsible for the Fund, Sub-Fund or class of Units of the Fund;
- d. is substantially similar to the name of another Collective Investment Fund in the DIFC or elsewhere;
- e. implies that it is a ~~REIT or an Islamic Fund, or Units of such a~~ specialist class of Fund, or Sub-Fund, where the relevant requirements relating to that class of specialist Fund are not met; or
- fe. is in the opinion of the DFSA likely to offend the public.

**7.1.54** Before using as part of or in connection with the name of a Fund, Sub-Fund or class of Units in a Fund the words “guaranteed”, “protected” or any other words with a similar meaning implying a degree of security in relation to the capital or income, the Fund Manager must demonstrate to the satisfaction of the DFSA that:

- (a) the guarantor has the authority and resources to honour the terms of the guarantee; and
- (b) 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.

#### **Guidance**

In considering whether to permit a Fund Manager to use the words “guaranteed” or “protected” as part of or in connection with the name of a Fund, Sub-Fund or class of Units in a Fund, 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.

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## **8 MANAGEMENT AND OPERATION OF A FUND**

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### **8.2 Duties in relation to Fund Property**

#### **Fund Manager**

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- 8.2.2** (1) In the case of an Investment Company or an Investment Partnership, the Fund Manager is responsible to the Unitholders for the safekeeping of the Fund Property.

- (2) Without removing the generality of the obligation under (1) and subject to (3), a Fund Manager must, in the case of a Fund which is an Investment Company or Investment Partnership:
  - (a) delegate the activity of Providing Custody in relation to the Fund Property to a Service Provider who is an Eligible Custodian; and
  - (b) comply with the delegation procedures set out in section 8.12 in relation to such a delegation.
- (3) The requirement in (2) does not apply to:
  - ~~(a) a Property Fund investing in Real Property where the Fund Manager has made adequate alternative arrangements that are in accordance with Rule 13.4.2; or~~
  - (a) a Property Fund in respect of Real Property:
    - (i) that is held by the Fund Manager in accordance with Rule 13.4.2 or 13.4.2A; or
    - (ii) for which the Fund Manager has made adequate alternative arrangements in accordance with Rule 13.4.2B; or
  - (b) a Private Equity Fund where the Fund Manager has made adequate alternative arrangements that are in accordance with Rule 13.3.1.

**Guidance**

Section 8.12 of this module governs the power of a Fund Manager to delegate certain of its Financial Service activities, and to outsource its functions.

**Trustee**

**8.2.3** In the case of an Investment Trust:

- (a) the Trustee of the Fund must hold 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 Property Fund investing in Real Property where the Trustee has made adequate alternative arrangements that are in accordance with Rule 13.4.2B; and
- (c) the Trustee must not act on instructions of the Fund Manager in relation to the Fund Property if such instructions are not in accordance with the agreement creating the Investment Trust, the Fund's Constitution, ~~and~~ or the Prospectus.

**Guidance**

Section 8.12 of this module governs the power of a Trustee to delegate certain of its Financial Service activities, and to outsource its functions.

**Eligible Custodian**

**8.2.4** For the purposes of the Rules in this module, an Eligible Custodian is a Person who is a separate legal entity from the Fund Manager and who also meets one of the following criteria:

- (a) an Authorised Firm whose Licence authorises it to Provide Custody Services;
- (b) an Authorised Firm that is a Bank;
- (c) an Authorised Market Institution;
- (d) a legal entity that is authorised to provide custody services, and is supervised, by a Financial Services Regulator in the State;
- ~~(d)(e)~~ a legal entity that is authorised to provide custody services, and is supervised, by a Financial Services Regulator in a Recognised Jurisdiction ~~for providing custody services in respect of a Fund and is subject to a minimum capital requirement of \$4 million or its equivalent in any other currency at the relevant time and has had surplus revenue over expenditure for the last two financial years;~~
- ~~(e)(f)~~ a legal entity where it, or its holding company, is:
  - ~~(i)~~ ~~in respect of its financial strength, 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; and~~
  - ~~(ii)~~ authorised to provide custody services and is supervised by a Financial Services Regulator in another jurisdiction which is a Zone 1 country; ~~or~~
- ~~(f)(g)~~ a legal entity that is authorised or recognised by a Financial Services Regulator to operate as an exchange or a clearing house in a Recognised Jurisdiction; or
- ~~(g)(h)~~ a legal entity that ~~is and remains~~:
  - (i) controlled and wholly owned by one or more of the national governments of the ~~six~~ five member states of the Gulf Cooperation Council, other than the State; and
  - (ii) authorised to provide custody services, and supervised, by a Financial Services Regulator ~~or Central Bank~~ of at least one of the ~~said national governments specified in (i); and~~

- (iii) ~~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.~~

### 8.3 Conflicts of interest

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#### Affected Person transactions Related Party Transactions

- 8.3.2** (1) A Fund Manager must not enter into a Related Party Transaction ~~in respect of the Fund Property with an Affected Person~~ unless it is in accordance with the requirements in this Rule.
- (2) A Fund Manager must ensure that any Related Party Transaction ~~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.
- (3) The Fund Manager must, before entering into a Related Party Transaction ~~transaction with an Affected Person~~:
- (a) issue to the Unitholders a circular containing the details of the proposed transaction; and
  - (ab) obtain Unitholders’ prior approval by Special Resolution, or by ordinary resolution in the case of a Property Fund, in respect of the proposed transaction if the total consideration or value of the transaction is 5% or more of the most recent net asset value of the Fund as disclosed in the latest published audited accounts of the Fund; and
  - ~~(b) issue to the Unitholders a circular containing the details of the transaction.~~
- (4) The Fund Manager must:
- (a) ~~if prior Unitholders’ prior approval is required pursuant to (3)(ab),~~ issue a notice to Unitholders providing details of the results of the Unitholders’ voting at the general meeting as soon as practicable after the meeting;
  - (b) include, in the Fund’s next published interim or annual report, a brief summary of the Related Party Transaction, and certification that the requirements in these Rules have been met for the transaction ~~Affected Person transactions in the Fund’s next published interim or annual report; and~~
  - (c) include, in the annual report of the Fund, the total value of any Related Party Transactions ~~Affected Person transactions~~, their nature and the identities of the Related Parties ~~Affected Persons~~

with whom such transactions were made. 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.

- (5) The requirements in (3) and (4)(a) do not apply in relation to an Exempt Property Fund.
- (6) The requirements in (3) and (4)(a) do not apply to a Public Property Fund in respect of a Related Party Transaction if:
  - (a) the transaction is for the acquisition or sale of Real Property in the State; and
  - (b) all of the conditions in Rule 13.4.11A(1) are met.

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## **8.6A Confirmation notes**

- 8.6A.1** (1) When the Fund Manager of a Public Fund Executes a Transaction relating to a Unit of the Fund, it must ensure that a confirmation note is sent to the Unitholder as soon as possible and no later than two business days after the date of Execution of the Transaction.
- (2) The confirmation note must set out:
- (a) the Fund Manager's name and address;
  - (b) the Unitholder's name;
  - (c) a description of the Fund;
  - (d) the date and time of receipt of the request for the Transaction to be executed and the method of payment;
  - (e) the nature of the Transaction;
  - (f) the number of Units subject to the Transaction;
  - (g) the date, time and price at which it was executed;
  - (h) the reference valuation date;
  - (i) the gross value of the Transaction, including charges for subscribing or net amount after charges for redemptions; and
  - (i) the total sum of commissions and expenses charged, and a breakdown of those commissions and charges.

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- 8.12.2** (1) Subject to the requirements in Rule 8.12.4, a Fund Manager 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
  - (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 8.12.2 (2) only applies in relation to a Public Fund, a Fund Manager of a ~~Private or~~ an Exempt Fund may make other appropriate arrangements in respect of the provision of Fund Administration.

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**Allocation of payments to capital or income**

- 8.13.7** (1) The Fund Manager and the Trustee or the Persons providing the oversight function 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 Fund Manager 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

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expenses to be paid from the capital property or the income property as the case may be.

**Payments of liabilities on transfer of assets**

**8.13.87** Where the property of a Body Corporate or of another Fund is transferred to a Fund or to the Fund Manager 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 8.13.98 applies.

**8.13.98** The Fund Manager 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 Fund Manager or the Trustee, as the case may be, 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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**9 ACCOUNTING, AUDIT AND PERIODIC REPORTING OF A FUND**

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**9.4 Periodic Reports**

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**9.4.7** (1) Where a Fund is required to appoint an investment committee pursuant to Rule 13.3.1 ~~9.4.7(1)~~ or 13.4.3, the annual report must also include a report by that committee.

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## **PART 5: RULES SPECIFIC TO DIFFERENT TYPES OF DOMESTIC FUNDS**

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### **10 REQUIREMENTS SPECIFIC TO PUBLIC FUNDS**

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#### **Requirements for registration**

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

- (a) the Fund has one of the permitted forms for Domestic Funds under Article 26(1) of the Law;
- (b) the registration or other legal formalities relating to the formation of the Fund as referred to in (a) are completed;
- (c) the Fund has appointed to it a Fund Manager which is:
  - (i) authorised by the DFSA under its Licence to carry on the Financial Service of Managing a Collective Investment Fund; or
  - (ii) an External Fund Manager as defined in Article 20(5) of the Law;
- (d) the Fund, if it is an Investment Trust, has a Trustee which meets the requirements in the Investment Trust Law 2006;
- (e) the Fund Manager has made satisfactory arrangements in relation to the oversight function of the Fund and the delegation of the activity of Providing Custody as required under the Law and this module;
- (f) the Fund Manager has appointed an Auditor of the Fund who complies with the requirements in section 9.3; and
- (gf) the name of the Fund is not undesirable or misleading and its purpose is reasonably capable of being successfully carried into effect.

#### **Guidance**

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3. Under Rule 8.2.2(2), the Fund Manager of an Investment Company or Investment Partnership must delegate the function of holding safe custody of Fund Property (i.e. the Financial Service of Providing Custody in relation to Fund Property) to an Eligible Custodian. In the case of an Investment Trust, the Trustee of the Fund provides the safe custody function relating to Fund Property. However, this obligation does not apply in the case of certain types of specialist Funds where alternative safe custody arrangements are permitted (see the custody requirements for Private Equity Funds and certain types of Property Funds in Rules ~~13.4.2~~ and 13.3.1, 13.4.2, 13.4.2A and 13.4.2B).

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## **12 REQUIREMENTS SPECIFIC TO EXEMPT FUNDS**

### **12.1 Meeting the criteria to be classified as an Exempt Fund**

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- 12.1.1 (1) .....
- (5) A Fund Manager of an Exempt Fund which is subject to the valuation requirement in CIR Rule 8.4.1(1)(a)(ii) must appoint a Fund Administrator or a Person regulated by a Financial Services Regulator as the Person undertaking the valuation of that Fund.

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## **PART 6: RULES SPECIFIC TO SPECIALIST CLASSES OF DOMESTIC FUNDS**

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### **13. ADDITIONAL REQUIREMENTS FOR SPECIALIST FUNDS**

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#### **13.3 Private Equity Funds**

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##### **Investment committee**

##### **13.3.1 .....**

##### **Guidance**

1. The DFSA expects Fund Managers 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.
3. Where a Private Equity Fund appoints an investment committee pursuant to Rule 13.3.21(42), the annual report of that Fund must also include a report by that committee (see Rule 9.4.7(1)).

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## **13.4 Property Funds**

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### **Self-custody of Real Property for Public Funds**

**13.4.2** (1) A Fund Manager of a Public Property Fund is not required to appoint an Eligible Custodian under Rule 8.2.2(2) for Real Property if the Fund Manager:

- (a) acts as custodian of the Real Property;
- (b) has in place adequate systems and controls to ensure the proper segregation and protection of the Real Property; and
- (c) has in place effective arrangements which ensure that the real Property is not available to creditors if the Fund Manager becomes insolvent.

(2) The systems and controls referred to in (1)(b) must, as a minimum, ensure that:

- (a) legal title to the Real Property is registered in the name of the Fund;
- (b) the Fund Manager identifies, manages and monitors any conflicts of interest that may arise due to it acting as custodian of the Real Property;
- (c) the Fund Manager clearly designates the employees who are responsible for safeguarding the ownership rights of the Fund over any Real Property including but not limited to:
  - (i) safekeeping title deeds and other legally relevant documents relating to the Real Property; and
  - (ii) ensuring that legal title to the Real Property is registered in the name of the Fund; and
- (d) the employees referred to in (c) are not required to carry out duties and functions which may conflict with their duties and functions referred to in that paragraph.

**Guidance**

1. A Fund Manager of a Public Property Fund may itself act as custodian of Real Property if it has in place adequate systems and controls to ensure the segregation and protection of the Real Property. This option only applies for Real Property (defined as land or buildings, whether freehold or leasehold, where the unexpired term of any lease exceeds 20 years). It does not permit the Fund Manager to act as custodian of Property Related Assets such as Shares in a Body Corporate which invests in Real Property or Units in another Property Fund.
2. In identifying, managing and monitoring conflicts of interest that may arise due to it acting as custodian, the Fund Manager must take into account that it is required under the Law to give priority to Unitholders' interests if there is a conflict between its own interests and the interests of Unitholders.
3. If a Fund Manager decides to act as custodian of Real Property as permitted under this Rule, it must disclose in the Fund's Prospectus that it acts as custodian, the additional risks that may arise due to it acting as custodian, and how it has addressed those risks (see Rule 14.4.4A).

**Self-custody of Real Property for Exempt Funds**

**13.4.2A**

A Fund Manager of an Exempt Property Fund is not required to appoint an Eligible Custodian under Rule 8.2.2(2) for Real Property if the Fund Manager:

- (a) acts as custodian of the Real Property; and
- (b) has in place effective arrangements which ensure that the Real Property is not available to creditors if the Fund Manager becomes insolvent.

**Guidance**

Under this Rule, the arrangements must be legally effective to ensure that the Real Property is not available to creditors if the Fund Manager becomes insolvent. This might involve, for example, the use of trust arrangements or registration of title in the name of the Fund. This option only applies to custody of Real Property and not, for example, to Property Related Assets.

**Alternative Custody arrangements for Real Property in certain jurisdictions**

**13.4.2B**

- (1) If a Fund Manager wishes to rely on Rule 8.2.2(3)(a)(ii), or a Trustee of an Investment Trust wishes to rely on Rule 8.2.3(b), to make alternative arrangements for the purposes of those Rules, it may do so only if the requirements in (2) and (3) are met. A Fund Manager of a Property Fund is not required to appoint an Eligible Custodian for the Fund pursuant to Rule 8.2.2 where it meets the requirements in (2) and (3).

- (2) The Fund Manager 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 Fund Manager to have unfettered control of the Fund Property; and
    - (ii) are in accordance, where applicable, with the requirements in Rules 13.4.6 to 13.4.11.
- (3) If the Fund Manager or, in the case of an Investment Trust, the Trustee, implements arrangements in accordance with (2), it must satisfy the DFSA that the arrangements have the effect specified in (2) and are legally effective in the DIFC and in the jurisdiction where the Real Property is situated.

#### **Guidance**

1. Rule 13.4.2B applies in limited situations such as where legal title to Real Property cannot be held in a GCC country due to an applicable law in another jurisdiction. It enables Fund Managers and Trustees to find suitable alternative arrangements to those mandated under Rule 8.2.2(2) and 8.2.3(b) 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 8.2.2(2) and 8.2.3(b).
2. Note that in relation to an Investment Company or Investment Partnership, Rule 8.2.2 requires a Fund Manager to delegate the activity of Providing Custody to an Eligible Custodian. In relation to an Investment Trust, Rule 8.2.3(b) also permits a Trustee to delegate the activity of Providing Custody to an Eligible Custodian.

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#### **Investments**

- 13.4.4** (1) A Fund Manager must, subject to (2), ensure that the assets of 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, up to a maximum of 40%.~~
- (2) The requirements in (1) do not apply to a Fund Manager 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) A Fund Manager must ensure that:
  - (a) Property Related Assets of a Public Property Fund:
    - (i) are listed and traded on an Exchange which is provided for in the Prospectus of the Fund; or ~~and~~
    - (ii) if not listed and traded as specified in (i), are approved and reviewed regularly by the investment committee of the Fund to ensure that they are sufficiently liquid and can be accurately valued; and
  - (b) the Property Fund does not grant any Person an option to acquire any property included in the Fund.
- (4) .....

**Borrowing**

- 13.4.5** (1) The Fund Manager 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 50% ~~80%~~ of the ~~total net~~ gross asset value of the Fund.
- (2) The Fund Manager of a Fund may pledge the Fund's assets to secure borrowings under (1).
  - (3) In the event that the borrowing limit under (1) is exceeded, the Fund Manager 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 Fund Manager must use its best endeavours to reduce as soon as reasonably possible the excess borrowings.
  - (4) All borrowings by the Fund must be conducted at arm's length.
  - (5) Borrowings by any Special Purpose Vehicles held by the Fund must be aggregated for the purpose of calculating borrowings of the Fund for the purposes of this Rule.

**Guidance**

The gross asset value of a Fund should be calculated as the total value of the Fund Property, based on the most recent valuation under Rule 8.4.1(1), but without making the deductions provided for in the other paragraphs of that Rule.

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**Joint Ownership Arrangement**

**13.4.6** The Fund Manager 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.

- 13.4.7** (1) In making any joint ownership investment under Rule 13.4.6~~7~~, the Fund Manager must:
- (a) be able to demonstrate that the arrangement, including the decision to own less than a 100% interest in the property, is in the interests of the Unitholders; and
  - (b) must obtain a legal opinion in accordance with (2).

(2) .....

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**Use of Special Purpose Vehicles**

**13.4.10** (1) .....

**Guidance**

~~Under 13.4.11, A~~ Additional Special Purpose Vehicles may be permitted by the DFSA by waiver or modification under limited circumstances, such as where the Fund Manager can 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.

**13.4.11** .....

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**Related Party Transactions ~~Transactions with Affected Persons~~**

**Guidance**

1. ~~A~~ Fund Managers of a Public Property Fund ~~is~~ ~~are~~ required pursuant to Rule 8.3.1~~2~~ to obtain the agreement of Unitholders by way of an ordinary resolution ~~Special Resolution~~ before undertaking a Related Party Transaction ~~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. See also App2 and App3.

2. A Fund Manager of a Public Property Fund may enter into a Related Party Transaction for the acquisition or sale of Real Property in the State without obtaining specific approval for the transaction under Rule 8.3.2 if all of the conditions in Rule 13.4.11A(1) are met.
3. If a Fund Manager enters into a Related Party Transaction under the exclusion in Rule 13.4.11A, it must notify Unitholders of details of the transaction as soon as practicable after entering into the transaction. It also must disclose in the Fund's Prospectus if it has Unitholder approval to enter into such transactions without obtaining a resolution in each case (see Rule 14.4.4B).

**13.4.11A** (1) The Fund Manager of a Public Property Fund is not required to comply with Rule 8.3.2(3) and (4)(a) for a Related Party Transaction if:

- (a) the transaction is for the acquisition or sale of Real Property in the State;
- (b) the Fund Manager has general Unitholder approval in accordance with (2) to enter into such transactions;
- (c) the oversight provider of the Fund has confirmed in writing, before the transaction is entered into, that it is on terms that comply with the requirement in Rule 8.3.2(2) and that all other applicable requirements have been complied with; and
- (d) the investment committee of the Fund has confirmed in writing, before the transaction is entered into, that it is on terms that comply with the requirement in Rule 8.3.2(2) and it has no objection to the transaction.

(2) Unitholder approval under (1)(b) must be by way of an ordinary resolution of the Unitholders of the Fund that:

- (a) was passed at the previous annual general meeting of the Fund;
- (b) is valid only until the date of the next annual general meeting of the Fund (when it may be renewed); and
- (c) authorises the Fund Manager to enter into Related Party Transactions referred to in (1)(a) without obtaining prior Unitholder approval in each case during the period for which the resolution is valid.

(3) If a Fund Manager of a Public Property Fund enters into a Related Party Transaction under this Rule, it must as soon as practicable after entering into the transaction provide written notification to Unitholders of the Fund setting out relevant details of the transaction including the identity of the Related Party and the nature and extent of his interest.

**13.4.12** (1) The following information in relation to Related Party Transactions Affected Person transactions must be disclosed to Unitholders and

where appointed, the Trustee, by the Fund Manager of the a Public Property Fund:

- (a) any beneficial interests of the Related Party~~Affected Person~~, and any changes thereof, in the Fund; and
- (b) any potential conflicts of interests involving the ~~Affected Person~~ Related Party and the measures implemented to address such conflicts.

- (2) If the Fund Manager operates more than one Fund and a transaction involves two or more of the Funds operated by the Fund Manager, such transactions between the Funds will be Related Party Transactions~~Affected Person transactions~~ for each of the Funds involved in the transactions.

**13.4.13** (1) Where any ~~Affected Person~~ Related Party has an interest in an Undertaking which competes or is likely to compete, either directly or indirectly, with the Fund's activities, the Fund Manager of a Public Property Fund must disclose to Unitholders and where appointed, the Trustee, the following:

- (a) a description of the Undertaking of the Related Party ~~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 Related Party ~~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 Related Party~~Affected Person~~.

- (2) If there is any change in information required under (1) after initial disclosure, the Fund Manager must disclose such changes to the Unitholders and where appointed the Trustee.

**13.4.14** Where an ~~Affected Person~~ Related Party has, for the purpose of the establishment of the Fund, agreed to sell Real Property to the Fund, the Fund Manager of a Public Property Fund must disclose the following in the Prospectus:

- (a) a valuation report by an independent valuer of the Real Property that the ~~Affected Person~~ Related Party 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.

**13.4.15** (1) The Fund Manager of a Public Property Fund must ensure that if any cash forming part of the Fund's assets is deposited with an ~~Affected Person~~ Related Party (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 Fund Manager ~~of a Public Property Fund~~ must ensure that in the event of borrowing from ~~an Affected Person~~ Related Party (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.

**13.4.16** (1) This Rule applies to a Related Party Transaction of a Public Property Fund that involves either:

- (a) services provided in the ordinary course of estate management of Real Property of the Fund, including renovation and maintenance work; or
- (b) engaging a property agent to provide services to the Fund, including advisory or agency services in property transactions.

- (2) The Fund Manager, and if appointed, the Trustee, must ensure that if the value of the transaction is 5% or more of the most recent net asset value of the Fund as disclosed in the latest published audited accounts, it is entered into only with the prior approval of the oversight provider of that Fund.

**Guidance**

The requirements in Rule 13.4.16 are in addition to other requirements in these Rules applying to Related Party Transactions. For example, under Rule 8.3.2, the Fund Manager must ensure the transaction is on normal commercial terms, is subject to Unitholder approval if it represents 5% or more of the net asset value of the Fund and is disclosed to Unitholders.

**13.4.16** ~~The Fund Manager 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.~~

**13.4.17 Deleted** ~~The Fund Manager 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.~~

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**RetirementReappointment of valuer**

**13.4.24** (1) A Fund Manager must ensure that where a Person appointed pursuant to Rule 13.4.19 has conducted valuations of the Real Property for the Fund for five consecutive years, that Person is ~~retired~~ not permitted to continue to provide valuation services for the Fund unless before the end of that period the position has been put out to tender and the Person has been re-appointed in accordance with that process.

- (2) ~~A Person retired under (1) must not be re-appointed by the Fund Manager to perform Fund valuation unless a period of two years has elapsed from the date of the retirement of that Person. If the Fund Manager decides to re-appoint the same Person to provide valuation services for the Fund following the tender process referred to in (1), it must, in the next interim or annual report provided to Unitholders, specify the reasons for the re-appointment and the evidence supporting those reasons.~~
- (3) The Fund Manager, and if appointed the Trustee on instructions of the Fund Manager, may at any time remove the Person appointed to provide the valuation services by notice in writing in any of the following events:
- (a) the Person enters into liquidation, becomes bankrupt or has a receiver appointed over its assets; or
  - (b) the Fund Manager, in consultation with the Trustee, determines on reasonable grounds that it is necessary to remove that Person in the interests of the Fund and the Unitholders; or
  - (c) an ordinary resolution is passed by the Unitholders to dismiss that Person.
- (4) Upon the retirement or dismissal of the Person appointed to provide the valuation services to the Fund, the Fund Manager must appoint another Person to provide valuation services to the Fund where the Fund Manager and where appointed the Trustee are satisfied that the Person meets the requirements specified in Rule 13.4.19.

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## **13.5 Real Estate Investment Trusts (REITs)**

### **Guidance**

1. See Rule 3.1.8 for the definition of a Real Estate Investment Trust (REIT).
2. REITs are a subset of Property Funds. The Fund Manager of a Public Property Fund, which is, or is to be held out, as a REIT, is required, in addition to the general Rules applying to Public Property Funds (such as Rules on borrowing and Related Party Transactions), to also comply with the Rules in this section.

### **Real Estate Investment Trusts (REITs)**

- 13.5.1**
- (1) A Fund Manager, or any Person making an Offer of a Unit of a Fund or otherwise marketing a Fund, must not include the term “Real Estate Investment Trust” or “REIT” or refer to a Fund or otherwise hold out a Fund as being a Real Estate Investment Trust or 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; and
- (3) (d) if at any time during the operation of the Fund the requirements in (2) are not met, the Fund Manager, and, if appointed 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.

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~~13.5.5~~ A Fund Manager 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.

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## **13.6 Hedge Funds**

### **Guidance**

See Rule 3.1.9 for the definition of a Hedge Fund.

### **Risk management**

**13.6.1** A Fund Manager 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 the strategies and investment process employed by the Fund Manager 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 a Fund Manager 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 a Fund Manager of a Hedge Fund can comply with the requirements relating to the use of prime brokers set out in Rule 13.6.34.

### **Use of prime brokers**

**13.6.3** .....

**Guidance**

1. 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 13.6.32(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.
2. In relation to the matters referred to in Rules 13.6.1 and 13.6.2 and in relation to management of Hedge Fund investments, the DFSA expects Fund Managers of Hedge Funds to have proper regard to best practice standards and guidance set out in App 78, DFSA's Hedge Fund Code of Practice as well as international developments relating to Hedge Funds.

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**13.8 Money Market Funds**
**Investment conditions and borrowings**

- 13.8.1**
- (1) A Fund Manager of a Money Market Fund must ensure that the Fund's investment strategy is consistent with the investment objectives of such a Fund as set out in Rule 3.1.11.
  - (2) Without limiting (1), the Fund Manager of a Money Market Fund must ensure that:
    - (a) at least 90% of the net asset value of the Fund Property is invested in Deposits or Debentures that are of high quality, as determined by the Fund Manager in accordance with Rule 13.8.2;
    - (b) at least 10% of the net asset value of the Fund Property consists of cash in accounts that permit the cash to be withdrawn immediately on demand;
    - (c) Deposits with, or Debentures issued by, a single entity do not exceed 10% of the net asset value of the Fund Property;
    - (d) the Fund invests only in Deposits or Debentures:
      - (i) with a residual maturity until the legal redemption date of not more than two years; and
      - (ii) where the time remaining until the next interest rate reset date is not more than 397 days;
    - (e) the Fund Property has a weighted average maturity of not more than 6 months;

- (f) the Fund Property has a weighted average life of not more than 12 months;
  - (g) the Fund does not invest in Financial Instruments other than Deposits or Debentures, except for:
    - (i) Units in other Money Market Funds that have investment objectives and strategies consistent with those of the Fund;  
or
    - (ii) Derivatives that are used solely to hedge against foreign exchange rate risk; and
  - (h) the borrowings of the Fund do not, at any time, exceed 10% of the net asset value of the Fund Property.
- (3) In (2):
- (a) the “net asset value” of Fund Property, means the value of Fund Property at the most recent valuation under Rule 8.4.1;
  - (b) the “weighted average maturity” of Fund Property, means the average length of time to maturity of all the Financial Instruments held as Fund Property, weighted to reflect the relative holdings in each Financial Instrument, where the maturity of a floating rate instrument is the time remaining until the next interest rate reset; and
  - (c) the “weighted average life” of Fund Property, means the weighted average of the remaining life of each Financial Instrument held as Fund Property, where the remaining life of a Financial Instrument is the time until the due date for repayment of the principal.

### **Guidance**

IFR 6.12 sets out further Rules and Guidance about how the requirements in this section apply to Islamic Money Market Funds.

### **Due diligence on investment quality**

#### **13.8.2**

To determine whether a Deposit or Debenture is of high quality for the purposes of Rule 13.8.1(2)(a), a Fund Manager of a Money Market Fund must carry out due diligence to an adequate standard on the Deposit or Debenture, taking into account the following factors:

- (a) the credit quality of the Issuer, and any guarantor, of the Investment;
- (b) the nature and quality of the asset class represented by the Investment;
- (c) the liquidity of the Investment; and

- (d) any other risks associated with the Investment or the market in which it is traded.

**Guidance**

1. A Fund Manager must carry out the due diligence required under Rule 13.8.2 as part of its internal procedures. However, this does not prevent it from using a service provider to carry out the necessary due diligence, provided the outsourcing requirements in these Rules are met.
2. A Fund Manager will not meet the due diligence requirements in the Rule if it relies solely on credit ratings issued by a credit rating agency. This is because assessment of credit quality is only part of the due diligence required under the Rule.
3. A Fund Manager should keep appropriate records of the due diligence it has conducted on an Investment to demonstrate that it has complied with the Rule.

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**14      MARKETING OF DOMESTIC FUNDS AND PROSPECTUS DISCLOSURE**

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**14.3      Prospectus content**

**Public Fund Prospectus**

**14.3.1** Without limiting the generality of the Prospectus disclosure required under Article 52 of the Law, the Fund Manager must, in the case of a Public Fund, include in the Fund's Prospectus of the Fund:

- (a) the information in App 75;
- (b) if it is a specialist class of a Public Fund, any information as is relevant to that specialist class of Fund as set out in section 14.4; and
- (c) the mandatory statement required under Rule 14.3.34.

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**14.4      Additional Prospectus disclosure for specialist Funds**

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**Prospectus of a Property Fund**

**14.4.2** A Fund Manager 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 Valuer under Rule 13.4.18(1);
  - (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 Related Parties~~Affected Persons~~;
  - (j) full particulars of the nature and extent of the interest, if any, of Related Parties~~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.

.....

**14.4.4A** Without limiting any other disclosure obligations of the Fund Manager under these Rules, if the Fund Manager of a Public Property Fund itself acts as custodian of Real Property in accordance with Rule 13.4.2, it must prominently disclose in the Fund's Prospectus:

- (a) that it acts as custodian of the Real Property;
- (b) the risks that may arise as a result of it acting as custodian rather than delegating the function to an Eligible Custodian; and

- (c) the measures and safeguards it has in place to ensure the proper segregation and protection of the Real Property.

**14.4.4B** Without limiting any other disclosure obligations of the Fund Manager under these Rules, if the Fund Manager of a Public Property Fund has approval to enter into Related Party Transactions in accordance with Rule 13.4.11A, it must disclose that fact in the Fund's Prospectus.

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**Risk warning for a Money Market Fund**

**14.4.7** A Fund Manager of a Money Market Fund that is a Public Fund must ensure that the Fund's Prospectus includes a prominent warning:

- (a) drawing to the attention of investors the different nature of a Unit in a Money Market Fund compared to a Deposit;
- (b) that the capital of an investment in a Money Market Fund is not guaranteed; and
- (c) that the value of Units in the Money Market Fund may fluctuate.

.....

**15      **MARKETING OF FOREIGN FUNDS****

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

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- 15.1.3**
- (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)- ; and
- (f) in the case of an Offer of a Unit in a Money Market Fund, contains the risk warning referred to in Rule 14.4.7.

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## **PART 8 – TRANSFER SCHEMES AND WINDING UP OF DOMESTIC FUNDS**

### **16. TRANSFER SCHEMES RELATING TO DOEMESTIC FUNDS**

#### **16.1 Application of the Regulatory Law**

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- 16.1.3** (1) ~~Article 108 (4)~~ Part 9 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) .....

.....

### **APP 2 MEETING PROCEDURES**

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- A2.1.5** If a resolution is required under these Rules for the approval of a Related Party Transaction, a Unitholder who is the Related Party proposing to enter into the transaction, and a Unitholder who is an Associate of that Related Party, is not entitled to vote on the resolution.

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## **APP 5 CONSTITUTION OF A DOMESTIC FUND**

### **A5.1 Contents of Constitution**

- A5.1.1**
- (1) The Constitution of a Domestic Fund must contain all the information prescribed in the following table except where it is an Exempt Fund, in which case, it must contain the information specified in A, C, D, F, G, H, K and M.
  - (2) The requirements in the following table do not apply in respect of the Constitution of a Qualified Investor Fund.

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## **App 8 Guidance for Hedge Fund Managers**

### **Hedge Fund Code of Practice 2010**

#### **Introduction**

##### ***What does this Code of Practice cover?***

This Code of Practice (“the Code”) sets out best practice standards for Fund Managers of Hedge Funds in the DIFC (i.e. Fund Managers of ~~both Public and Private~~ Domestic Hedge Funds that are Public Funds, Exempt Funds or Qualified Investor Funds). These are designed to address risks inherent in the operation of Hedge Funds and are set out under 9 Principles as follows:

- Principle 1 – A Fund Manager of a Hedge Fund should have, or have access to, appropriate skills and resources to conduct the operations of the Fund (see paragraphs 3 – 6);

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## **App 6 ~~GUIDANCE ON FITNESS AND PROPRIETY FOR OVERSIGHT FUNCTIONS~~**

### **~~Guidance~~**

#### **~~General~~**

- ~~1. The guidance in this Appendix is intended to assist a Fund Manager when making appointments in accordance with Rule 10.3.2 in respect of oversight functions.~~

#### **~~Integrity~~**

- ~~2. The Fund Manager 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 Fund Manager.~~
-