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A Guide to the Dubai International Financial Centre's Fund Regime

The Dubai International Financial Centre ("DIFC") has reviewed and enhanced its Funds regime as it positions itself as the centre for asset management in the Middle East. The DIFC is providing further encouragement to regional start-up Fund Managers, Fund Managers of Venture Capital Funds as well as General Partners ("GPs") and Limited Partners ("LPs") in investment funds by offering discounts on certain fees.

This guide is designed to provide you with an overview of the types of funds which can be established or managed in the DIFC, highlighting their key features and explaining the local terminology. In addition, it will look at some of the considerations that should be taken into account when establishing a Fund, Fund Manager or Asset Manager within the DIFC.

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The Fund Regime in the DIFC

This guide is intended as a brief overview of the rules and a broad guide to the terminology used in the Dubai International Financial Centre ("DIFC") regarding Collective Investment Funds ("CIF"), as well as the types of Funds available and the marketing of such Funds.

Persons wishing to do further research on the specific laws and regulations applicable in the DIFC in relation to CIF should review the Dubai Financial Services Authority ("DFSA") website **www.dfsa.ae**, and especially the DFSA's Collective Investment Rules ("CIR") and Islamic Finance Rules ("IFR") or contact us directly for specific advice.

Key Terms in the DFSA Rulebook

Fund Manager or Asset Manager

Definition of Fund Manager

A Fund Manager is the person who is legally accountable to the unitholders for the management of the Fund, including the property held for or within the Fund ("Fund Property"), and who establishes, manages, or otherwise operates or winds up the Fund. A person who performs this financial service in the DIFC must obtain from the DFSA the regulatory permission of 'Managing a Collective Investment Fund'. Whilst this permission also includes the financial service of 'Managing Assets', i.e. acting as the Asset Manager (see definition of 'Asset Manager' below) it is common for a Fund Manager to delegate this asset management function to a third party.

Definition of Asset Manager

The term 'Asset Manager' (alternatively referred to as 'Investment Manager') is the person who manages the assets of a fund on a discretionary basis. A person who performs this financial service in the DIFC must obtain from the DFSA the regulatory permission of 'Managing Assets'. Note, however, that a person who performs the financial service of 'Managing Assets' is not, by virtue of this permission, a Fund Manager.

Types of Fund Manager

A Domestic Fund Manager

A Domestic/DIFC Fund Manager is a Fund Manager who is incorporated in the DIFC and is licensed and regulated by the DFSA to provide the financial service of managing a CIF. A Domestic Fund Manager is licensed by the DFSA to operate the Fund and can provide this financial service to either Domestic or Foreign Funds.

An External Fund Manager

An External Fund Manager is a Foreign Fund Manager who is permitted to establish and manage a Domestic Fund in the DIFC without having to establish a place of business in the DIFC. The External Fund Manager must be subject to regulation by a Financial Services Regulator in a Recognised Jurisdiction (as defined by the DFSA) and subject itself to the DIFC laws and jurisdiction of the DIFC courts.

Additionally, the External Fund Manager must appoint a Fund Administrator or Trustee in the DIFC to act as its agent in its dealings with the DFSA, Unitholders, and prospective Unitholders. A Delegation Agreement must be in place, which requires the agent to facilitate:

- Issuance, resale and redemption of the Units of the Fund
- Sending all the reports required under the law and the rules to Unitholders of the Fund, including Net Asset Valuation
- Access, in the DIFC, to the constitution and most recent Prospectus of the Fund to Unitholders and Prospective Unitholders
- Access, in the DIFC, to the Unitholder register
- Access, in the DIFC, to the books and records relating to the Fund and any oversighting functions of the Fund

Domestic Fund Structures

There are several types of Domestic Funds, including Public Funds, Exempt Funds, and Qualified Investor Funds ("QIF") (see below for relevant definition). The definitions of Domestic Fund, External Fund and Foreign Fund are particularly relevant when considering the prospectus requirements relating to, and the marketing of, these Funds.

- **Public Funds:** The Public Fund regime provides greater protection to larger numbers of investors and may consequently lead to retail investors requiring the Fund Manager to add a Retail Endorsement to their licence.
- **Exempt Funds:** An Exempt Fund enjoys a fast-track notification process, in which the DFSA aims to complete the process within a period of 5 days and with lesser regulatory requirements than for a Public Fund.
- **QIF:** The QIF regime provides for a lighter touch regulatory approach and requires self-certification regarding the adequacy of systems and controls. QIFs enjoy a fast-track notification process whereby the DFSA aims to complete the process within a period of 2 days. A QIF may be established in the DIFC by a DFSA-authorised Fund Manager or by an External Fund Manager.

Comparison of a Public Fund, Exempt Fund and Qualified Investor Fund
Domestic Funds can be managed by either a Domestic Fund Manager or an External Fund Manager.

Type of Fund	Public Funds	Exempt Funds	QIF
Level of regulation	Detailed regulation in line with IOSCO standards	Somewhat less stringent than for Public Funds	Significantly less stringent than for Public Funds
Investors and Offer	• Unitholders include Retail Clients • Some or all of its units are offered to investors by way of public offer.	• Only Professional Clients • Units are offered to persons only by way of a Private Placement.	• Only Professional Clients • Units are offered to persons only by way of a Private Placement.
Minimum Subscription	N/A	US $50,000	US $500,000
DFSA Application Process Time	Varies	5 business days	2 business days

External and Foreign Funds
A Domestic Fund Manager who wishes to establish an External Fund must complete the relevant application form which acts as a formal notification to the DFSA. An External Fund is a Foreign Fund managed by a Domestic Fund Manager. There are no specific regulations imposed by the DFSA relating to External Funds other than the need to comply with requirements in the jurisdiction in which the External Fund is established and the Fund Manager to assess and confirm that the Anti Money Laundering (“AML”) regulations in that jurisdiction are comparable to those of DFSA.

A Foreign Fund does not require any DFSA approval as both the Fund and the Fund Manager will be based outside the DIFC. The DFSA regulations therefore only impact a Foreign Fund if the Asset Manager is based in the DIFC or the Foreign Fund is being marketed in or from the DIFC.

The regulatory cost of setting up and carrying on Fund Management business in the DIFC

There are some key regulatory costs which must be taken into account when setting up a Fund Management business in the DIFC.

The main costs relating to setting up a Fund Management entity entity in the DIFC relate to the incorporation itself and the commercial licence. Fee discounts are offered to regional start-up Fund Managers, Fund Managers of Venture Capital Funds as well as GPs and LPs in Investment Funds where the incorporation cost is between $100-$1,000, rather than $8,000 and the initial commercial licence is up to $2,000, for the first year.

DFSA application process and cost for Fund Managers and Asset Managers

Becoming authorised as a Domestic Fund Manager or Asset Manager

You will need to establish a DIFC entity and be authorised by the DFSA to provide the financial service of Managing a CIF or Managing Assets. Please see "Setting up in the DIFC" for further details relating to this process and how we can assist you.

If you apply to the DFSA to manage a QIF or an Exempt Fund your licence will be restricted to managing only these types of funds and an upgrade will be required should you wish, in the future, to manage a Public Fund. The QIF application process should take 4-6 weeks and Exempt Funds only slightly longer, but both applications rely heavily on self-certification. If you are seeking a variation of licence, you will be required to complete the relevant DFSA application forms and demonstrate to the DFSA that you have the necessary systems and controls and oversight arrangements in place if setting up a Public Fund. You may also be required to apply for a Retail Endorsement.

Application to become an External Fund Manager of a DIFC Domestic Fund

An External Fund Manager will not be a DFSA licensed firm and therefore the process for reviewing the application will be shorter than that for a Domestic Fund Manager. A letter of good standing from the home state financial services regulator, a copy of the licence, and the appointed DFSA-Licensed Fund Administrator/Trustee agreement should be provided with the relevant DFSA application form.

The DFSA also requires Fund Managers to meet the capital requirements as set out in the Prudential rules, being the greater of 13 weeks forecast audited expenditure or the minimum base capital requirements set out below.

Type of Fund Manager	DFSA Base Capital Requirements in USD
Category 3C Domestic Public Fund Manager	140,000
Category 3C Domestic QIF Manager or Exempt Fund Manager	70,000
Category 3C Asset Manager / Public Fund Manager	500,000

Application to establish a Fund

The Application Process

The DFSA will only accept a Fund application once the Fund Manager has been authorised (in the case of a Domestic Fund Manager) or approved (in the case of an External Fund Manager). The application process is different depending on which fund type you wish to establish. The detail required in each form reflects the level of regulatory risks involved. The Public Fund form is based on open-ended questioning requiring detailed narrative responses which describe the systems and controls the Fund Manager will maintain to mitigate the regulatory risks inherent in the type of fund concerned. Exempt Funds, QIFs and External Funds rely heavily on self-certification.

DFSA fees for Funds	Public Fund (USD)	Exempt Fund (USD)	QIF (USD)	External Fund (USD)
Application fee	1,000	0	0	**
Annual fee per Fund	4,000	4,000	4,000	**
Annual ongoing fee per Fund	4,000	4,000	4,000	**

***Note there are no fees to be paid, a notification to the DFSA is required by submitting Form AUT- EXF.*

DFSA requirements in relation to specialist Domestic Funds

The DFSA has set out certain requirements relating to specific types of Domestic Funds. Below are some of the specialist Domestic Funds that are referenced, although others are also covered in the Part 6 of the CIR.

Islamic Funds

Islamic Funds can be Public Funds, Exempt Funds or QIFs.
The Fund Manager of an Islamic Fund must:

- have a licence that authorises it to conduct Islamic Financial Business
- appoint a Sharia Supervisory Board to supervise its Islamic Financial Business
- establish and maintain an Islamic Financial Business policy and procedures manual with which to manage its compliance with Sharia.

Hedge Funds

Investment strategies of Hedge Funds often involve short selling, use of over the counter (“OTC”) derivatives, investments in distressed debt and various forms of leverage, which may give rise to higher risks than in other more conventional Funds, which only take long positions.

The Fund Manager of a Hedge Fund is responsible for ensuring that any risks associated with the Fund are adequately managed by:

- Ensuring that there is adequate segregation of duties between the investment function and the Fund valuation process;
- Observing best practice standards and guidance issued by the DFSA, in particular the DFSA Hedge Fund Code of Practice
- Observing the requirements that relate to the appointment of prime brokers with authority to combine the assets of the Fund with any other assets, which can only be done in respect of Exempt Funds and QIFs, and not Public Funds

Private Equity Funds

A Private Equity Fund invests in unlisted companies by means of shares, convertible debt or other instruments carrying equity participation rights or reward, or if it participates in management buy-outs or buy-ins.

Public Equity Funds are generally Exempt Funds, but can also be QIFs, which allows for the appointment of an Investment Committee rather than a Custodian although this then requires certain disclosures in the prospectus relating to how the Fund’s assets are held.

Property Funds

All Property Funds (i.e. Funds investing predominantly in real estate or real estate-related assets) must be closed-ended Funds unless the Fund is considered an Exempt Fund or a QIF.

If the Property Fund is a Public Fund it must:

- invest only in Real Property or Property Related Assets, but may retain up to 40% of its investments in cash or certain specified securities
- be an Investment Company or Investment Trust

- be listed, within 3 years of its offering to the public, either on an Authorised Market Institution or an Exchange in a Recognised Jurisdiction
- ensure that the constitution of the Fund includes certain provisions regarding any private placements (if made) and the manner in which the issue and redemption of the Fund's Units will be made

If the offer document or marketing material of a Property Fund which is an Exempt Fund or QIF states that it intends to be listed, it must:

- be registered as a Public Company
- list and trade its Units on the exchange specified in its offer document or marketing material within 3 years of its registration
- during the period pending its listing and trading, comply with all the requirements applicable to a Public Fund other than the requirements relating to the independent oversight function and the issue of a Public Fund Prospectus

Real Estate Investment Trusts ("REITs")

REITS are a sub-set of Property Funds. A REIT must:

- be structured either as an Investment Company or Investment Trust
- be aimed primarily at investments in income-generating Real Property
- distribute 80% of its audited annual net income to unitholders

A Fund Manager of a Public REIT, in addition to complying with the rules applying to Public Property Fund, must ensure 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. Furthermore, the Fund Manager must ensure that the total contract value of the property under development must not exceed 30% of the net asset value of the Fund Property of the Public REIT.

Feeder Funds and Fund of Funds

In addition to the aforementioned specialist classes of Funds, the DIFC Funds Regime also has specific provisions dealing with Feeder Funds and Fund of Funds.

Foreign Funds

Firms which manage the assets of Foreign Funds come under the definition of 'Asset Managers' and therefore require the permission to manage assets and will require a DFSA Category 3C licence. It is important that Firms that are managing assets of Foreign Funds are able to categorise their Funds as either designated or non-designated Foreign Fund as set out below. This is also important when marketing these type of Funds (see next section).

Designated Foreign Funds

A Foreign Fund is a Designated Foreign Fund if:

(a) it is both established and operated in a Recognised Jurisdiction, as specified in the DFSA's Recognised Jurisdiction Notice.

(b) it is a Property Fund, as previously described.

(c) if it is an Exchange Traded Fund ("ETF").

Non-Designated Foreign Fund

A Non-Designated Foreign Fund must meet the criteria prescribed in DFSA rules if it is to be marketed in or from the DIFC. The criteria to be met is as follows:

(a) The Fund Custodian and Investment Manager

The Fund's Custodian must be:
- an Eligible Custodian (see CIR 8.2.4 for definition)
- a member of a Group that is Regulated in a Recognised Jurisdiction
- appointed by a Person who is Regulated in a Recognised Jurisdiction or
- a Person who has adequate custody and asset safety arrangements

The Investment Manager must be:
- regulated by the DFSA or a regulator located in a Recognised Jurisdiction
- a member of a Group that is regulated in a Recognised Jurisdiction or
- appointed by a Person who is Regulated in a Recognised Jurisdiction

Alternatively, 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 acceptable to the DFSA

(b) if the Fund is a Property Fund, as previously described.

(c) if it is an ETF, as previously described.

Marketing of Funds

Prospectus Requirements

All Funds marketed in and from the DIFC must be accompanied by a prospectus in English (or an information memorandum in respect of Exempt Funds and QIFs or other disclosure document prepared in accordance with the laws relevant to a Foreign/External Fund). Depending on the type of Fund, the content of the prospectus and the manner of distribution may vary. The detailed rules relating to the Marketing of Funds are set out in Part 7 of the DFSA's CIR.

Other than the usual requirements to provide all material information in a manner which is clear, fair and not misleading, and taking into account whether the recipient may be a Retail Client, the DFSA has also set out other specific requirements, as detailed below.

Domestic Funds

Public Funds
The disclosure requirements that apply to a Public Fund are more extensive than the prospectus disclosures that apply to Exempt Funds and QIFs. The prospectus (and any supplementary Prospectus) of a Public Fund must be filed with the DFSA prior to marketing the Fund. It must include specific disclosures which are set out in detail in the appendix to the CIR. The key mandatory disclosures required in a Public Fund Prospectus under the law, CIR and Islamic Finance Rules ("IFR"), in relation to the name and description of the Fund, investment objectives and policy of the Fund, distribution and accounting period, and the rights attached to units of the Fund, etc. are specifically listed in APP7 in CIR.

In addition to redemptions procedure, the prospectus of a Public Fund must set out the dealing days and times when the Fund Manager will receive requests for the sale and redemption of units.

The prospectus must include specific disclosures which are set out in detail in the appendix to the CIRs as well as the following mandatory statement:

> "This Prospectus relates to a DIFC Fund in accordance with the Collective Investment Law 2010 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."

There are also some additional disclosures for certain types of specialist Funds and listed Funds.

Exempt Fund

In addition to the aforementioned statement, if the Fund is an Exempt Fund, the prospectus must include the following statement:

> "This Information Memorandum is intended only for Professional Clients who can make a minimum subscription of US$50,000 and must not, therefore, be delivered to, or relied on by, a Retail Client or a Professional Client not able to make that minimum subscription."

QIF

There is not a mandatory statement for a QIF. However, the Fund Manager must include all information that a Professional Client would reasonably require and expect to find in a prospectus to enable them to make investment decisions related to the Fund. It is highly recommended to include the same statement as Exempt Funds.

Foreign Funds and External Funds

The DFSA rules set out the types of Funds which can be marketed in or from the DIFC. A Firm must ensure that it does not offer any Foreign Fund, including an External Fund, to any potential investor unless the Foreign Fund meets the specific criteria set out by the DFSA Collective Investment Rules (see below details in this section).

In the case of a transaction with or for a Retail Client, the units must also satisfy the requirements that govern the sale of such units to retail investors in the Fund's home jurisdiction. The prospectus must also 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."

(e) includes a prominent statement to be incorporated within the warning in (d) if the offer is not directed to Retail Clients.

Foreign Funds can be marketed in, or from, the DIFC by a DFSA licenced Firm authorised to carry out the Financial Services of Advising on Financial Products or Arranging Deals in Investments. However, representative offices can only market Funds by ensuring that in doing so it does not provide advice or arrange for a Person to buy or sell a Fund.

Such authorised firms can market Foreign Funds if one of the following criteria is met:

(i) The Foreign Fund is a Designated Fund or a Non-designated Fund, as defined above in the Types of Funds section
(ii) The Firm makes suitability recommendation of the investment in units of the Foreign Fund to meet the investment objectives and circumstances of an investor
(iii) The Foreign Fund meets the definition of an Exempt Fund or QIF.

Representative offices can also Market Foreign Funds although additional limitations apply.

The Fund Protocol Rules ("FPR")

The SCA, DFSA and FSRA entered into an agreement on facilitating the licensing of Domestic Funds by each authority for promotion across the UAE. The 'Protocol' sets out a common regulatory framework which is to be implemented by each of the regulators, enabling the promotion of Domestic Funds and their units, for those firms choosing to opt in.

Definitions relating to the Funds' Protocol rules are set out in a specific glossary to take in to account the different regulatory definitions of the three regulators and can be found in the Funds' Protocol Rules of the DFSA rulebook.

Promotion includes not only the marketing and sale of units but also conduct of associate services such as advising, dealing and arranging in relation to the units.

The terms used in the Protocol for this special facility are as follows:

a) Home Jurisdiction – the jurisdiction in which the Fund Manager is licensed, and the Fund domiciled
b) Home Regulator – the financial services' regulator that issues the licence referred to above
c) Host Jurisdiction – the jurisdiction, other than the home jurisdiction, in which marketing and sales of units will take place
d) Host Regulator – the financial services' regulator in the host jurisdiction
e) Agent – a person licensed by either SCA or the FSRA and appointed by the Fund Manager to promote the units of a Passported Fund
f) A Qualified Investor has the same definition as a Professional Client under the DFSA COB Rules

A Domestic Fund that is registered as a Passported Fund must be either a Public Fund or a Private Fund. In relation to a Private Fund, the Fund Manager, its Agent and any other Licensed Person may promote the units in the Fund only by way of private placement to Qualified Investors and the initial subscription must be $50,000 or higher. A Public Fund may be promoted to Retail Investors and Qualified Investors.

**Procedures and requirements that apply in relation to a Passported Fund where the DFSA is either the home regulator or the host regulator of the Fund are specified in the DFSA FPR rulebook.*

Where the DIFC is the Home Jurisdiction

In order to opt in to the Passported Fund facility, the Fund Manager of the DIFC Domestic Fund must notify the DFSA of the intention to register the Fund as a Passported Fund, identify the Agents (if any) that will conduct the promotion of the Fund, include a copy of the offering document containing the required disclaimer, and pay the required notification fee**. You will need to identify the host jurisdiction(s) in which the Fund will be promoted and decide whether you want to target potential investors either in the UAE (outside the DIFC and the ADGM), in the ADGM, or both jurisdictions.

Assuming that the Fund meets all the requirements, the passporting notice will be registered by the DFSA within 5 business days of receipt and the host regulators will be notified. Promotion of Fund units will be allowed in the relevant jurisdiction once the Fund Manager receives notification that the Fund is registered on the DFSA's register of Passported Funds or once the host regulator includes the Fund on their Passported Fund Register.

In the case of a Public Fund, additional disclaimers must be included in the Fund prospectus, which are set out at Appendix 6 of MKT Rulebook and the Fund must appoint a custodian that is licensed by SCA, unless the Public Fund is a Property Fund. Furthermore, the Fund prospectus and Key Investor Information Document ("KIID") must be provided in English and Arabic to ensure that potential investors in the UAE understand the offering document.

***a notification fee of USD 9,500 is payable when a Fund Manager notifies the home regulator of its intention that a Domestic fund be a Registered Fund. Then, an annual fee of USD 2,000 is payable each year in respect of the Registered Fund. For an Umbrella Fund or a segregated portfolio company or cell company, the fee is calculated per sub-fund, segregated portfolio or cell.*

Where the DIFC is the Host Jurisdiction

Similar to above, an authorised Fund Manager in the ADGM or in the UAE or their Agents may promote the registered Fund in the DIFC without requiring additional DFSA authorisation or approvals for a Financial Promotion from the DFSA. Once the home regulator provides the DFSA with a notice that a Private Fund or Public Fund domiciled or registered in that jurisdiction is a Passported Fund, the DFSA Register of Passported Funds will be updated to include details of the relevant Fund. The Fund Manager or its Agent can then promote the Fund while complying with the home jurisdiction requirements and follow the legislations applicable to them in the jurisdiction in which they are domiciled.

The Fund Manager or the governing body of a Passported Fund must notify the DFSA within 7 days to retire as manager of the Fund or be removed or replaced as manager. Furthermore, the DFSA must be informed within 7 days about any change of service providers, any amendments on the prospectus or offering documents, winding-up of the Fund or variation or revocation of the Fund Manager's authorisation or any of its permissions in the home jurisdiction.

****an offer of a unit of a Passported Fund in the DIFC, where the DIFC is the host jurisdiction, is specified to be an excluded offer. This is necessary because the offer of the units in the fund will be subject to the requirements of the home jurisdiction relating to a prospectus and marketing. It is, therefore, unnecessary to apply duplicative requirements in the host jurisdiction.*

Contact Us

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