



The DFSA Rulebook

Collective Investment Rules

(CIR)

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PART 1: INTRODUCTION

1. Application and Interpretation

1.1 Application

1.1.1 The Rules in this module (CIR):

- (a) are made for the purposes of the Collective Investment Law 2010 and the Investment Trust Law 2006; and
- (b) apply to every Person to whom the legislation in (a) applies except as otherwise provided.

Guidance

- 1. Article 1 of the Collective Investment Law 2010 provides as follows:

- “(a) This Collective Investment Law 2010 repeals and replaces the Collective Investment Law 2006 (“the Previous Law”) and may be cited as the “Collective Investment Law of 2010” (“this Law”).
- (b) Except where otherwise provided in the Rules, anything done or omitted to be done pursuant to or for the purposes of the Previous Law is deemed to be done or omitted to be done pursuant to or for the purposes this Law.
- (c) Without limiting the generality of Article 1(b), such repeal shall not affect:
 - (i) any right, privilege, remedy, obligation or liability accrued to or incurred by any person; or
 - (ii) any investigation or legal or administrative proceeding commenced or to be commenced in respect of any right, remedy, privilege, obligation or liability,

under the Previous Law and, any such investigation or legal or administrative proceeding may be instituted, continued or enforced, including any penalty, fine or forfeiture, under this Law.
- (d) The DFSA may, by Rules, prescribe any transitional or saving provisions as are or are deemed necessary to give effect to, or to facilitate, the transition from the Collective Investment Law 2006 to this Law.”

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

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

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

- (a) a Fund Manager;
- (b) an External Fund Manager;
- (c) a member of the Governing Body;
- (d) a director of a Corporate Director;
- (e) an Eligible Custodian;
- (f) a Trustee; and
- (g) an oversight provider.

1.1.4 (1) CIR also applies to an Authorised Firm other than a Representative Office that:

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

in relation to a Domestic Fund or Foreign Fund.

- (2) In the case of a Representative Office, only the Rules in chapter 15 apply.

Guidance

In regard to Rule 1.1.4(2), a Representative Office is authorised under its Licence to market, among other financial products, the Units of Foreign Funds, however, the scope of such marketing is limited to marketing the Units of the Foreign Funds that fulfil the criteria set out under REP section 4.7 as appropriate.

1.1.5 (1) CIR also applies to a Fund whether or not it has a separate legal personality.

- (2) Where a Rule imposes an obligation on a Fund, each Director, Partner or other Person charged with the management of that Fund must take reasonable steps to ensure compliance with the requirement by the Fund.

Guidance

1. The Rules in this module (CIR) establish a regime to regulate Domestic Funds, which may be Public Funds, Exempt Funds or Qualified Investor Funds. Domestic Funds include External Funds as defined in Article 14(1) of the Law. In addition, this module also regulates Fund Managers, which include External Fund Managers as defined in Article 20(5) of the Law.
2. CIR also applies to marketing and selling of Units of Foreign Funds in or from the DIFC and to the provision of a Financial Service to a Foreign Fund where any such activity is undertaken by an Authorised Firm. In that regard, the COB Rules also apply to the provision of Financial Services by an Authorised Firm.
3. If a Domestic Fund or Foreign Fund intends to list its Units on an Authorised Market Institution (AMI), it will need to comply with the relevant Rules in the MKT module and

the AMI's listing Rules in respect of Domestic Funds. Exempt Funds and Qualified Investor Funds cannot be listed.

4. A Public Property Fund is required to be a Closed-ended and Listed Fund and to be structured as an Investment Company or an Investment Trust. A Property Fund that is an Exempt Fund or QIF can be either Open-ended or Closed-ended.

1.2 Interpretation

- 1.2.1 Any references to "the Law" or to "Articles" are to be construed as references to the Collective Investment Law 2010 and to Articles in that law.

1.3 Client Classification

- 1.3.1 For the purposes of Article 16(7)(a) of the Law:
 - (a) the criteria to be classified as a Professional Client are specified in COB Rule 2.3.3, and
 - (b) the criteria to be classified as a Retail Client are specified in COB Rule 2.3.2.

1.4 The different types of Domestic Funds

Guidance

Article 13 of the Law defines Funds as either Domestic Funds or Foreign Funds. Article 15 of the Law then further divides Domestic Funds into three categories which are listed below in terms of the level of regulation (from most intensively regulated to least intensively regulated):

- (a) Public Funds;
- (b) Exempt Funds; and
- (c) Qualified Investor Funds.

This table illustrates the different Rules applicable to the three categories of Domestic Fund.

CIR chapters	Public Fund	Exempt Fund	QIF
Chapter 1: Application & Interpretation	✓	✓	✓
Chapter 2: Arrangements not constituting a CIF	✓	✓	✓
Chapter 3: Specialist Classes of Fund	✓	✓	✓
Chapter 4: Excluded Offers	✓	✓	✓
Chapter 5: Fund Administrator	✓	✓	✓ Rule 5.1.4 does not apply

CIR chapters	Public Fund	Exempt Fund	QIF
Chapter 6: External Fund Managers and External Funds	✓	✓	✓
Chapter 6A: Using a Fund Platform	✓	✓	✓
Chapter 7: Constitution	✓	✓	Only Rules 7.1.1; 7.1.2(1)(b); 7.1.2(2) & 7.1.4 apply
Chapter 8: Management and Operation of a Fund	✓	✓ Rule 8.2.2(2) and sections 8.3 and 8.4, other than Rules 8.3.1(2) and 8.4.1(1)(a), do not apply if the Fund is a Venture Capital Fund. Rule 8.2.2(2) does not apply if the Fund is a Credit Fund.	Only Rules 8.1.1, 8.1A.1, 8.1A.2, 8.3.1(2) (for a Venture Capital Fund), section 8.3 (for a Credit Fund), Rules 8.4.1(1)(a), 8.6A.1 and 8.10.1 apply
Chapter 9: Accounting, Audit & Periodic Reporting of a Fund	✓	✓ A comparative table for the annual report is not required	✓ Rules on interim reports do not apply unless there has been a material change during the interim accounting period. A comparative table for the annual report is not required
Chapter 10: Requirements specific to Public Funds	✓	X	X
Chapter 12: Requirements specific to Exempt Funds	X	✓	X
Chapter 12A: Requirements specific to Qualified Investor Funds	X	X	✓
Chapter 13: Additional Requirements for Specialist Funds	✓	✓	Only Rules 13.1.1, 13.4.1, 13.5.1, 13.6.3, 13.7, 13.10 and 13.12 apply
Chapter 14: Marketing of Domestic Funds and Prospectus Disclosure	✓	✓	Only Rules 14.1.1, 14.2.1, 14.2.4-14.2.7, 14.4.6, 14.4.11, 14.4.12, 14.4.13, 14.5.1, 14.5.2 & section 14.6 apply
Chapter 15: Marketing of Foreign Funds	X	X	X
Chapter 16: Transfer Schemes relating to Domestic Funds	✓	✓	✓
Chapter 17: Winding up of Domestic Funds	✓	✓	✓
APP 1: Delegation & Outsourcing	✓	✓	X
APP 2: Meeting Procedures	✓	X	X
APP 3: Approvals and Notifications	✓	X	X
APP 4: Guidance of Asset Valuation and Pricing	✓	✓	X
APP 5: Constitution of a Domestic Fund	✓	✓	X
APP 6: Guidance of Fitness and Propriety for Oversight Functions	✓	X	X

CIR chapters	Public Fund	Exempt Fund	QIF
APP 7: Content of a Public Fund Prospectus	✓	X	X
APP 8: Guidance for Hedge Fund Managers	✓	✓	✓
APP 9: Use of Price Information Providers	✓	X	X

1.5 The Fund Protocol in the UAE

Guidance

1. The authorities responsible for the regulation of Funds in the UAE (the DFSA, SCA and the FSRA) have entered into arrangements (the “Fund Protocol”) to facilitate domestic funds established or domiciled in one jurisdiction (the Home Jurisdiction) being Promoted in the other jurisdictions (the Host Jurisdictions).
2. The Fund Protocol Rules (FPR) set out, among other things, the procedures and requirements that apply if a Fund established or domiciled in the DIFC (whether a Public Fund, Exempt Fund or Qualified Investor Fund) wishes to Promote the Fund in the other jurisdictions (a ‘Passported Fund’).
3. A Fund established or domiciled in the DIFC that wishes to be a Passported Fund will, in addition to complying with the procedures and requirements in FPR, still need to comply with relevant requirements in this module. In some cases, requirements in this module are modified for a Passported Fund for consistency with FPR. In summary, the main additional or modified requirements in FPR relate to:
 - a. custodian requirements for Public Funds;
 - b. prospectus requirements for Public Funds, including the requirement for a Key Investor Information Document (KIID); and
 - c. requirements for notification of certain material events.
4. For more information about the procedures and requirements for a Passported Fund, see the Fund Protocol Rules (FPR).
5. If a Passported Fund is established or domiciled in one of the other UAE jurisdictions, many of the requirements in this module do not apply to the Fund as it is a Foreign Fund rather than a Domestic Fund (as those terms are defined in the Law). Only certain requirements in this module apply to Foreign Funds (e.g. Chapter 15: marketing of Foreign Funds). Instead, the Passported Fund will need to comply with the requirements in its Home Jurisdiction, including the relevant Fund Protocol rules or regulations made by its Home Regulator.

1.6 When a Fund invests in Crypto Tokens

- 1.6.1** (1) For the purposes of this module, a Fund invests in Crypto Tokens if:
- (a) any of its Fund Property consists of Crypto Tokens;
 - (b) it has a derivative exposure to Crypto Tokens;
 - (c) it tracks an index that includes Crypto Tokens; or

- (d) it invests in another Fund or entity which:
 - (i) has property that includes Crypto Tokens;
 - (ii) a derivative exposure to Crypto Tokens; or
 - (iii) tracks an index that includes Crypto Tokens.
- (2) An investment in another Fund or entity referred to in (1)(d) is to be disregarded under that paragraph if the total aggregate exposure of that other Fund or entity under (d)(i), (ii) and (iii) to all Crypto Tokens does not exceed 5% of the gross value of the Fund or entity.

PART 2: DEFINITIONAL PROVISIONS

Guidance

A Collective Investment Fund is defined in Article 11 of the Law. The definition under Article 11 is very wide, however, Article 12 enables the DFSA to make Rules excluding certain arrangements or types of arrangements from constituting a Fund. These excluded arrangements are set out below in section 2.1.

2 ARRANGEMENTS NOT CONSTITUTING A COLLECTIVE INVESTMENT FUND

2.1 Exclusions

2.1.1 Pursuant to Article 12 of the Law, the DFSA prescribes that an arrangement which otherwise amounts to a Collective Investment Fund as defined in Article 11 of the Law does not constitute a Collective Investment Fund if it falls within one or more of the exclusions specified in this chapter.

Deposits

2.1.2 An arrangement does not constitute a Collective Investment Fund if 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.

Common accounts

2.1.3 An arrangement does not constitute a Collective Investment Fund if:

- (a) the rights or interests of each participant in the arrangement are rights or interests in money held in a common account; and
- (b) 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.

Commercial activities unrelated to Financial Services

2.1.4 An arrangement does not constitute a Collective Investment Fund if each of the participants in the arrangement:

- (a) 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
- (b) enters into the arrangement for commercial purposes related to that business where that participant carries on that business by virtue of being a participant in the arrangement.

Group arrangements

- 2.1.5** An arrangement does not constitute a Collective Investment Fund if each of the participants is a Body Corporate in the same Group as the Person undertaking the fund management function in relation to the arrangement.

Franchise arrangements

- 2.1.6** An arrangement does not constitute a Collective Investment Fund if the arrangement is a franchise arrangement.

Clearing services

- 2.1.7** An arrangement does not constitute a Collective Investment Fund if the purpose of the arrangement is the provision of clearing services and the services are operated by an Authorised Market Institution.

Certificates or Options

- 2.1.8** An arrangement does not constitute a Collective Investment Fund if the rights or interests of the participants in the arrangement are Investments of the kind specified under GEN Rule A2.2.1(d) or A2.3.1(a).

Time-share and other 'property-enjoyment' related arrangements

- 2.1.9** An arrangement does not constitute a Collective Investment Fund:
- (a) if the rights or interests of each of the participants in the arrangement are time share rights; or
 - (b) if:
 - (i) the predominant purpose of the arrangement 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 arrangement relates does not consist of or include the currency of any country or territory or Investments, as defined in GEN Rule A2.1 or, which would be such Investments if not for any applicable exclusion.

Commercial arrangements

- 2.1.10** An arrangement that consists of a company, partnership or trust does not constitute a Collective Investment Fund if the main purpose and effect of the arrangement is the carrying on of a commercial or other business unrelated to financial or investment activities.

Guidance

Common indicators and examples

1. The DFSA would generally not expect an ordinary company, partnership or trust (an undertaking) that carries on a general commercial business to be a Fund, and therefore

regulated. An undertaking would be regarded as carrying on a general commercial business where it pursues a business strategy that involves activities such as:

- a. running a business involving the purchase, sale or exchange of goods and commodities;
- b. supplying services – such as maintenance, cleaning, electrical or plumbing, servicing appliances;
- c. providing non-financial professional services – such as legal or accounting;
- d. conducting media activities/business;
- e. operating an industrial activity, such as the production of goods or construction of property; or
- f. carrying on a combination of the above or similar activities.

Similarly, an arrangement that pursues a charitable purpose (such as a charitable trust) would not be regarded as a Fund.

2. Further indicators which can be used to identify if an undertaking is a commercial business include:
 - a. the particular structure of the undertaking – i.e. if it is open-ended, then the structure is generally regarded as more suited for collective investment, rather than a commercial operation (because a commercial business does not lend itself to having parts of it sold off to meet redemption rights of investors and, also, investors in commercial businesses do not expect the business to do so);
 - b. the distribution mechanism used by the undertaking – if it is closed-ended and has a specified period at the end of which it will be wound up and proceeds from realising assets will be distributed to investors, then generally such an undertaking is an investment vehicle, rather than a commercial undertaking;
 - c. how it conducts its business – for example:
 - i. if the business has a large number of employees engaging in its business activities, this is a possible indicator it is a commercial business. This is because many investment companies delegate or outsource their investment and administration activities to third party service providers, and have limited staff;
 - ii. if the undertaking merely holds the property to take advantage of changing market prices or the income stream, it is an indicator of conducting collective investment business, rather than undertaking any construction or development activities, which are commercial activities;
 - iii. if the business is designed to expand any existing commercial business of investors, this is a pointer that it is a commercial business, as opposed to an undertaking which would achieve gains or benefits by realisation of the underlying assets – which is a pointer that it is an investment business; and
 - iv. if the business itself creates the property or assets it manages (e.g. by constructing a building), it indicates that such a business is more likely to be a property development business, which is a commercial business, rather than an investment vehicle.
 - d. How the undertaking promotes its business to potential investors. For example, if the business promotes itself based on its investment mandate and the investment skills of the person carrying out the investment and risk management function in the business, it is likely to be a Fund rather than a commercial business.

3. See further Guidance under Rule 3.1.7 about property companies that are not Funds.

Debentures and Warrants of a single issuer

- 2.1.11** (a) An arrangement does not constitute a Collective Investment Fund if the rights or interests of the participants in the arrangement are represented by a Debenture or Warrant:
- (i) where the issuer of the Debenture or Warrant is a single issuer, and if that issuer is:
 - (A) a Body Corporate, it is neither an Open-ended investment company nor a Closed-ended company the intent or purpose of which is investment management as specified in Rule 2.1.10; or
 - (B) not a Body Corporate, the rights and interests of the Debenture or Warrant holder are guaranteed by the government of any country or territory; and
 - (ii) which, if it is a convertible Security, the underlying Securities to which the Debenture or Warrant holder is entitled are Shares or Debentures issued, or to be issued, by the same issuer as the issuer of the Debenture or Warrant or single other issuer.
- (b) An arrangement that does not constitute a Collective Investment Fund by virtue of Rule 2.1.11(a) does not become a Fund merely because one of the participants in the arrangement is a person:
- (i) whose ordinary business involves him engaging in an activity that is a Financial Services activity as defined in GEN chapter 2 or that would fall within an applicable exclusion from a Financial Services activity; and
 - (ii) whose rights or interests in the arrangement are, or include, rights or interests in a swap arrangement under which he facilitates the making of payments to participants whether in a particular amount or currency or at a particular time or rate of interest or all or any combination of those things in settlement of the rights and interests of the other participants in the arrangement.

Insurance

- 2.1.12** An arrangement does not constitute a Collective Investment Fund if it is a Contract of Insurance.

Profit Sharing Investment Accounts

- 2.1.13** An arrangement does not constitute a Collective Investment Fund if it is an account or portfolio which is a Profit Sharing Investment Account.

Discretionary Portfolio Accounts

- 2.1.14** An arrangement does not constitute a Collective Investment Fund if it is a portfolio or account managed under a Discretionary Portfolio Management Agreement.

Close Relative accounts

- 2.1.15** An arrangement does not constitute a Collective Investment Fund if every participant in the arrangement is a Close Relative. For the purposes of this Rule, the defined term "Close Relative" includes grandchildren.

Sukuks

- 2.1.16** An arrangement does not constitute a Collective Investment Fund if 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.

Employee reward schemes

- 2.1.17** An arrangement does not constitute a Collective Investment Fund if the arrangement is for the purposes of enabling or facilitating the operation of an employee compensation or reward scheme where the arrangement:

- (a) makes Securities available only to:
 - (i) an Employee or former Employee of the Issuer or of another member of the same Group as the Issuer; or
 - (ii) a Close Relative of any such Employee; and
- (b) is 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 Rule 2.1.17(a)(i) or (ii).

Crowdfunding

- 2.1.18** An arrangement does not constitute a Collective Investment Fund if all of the following conditions are met:

- (a) the arrangement is entered into using a Property Investment Crowdfunding Platform, operated by a Crowdfunding Operator;
- (b) the arrangement involves multiple investors investing in an individual apartment, house or building that has a single discrete title deed;

- (c) all of the investors are Clients of the Crowdfunding Operator; and
- (d) the total consideration paid by all investors in the apartment, house or building is not more than \$10 million or an equivalent amount in another currency.

Guidance

An Investment made through an Investment Crowdfunding Platform (i.e. a platform that facilitates an investment in a business or a project rather than a property) is likely to fall within the exclusion in Rule 2.1.10.

2.1.19 An arrangement does not constitute a Collective Investment Fund if all of the following conditions are met:

- (a) the arrangement is entered into using a Loan Crowdfunding Platform, operated by a Crowdfunding Operator;
- (b) the arrangement involves multiple lenders providing a loan to a borrower for a business or project;
- (c) all of the lenders are Clients of the Crowdfunding Operator;
- (d) the amount of the loan, the rate of return and the repayment period are fixed when the loan agreement is entered into; and
- (e) the total funding provided by all lenders to the borrower is not more than \$10 million or an equivalent amount in another currency.

Employee Money Purchase Scheme

2.1.20 An arrangement does not constitute a Collective Investment Fund if all of the following conditions are met:

- (a) the arrangement is an Employee Money Purchase Scheme and the DFSA has approved that Scheme under COB Rule 12.2.2;
- (b) the Scheme is operated by an Authorised Firm that is authorised to Operate an Employee Money Purchase Scheme; and
- (c) the Scheme is administered by an Authorised Firm that is authorised to Act as the Administrator of an Employee Money Purchase Scheme.

3 SPECIALIST CLASSES OF FUNDS

3.1 Specialist Funds

- 3.1.1** (1) Pursuant to Article 17 of the Law, a Domestic Fund that falls within one or more of the criteria specified in Rules 3.1.2 to 3.1.15 is hereby prescribed to be a Domestic Fund of that specialist class or classes.
- (2) Pursuant to Article 18(1)(c) of the Law, a Foreign Fund that falls within one or more of the criteria specified in Rules 3.1.2 – 3.1.15 is hereby prescribed to be a Foreign Fund of that specialist class or classes for the purposes of:
- (a) marketing of the Units of that Fund in or from the DIFC; or
 - (b) determining whether a Domestic Fund investing in such a Fund continues to meet any criteria or other requirements applicable to that Domestic Fund.

Guidance

1. A Domestic Fund may attract more than one definition of a specialist class of Funds. For example, a Domestic Fund may be an Islamic Hedge Fund, Islamic Private Equity Fund or an Islamic REIT. However, due to the definition of Private Equity Fund, a Fund cannot be both a Private Equity Fund and a Venture Capital Fund.
2. Article 50(1) of the Law contains the prohibition against the Offer of Units of Foreign Funds (i.e. marketing of Units of Foreign Funds) in or from the DIFC. Article 54(1) of the Law provides the limited circumstances in which an Authorised Firm may market Units of a Foreign Fund. An Authorised Firm may, under Article 54(1)(a), (b) or (c) of the Law, offer Units of a Foreign Fund if the conditions of the relevant paragraph are met. For example, under Article 54(1)(c), the offer is required to be by private placement to Professional Clients who invest at least US\$ 50,000. Such marketing activities are also subject to additional requirements that are prescribed in this module – see chapter 15. An Authorised Firm marketing Units of a Foreign Fund should take reasonable steps to ensure that the Fund meets the applicable requirements including the relevant criteria for being a specialist class of Fund.

Islamic Fund

- 3.1.2** A Fund is an Islamic Fund if its entire operations are conducted, or held out as being conducted, in accordance with Shari'a.

Guidance

IFR module contains the additional requirements that apply to a Domestic Fund by virtue of it being an Islamic Fund.

Fund of Funds

- 3.1.3** A Fund is a Fund of Funds if it restricts its investment activities to investing in Units or Debentures of only two or more other Funds.

Guidance

A Fund of Funds does not cease to be a Fund of Funds merely because it holds some investments in cash or transferable securities to meet its on-going obligations such as for redemption purposes.

Feeder Fund

- 3.1.4** A Fund is a Feeder Fund if it is dedicated to investing in the Units or Debentures of a single other Fund (Master Fund).

Guidance

1. A Domestic Feeder Fund may have as its Master Fund a Foreign Fund.
2. A Sub-Fund of an Umbrella Fund is not a Feeder Fund.

Master Fund

- 3.1.5** A Fund is a Master Fund if it issues its Units or Debentures only to other Funds which are dedicated to investing in that Master Fund.

Guidance

A Domestic Master Fund may have Foreign Funds as its Feeder Funds.

Private Equity Fund

- 3.1.6** A Fund is a Private Equity Fund if it;
- (a) invests in unlisted companies, by means of Shares, convertible debt or other instruments carrying equity participation rights or reward; or
 - (b) participates in management buy-outs or buy-ins,
- and does not meet the criteria in Rule 3.1.13 to be a Venture Capital Fund.

Property Fund

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

Guidance

1. Whether an arrangement, particularly if it is a closed-ended company which invests in Real Property, is a Fund or a commercial company is not always an easy question to answer. The following guidance is intended to help answer this question. The examples are indicative only and not exhaustive. If a property company is in doubt as to whether it is an investment company or a commercial company, it may seek further clarification from the DFSA.
2. Please also refer to the Guidance under Rule 2.1.10 for the general distinction between Collective Investment Funds and other commercial arrangements.

Practical examples

3. Applying the indicators under Rule 2.1.10, the DFSA considers the following type of closed-ended property companies to be commercial companies, rather than investment companies:
 - a. a property developer or a property construction company which is in the business of developing and constructing (i.e. creating) the property;
 - b. a real estate company which operates a business of selling or leasing real estate for its customers;
 - c. a property management or maintenance company – which generates profits through fees charged for those services; and
 - d. a property valuation service provider – which is a property related service provider.
4. In contrast, there are certain types of closed-ended companies which directly or indirectly invest in Real Property and therefore are clearly investment companies. For example a company which:
 - a. raises capital from investors to invest in real estate, on the basis that the real estate will be selected or bought and sold on the basis of specified criteria, and profits generated are distributed as specified; or
 - b. invests in Securities (such as shares, debentures or units) of other real estate companies or property developers to generate profits through returns on such investments.

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 be a Public Fund, Exempt Fund or a Qualified Investor Fund (see Rule 13.5.1). As REITs are a subset of 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.

Hedge Fund

- 3.1.9** (1) A Fund is a Hedge Fund if it is a Fund which has some or all of the following characteristics:
- (a) it has a broad mandate giving its Fund Manager flexibility to shift strategy;
 - (b) it is aimed at achieving absolute returns rather than returns relative to the market;
 - (c) it employs some or all of the following techniques:
 - (i) the pursuit of absolute returns or “alpha” rather than measuring their investment performance relative to the market;
 - (ii) the use of short selling;

- (iii) the use of Derivatives for investment purposes;
 - (iv) the use of economic or debt leverage as well as leverage embedded in financial instruments such as Derivatives;
 - (v) the acquisition of distressed debt with a view to its realisation at a profit; or
 - (vi) the acquisition of “high yield” debt Securities.
- (2) A Fund is a Fund of Hedge Funds if it is dedicated to investing in a number of Hedge Funds or Sub-Funds of one or more Hedge Funds that meet the criteria in (1).

Umbrella Fund

- 3.1.10** A Fund is an Umbrella Fund if the contributions of the Unitholders in the Fund and the profits or income out of which payments are to be made to them are pooled separately in a number of Sub-Funds constituting separate parts of the Fund Property.

Guidance

1. An Umbrella Fund may be constituted as a Protected Cell Company.
2. Unitholders of an Umbrella Fund are entitled to exchange rights they have in one Sub-Fund for rights in another Sub-Fund of the same Umbrella Fund – see Article 11(2) of the Law.
3. A Sub-Fund of an Umbrella Fund is not a Feeder Fund or any other form of a discrete Fund.

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.

Exchange Traded Fund (“ETF”)

- 3.1.12** (1) A Fund is an Exchange Traded Fund (“ETF”) if it:
- (a) is constituted as an Open-ended Public Fund;
 - (b) has its Units available for trading throughout the day on an exchange that meets the criteria in (2); and
 - (c) has at least one market maker (Authorised Participant) who:
 - (i) purchases and redeems ‘creation Units’ of the Fund from the Fund Manager; and
 - (ii) is prepared to buy and sell Units of the Fund throughout the day on the relevant exchange.
- (2) An exchange meets the requirement in (1)(b) if it is:
- (a) operated by an Authorised Market Institution;
 - (b) regulated by a Financial Services Regulator in a jurisdiction that is a signatory to the IOSCO Multilateral Memorandum of Understanding for sharing information; or
 - (c) regulated by a Financial Services Regulator in a jurisdiction which has entered into a bilateral memorandum of understanding with the DFSA for sharing information.

Guidance

1. Rule 13.9.1 prohibits the use of the term Exchange Traded Fund or ETF unless a Fund meets the criteria in Rule 3.1.12. A similar prohibition applies to Foreign Funds that offer Units in or from the DIFC – see Rules 15.1.5(c) and 15.1.6(1)(c).
2. ETFs are different to other exchange traded Open-ended Funds. ETFs generally do not sell or redeem their Units to and from retail investors directly at net asset value (NAV). Instead, an Authorised Participant (“AP”) (i.e. a market maker appointed by the ETF Fund Manager) buys and redeems ETF Units, called creation Units, directly from the ETF Fund Manager. Generally, an AP that purchases a creation Unit of an ETF deposits with the ETF Fund Manager a ‘purchase basket’ of certain securities and cash and/or other assets identified by the ETF Manager that day, and then receives the creation Unit in return for those assets. The basket generally reflects a pro-rata portion of the ETF’s underlying holdings. After purchasing a creation Unit, the AP may hold or sell some or all of the Units in the basket on the relevant exchange.
3. The redemption process is the reverse of the purchase process. The AP redeems the creation Unit from the ETF, in exchange for a ‘redemption basket’ of securities and/or cash and other assets (or all cash) received from the Fund Manager. The AP also offers to buy and sell ETF Units on the relevant exchange, where retail investors can buy and sell ETF Units at a price close to NAV.

4. See further Guidance about ETFs under CIR 13.9.6.

Venture Capital Fund

3.1.13 A Fund is a Venture Capital Fund if it is an Exempt Fund or a Qualified Investor Fund and its investment objective is to invest:

- (a) at least 90% of its committed capital in unlisted business ventures that have been incorporated for no more than ten years at the time of the Fund's initial investment in each business; and
- (b) by means of Shares, convertible debt or other instruments carrying equity participation rights or reward that are directly issued by the unlisted business ventures.

Guidance

1. A Venture Capital Fund is expected to finance small to medium sized businesses which are in the early stages of business development and growth. Some business ventures would be using innovative technologies or new ways of doing business. However, where an established large-scale business spins off subsidiaries to expand existing businesses and operations, this would not be considered to be a start-up or small to medium sized business in which a Venture Capital Fund should invest.
2. The term "committed capital" refers to the total amount that Unitholders have agreed to contribute to the Venture Capital Fund.
3. A business venture is "unlisted" if it does not have securities admitted to an official list of securities of an exchange, or admitted to trading on a MTF or an OTF.
4. The type of investments referred to in Rule 3.1.13(b) include Warrants which confer rights to acquire unissued Shares or Units in an unlisted business venture. However, Warrants over unissued Debentures do not confer equity participation rights and are not included. Structured Products can also be used if the contractual rights confer on the Venture Capital Fund the right to participate in profits and assets of the business venture, in which the Fund invests.
5. A Venture Capital Fund may also invest in a business venture using tokens that give the Fund rights attaching or analogous to holding Shares or Units, i.e. equity participation rights in the profits and assets of the venture, with or without governance rights. However, a right to receive utility tokens or payment tokens issued by a business venture, for example, operating in the distributed ledger or similar technology sector, which does not provide such rights, will not be an equity participation right referred to in Rule 3.1.13(b). The DFSA may consider, on a case-by-case basis, any new arrangements relating to tokens as a means of investing in a venture operating in distributed ledger or similar technology sector, to assess whether those tokens meet the criteria in Rule 3.1.13(b).

Investment Token Funds

3.1.14 A Fund is an Investment Token Fund if its main purpose is investing in Investment Tokens.

Credit Fund

- 3.1.15** (1) A Domestic Fund is a Credit Fund if its investment objective is to use at least 90% of its Fund Property to Provide Credit, including by acquiring loans.
- (2) A Foreign Fund is a Credit Fund if its investment objective is, or includes, Providing Credit, including by acquiring loans.
- (3) In this Rule, “acquire” a loan means to purchase, take transfer of, take credit risk or part of credit risk attaching to, or take other exposures to, the loan.

Crypto Token Funds

- 3.1.16** A Fund is a Crypto Token Fund if its main purpose is investing in Crypto Tokens.

Guidance

A Fund in the DIFC is, except as specified in GEN Rule 3A.2.1(3), only permitted to invest in a Recognised Crypto Token i.e. a Crypto Token that the DFSA has recognised as meeting criteria specified in GEN section 3A. See also the definition in GEN Rule 3A.1.2 of when a Fund invests in a Crypto Token, which applies for the purposes of the requirement in GEN 3A.2.1.

4. EXCLUDED OFFERS

4.1 Excluded transactions and offers

4.1.1 Pursuant to Article 50(2) of the Law, the activities specified in Rules 4.1.2, 4.1.3, 4.1.4 and 4.1.5 are hereby prescribed as not constituting an Offer for the purposes of the Law and the Rules.

4.1.2 A Person does not make an Offer of a Unit by offering to sell or transfer a Unit that is owned by that Person if the offer to sell or transfer:

- (a) is capable of acceptance only by the Person to whom that offer is made; and
- (b) is not made by way of a financial promotion as defined in Article 19(3) of the Law.

Guidance

While a Person who makes personal offers of the kind referred to in Rule 4.1.2 does not attract the Prospectus disclosure obligations in Part 7 of the CIR module, if that Person frequently sells Units held by him, he would be likely to be 'Dealing in Investments as Principal'. As a result, such a Person would need to be licensed. Similarly, a Person who obtains Units for the purposes of secondary sales would be likely to be regarded as making those sales "by way of business" and would thus trigger the need to be licensed.

4.1.3 (1) A Person does not make an Offer of a Unit if that Person is an Authorised Firm and it undertakes a Transaction in relation to a Unit of a Fund if the Transaction is:

- (a) an Execution-Only Transaction undertaken for or on behalf of a Client;
- (b) a trade executed for or on behalf of a Client in accordance with a Discretionary Portfolio Management Agreement entered into with that Client; or
- (c) effected with the Fund Manager of a Fund for the purposes of redeeming a Unit of that Fund for or on behalf of a Client.

4.1.4 A Person does not make an Offer of a Unit if that Person is an Authorised Firm and the Offer is made only to, or directed only at, a Market Counterparty.

4.1.5 A Person does not make an Offer of a Unit if:

- (a) the Unit is of a Passported Fund;
- (b) the DIFC is a Host Jurisdiction in relation to the Passported Fund;
- (c) the Person making the Offer is the Fund Manager of the Fund, its Agent or another Licensed Person; and

- (d) the Offer is made in accordance with the offer requirements in the Home Jurisdiction of the Fund, including relevant Fund Protocol rules or regulations.

PART 3: FUND FUNCTIONARIES

5 FUND ADMINISTRATORS

5.1 General

Application

- 5.1.1** (1) Subject to (2), this chapter applies to an Authorised Firm which is appointed as a Fund Administrator to either a Domestic or a Foreign Fund.
- (2) This chapter does not apply to a Fund Manager or Trustee to the extent that it carries on an activity of Providing Fund Administration within the Financial Services of Managing a Fund or of Acting as the Trustee of a Fund.

Compliance with the AML Rules

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

Client Money and Assets

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

Delegation and service level agreements

- 5.1.4**
- (1) A Fund Administrator of a Domestic Fund for which it is Providing Fund Administration must have a Delegation Agreement that meets the requirements in App1 with the Fund Manager or Trustee of the Fund.
 - (2) Paragraph (1) does not apply to a Fund Administrator of a Qualified Investor Fund.

Guidance

Section 8.12 of this module governs the delegation of activities by a Fund Manager or where appointed the Trustee.

- 5.1.5**
- (1) A Fund Administrator of a Foreign Fund for which it is Providing Fund Administration must have a service level agreement with the fund manager of that Foreign Fund setting out the functions and service standards that will be applied to the provision of such administration.
 - (2) The agreement in (1) must ensure that the Fund Administrator cannot in turn delegate the activities and functions delegated to it by the fund manager of the Foreign Fund unless the sub-delegate has been approved by that fund manager.
 - (3) The agreement in (1) must also require the Fund Administrator to retain any relevant work or records relating to the delegated activities and functions where the contract is terminated either by the fund manager or the Fund Administrator.

Guidance

The DFSA would expect any agreement required under Rule 5.1.5 to include as a minimum the following provisions:

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

Record keeping

- 5.1.6** A Fund Administrator must maintain records which are sufficient to show and explain transactions in relation to each of the specific activities and functions which are being provided to each Fund, in respect of Unitholders or potential Unitholders of the Fund as appropriate.
- 5.1.7** The records required under Rule 5.1.6 must be:
- (a) capable of demonstrating to the Governing Body of the relevant Fund that any accounts prepared comply with the applicable requirements in this module or any other applicable legislation;
 - (b) retained by the Fund Administrator for at least 6 years from the date to which they relate;
 - (c) at all reasonable times, open to inspection by the DFSA, the Fund's Auditor and any Person providing oversight functions for the relevant Fund; and
 - (d) if requested by the DFSA, capable of reproduction within a reasonable period not exceeding 3 days, in hard copy and in English.

6 EXTERNAL FUND MANAGERS AND EXTERNAL FUNDS

Guidance

This chapter sets out the detailed requirements that apply to External Fund Managers and External Funds. Article 20(5) of the Law contains the criteria to be classified as an External Fund Manager and Article 14(1) of the Law contains the criteria for an External Fund.

6.1 Requirements for External Fund Managers

Application

6.1.1 This section applies to an External Fund Manager.

Subjecting to the DIFC jurisdiction

6.1.2 An External Fund Manager must:

- (a) be subject to regulation by a Financial Services Regulator in a Recognised Jurisdiction or a jurisdiction otherwise acceptable to the DFSA with respect to its activity of managing Fund; and
- (b) subject itself to the DIFC laws and the jurisdiction of the DIFC Courts so far as they apply to its activities relating to the Domestic Fund, and, for that purpose, sign the appropriate declaration contained in AFN.

Appointment of Fund Administrator/Trustee

6.1.3 (1) An External Fund Manager must:

- (a) appoint to the Fund a Fund Administrator or a Trustee licensed by the DFSA (hereafter referred to as the “Appointed Fund Administrator” or “Appointed Trustee”) before any Units in that Fund are Offered to any Person;
- (b) nominate, and require, the Appointed Fund Administrator or Appointed Trustee, as the case may be, to be its agent in relation to its dealings with the DFSA and Unitholders and prospective Unitholders of the Fund; and
- (c) require the Appointed Fund Administrator or Appointed Trustee to, and for this purpose grant to that Person such powers as are necessary to, facilitate:
 - (i) if it is an Open-ended Fund, the issue, resale and redemption of the Units of the Fund and the publication of the price at which such issue, resale or redemption will occur as provided under the Law and the Rules;
 - (ii) the sending to Unitholders of the Fund all the reports required under the Law and the Rules;

- (iii) access to the Constitution and most recent Prospectus of the Fund to Unitholders and prospective Unitholders;
- (iv) access to the Unitholder register; and
- (v) access to the books and records relating to the Fund as required by the DFSA and any person providing the oversight functions of the Fund,

in or from a place of business in the DIFC.

- (2) If the Fund is structured as an Investment Trust, the Fund Manager may appoint the Trustee as its Appointed Trustee for the purposes of (1).
- (3) An External Fund Manager must continue to meet the criteria in Article 20(5) of the Law.

Guidance

In addition to the requirements in this chapter which apply to the Appointed Fund Administrator or Appointed Trustee, Persons who are appointed to Funds as Fund Administrators or Trustees have other obligations (see for example chapter 5.1).

Use of a Fund Platform not permitted

- 6.1.4** An External Fund Manager must not use a Fund Platform.

External management of Credit Fund not permitted

- 6.1.5** An External Fund Manager must not manage a Domestic Fund that is a Credit Fund.

No external management of Funds investing in Crypto Tokens

- 6.1.6** An External Fund Manager must not manage a Domestic Fund that invests in Crypto Tokens.

6.2 Requirements for External Funds

Guidance

Article 14(1) of the Law provides that a Fund is an External Fund if that Fund:

- a. is established in a jurisdiction other than the DIFC; and
- b. is managed by a Fund Manager which is an Authorised Firm.

Application

- 6.2.1** This section applies to the Fund Manager of an External Fund.

6.2.2 The Fund Manager of an External Fund must:

- (a) have systems and controls which are adequate to ensure compliance with the requirements that apply to the External Fund in the jurisdiction in which it is established or domiciled; and
- (b) inform the DFSA of the jurisdiction in which the Fund is or is to be established or domiciled and the nature of regulatory requirements applicable to the Fund in the host jurisdiction.

Guidance

1. A Fund Manager of an External Fund is generally not subject to the requirements that otherwise apply to other Domestic Funds (see Article 14(2) of the Law). However, some limited requirements apply to External Funds. See for example the requirements referred to in Guidance note (2) below and the disclosure required under Rules 14.2.4 – 14.2.7. Should such a requirement conflict with any requirements that apply to an External Fund in the jurisdiction in which the Fund is domiciled, the Fund Manager may apply to the DFSA for appropriate waivers or modifications of the DFSA requirements.
2. A Fund Manager of an External Fund should be mindful that overarching obligations applicable to Authorised Firms continue to apply to them, including Article 22 of the Law, Article 38 of the Law, GEN chapter 5 (Systems and controls requirements) and GEN section 4.2 (The Principles for Authorised Firms). As an Authorised Firm, the Fund Manager would need to observe high standards of integrity and fair dealing, and apply due skill, care and diligence, in managing an External Fund. Similarly, it is required to have adequate systems and controls to ensure that the affairs of the Fund are effectively managed, taking into account the nature, scale and complexity of the Fund's operations and the investment objectives and needs of its investors
3. The DFSA may, upon receipt of the information referred to in Rule 6.2.2(b), assess the desirability of establishing an External Fund in the particular jurisdiction chosen by the Fund Manager. Relevant considerations include:
 - a. the Fund Manager's need to establish the Fund in the particular jurisdiction for reasons such as the physical location of the Fund assets or investor preference;
 - b. any regulatory risks arising from establishing the External Fund in the relevant jurisdiction, particularly if the Fund is to be open to retail investors; and
 - c. whether the relevant jurisdiction complies with the FATF or other relevant international standards or requirements.

Restriction on fund management of external Credit Fund
6.2.3 A Fund Manager must not manage an External Fund that is a Credit Fund unless the External Fund is a Qualified Investor Fund.

Restrictions on an External Fund investing in Crypto Tokens
6.2.4 (1) A Fund Manager must not manage an External Fund that invests in Crypto Tokens unless:

- (a) the investment in Crypto Tokens is limited to Recognised Crypto Tokens and does not exceed 20% of the gross asset value of the External Fund; and
- (b) the External Fund:
 - (i) has its Units offered to Persons only by way of a Private Placement;
 - (ii) has its Units offered to Persons only who meet the criteria to be classified as Professional Clients; and
 - (iii) requires an initial subscription of at least US\$50,000 to be paid by a person to become a Unitholder in the Fund.
- (2) A Fund Manager that manages an External Fund referred to in (1) must:
 - (a) ensure that an Eligible Custodian safeguards and administers the Fund's Recognised Crypto Tokens;
 - (b) provide Unitholders, upon request, with relevant and up-to-date information about the performance and management of the Fund's Recognised Crypto Tokens; and
 - (c) conduct daily valuations of the Fund's investments in Recognised Crypto Tokens and keep a record of those valuations.

Guidance

The gross asset value of a Fund under Rule 6.2.4(1)(a) should be calculated as the total value of the Fund Property without making any deductions, such as deductions for expenses or outstanding borrowing.

6A USING A FUND PLATFORM

Guidance

Overview

1. The DIFC Incorporated Cell Company (ICC) Regulations ('the ICC Regulations') provide for the establishment of an Incorporated Cell Company and its Incorporated Cells. The Incorporated Cells are stand-alone companies distinct from each other and from the ICC itself, of which they are cells. The ICC Regulations permit such companies to be used to conduct Fund business or Insurance Business.
2. The ICC contains the infrastructure (e.g. systems and controls) for the exclusive use by the Fund Manager to manage Funds established as Incorporated Cells of the ICC. The ICC is the 'core' and each Incorporated Cell of the ICC is a Fund on the ICC. Under the ICC Regulations, an ICC cannot itself be constituted as a Fund or act as a Fund Manager.
3. A Fund Manager with an endorsement to use a Fund Platform (see GEN 2.2.7A) can incorporate an Incorporated Cell Company to assist it to manage any type or specialist classes of Fund, in accordance with the applicable requirements in the Law and these Rules and in the DIFC Companies Law and ICC Regulations. However, a Fund Manager cannot use the Fund Platform to create, or provide services to, a type of Fund if it is contrary to its authorisation. For example, a Fund Manager permitted under its Licence to manage only QIFs cannot use the Fund Platform to establish or manage Exempt or Public Funds.
4. A Fund Manager may use the infrastructure available in the ICC (the core) to provide a range of services relating to the Funds on the ICC. These services include implementing the Fund's investment mandate (e.g. investment selection), carrying out administrative functions such as issuing, transferring and redeeming Fund Units, valuing Fund assets, account keeping, financial reporting and carrying out compliance and oversight functions, in relation to each Fund constituted as an Incorporated Cell.
5. The activities which the Incorporated Cell Company carries out for the Funds are not those of a third party service provider appointed by the Fund Manager, however the Fund Manager remains legally responsible to Unitholders in the Funds for acts or omissions of the Incorporated Cell Company (see Rule 6A.1.3).

Incorporated Cell Companies and Protected Cell Companies

6. While both Incorporated Cell Companies (ICCs) and Protected Cell Companies (PCCs) have a similar structure as both have a 'core' containing the infrastructure to manage their 'cells', there is a significant difference between an ICC and a PCC. Unlike a cell of a PCC, each Incorporated Cell of an ICC is a separate legal entity operating under its own name and with its own directors and Articles of Association. Under the ICC Regulations, an Incorporated Cell is not a subsidiary of the ICC. By contrast, a PCC and its cells form a single Fund, with each cell being a Sub-Fund of the PCC.
7. A Fund Manager wishing to offer different investment strategies within a Single Fund (e.g. an Umbrella Fund) and different asset classes within its Sub-Funds to investors who can freely switch their investment strategies, can use the PCC structure. A Fund Manager wishing to manage different types or specialist classes of Funds, which are separate legal entities, using the infrastructure available in the core, can only do so by establishing an ICC.

Funds constituted as Incorporated Cells

8. Each Incorporated Cell of an ICC that is established as a Fund will need to be registered with, or notified to, the DFSA as a separate Fund (as it is a separate legal entity). Unless

specified otherwise, the requirements in the Law and these Rules apply to an Incorporated Cell that is a Fund in the same way that the requirements apply to other Funds that use a company structure. This includes, for example, general requirements for the management or operation of Funds and requirements that apply according to whether the Fund is a Public Fund, Exempt Fund or QIF and relevant requirements for specialist classes of Funds.

9. An ICC is incorporated under the DIFC Companies Law, and so each Incorporated Cell of that ICC that is used to conduct Fund business is a Domestic Fund as defined in the Law (see Article 26(2) of the Law).
10. An External Fund Manager is not permitted to use a Fund Platform (see Rule 6.1.4).
11. A Fund Manager that uses the ICC structure to establish and manage Funds is not prevented from also managing other Funds outside that structure. However, the Fund Manager cannot use the infrastructure available in the Incorporated Cell Company to provide services to Funds that are not Incorporated Cells of the ICC (see Rule 6A.1.4(c)).
12. This chapter sets out various requirements that apply to a Fund Manager that uses a Fund Platform to manage Funds constituted as Incorporated Cells of that ICC. These requirements should be read in conjunction with the other obligations, particularly under the ICC Regulations.

Application of chapter

- 6A.1.1** This chapter applies to a Fund Manager that uses a Fund Platform.

General application of CIR to Incorporated Cell Companies

- 6A.1.2** Except as otherwise provided in these Rules, the requirements in CIR that apply:
- (a) to a Fund Manager, apply to a Fund Manager when it uses an Incorporated Cell Company (ICC) to provide infrastructure to a Fund; and
 - (b) in relation to a Fund that is a Company, apply in relation to a Fund that is an Incorporated Cell of an ICC.

Guidance

Because each Fund (i.e. an Incorporated Cell) is a stand-alone Fund, the Fund Manager using a Fund Platform needs to comply with all the applicable requirements in respect of each such Fund, although it is a Fund on a Fund Platform.

Fund Manager responsible for acts of Fund Platform

- 6A.1.3** A Fund Manager using a Fund Platform remains responsible for any acts or omissions of the ICC as if they were the acts or omissions of the Fund Manager.

The Fund Manager's obligations when using a Fund Platform

- 6A.1.4** Without limiting any other obligations of the Fund Manager under the Law or these Rules, a Fund Manager using a Fund Platform must ensure that the ICC:
- (a) maintains adequate infrastructure to provide services to Funds on the Fund Platform, taking into account the type or specialist class of each particular Fund;

- (b) does not carry on any activity in relation to a Fund on the Fund Platform, other than the activities which the Fund Manager is authorised and permitted to undertake in respect of the relevant Fund;
- (c) does not provide any service to a Fund that is not an Incorporated Cell of the ICC; and
- (d) maintains procedures and up-to-date records to demonstrate to the DFSA:
 - (i) the activities that the ICC undertakes in relation to each Fund on the Fund Platform; and
 - (ii) that all applicable requirements have been met in respect of each Fund on the Fund Platform, taking into account the type or specialist class of the relevant Fund.

Guidance

1. Under Rule 6A.1.4(b), a Fund Manager using a Fund Platform cannot establish on its Fund Platform any Funds other than a QIF if its authorisation is limited to managing QIFs. What type of Funds a Fund Manager can manage is reflected in the fees applicable to Fund Managers under FER.
2. Rule 6A.1.4(c) does not prevent a Fund Manager from being able to share resources available to it (such as its IT systems and staff) between a Fund Platform and other Funds the Fund Manager manages on a stand-alone basis. However, a Fund Manager allocating its resources between the Fund Platform and such a Fund should be able to demonstrate (for example, through its written records) effective functional separation.

Directors of the Fund Platform and its Funds

6A.1.5 A Fund Manager using a Fund Platform must ensure that if the ICC or an Incorporated Cell of the ICC has any Directors other than the Directors of the Fund Manager, that the Fund Manager exercises control over the board of the ICC or Incorporated Cell, as the case may be, either by having:

- (a) a majority of its Directors on the board of the ICC or the Incorporated Cell; or
- (b) the power to veto decisions of that board, if the Fund Manager reasonably believes that the decision will have an adverse impact on the ICC or the Incorporated Cell.

6A.1.6 A Fund Manager using a Fund Platform must not allow a Fund that is an Incorporated Cell of the Incorporated Cell Company to have a Corporate Director.

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

7 CONSTITUTION

7.1 Application

- 7.1.1** (1) This chapter applies to a Fund Manager, and where appointed a Trustee, of a Domestic Fund.
- (2) Only this Rule and Rules 7.1.2(1)(b), 7.1.2(2) and 7.1.4 apply to a Fund Manager and, where appointed, a Trustee, of a Qualified Investor Fund.

Instrument constituting the Fund

- 7.1.2** (1) The Fund Manager and, in the case of an Investment Trust, both the Fund Manager and the Trustee of a Fund, must ensure that the written Constitution which every Fund is required to have pursuant to Article 27(1) of the Law:
- (a) contains the statements and disclosures prescribed in the table in App5 as are applicable to the Fund; and
 - (b) does not contain any provision that is prejudicial to the interests of the Unitholders generally or to the Unitholders of any class of Units.
- (2) The Fund Manager and, in the case of an Investment Trust, both the Fund Manager and the Trustee, are responsible for maintaining the Constitution and for making necessary alterations to it in accordance with the applicable legislation.

Guidance

In the case of a Fund on a Fund Platform, such a Fund, being an Incorporated Cell of an Incorporated Cell Company, needs its own Articles of Association under the ICC Regulations.

- 7.1.3** (1) A Fund Manager may issue and in the case of an Investment Trust, may instruct the Trustee to issue such classes of Units as are set out in the Constitution, provided the rights of any class are not unfairly prejudicial to the interests of the Unitholders of any other class of Units in that Fund.
- (2) Units whose issue may be limited can be issued by a Fund Manager if permitted by the Constitution and if in accordance with the conditions set out in the Prospectus, provided that such issue will not materially prejudice any existing Unitholders in the Fund.
- (3) In the case of an Investment Trust, the Trustee must take reasonable measures to ensure, before carrying out the Fund Manager's instructions, that those instructions comply with the requirements in (1) and (2).

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. In the case of a Protected Cell Company or an Incorporated Cell Company, the PCC and the ICC Regulations confer additional powers on the DFSA to give a direction in relation to those companies and their cells.
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 specialist class of Fund or Sub-Fund, where the relevant requirements relating to that class of specialist Fund are not met; or
 - f. is in the opinion of the DFSA likely to offend the public.

- 7.1.5** 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.

Alterations to the Constitution of a Fund

Guidance

Articles 35 and 36 of the Law govern the process of making alterations to a Constitution. These requirements apply to the alteration of Articles of Association of a Fund on a Fund Platform (i.e. an Incorporated Cell of an Incorporated Cell Company).

8 MANAGEMENT AND OPERATION OF A FUND

Guidance

While most of the provisions in this chapter are of general application to all Domestic Funds, in a few instances, some provisions which are specific to a certain type of Domestic Fund, for example a Public Fund, are retained in this Part. The DFSA has, instead of removing such provisions to Part 5 which contains provisions applicable to specific types of Domestic Funds, retained them in this Part because those requirements are integral to the main provisions applying to all Domestic Funds and therefore need to be read together.

8.1 General management duties

Application

- 8.1.1** (1) This chapter applies to a Fund Manager, and if appointed the Trustee, of a Domestic Fund, except as provided in (3) and (4) or where otherwise provided in this chapter.
- (2) This chapter also applies, where expressly provided, to a Fund Administrator or Eligible Custodian of a Domestic Fund.
- (3) Only the following requirements in this chapter apply in relation to a Qualified Investor Fund:
- (a) Rule 8.1A.1;
 - (b) Rule 8.1A.2;
 - (c) Rule 8.3.1(2), if the QIF is a Venture Capital Fund;
 - (d) section 8.3, if the QIF is a Credit Fund;
 - (e) Rule 8.4.1(1)(a);
 - (f) Rule 8.6A.1, if the QIF is an Open-ended Fund; and
 - (g) Rule 8.10.1.
- (4) The following requirements in this chapter do not apply in relation to an Exempt Fund:
- (a) if the Exempt Fund is a Venture Capital Fund, Rule 8.2.2(2), section 8.3 (except for Rule 8.3.1(2)) and section 8.4 (except for Rule 8.4.1(1)(a)); and
 - (b) if the Exempt Fund is a Credit Fund, Rule 8.2.2(2).

Guidance

1. Article 22 of the Law requires the Fund Manager of a Domestic Fund to manage the Fund in accordance with the Fund's Constitution and its most recent Prospectus and to perform the functions conferred on it by the Constitution and the Law. In doing so, the Fund Manager is required under that Article to comply with any conditions or restrictions on its Licence as well as any limitations or requirements imposed by or under the Law or Rules.
2. Article 38 of the Law requires the Fund Manager to establish and maintain systems and controls including but not limited to financial and risk controls to ensure sound management of the Fund in accordance with the Fund's Constitution and its most recent Prospectus, taking due account of the nature, scale and complexity of the Fund's investments and operations. There is an additional obligation on Fund Managers of all Open-ended Domestic Funds to have adequate systems and controls to address liquidity risks in such Fund – see Rule 8.6A.1.
3. The requirements in this chapter apply to External Fund Managers in the same manner as they apply to Fund Managers of Domestic Funds, unless otherwise provided. External Fund Managers and External Funds attract additional requirements, which are set out in chapter 6.
4. This chapter sets out more detailed obligations of the Fund Manager, and where appointed the Trustee, of a Domestic Fund with regard to:
 - a. Duties relating to Fund Property;
 - b. Conflicts of interests;
 - c. Valuation of Fund;
 - d. Determination of single price;
 - e. Issue and redemption of Units;
 - f. Unitholder register;
 - g. Meetings of Governing Body and Unitholders;
 - h. Approvals and notifications;
 - i. Maintenance of records;
 - j. Capital;
 - k. Delegations and outsourcing; and
 - l. Charges and expenses.
5. When a Fund Manager manages Funds that are Incorporated Cells of an ICC, the Fund Manager is subject to the additional duties under chapter 6A (as well as the duties in this chapter). The Fund Manager will need to ensure that it meets all of its obligations relating to each Fund on the Fund Platform, even if some activities or functions of the Fund Manager are carried out by the Fund Platform.

8.1A Corporate Director

Application

8.1A.1 This chapter applies to:

- (a) an Investment Company which elects to have its sole Corporate Director act as its Fund Manager; and
- (b) that Corporate Director.

Requirements relating to a Corporate Director

- 8.1A.2** (1) The Investment Company must:
- (a) not have any directors other than a Corporate Director; and
 - (b) have Articles of Association that permit the company to appoint that Corporate Director as its Fund Manager.
- (2) The Corporate Director must ensure that:
- (a) the requirements in (1) are met;
 - (b) it is registered under the Companies Law of the DIFC;
 - (c) it has at least two individuals appointed as its directors; and
 - (d) it does not act as the Fund Manager of any Fund other than the Investment Company or Manage Assets for another Person.

Guidance

1. The Companies Regulations permit Investment Companies to have a sole corporate director. An Investment Company has the option to be internally managed, by having that corporate director act as its Fund Manager. Alternatively, an Investment Company has the option to have an 'external' Fund Manager. In both cases, the Fund Manager must be licensed and is legally accountable to Unitholders in the Fund (i.e., to its shareholders) for the proper management of the Fund (i.e. the Fund Property).
2. A Corporate Director of an Investment Company, which elects to be internally managed, is required to meet all the other requirements that are applicable to an applicant for a Fund Manager's Licence, including the capital requirements (in PIB), and the adequate systems and controls requirements (in GEN). However, as such a Corporate Director can only act as the Fund Manager of the Investment Company (and not of any other Funds), the systems and controls requirements would apply proportionately to the nature and scale of the activities of that company.
3. A Corporate Director that is a Fund Manager may delegate and outsource its functions and activities in the same manner and subject to the same requirements as other Fund Managers. A Corporate Director who outsources functions cannot thereby delegate responsibility for meeting the Fund Manager's duties and obligations and its legal accountability to investors in the Fund. Please refer to GEN Rules 5.3.21 and 5.3.22 and CIR Rule 8.12.4 for outsourcing and delegation requirements applicable to Fund Managers.

8.2 Duties in relation to Fund Property

Fund Manager

- 8.2.1** (1) A Fund Manager must make decisions as to the constituents of the Fund Property that are in accordance with the Constitution of the Fund and investment objectives and policy stated in the Prospectus.
- (2) A Fund Manager must take all steps and execute all documents to ensure that transactions relating to the Fund Property are properly entered into for the account of the relevant Fund or Sub-Fund.
- (3) A Fund Manager of an Investment Trust must ensure that instructions it gives to the Trustee in relation to the Fund Property are in accordance with the agreement creating the Investment Trust, the Fund's Constitution, and the Prospectus.
- 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 in respect of Real Property:
 - (i) that is held by the Fund Manager or by an Incorporated Cell Company 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;
 - (b) a Private Equity Fund where the Fund Manager has made adequate alternative arrangements that are in accordance with Rule 13.3.1; or
 - (c) an Exempt Fund where the Fund Property:
 - (i) comprises of an interest in the operation of a Real Property asset (such as an investment in an infrastructure project); and
 - (ii) the Fund Manager makes alternative arrangements to ensure that the Fund Property is clearly distinguishable as belonging to the Fund, and is segregated from the assets of the Fund Manager and from the assets of any other Fund which the Fund Manager manages.

- (4) Nothing in (3) is to be taken as permitting Fund Property that consists of Crypto Tokens to be held by a Person other than an Eligible Custodian.

Guidance

1. 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.
2. Where a Fund invests in infrastructure projects (for example, the development of public facilities such as roads, railways or bridges), the interest acquired by the Fund may not necessarily be suited to the conventional forms of holding custody of Real Property. Where this is the case, a Fund Manager may use adequate alternative custody arrangements that meet the requirements in CIR 8.2.2(3)(c)(2)(ii).

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, 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, except as provided in Rule 8.2.5 and 8.2.6, 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;
- (e) a legal entity that is authorised to provide custody services, and is supervised, by a Financial Services Regulator in a Recognised Jurisdiction;

- (f) a legal entity where it, or its holding company, is authorised to provide custody services and is supervised by a Financial Services Regulator in another jurisdiction which is a Zone 1 country;
- (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
- (h) a legal entity that:
 - (i) has at least 50% of its Shares owned by, or is a wholly owned Subsidiary of another legal entity that has least 50% of its Shares owned by one of the national governments of the five member states of the Gulf Cooperation Council, other than the State; and
 - (ii) is authorised to provide custody services, and supervised, by a Financial Services Regulator of at least one of the national governments specified in (i).

8.2.5 For a Public Fund (other than a Property Fund) that is a Passported Fund, the Eligible Custodian must be a Person who meets the requirements in FPR Rule 6.5.3.

8.2.6 (1) For a Fund that invests in Crypto Tokens, an Eligible Custodian of the Fund's Crypto Tokens is a Person who is a separate legal entity from the Fund Manager and is either:

- (a) an Authorised Firm whose Licence authorises it to Provide Custody of Crypto Tokens; or
 - (b) a Person whom the Fund Manager has reasonably determined to have adequate custody and asset safety arrangements after performing proper due diligence on that Person.
- (2) The due diligence and determination under (1)(b) must take into account the following factors:
- (a) whether the Person is authorised by a Financial Services Regulator to provide custody of Crypto Tokens;
 - (b) whether the Person's systems and controls ensure proper safeguarding and segregation of Crypto Tokens;
 - (c) the adequacy of the Person's policies and procedures on storage of Clients' private keys to protect against hacking, theft or fraud;
 - (d) the robustness of the Person's technology governance;
 - (e) the Person's independence and management of conflicts of interests; and
 - (f) whether the Person provides appropriate Client disclosures and periodic reporting.

8.3 Conflicts of interest

- 8.3.1** (1) The Fund Manager and, if it is a Fund structured as an Investment Trust, the Trustee, must take reasonable steps to ensure that in any dealing in relation to the Fund Property such dealings do not give rise to a conflict of interest.
- (2) Where a conflict of interest arises, whether in dealings with Related Parties or otherwise, the Fund Manager and, if appointed, the Trustee, must disclose to the Unitholders the nature of the conflict and how the conflict will be managed.
- (3) The Fund Manager must take reasonable steps to establish and implement remuneration policies and practices which:
- (a) are consistent with sound and effective risk management of the Funds it manages; and
 - (b) do not, to the extent practicable, encourage risk-taking inconsistent with the investment objectives and risk profile of such Funds.

Guidance

GEN Rule 4.2.12 (Principle 12) requires an Authorised Firm to have remuneration structures and strategies which are well aligned with the long term interests of the firm, and are appropriate to the nature, scale and complexity of its business. That requirement is extended under Rule 8.3.1(3) to cover remuneration practices relating to Funds which a Fund Manager manages.

Related Party Transactions

- 8.3.2** (1) A Fund Manager must not enter into a Related Party Transaction unless it is in accordance with the requirements in this Rule.
- (2) A Fund Manager must ensure that any Related Party Transaction 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:
- (a) issue to the Unitholders a circular containing the details of the proposed transaction; and
 - (b) 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.
- (4) The Fund Manager must:
- (a) if Unitholders' prior approval is required pursuant to (3)(b), 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; and
 - (c) include, in the annual report of the Fund, the total value of any Related Party Transactions, their nature and the identities of the Related Parties 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.
 - (7) The requirements in (3) and (4) do not apply to the Fund Manager of an ETF in relation to the appointment of a Price Information Provider, who is a Related Party, where such an appointment occurs at the time of establishment of the ETF.

Guidance

1. If a Fund Manager of an Exchange Traded Fund (ETF) has an arrangement with a Related Party, for that Related Party to provide an index or benchmark, then the Fund Manager is required to also treat that arrangement as a Related Party Transaction (see Rule 13.9.5) and comply with Rule 8.3.2 in relation to the transaction.
2. An ETF Fund Manager is not required to comply with the requirements in Rule 8.3.2(3) and (4) in relation to a Price Information Provider (PIP), who is a Related Party and provides a custom made index or other benchmark which the ETF tracks, if that appointment takes place at the time of establishing the ETF. This is because, generally, there are no investors in the Fund at that time to give the prior approval that is envisaged.
3. However, such an ETF Fund Manager does need to comply with the arm's length transaction requirement in Rule 8.3.2(2) and, also, disclose in the Fund Prospectus that it tracks a custom made index, or other benchmark, provided by a Related Party PIP (under Rule 14.4.8(d)).
4. In relation to a Fund on a Fund Platform, the definition of a Related Party in GLO includes any other Fund on the Fund Platform.

Best execution and fair allocation

8.3.3 Without limiting the generality of the obligations of the Fund Manager including those in Rules 8.3.1 and 8.3.2, the Fund Manager's systems and controls must include policies and procedures which are designed to ensure that:

- (a) when executing or procuring execution of trades for or on behalf of the Fund, the transactions are executed:
 - (i) as soon as reasonably practicable after a decision to effect a transaction has been made; and
 - (ii) on the best terms available at the time of dealing;
- (b) where the Fund Manager undertakes investment transactions for or on behalf of a Fund which it operates and one or more other Funds or Clients, there is timely and fair allocation of trades to each Fund and Client;
- (c) trading of the investment portfolio forming part of the Fund Property is not excessive in light of the Fund's investment objective as stated in its Constitution and the most recently issued Prospectus; and
- (d) any underwriting arrangements it undertakes are carried out in the best interest of the Fund.

Guidance

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

8.4 Valuation of Fund Property

- 8.4.1** (1) A Fund Manager must:
- (a) ensure that the Fund Property is valued at regular intervals as appropriate to the nature of the Fund, except where such valuation is suspended in any circumstances that are set out in the Fund's Constitution or Prospectus;
 - (b) prepare a valuation in accordance with (3) for each relevant type of Unit at each relevant valuation point; and
 - (c) as soon as practicable after each valuation point, both publish and make available to the Unitholders and prospective Unitholders of the Fund, the price of the Units of the Fund.
- (2) The value of the Fund Property is the net value of the Fund Property after deducting any expenses and outstanding borrowings, including any capital outstanding on a mortgage of any Real Property.
- (3) The value of the Fund Property must, except as otherwise provided in this section, be determined in accordance with the provisions of the Constitution and the Prospectus, as appropriate.
- (4) For the purposes of (2), any charges that were paid, or would be payable, on acquiring or disposing of the asset must be excluded from the value of that asset.
- (5) A Fund Manager must not make a dilution levy or dilution adjustment unless stated as permitted in the Fund's Prospectus. Such a measure must be applied in a fair manner to reduce dilution and solely for that purpose.

Guidance

1. A dilution levy or adjustment means a charge of such amount or such rate as is determined by a Fund Manager of a Fund to be made for the purpose of reducing the effect of dilution, i.e., the amount of dealing costs incurred, or expected to be incurred, by a Fund Manager, to the extent that these costs may reasonably be expected to result, or to have resulted, from the acquisition or disposal of Investments by the Fund Manager as a consequence (whether or not immediate) of the increase or decrease in the cash resources of the Fund resulting from the issue or cancellation of Units over a period.
2. Dealing costs referred to in Guidance 1 include both the costs of dealing in an Investment, professional fees incurred, or expected to be incurred, in relation to the acquisition or disposal of Real Property and, where there is a spread between the buying and selling prices of the Investment, the indirect cost resulting from the differences between those prices.

- 8.4.2** (1) A Fund Manager must:
- (a) ensure that at each valuation point there are at least as many Units in issue of any class as there are Units registered to Unitholders of that class; and

- (b) not do, or omit to do, anything that is or is reasonably likely to confer on itself a benefit or advantage at the expense of a Unitholder or prospective Unitholder.
- (2) Where a Fund Manager has not complied with (1) or there is any other valuation error, it must correct the error as soon as possible and must reimburse the Fund any costs it may have incurred in correcting the position, subject to any reasonable minimum level for such reimbursement as set out in the Prospectus.
- (3) If the Fund is structured as an Investment Trust:
 - (a) the Fund Manager must notify the Trustee of the matters specified in (2);
 - (b) the Trustee must also:
 - (i) take reasonable steps to ensure that the Fund Manager complies with the matters specified in (1) and (2); and
 - (ii) provide any other notification required under these Rules.

Guidance

Appendix 4 (App4) contains guidance on asset valuation and pricing.

8.5 Determination of single price

- 8.5.1**
 - (1) A Fund Manager must take all reasonable steps and exercise due diligence to ensure that the Units in the Fund are correctly priced in accordance with the applicable accounting procedures to ascertain an accurate single price for a Unit.
 - (2) The price of a Unit must be calculated on the basis of the valuation in Rule 8.4.1 in a manner that is fair and reasonable as between Unitholders.
- 8.5.2**
 - (1) A Fund Manager must take immediate action to rectify any breach of Rule 8.4.1 where such breach relates to the incorrect pricing of Units.
 - (2) In (1), unless the incorrect pricing in respect of an issue is of minimal significance, the Fund Manager must inform the DFSA, and if appointed, the Trustee or Eligible Custodian or other Persons providing oversight functions in relation to the Fund, of such a rectification.

8.6 Issue and redemption of Fund Units

- 8.6.1**
 - (1) A Fund Manager of an Open-ended Fund must, within any conditions in its constitution and offer documents:

- (a) at all times during the dealing day, be willing to issue or sell Units in the Fund to any eligible Client; and
 - (b) do so in a manner that is fair and reasonable as between all Unitholders and prospective Unitholders for whom the Fund Manager does not have reasonable grounds to refuse such issue or sale.
- (2) A Fund Manager of an Open-ended Fund must, within any conditions in its constitution and offer documents:
 - (a) at all times during the dealing day, be willing to effect a redemption of the Units on the request of any Unitholder; and
 - (b) do so in a manner fair and reasonable as between redeeming Unitholders and continuing Unitholders.
- (3) On agreeing to a redemption of Units within (2), the Fund Manager must pay the full proceeds of the redemption to the Unitholder within any reasonable period specified in the constitution and offer documents, unless it has reasonable grounds for withholding payment.

Guidance

1. Refer to Article 18A(2) of the Law for the definition of an Open-ended Fund.
2. The Prospectus of a Public Fund is required to set out, among other things, the dealing days and times in the dealing day on which the Fund Manager will receive requests for the sale and redemption of Units and also, redemption procedures. The Constitution or offer documents (i.e. the Information Memorandum) of an Open-ended Exempt Fund or QIF may specify the Fund's dealing days, but where it does not do so, the maximum period between dealing days will depend on the reasonable expectations of the target investor group and the particular investment objectives and policy of the Fund.
3. Capital reductions or share buy-backs that occur in a Closed-ended Fund are not treated as redemptions and resales of Units of Funds based on NAV in the same manner as occurs in the case of an Open-ended Fund as provided in these Rules. See Article 18A(3) of the Law for the definition of a Closed-ended Fund.
4. The circumstances in which a Fund Manager may withhold redemption proceeds under (3) include where there are any dues from the redeeming Unitholder, such as under any margin lending arrangements.
5. See Article 37 of the Law for provisions dealing with suspension of dealings of Open-ended Funds.
6. If an Open-ended Domestic Fund is listed and traded, the redemption and reissue of its Units in the primary market does not generally take place concurrently, unless it is an Exchange Traded Fund (ETF). However, the exchange on which an Open-ended Fund is listed and traded may permit the Fund Manager to offer periodic windows for redemption and reissue of Units of the Fund (which would have to be based on NAV). The DFSA regime allows such windows, subject to disclosure in the Fund's Prospectus and to the relevant exchange as to when such windows would be offered.

8.6A Systems and controls for liquidity risk management in Open-ended Funds

- 8.6A.1** (1) A Fund Manager of an Open-ended Domestic Fund must ensure that the Fund has sufficient liquidity to meet redemption requests as stated in the Fund's Constitution and its most recent Prospectus, as appropriate to the nature and risk profile of the relevant Fund.
- (2) For the purposes of meeting the requirement in (1), the Fund Manager's systems and controls must, at a minimum, contain well-documented and detailed policies and strategies, which:
- (a) include appropriate liquidity buffers and limits on illiquid assets, and the availability of other resources, such as lines of credit;
 - (b) take into account:
 - (i) the underlying classes of assets of the Fund;
 - (ii) if such assets are traded on-exchange, the liquidity in those markets;
 - (iii) investors' redemption patterns and behaviour; and
 - (iv) any other factors that affect or potentially affect the liquidity of the relevant classes of assets;
 - (c) include appropriate mechanisms to measure, monitor, stress test and manage the controls referred to in (a) to assess whether they are adequate, and are operating as intended in both normal and stressed conditions and the procedures available to the Fund Manager to address any gaps and failures identified; and
 - (d) include powers available to the Fund Manager to address liquidity stresses which pose, or have the potential to pose, risks to its ability to effect redemptions (such as the power to impose anti-dilution levies, create side pockets to ring-fence illiquid assets and create redemption gates or suspend redemptions), and clear triggers and procedures for exercising such powers.

Guidance

1. The DFSA expects Fund Managers to take into account the Final Report: "Open-ended Fund liquidity and risk management - Good Practices and Issues for Consideration" issued by OICU-IOSCO in February 2018, (which can be found at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD591.pdf>). The DFSA believes that the measures identified in that report would, if adopted by the Fund Managers as appropriate to the nature, scale and complexity of their Funds, would enable such managers to meet their overarching obligations in Rule 8.6A.1.
2. In the DFSA's view, there are certain specialist classes of Funds which generally do not lend themselves to be Open-ended, such as Private Equity Funds (because of the long-term nature of their investments), and Fund of Funds or Feeder Funds (unless the Funds in which they invest themselves are Open-ended). Conversely, there are Funds which may lend themselves better to being structured as Open-ended Funds offering redemptions, such as Funds investing in transferable securities (e.g. UCITS style Funds), or ETFs – due to the liquidity of the underlying classes of their assets, provided they meet the liquidity risk management controls referred to in Rule 8.6A.1. However, it is

a matter for the Fund Manager to objectively assess the liquidity profile of the Fund and associated risks.

8.6B Confirmation notes

- 8.6B.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
 - (j) the total sum of commissions and expenses charged, and a breakdown of those commissions and charges.

8.7 Unitholder register

- 8.7.1** (1) Subject to (5), a Fund Manager must maintain a register of Unitholders.
- (2) The register must contain:
- (a) the name and address of each Unitholder;
 - (b) the number of Units including fractions of a Unit of each class held by each Unitholder; and
 - (c) the date on which the Unitholder was registered in the register for the Units standing in his name.
- (3) A Fund Manager must take all reasonable steps and exercise all due diligence to ensure that the register is kept complete and up to date.

- (4) A Fund Manager or, if applicable the Appointed Fund Administrator or Appointed Custody Provider, must, subject to (5), make the Unitholder register in electronic or hard copy form available for inspection by Unitholders during normal business hours at the Fund Manager's or Appointed Fund Administrator's place of business in the DIFC or otherwise in a designated location in the DIFC.
- (5) Where a Fund is structured as an Investment Trust, the Trustee must maintain the register of Unitholders in accordance with the requirements in the Investment Trust Law 2006 and make the register in electronic or hard copy form available for inspection by Unitholders during normal business hours at the Trustee's place of business in the DIFC or otherwise in a designated location in the DIFC.

8.8 Meetings of Unitholders

8.8.1 In the case of a Public Fund, the Fund Manager must hold at least two meetings of the Governing Body of every Public Fund which has such a Body every 12 month period from the date of registration of that Fund with the DFSA.

8.8.2 The Fund Manager of a Fund other than an Exempt Fund must hold at least one general meeting of the Unitholders of the Fund in every 12 month period (i.e. an annual general meeting). The annual general meeting must be held in the case of a Public Fund within 12 months from the date of registration of the Fund. The annual report required under Rule 9.4.2(1)(a) must be presented at that annual general meeting.

8.8.3 (1) The Fund Manager and if appointed the Trustee of a Fund other than an Exempt Fund:

- (a) may convene a general meeting of Unitholders at any time; and
- (b) must convene a general meeting of Unitholders of the Fund immediately upon a request being made by Unitholders in accordance with (2).

(2) The Unitholders of the Fund may request the Fund Manager, or if appointed the Trustee, to convene a general meeting of Unitholders at any time. Such a request must:

- (a) state the purpose of the meeting;
- (b) be dated;
- (c) be signed by a number of registered Unitholders representing at least one-tenth in value of all of the Units then in issue; and
- (d) be deposited at the place of business of the Fund Manager, or if applicable, the Trustee or Appointed Fund Administrator of the Fund.

- (3) If the Fund is an Investment Trust, the primary responsibility to convene meetings in accordance with this Rule rests with the Fund Manager, failing which, with the Trustee.
- (4) A meeting of Unitholders of a Fund duly convened and held in accordance with the Law and Rules is competent by Special Resolution to require, authorise or approve any act, matter or document in respect of which any such resolution is required. Such a resolution has no other powers or effect.
- (5) Where no Special Resolution is specifically required or permitted by the Law or Rules, any resolution of Unitholders required under the Rules is passed by a simple majority of the votes validly cast for and against the resolution at a general meeting of Unitholders.

8.8.4 The Fund Manager of an Exempt Fund must hold meetings of Unitholders in accordance with the requirements included in the Fund's Constitution and its most recent Prospectus.

Guidance

Exempt Funds are required to have an Information Memorandum under which its Units are marketed to prospective Unitholders by way of private placement. Under Article 50(3) of the Law, such a document is a Prospectus.

Unitholder meetings procedures

- 8.8.5** (1) A Fund Manager must set out, if it is a Public Fund, in its procedures manual the procedures for holding Unitholder meetings and the conduct of such meetings including but not limited to, the following matters:
- (a) voting rights;
 - (b) right to demand a poll;
 - (c) proxies;
 - (d) minutes; and
 - (e) variation of class rights and class meetings.
- (2) The meeting procedures under (1) must comply with the provisions in App2. Any provisions in such procedures that are inconsistent with the procedures in App2 are void.
- (3) In the case of a Public Fund, the Fund Manager must distribute the meetings procedures manual to all Unitholders.
- (4) If the Fund is structured as an Investment Trust, the Fund Manager must obtain the prior approval of the Trustee in respect of its meetings procedures.

8.9 Approvals and notifications

8.9.1 A Fund Manager of a Public Fund must comply with the provisions in App3 in regard to:

- (a) fundamental changes requiring prior approval of the Unitholders;
- (b) significant changes requiring pre-event notification to the Unitholders; and
- (c) notifiable changes, that is, a change other than one in (a) or (b) which requires post notification to the Unitholders.

8.10 Maintenance of records

8.10.1 (1) A Fund Manager must make and retain accounting and other records that are necessary:

- (a) to enable it to comply with Rules in this module; and
- (b) to demonstrate at any time that such compliance has been achieved.

(2) A Fund Manager must make and retain for a period of six years a record of the Units held, acquired or disposed of, by it, including the classes of such Units, and the balance of any acquisitions and disposals.

(3) A Fund Manager must make the record available for inspection by the DFSA in the DIFC and, if applicable, the Trustee or appointed Eligible Custodian, free of charge at all times during ordinary office hours and must supply a copy of the record or any part of it.

(4) Where a Fund Manager makes a dilution levy or dilution adjustment in accordance with Rule 8.4.1(5), it must make and retain for a period of six years from the date such action is taken a record of:

- (a) how it calculates and estimates dilution; and
- (b) its policy and method for determining the amount of any dilution levy or dilution adjustment.

8.11 Capital

8.11.1 (1) In the case of a Public Fund, if at any time after the size of the Fund's capital has reached the minimum size provided in its Constitution the size of that capital falls below that minimum size, the Fund Manager must immediately notify the DFSA of that fact.

(2) The notification under (1) must also:

- (a) state the Fund Manager's grounds for believing that the Fund is still commercially viable and the purpose of the Fund can still be accomplished; and

- (b) be accompanied by the relevant Unitholders' resolution supporting the Fund Manager's views in (1); or
- (c) state what steps the Fund Manager has taken or will take to wind up the Fund.

8.12 Delegation and outsourcing

Guidance

1. This section sets out the general requirements that apply to a Fund Manager, or where appointed the Trustee, of a Domestic Fund where it delegates or outsources any Financial Service activity or function to another Person. Such a Person is defined as a "Service Provider" for the purposes of this module.
2. Under Article 24 of the Law and Article 24 of the Investment Trust Law 2006, a Fund Manager or where appointed the Trustee of a Fund respectively may, subject to any restriction in the Constitution of the Domestic Fund and any provisions of the Rules, delegate any of its Financial Service activities or outsource any of its functions to a Service Provider, which may be located in or outside the DIFC.
3. Fund Managers of Domestic Funds structured as an Investment Company or Investment Partnership are required under Rule 8.2.2(2) to delegate the activity of Providing Custody to an Eligible Custodian. This obligation does not apply where there are adequate alternative arrangements. This chapter sets out the circumstances in which the obligation under Rule 8.2.2(2) does not apply.
4. A Fund Manager or Trustee 'outsources' a function relating to the operation of the Fund where the function, whether or not relating to a Financial Service activity, is contracted to be performed by a Service Provider. Where the extent of any such function or functions is such that they effectively constitute the carrying on of a Financial Service activity, the DFSA will consider this to comprise a 'delegation' of the Financial Service.
5. If the Fund Manager or the Trustee delegates any activities or outsources any functions, the Fund Manager or the Trustee remains liable to the Unitholders for any acts or omissions of the Service Provider as if they were the acts or omissions of the Fund Manager or Trustee.
6. The Rules permitting the use of a Service Provider do not relieve the Fund Manager or the Trustee from their obligations, including any restrictions on delegation or outsourcing arising from the Fund's Constitution or Prospectus.
7. GEN Rules 5.3.21 and 5.3.22 also govern outsourcing of functions and activities by an Authorised Firm. Those Rules are not disapplied by this section.

Fund Manager

8.12.1 In accordance with the Delegation Agreement, the Fund Manager:

- (a) must register the legal title of the Fund Property with the Eligible Custodian; and
- (b) may give instructions to the Eligible Custodian to deal with the Fund Property.

Guidance

See Rule 8.2.4 for the definition of an Eligible Custodian

- 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 an Exempt Fund may make other appropriate arrangements in respect of the provision of Fund Administration.

Trustee

- 8.12.3**
- (1) Subject to Rules 8.12.4, a Trustee may, with the prior written consent of the Fund Manager, delegate one or both of the Financial Service activities of Providing Fund Administration and Providing Custody to a Service Provider.
 - (2) For the purposes of (1), and in relation to Providing Fund Administration for a Public Fund, the Service Provider must be:
 - (a) a Person authorised by the DFSA to carry on the activity of Providing Fund Administration; or
 - (b) a Person who is lawfully entitled in a Zone 1 jurisdiction or Recognised Jurisdiction to carry on in that jurisdiction the activities of:

- (i) asset pricing and Fund valuation;
 - (ii) issuing and redemption of Units; and
 - (iii) record keeping and maintaining the Unitholders register.
- (3) For the purposes of (1), and in relation to Providing Custody, the Service Provider must be an Eligible Custodian.

Delegation and outsourcing process and requirements

- 8.12.4** (1) When delegating, a Fund Manager or Trustee must:
- (a) carry out due diligence on a proposed Service Provider to ensure eligibility prior to effecting a delegation of a Financial Services activity; and
 - (b) comply with the requirements in chapter 5 of GEN and App1 and ensure that any delegation is made in a written Delegation Agreement as prescribed in App1.
- (2) Delegation to a Service Provider does not relieve the Fund Manager or Trustee from accountability for the proper conduct of a delegated activity.
- (3) The DFSA may, as a condition on a Fund Manager's or Trustee's Licence, require the delegation of one or more specified Financial Service activities to a Service Provider.

Guidance

The DFSA may impose a condition under Rule 8.12.4(3) when, for example, it considers that a Fund Manager is unable to conduct the activity under its own Licence.

- 8.12.5** (1) When a Fund Manager or Trustee outsources any function to a Service Provider, it must:
- (a) comply with any relevant requirements in chapter 5 of GEN;
 - (b) enter into an Outsourcing Agreement which complies with the requirements in App1; and
 - (c) before entering into such agreement, carry out due diligence on the proposed Service Provider to conclude on reasonable grounds that the Person is suitable to perform the relevant functions.
- (2) Outsourcing to a Service Provider does not relieve the Fund Manager or Trustee from accountability for the proper conduct of the outsourced activity.

Systems and controls

- 8.12.6** If a Fund Manager or Trustee delegates any activity or outsources any function under this section, it must take reasonable steps to ensure that it implements and maintains systems and controls to monitor the Service Provider.

Guidance

This Rule supplements the requirements under GEN section 5.3.

Review

- 8.12.7**
- (1) A Fund Manager or the Trustee of a Public Fund, which has delegated any Financial Service activities or outsourced any functions, must conduct a review of the carrying out of the relevant activities or functions by the Service Provider and present the findings of the review to either:
 - (a) the Fund's Governing Body every 6 months at the Fund's board meeting; or
 - (b) in the case of a Fund structured as an Investment Trust, to the Trustee.
 - (2) Notwithstanding the requirement in (1), if a Fund Manager or the Trustee discovers non-compliance in regard to a term of the Delegation Agreement or Outsourcing Agreement, the Fund Manager or the Trustee, as the case may be, must take immediate action to remedy the matter and also notify the DFSA and, as applicable, its Governing Body or the Trustee forthwith.
 - (3) For the purposes of (2), the Fund Manager or the Trustee must notify the DFSA only where the non-compliance is material.

8.13 Fees, charges and other levies

Permissible fees, charges, levies and expenses

- 8.13.1**
- (1) A Fund Manager must not make any charge or levy in connection with the issue or sale of Units except in accordance with the Constitution and Prospectus.
 - (2) A preliminary or redemption charge must not be made by the Fund Manager unless:
 - (a) it is permitted by the Constitution; and
 - (b) it is expressed either as a fixed amount or calculated as a percentage of the price of a Unit.
 - (3) The preliminary charge must not exceed the amount or rate stated in the current Prospectus in respect of any class of Units.
- 8.13.2**
- (1) No payment may be made, or benefit given, to the Fund Manager out of the Fund Property, whether by way of remuneration for its services,

reimbursement of expenses or otherwise, unless it is permitted by the Constitution and the Prospectus specifies how it will be calculated, accrued, when it will be paid and the maximum and current rates or amount of such remuneration.

- (2) The Fund Manager must give not less than 90 days written notice of any increase proposed within the parameters of the Constitution and Prospectus.

8.13.3 A Fund Manager must not introduce a new category of remuneration for its services or make any increase in the current rate or amount of its remuneration payable out of the Fund Property unless it has given not less than 90 days written notice of that introduction or increase and of the date of its commencement to the Unitholders and the Unitholders approve such new category by Special Resolution.

Reimbursement of remuneration and expenses

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

Promotional payments, performance fees and set up costs

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

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

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

Payments of liabilities on transfer of assets

8.13.8 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 8.13.9 applies.

8.13.9 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.

9 ACCOUNTING, AUDIT AND PERIODIC REPORTING OF A FUND

9.1 Application

- 9.1.1**
- (1) This chapter applies to a Fund Manager and a Trustee of a Domestic Fund.
 - (2) In this Chapter, references to a “Fund” mean a “Domestic Fund”.

Guidance

The IFR module contains specific requirements relating to reporting that apply to a Fund and its Fund Manager where that Fund is an Islamic Fund.

9.2 Preparation of Fund financial statements

Financial statements and financial reporting standards

- 9.2.1**
- (1) A Fund Manager of a Fund must prepare financial statements for each financial year of the Fund.
 - (2) A Fund Manager must, in respect of a Fund, prepare and maintain all financial statements in accordance with the International Financial Reporting Standards (IFRS) or USGAAP as supplemented by the Statement of Recommended Practice (SORP).

Accounting Records

- 9.2.2** A Fund Manager must keep Accounting Records that are sufficient to show and explain transactions and are as such, to:

- (a) be capable of disclosing the financial position of the Fund on an ongoing basis; and
- (b) record the financial position of the Fund as at its financial year end.

- 9.2.3** Accounting Records must be maintained by a Fund Manager such as to enable the Governing Body and, if appointed, the Trustee or any Persons providing the oversight function of the Fund to ensure that any financial statements prepared by the Fund Manager in relation to the Fund comply with the legislation applicable in the DIFC.

- 9.2.4** The Accounting Records must be:

- (a) retained by the Fund Manager or Fund for at least six years from the date to which they relate;
- (b) at all reasonable times, open to inspection by the DFSA or the Registered Auditor of the Fund; and

- (c) capable of reproduction, within a reasonable period not exceeding 3 business days, in hard copy and in English.

9.3 Auditors of a Fund

Guidance

1. Article 27(1)(c) of the Law requires every Domestic Fund to have a Registered Auditor appointed to it in accordance with Part 8 of the Regulatory Law and any Rules made for the purposes of that Part.
2. Part 8 of the Regulatory Law sets out how an Auditor must be appointed to each Domestic Fund and the main duties and functions of the Auditor. This section sets out additional requirements that apply in relation to Registered Auditors of a Fund.
3. Under Article 97C(1) of the Regulatory Law a Person is prohibited from providing any Audit Service to a Domestic Fund unless that Person is a Registered Auditor.

Appointment and termination of auditors

9.3.1 A Fund Manager must:

- (a) notify the DFSA of the appointment of a Registered Auditor to the Fund by completing and submitting the appropriate form in AFN;
- (b) prior to the appointment of the Registered Auditor, take reasonable steps to ensure that the Registered Auditor has the required skills, resources and experience to audit the type of Fund for which the Registered Auditor has been appointed; and
- (c) ensure that the Registered Auditor, at the time of appointment and for the duration of the engagement is registered with the DFSA as a Registered Auditor.

9.3.2 A Fund Manager must notify the DFSA immediately if the appointment of the Registered Auditor is or is about to be terminated, or on the resignation of the Fund's Registered Auditor, by completing and submitting the appropriate form in AFN.

9.3.3 A Fund Manager must appoint a Registered Auditor to fill any vacancy in the office of Registered Auditor and ensure that the replacement Registered Auditor can take up office at the time the vacancy arises or as soon as reasonably practicable.

9.3.4

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

Manager, the Trustee or the Fund, or have a conflict of interest which may affect their judgement in respect of the Fund.

Guidance

1. A Fund Manager should consider whether there is any financial or personal relationship between it or any of its relevant Employees and the Registered Auditor or any of the relevant Employees of the Registered Auditor that may affect the judgement of the Registered Auditor when conducting an audit of the Fund or complying with all its legal obligations, including the Regulatory Law, AUD, AML and other relevant modules of the DFSA Rulebook.
2. A Fund Manager should consider rotating the appointed relevant staff of the Registered Auditor on a regular basis to ensure that the relevant staff of the Registered Auditor remain independent.

Co-operation with auditors

9.3.5 A Fund Manager must take reasonable steps to ensure that it and its Employees:

- (a) provide any information to its Registered Auditor that its Registered Auditor reasonably requires, or is entitled to receive as Registered Auditor;
- (b) give the Registered Auditor right of access at all reasonable times to relevant records and information within its possession;
- (c) allow the Registered Auditor to make copies of any records or information referred to in (b);
- (d) do not interfere with the Registered Auditor's ability to discharge its duties;
- (e) report to the Registered Auditor any matter which may significantly affect the financial position of the Fund; and
- (f) provide such other assistance as the Registered Auditor may reasonably request it to provide.

9.3.6 A Trustee must take reasonable steps to ensure that it and its Employees act in compliance with Rule 9.3.5(a)-(f).

9.3.7 A Fund Manager must, in writing, require any Person to whom the Fund Manager has delegated or outsourced any functions to co-operate with the Fund's Registered Auditor in accordance with the provisions specified in Rule 9.3.5.

Function of the Registered Auditor

9.3.8 A Fund Manager must, in writing, require its Registered Auditor to:

- (a) conduct an audit of the Fund's financial statements in accordance with the requirements of the relevant standards published by the International Auditing and Assurance Standards Board (IAASB); and

- (b) produce a Fund Auditor's Report on the audited financial statements in accordance with AUD App5.

9.4 Periodic Reports

Annual and interim reports

- 9.4.1**
- (1) In order to provide the Unitholders with relevant and up-to-date information about the performance and management of a Fund, a Fund Manager must, subject to (2), produce one interim report and one annual report in respect of each Fund it operates in accordance with the Rules in this section.
 - (2) The Fund Manager of a Qualified Investor Fund is not required to comply with the requirements in (1) relating to the production of an interim report for that Fund unless there has been a material change relating to the Fund during the relevant period.
 - (3) For the purposes of (2), the relevant period in relation to a Qualified Investor Fund is the 6 month period referred to in Rule 9.4.2(4).
- 9.4.2**
- (1) A Fund Manager must produce the required annual report and interim report as follows:
 - (a) an annual report within four months after the end of each annual accounting period; and
 - (b) an interim report within two months after the end of each interim accounting period.
 - (2) For the purposes of (1), the first annual accounting period of a Fund begins:
 - (a) in the case of a Public Fund, on the date of registration by the DFSA; or
 - (b) in the case of an Exempt Fund or a Qualified Investor Fund, on the date of notification to the DFSA; and

ends 12 months later. Thereafter, annual accounting periods cover the period between each subsequent financial year end.
 - (3) Notwithstanding the requirement in (2), a Fund Manager may, subject to the prior approval of the DFSA, produce the Fund's reports and financial statements in accordance with the Fund Manager's reporting periods.
 - (4) For the purposes of (1), an interim accounting period is the period covering:
 - (a) 6 months after the date of registration of the Fund with the DFSA in the case of a Public Fund, or the date of notification to the

- DFSA in the case of an Exempt Fund or Qualified Investor Fund;
and
- (b) 6 months after the anniversary of each annual accounting period.
- (5) If a Fund intends to change its annual or interim accounting period, the Fund Manager must:
- (a) obtain written confirmation from its Registered Auditor that the change of its annual accounting period would not result in any significant distortion of the financial position of the Fund; and
 - (b) obtain the DFSA's prior consent before implementing the change.
- (6) For a Fund which is an Umbrella Fund, the Fund Manager must prepare an interim report for each Sub-Fund, but this is not necessary for the Umbrella Fund as a whole.
- (7) The Fund Manager must prepare the annual and interim reports of the Fund in accordance with Rule 9.2.1.
- (8) The reports must:
- (a) be supplied free of charge to Unitholders;
 - (b) be available in English,
 - (c) be sent to the DFSA; and
 - (d) if the Fund is a Public Fund, be available for inspection free of charge during ordinary office hours at a place specified.

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

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

Contents of the interim report

9.4.4 The Fund Manager must produce an interim report which contains:

- (a) the total expense ratio at the end of the period;
- (b) particulars of any material issues raised by the Eligible Custodian and, if applicable, the Trustee, the investment committee or any Person providing oversight in relation to the Fund; and
- (c) matters required to be included in the Fund Manager's report under Rule 9.4.9.

Contents of the annual report

9.4.5 An annual report of a Fund, other than a Fund which is an Umbrella Fund, must contain:

- (a) the full audited financial statements for the annual accounting period;
- (b) the report produced by the Registered Auditor in accordance with Rule 9.3.8(b);
- (c) the report of the Fund Manager in accordance with Rule 9.4.9;
- (d) if the Fund is a Public Fund, the comparative table in accordance with Rule 9.4.10; and
- (e) if the Fund is a Public Fund, the Oversight report in accordance with Rule 10.3.13.

9.4.6 An annual report on a Fund which is an Umbrella Fund must contain:

- (a) for each Sub-Fund:
 - (i) the full audited financial statements for the annual accounting period;
 - (ii) the report of the Fund Manager in accordance with Rule 9.4.9; and
 - (iii) if the Fund is a Public Fund, the comparative table in accordance with Rule 9.4.10;
- (b) an aggregation of the financial statements required by (a)(i) for each Sub-Fund;
- (c) the report produced by the Registered Auditor in accordance with Rules 9.3.8(b); and
- (d) if the Fund is a Public Fund, the Oversight Report in accordance with Rule 10.3.13.

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

- (2) Where a Fund is a Hedge Fund, the annual report must also include a report of its Eligible Custodian.
- 9.4.8** The Fund Manager must ensure that the financial statements give a true and fair view of the net income and the net gains and the losses on the Fund Property of the Fund, or, the Sub-Fund, for the annual accounting period in question and the financial position of the Fund or Sub-Fund as at the end of that period.

Fund Manager's report

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

Comparative table

Guidance

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

- 9.4.10** The comparative table for the annual report for a Public Fund must set out:
- (a) the performance record over the last five calendar years, or if the Fund has not been in existence during the whole of that period, over the whole period in which it has been in existence, showing:
 - (i) the highest and the lowest price of a Unit of each class in issue during each of those years; and

- (ii) the net income distributed or, for accumulation Units, allocated for a Unit of each class in issue during each of those years, taking account of any sub-division or consolidation of Units that occurred during that period;
- (b) as at the end of each of the last three annual accounting periods or all of the Fund's annual accounting periods, if less than three:
 - (i) the total net asset value of the Fund Property at the end of each of those years;
 - (ii) the net asset value per Unit of each class; and
 - (iii) for a report of the directors of an Investment Company, the number of Units of each class in issue; or
 - (iv) for a report of the Fund Manager of any other Fund, the number of Units of each class in existence or treated as in existence; and
- (c) if, in the period covered by the table:
 - (i) the Fund Manager has been the subject of any event such as a transfer scheme having a material effect on the size of the Fund, but excluding any issue or cancellation of Units for cash; or
 - (ii) there have been changes in the investment objectives of the Fund;

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

9.5 Table illustrating content of the annual report

Guidance

Type of Report	CIR Ref	Public Funds	Exempt Funds	QIF
Annual and interim reports	9.4.2	✓	✓	Annual Report only. An interim report is required only if there has been a material change during the interim accounting period
Fund Manager's Report	9.4.9	✓	✓	✓
Fund Auditor's Report	9.3.8(b)	✓	✓	✓
Oversight Report	10.3.13	✓	Not applicable	Not applicable
Comparative Table	9.4.10	✓	Not applicable	Not applicable
Eligible Custodian Report	9.4.7(2)	Hedge Funds only	Hedge Funds only	Hedge Funds only
Investment Committee	13.3.1 & 13.4.3	Private Equity Funds and Property Funds	Private Equity Funds and Property Funds	Not applicable

This table illustrates the different content requirements for reports of a Domestic Fund.

9.6 Periodic Fund Return

9.6.1 The Fund Manager of a Domestic Fund must complete and submit a Periodic Fund Return in respect of each Domestic Fund that the Fund Manager manages.

9.6.2 A Periodic Fund Return referred to in Rule 9.6.1 must be submitted:

- (a) in respect of the period 1 January to 30 June of each year, by 31 July of the year; and
- (b) in respect of the period 1 July to 31 December of each year, by 31 January of the following year.

9.6.3 The DFSA may direct a Fund Manager to complete and submit a Periodic Fund Return in respect of a different period than the period specified in Rule 9.6.2 (a) or (b), in which case, the Fund Manager must submit the Periodic Fund Return within one month after the period specified by the DFSA.

Guidance

A Domestic Fund includes an External Fund.

PART 5: RULES SPECIFIC TO DIFFERENT TYPES OF DOMESTIC FUNDS

Guidance

Article 13 of the Law defines Funds as either Domestic Funds or Foreign Funds. Article 15 of the Law further defines Domestic Funds as falling into three categories, i.e. Public Funds, Exempt Funds and Qualified Investor Funds. While the core requirements in Part 4 of this module are of common application to most types of Domestic Funds, the requirements in this Part apply only to certain types of Domestic Funds, depending on whether they are Public Funds, Exempt Funds or Qualified Investor Funds. Where a certain type of Fund is also a specialist class of Funds, there are additional requirements that are prescribed in Part 6.

10 REQUIREMENTS SPECIFIC TO PUBLIC FUNDS

10.1 Application

- 10.1.1**
- (1) This chapter applies to a Fund Manager and Trustee of a Domestic Fund which is a Public Fund, and also to Persons providing the oversight function for such a Fund.
 - (2) A Fund Manager and Trustee of a Public Fund are not subject to the oversight requirement in (1) if the Fund's investments are limited to those that require passive management and the Fund's systems and controls contain adequate measures to address any risks arising in that context.

Guidance

Funds are passively managed if they are investing in products such as index tracking products.

10.1.2 A reference in this chapter to:

- (a) a "Fund Manager" or "Trustee" includes a reference to a Person proposing to be the Fund Manager or Trustee of a Domestic Fund;
- (b) a "Fund" includes a reference to a Fund registered or seeking to be registered as a Public Fund; and
- (c) a reference to a "Person providing the oversight function" includes a reference to an individual or a body corporate appointed or to be appointed as a Person providing oversight function for a Fund.

10.2 Registration of Public Funds

The application for registration

- 10.2.1**
- (1) An application pursuant to Article 28 of the Law for the registration of a Public Fund must be made to the DFSA by the Body Corporate which is to be the Fund Manager of a Domestic Fund. If the Fund is an Investment Trust, then the Trustee and Fund Manager must jointly apply.

- (2) The Fund Manager and, if applicable, the Trustee must complete and submit the appropriate form or forms in AFN.
- (3) In addition to the requirements of Article 28(4) of the Law, the application must be accompanied by certification by the Fund's legal advisers to the effect that:
 - (a) the Constitution of the Fund complies with the requirements prescribed under the Law and under these Rules;
 - (b) the Prospectus complies with the requirements prescribed under the Law and under these Rules; and
 - (c) if the Fund is managed by an External Fund Manager, the requirements in section 6.1 are met.

10.2.2 In assessing an application for registration, the DFSA may:

- (a) make any enquiries which it considers appropriate, including enquiries independent of the Fund Manager and Trustee; or
- (b) require the Fund Manager or Trustee to provide further information.

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
- (g) the name of the Fund is not undesirable or misleading and its purpose is reasonably capable of being successfully carried into effect.

Guidance

1. Article 26(1) of the Law requires every Domestic Fund to have the form of an Investment Company, Investment Partnership or Investment Trust. An Investment Company can also take the form of a Protected Cell Company (PCC).
2. In the case of an Investment Company (including a PCC) or Investment Partnership, the legal formalities relating to formation of the Fund involves registration by the Company Registrar of the Investment Company or Investment Partnership which is to be the Fund vehicle. In the case of an Investment Trust, the legal formalities relating to the formation of the trust involve the execution by the Fund Manager and the Trustee of the relevant trust deed pursuant to the requirements in the Investment Trust Law of 2006.
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 13.3.1, 13.4.2, 13.4.2A and 13.4.2B).

Rejection of an application

Guidance

Under Article 30(1) of the Law, the DFSA may, refuse to grant an application for the registration of a Fund if it is not satisfied that the requirements referred to in Article 28 of the Law have been met.

Granting registration

Guidance

1. Under Article 31 of the Law, once the DFSA grants registration to a Fund, it will without undue delay inform the relevant applicant in writing of:
 - a. such decision; and
 - b. the date on which the registration shall be deemed to take effect.
2. The DFSA maintains a list of Public Funds which have been registered on its Public Register.

Withdrawal of registration

Guidance

Under Article 32 of the Law, the DFSA may withdraw the registration of a Fund in specified circumstances.

Reinstatement

Guidance

The DFSA may reinstate the registration of a Fund pursuant to Article 33 of the Law if it is satisfied that the Fund should not have been deregistered or if the defect that led to registration being withdrawn has been remedied.

10.3 Oversight arrangements for Public Funds

Guidance

Chapter 2 of the Law (see Articles 39 – 42) sets out the general requirements relating to the oversight arrangements which a Public Fund must have, including the powers and duties of the Persons appointed to a Public Fund to provide the oversight function. The Rules in this section provide further detailed requirements relating to that function.

Permitted oversight arrangements

10.3.1 The following oversight arrangements are hereby prescribed by the DFSA for the purposes of Article 39(1)(a) of the Law:

- (a) an Oversight Committee comprising at least three individuals each of whom meets the suitability criteria prescribed in Rule 10.3.2; or
- (b) the Eligible Custodian or Trustee of the Fund, where the individuals undertaking the primary responsibility for the oversight function meet the suitability criteria prescribed in Rule 10.3.2.

Guidance

1. Article 39(1)(a) of the Law requires the Fund Manager of a Domestic Fund which is a Public Fund to establish and maintain one of the permitted oversight arrangements prescribed by the DFSA. Accordingly, such a Fund Manager must appoint one of the oversight arrangements specified in Rule 10.3.1 to every Public Fund which it manages.
2. The membership of the Oversight Committee may comprise individuals including but not limited to members of the board of directors of the Fund Manager or that of the Fund, or the individual directors of the Corporate Director, or the members of the General Partner of an Investment Partnership, or external experts, provided such individuals can meet the suitability criteria prescribed in Rule 10.3.2(1). The criteria include a test of independence.
3. For example, for an individual such as a member of the board of directors of the Fund Manager to be able to meet the independence test, the starting point is that such an individual would need to be a non-executive member of the Fund Manager's board. But that alone may not be sufficient, as the independence requirement has a range of other elements against which such an individual's ability to be independent of the Fund Manager is assessed. See Article 42 of the Law and Rule 10.3.2. The other elements of the suitability test encompass a fit and proper test and relevant expertise. These too need to be satisfied by such individuals.

Suitability criteria for persons providing oversight function

- 10.3.2** (1) For the purposes of Rule 10.3.1, a Person undertaking the oversight function meets the relevant criteria if that Person:
- (a) is suitably qualified;
 - (b) is fit and proper; and
 - (c) meets the independence criteria in Article 42 of the Law.

- (2) A Fund Manager must, in the case of each individual to be appointed as a member of an Oversight Committee referred to in Rule 10.3.1(a), undertake appropriate due diligence to ascertain whether the individual meets the suitability criteria in (1).
- (3) A Fund Manager must, where an Eligible Custodian or Trustee is to be appointed as the oversight provider of the Fund, undertake appropriate due diligence to ascertain whether the individual meets the suitability criteria in (1) in respect of those individuals within the organisation of the Eligible Custodian or Trustee who will be undertaking the primary responsibility for performing the oversight function for the Fund.
- (4) A Fund Manager must ensure that there is a written agreement:
 - (a) by which an individual is appointed to an Oversight Committee or the Trustee or Eligible Custodian is appointed to the oversight function of the Fund, as is relevant; and
 - (b) which contains express provisions that the appointee agrees to discharge the oversight function in accordance with the requirements in the Law and this module.
- (5) If requested by the DFSA, a Fund Manager must provide to the DFSA any information relating to the appointment or intended appointment of a Person to provide the oversight function for the Fund.

Guidance

1. The Guidance under Appendix 6 (App6) sets out matters which a Fund Manager should take into account when assessing the fitness and propriety of an individual who is to be appointed to carry out the Fund's oversight function.
2. In the case of a Trustee or Eligible Custodian appointed to provide the oversight function, a Fund Manager should, before making such an appointment, identify the most senior individuals within the organisation who will carry the primary responsibility for the oversight function. The suitability assessment should then be applied to each such individual.
3. Trustees are required to be independent of the Fund Manager (see Article 19 of the Investment Trust law 2006, which is incorporated in the independence requirement for oversight providers under Article 42(1)(f) of the Law). However, if the primary responsibility for providing oversight function within a Trustee rests on individuals other than its board members, the Fund Manager should assess whether such individuals possess the required degree of independence from the Fund Manager in assessing their fitness and propriety to carry out the oversight function effectively. A Fund Manager should, when making that assessment, focus particularly on whether the Persons providing the oversight function have access to sufficient resources to perform their duties objectively and independently of the Fund Manager.
4. In assessing the competence of a prospective appointee, a Fund Manager should:
 - a. obtain details of the knowledge and skills of the individual in relation to the knowledge and skills required for the role;
 - b. take reasonable steps to verify the relevance, accuracy and authenticity of any information acquired;

- c. determine whether the individual holds any relevant qualifications with respect to the functions to be performed; and
- d. determine the individual's relevant experience.

- 10.3.3**
- (1) The systems and controls which a Fund Manager is required to have in place must include adequate measures to monitor whether the Persons appointed to provide the oversight function for the Fund meet the suitability criteria specified in Rule 10.3.2(1) on a continuing basis.
 - (2) If a Person appointed to provide the oversight function for the Fund is either unable to fulfil his duties or no longer meets the suitability criteria in Rule 10.3.2(1), the Fund Manager must, within 21 days of the event causing such inability, dismiss and replace that Person, subject to the requirement in (4).
 - (3) If a Person appointed to provide the oversight function for the Fund resigns from or otherwise vacates that position, the Fund Manager must, within 60 days of the event causing the vacancy, appoint a replacement, subject to the requirement in (4).
 - (4) An appointment made under (2) or (3) must meet the relevant requirements relating to the oversight arrangement of the Fund as specified in Rule 10.3.1 as is relevant to that particular Fund.
 - (5) The Fund Manager must notify the DFSA and, in the case of an Investment Trust where the Trustee is not the appointed oversight provider for the Fund, the Trustee, of the matters referred to in this Rule, giving reasons for the relevant cessation and replacement of the oversight provider.

General oversight duties

- 10.3.4** The Persons providing the oversight function must:

- (a) monitor whether the Fund Manager:
 - (i) is managing the Fund in accordance with the Constitution and the most recent Prospectus of the Fund, including in particular, any investment and borrowing limitations, requirements relating to the valuation of Fund Property and any other requirements or restrictions imposed on the Fund under the Law or any Rules in this module;
 - (ii) is complying with any terms and conditions on the Fund Manager's Licence, particularly with respect to the management of the Fund; and
 - (iii) if it is an External Fund Manager, is complying with the specific requirements that apply to such a Person by virtue of being an External Fund Manager;

- (b) assess whether the Fund Manager's systems and controls, particularly those relating to risk management and compliance, operate as intended and remain adequate;
- (c) report to the Fund Manager on its findings, including any actual or potential breaches or inadequacies in relation to the matters specified in (a) and (b), as soon as such breaches or inadequacies are identified or suspected; and
- (d) report to the DFSA if:
 - (i) the Fund Manager has failed, or is reasonably likely to fail, to take appropriate action to rectify or remedy a matter reported to it within 30 days of that matter being so reported; and
 - (ii) that Person believes on reasonable grounds that the matter has had, or is likely to have, a materially adverse impact on the interests of the Unitholders of the Fund.

Guidance

External Fund Managers are subject to specific requirements, for example in CIR section 6.1.

Proceedings of the oversight provider

- 10.3.5** The Persons providing the oversight function for a Fund must conduct and regulate their proceedings in such a manner so as to be able to discharge the duties and responsibilities relating to the oversight function efficiently and effectively in accordance with the requirements of the Law and this module, and in the case of a Trustee, the requirements in the Investment Trust Law 2006.

Guidance

1. The Persons providing the oversight function should hold in the DIFC such number of meetings during every annual accounting period as are considered appropriate for the nature and scale of the activities of the Fund.
2. The Persons providing the oversight function should keep minutes of their meetings and records of their reports and recommendations for a minimum of six years.

Principles and disclosure of interests

- 10.3.6** Each individual appointed to carry out the oversight function for a Fund, in carrying out his oversight functions, must abide by the four principles set out in Rules 10.3.7 to 10.3.10. These principles apply:
- (a) in the case of an Oversight Committee referred to in Rule 10.3.1(a), to each member of that Committee; and
 - (b) where a Trustee or Eligible Custodian is appointed for providing the oversight function for a Fund, to each individual responsible for carrying out the oversight function for the Fund.

Guidance

1. The principles do not apply to an individual in respect of any other functions he may carry out, although his conduct in those functions may be relevant to his fitness and propriety.
2. Breaching a principle makes an individual liable to disciplinary action and may indicate that he is no longer fit and proper to perform an oversight function and the DFSA may consider exercising its power under Article 39(2) of the Law to object to the appointment and require the Fund Manager to appoint a replacement.
3. The onus will be on the DFSA to show that he is culpable, taking into account the standard of conduct required under the principle in question. In determining whether or not the particular conduct of an individual complies with the principles, the DFSA will take into account whether that conduct is consistent with the requirements and standards relevant to an individual's role and the information available to him.

Principle 1 - Integrity

- 10.3.7** An individual must observe high standards of integrity and fair dealing in carrying out every oversight function and disclose to the Oversight Committee or the senior persons responsible within the Trustee or Eligible Custodian for the discharge of the oversight function any direct or indirect financial interest that he has or is likely to have in a matter that is being considered, or about to be considered by that committee or those persons if his interest could conflict with the proper performance of his duties in relation to the consideration of the matter.

Principle 2 – Due skill, care and diligence

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

Principle 3 – Market conduct

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

Principle 4 – Relations with the DFSA

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

Systems and controls relating to oversight

- 10.3.11** (1) Without limiting the generality of the obligation under Article 38(1) of the Law and any requirements relating to systems and controls set out in the Rules, the systems and controls established and maintained by the Fund Manager must be adequate to ensure that the Persons providing the oversight function:
- (a) have adequate resources and access to accurate, timely and comprehensive information relating to the management of the Fund to be able to effectively monitor and assess the matters specified in Rule 10.3.4(a) and (b); and

- (b) can report any actual or suspected compliance breaches or inadequacies that are identified by such Persons to the Fund Manager as required under Rule 10.3.4(c) and, for this purpose, have recourse to the Fund Manager's Governing Body or any other relevant committee established by that Governing Body where relevant.
- (2) The Fund Manager must also ensure that its systems and controls make provision to enable:
 - (a) the Compliance Officer to have unrestricted access to the Persons providing the oversight function and, to their reports and recommendations;
 - (b) the Fund Manager to promptly act upon and remedy, to the satisfaction of the Persons providing the oversight function, any matter identified and reported to it by such Persons; and
 - (c) the Persons providing the oversight function to report to the DFSA of any compliance breaches or inadequacies that are reported to the Fund Manager which are not remedied within the period specified in Rule 10.3.4(d).
- (3) The monitoring and reporting processes and procedures in (1) and (2) must be approved by the Persons providing the oversight function before implementation.

Guidance

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

- 10.3.12**
- (1) The Persons appointed to perform the oversight function must report to the Fund Manager as to whether the Fund Manager's systems and controls relating to the oversight function are operating as intended and remain adequate at least quarterly at a board meeting of the Fund Manager.
 - (2) Where an Eligible Custodian or Trustee has been appointed as the Person providing the oversight function, the Fund Manager must provide to that Person, and to the Fund's Governing Body, a copy of the Fund's most recent internal audit report and any compliance report as soon as such report is available to the Fund Manager.

Oversight report

- 10.3.13**
- (1) The Person providing the oversight function of a Public Fund must make a report to Unitholders of the Fund which must be included in the Fund's annual report referred to in Rule 9.4.2.

- (2) The oversight report must contain:
 - (a) a description, which may be in summary form, of the duties of the Person carrying out the oversight functions and in respect of the safekeeping of the Fund Property; and
 - (b) a statement whether, in any material respect:
 - (i) the issue, sale, redemption and cancellation, and calculation of the price of the Units and the application of the Fund's income, have not been carried out in accordance with the Rules and, the Constitution; and
 - (ii) the investment and borrowing powers and restrictions applicable to the Fund including those specified in section 10.5, if those have been exceeded.

Co-operation with oversight providers

10.3.14 A Fund Manager must take reasonable steps to ensure that it and its Employees and those of the Fund:

- (a) provide such assistance as the Persons providing the oversight function reasonably require to discharge their duties;
- (b) give the Persons providing the oversight function right of access at all reasonable times to relevant records and information relating to the Fund;
- (c) do not interfere with the ability of the Persons providing the oversight function to discharge their duties;
- (d) do not provide false or misleading information to the Persons providing the oversight function; and
- (e) report to the Persons providing the oversight function any matter which may significantly affect the financial position of the Fund or which is a breach of the Law or the Rules in this module.

Record keeping

10.3.15 A Fund Manager must keep records of:

- (a) the due diligence process it has undertaken to assess whether the Persons appointed for the oversight function meet the suitability criteria in Rule 10.3.2(1); and
- (b) the matters identified and reported to it by the Persons providing the oversight function under Rule 10.3.4(c) and any remedial measures adopted by it to address such matters.

10.4 Prospectus requirement for Public Funds

Guidance

The disclosure requirements relating to a Prospectus that apply to a Public Fund are somewhat more extensive than the Prospectus disclosure that apply to other types of Funds, in particular, Exempt Funds and Qualified Investor Funds. However, as Prospectus disclosure is a matter closely linked to the marketing of Funds, Prospectus requirements relating to the relevant types of Funds are set out in Part 7 of this module, which deals with the Offer of Units of Funds.

10.5 Investment and borrowing requirements for Public Funds

Application

10.5.1 This section applies to the Fund Manager of a Domestic Fund which is a Public Fund, an Eligible Custodian and, where appropriate, a Trustee, and, to Persons appointed to perform the oversight function for such a Fund, to the extent specified in Rule 10.3.4.

Spread of risk and protection of Fund Property

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

Guidance

The investment policy of a Public Fund can provide a wide or restrictive spread of risk, provided it is consistent with the investment objectives and policy of the Fund as stated in the most recently published Fund Prospectus of that Fund. For example, if a Fund's investment objectives and policy are to invest in a single asset (a single property Fund), or a single asset class (e.g. shares in emerging markets) or a single sector (mining or technology) that policy must be properly disclosed in the Prospectus, along with the risks associated in the particular asset or asset class. See also the additional disclosure required under Rules 14.4.3 and 14.4.4 in the Prospectus of a Public Fund that is a Property Fund.

- 10.5.3**
- (1) A Fund Manager must avoid the Fund Property being used or invested contrary to any provision in this section.
 - (2) On becoming aware of any breach of a Rule in this section, a Fund Manager must take action, at its own expense, to rectify that breach.
 - (3) A Fund Manager must take the action in (2) immediately, except in circumstances where it decides doing so would not be in the best interests of Unitholders, in which case the action must be taken as soon as such circumstances cease to apply.
 - (4) A Fund Manager must not postpone taking action in accordance with (2) unless the Persons providing oversight functions have given their consent.

Investment in other Funds

- 10.5.4** A Fund may invest in Units of another Fund, except where otherwise provided in the Rules in this module, only where the Fund Manager has taken reasonable care to determine, before investing in that other Fund, it:
- (a) is the subject of an independent annual audit conducted in accordance with IFRS or US GAAP;
 - (b) has mechanisms in place to enable Unitholders to redeem their Units within a reasonable time if it is an Open-ended Fund;
 - (c) is prohibited from having more than 20% of its value in the Units of other Funds; and
 - (d) has a proper and disclosed basis for asset valuation and the pricing of Units in that Fund.

Transactions in derivatives

- 10.5.5**
- (1) The total exposure of a Public Fund to Derivatives may not exceed the net asset value of the Fund Property.
 - (2) The Fund Manager's systems and controls must include adequate risk management processes which enable it to monitor and measure as frequently as appropriate the risk of a Fund's Derivative positions and their contribution to the overall risk profile of the Fund.

Guidance

1. There are additional requirements relating to liquidity risk management, including liquidity risks resulting from the use of certain classes of assets (such as Derivatives) giving rise to credit or counterparty exposure in Open-ended Domestic Funds (see Rule 8.6A.1(2)).
2. An Exchange Traded Fund (ETF) which is a 'synthetic ETF' (see Guidance items 11 – 14 under Rule 13.9.6 for descriptions of different types of synthetic ETFs) would use Derivatives, such as a total return swap, to replicate the performance of the specified index or other benchmark it tracks. The Prospectus of a synthetic ETF is required to include details relating to counterparty and collateral-related risks associated with the use of synthetic replication of the performance of the relevant underlying index or benchmark through the use of Derivatives (see Rule 14.4.8(i)).

Stock lending and borrowing

- 10.5.6**
- (1) Subject to the Fund's Constitution and its most recent Prospectus, the Fund Manager, or the Eligible Custodian or Trustee at the request of the Fund Manager, may enter into:
 - (a) stock lending arrangements in respect of any Securities forming the Fund Property; and
 - (b) stock borrowing arrangements.

- (2) The Fund Manager must ensure that the value of any collateral for the stock lending arrangement is at all times at least equal to the value of the Securities transferred.

Borrowing

- 10.5.7**
- (1) Subject to the Fund's Constitution and its most recent Prospectus, the Fund Manager, or the Eligible Custodian or Trustee on the instructions of the Fund Manager, may borrow money for the use of the Fund on terms that the borrowing is to be repayable out of the Fund Property.
 - (2) The Fund Manager must ensure, except in the case of a Property Fund, that the Fund's borrowing does not on any day exceed 20% of the net asset value of the Fund Property and must take reasonable care to ensure that arrangements are in place that will enable borrowings to be repaid to ensure such compliance.
 - (3) Where the limit in (2) is breached, the Fund Manager must take immediate action to deal with that breach.
 - (4) In this Rule, "borrowing" also includes any arrangement including a combination of Derivatives to achieve a temporary injection of money into the Fund Property in the expectation that the sum will be repaid.

Investment in Real Property

- 10.5.8** A Fund Manager of a Fund other than a Property Fund must before investing in Real Property, appoint, with the approval of the Person providing the oversight function for the Fund, a Valuer with relevant expertise who meets the requirements in Rule 13.4.19 and likewise upon any vacancy to ensure that any property in the Fund Property is expertly valued.

- 10.5.9**
- (1) The Fund Manager must ensure that the Valuer appointed under Rule 10.5.8 procures the proper valuation of all the property held within the Fund Property, on the basis of a full valuation with physical inspection including, where the property is or includes a building, an internal inspection at least once a year.
 - (2) For the purposes of (1), any inspection in relation to adjacent properties of a similar nature and value may be limited to that of only one such representative property.
 - (3) The Fund Manager must, subject to (4), ensure that the Valuer values the property, on the basis of a review of the last full valuation, at least every 12 months.
 - (4) If any event occurs which may on reasonable grounds have a material effect on the valuation of the relevant property the Fund Manager must consult with the Valuer with a view to arranging a fresh valuation before any Units in the Fund are issued or redeemed after the date of the event.
 - (5) The Fund Manager must require that any valuation by the Independent Valuer is on the basis of an 'open market value' as defined in the Constitution and Prospectus.

Guidance

The DFSA would expect the Fund Manager to define ‘open market value’ to be based on an authoritative text such as the Royal Institute of Chartered Surveyors’ Appraisal and Valuation Standards (fifth edition) (“Red Book”) or similar practitioners text used by surveyors for the valuation to be a proper valuation under Rule 10.5.9(5).

11 NOT IN USE

12 REQUIREMENTS SPECIFIC TO EXEMPT FUNDS

12.1 Meeting the conditions to be classified as an Exempt Fund

Guidance

1. Article 16(2) of the Law provides that a Domestic Fund may be constituted as an Exempt Fund only if it satisfies all of the conditions in Article 16(4). Article 16(4) provides that an Exempt Fund must:
 - a. have its Units offered to persons only by way of a Private Placement;
 - b. have only Unitholders each of whom meets the criteria to be classified as a Professional Client; and
 - c. have a minimum subscription of at least US\$50,000 for a person to become a Unitholder in the Fund,
 and not satisfy the conditions in Article 16(5) to be a Qualified Investor Fund.
2. Under Article 26(1) of the Law, an Exempt Fund is required to have one of the permitted forms, i.e. an Investment Company, Investment Partnership or an Investment Trust. However, certain types of Exempt Funds which belong to a specialist class of Funds may be permitted to use only some and not all the permitted forms. See Part 6 for those variations.
3. If an Exempt Fund can no longer meet the relevant conditions to be classified as an Exempt Fund, the Fund Manager of that Fund is required, under Article 34(3), to apply for the winding up of that Fund. Alternatively, the Fund Manager may have that Fund moved to the classification of a Public Fund, which requires the satisfaction of the requirements and formalities specific to that type of Fund. An Exempt Fund may also, if it wishes to, convert to a Qualified Investor Fund provided it meets the conditions applicable to a Qualified Investor Fund in Article 16(5) of the Law.
4. In addition to the requirements specific to Exempt Funds, such a Fund must also meet, except where otherwise provided, the other requirements that are common to all Domestic Funds, which are set out in Part 4 of this module.
5. Units of Exempt Funds can only be Offered by way of Private Placement and to Professional Clients, but must meet the additional criterion of a minimum subscription test of US\$50,000. The definition of Professional Client is set out in Rule 1.3.1.
6. Generally a firm will not be able to undertake mass marketing activities relating to Units of Exempt Funds because such marketing would not meet the Private Placement requirement, and would be likely to amount to a public offer, which can only be made in respect of a Unit of a Public Fund.
7. A Fund Manager of an Exempt Fund, which is structured as an Open-ended Fund, is required to comply with the requirements relating to adequate systems and controls to manage, among others, the liquidity risk. See Rule 8.6A.1.

- 12.1.1** (1) A Fund may be classified as an Exempt Fund only if it fulfils the criteria in Article 16(4) of the Law at the inception of the Fund and on an on-going basis.

- (2) A Fund Manager must ensure that a Fund which is or is intended to be established and operated as an Exempt Fund meets the criteria in Article 16(4) both at the inception of the Fund and on an on-going basis.
- (3) For the purposes of (2), where a Fund Manager makes arrangements with other Authorised Firms or Persons in other jurisdictions to Offer to issue or sell the Units of an Exempt Fund, then it must take reasonable steps to ensure that those Authorised Firms or other Persons do not Offer to issue or sell the Units in a manner that would result in a breach of the criteria in Article 16(4).
- (4) As soon as a Fund Manager becomes aware that an Exempt Fund it manages no longer meets or is likely to not meet the criteria in Article 16(4) of the Law, it must immediately:
 - (a) commence proceedings relating to the winding up of the Fund, or alternatively, take necessary steps to have the Fund registered as a Public Fund; and
 - (b) notify the DFSA of that fact and the measures it has taken and proposes to take under (a).
- (5) A Fund Manager of an Exempt Fund which is subject to the valuation requirement in CIR Rule 8.4.1(1) must appoint a Fund Administrator or a Person regulated by a Financial Services Regulator as the Person undertaking the valuation of that Fund.

12.1.2 A Fund Manager of an Exempt Fund, when notifying the DFSA pursuant to Article 34 of the Law, must also include:

- (a) a general description of the Fund including the nature of its investments and the intended size of the Fund in monetary terms;
- (b) if it is a Hedge Fund which has appointed a prime broker pursuant to Rule 13.6.3:
 - (i) the details relating to the identity of the prime broker and its Regulator; and
 - (ii) a legal certification that all the requirements in Rule 13.6.3 relating to the use of prime brokers have been fully complied with by the Fund Manager;
- (c) if it is an External Fund, the name of the jurisdiction in which the Fund is established or domiciled; and
- (d) if it is an External Fund Manager, the name of the jurisdiction in which that Fund Manager is domiciled, and the details of the Appointed Fund Administrator or Trustee to that Fund for the purposes of Rule 6.1.3.

12.2 Exempt Fund Prospectus

Guidance

The disclosure requirements relating to a Prospectus that apply to an Exempt Fund are different from the Prospectus disclosure required for Public Funds. As Prospectus disclosure is a matter closely linked to the marketing of Units of Funds, Prospectus requirements relating to the relevant types of Funds are set out in chapter 14.

12A REQUIREMENTS SPECIFIC TO QUALIFIED INVESTOR FUNDS

12A.1 Meeting the conditions to be classified as a Qualified Investor Fund

Guidance

1. Article 16(2) of the Law provides that a Domestic Fund may be constituted as a Qualified Investor Fund only if it satisfies all of the conditions in Article 16(5). Article 16(5) provides that a Qualified Investor Fund must:
 - a. have its Units offered to persons only by way of Private Placement;
 - b. have only Unitholders each of whom meets the criteria to be classified as a Professional Client; and
 - c. have an initial subscription to be paid by a person to become a Unitholder in the Fund of at least US\$500,000.
2. The definition of “Professional Client” is set out in Rule 1.3.1.
3. Generally a firm will not be able to undertake mass marketing activities relating to Units of Qualified Investor Funds because such marketing would not meet the Private Placement requirement, and would be likely to amount to a public offer, which can only be made in respect of a Unit of a Public Fund.

- 12A.1.1**
- (1) A Fund may be classified as a Qualified Investor Fund only if it fulfils the conditions in Article 16(5) of the Law at the inception of the Fund and on an on-going basis.
 - (2) A Fund Manager must ensure that a Fund which is or is intended to be established and operated as a Qualified Investor Fund meets the conditions in Article 16(5) of the Law both at the inception of the Fund and on an on-going basis.
 - (3) For the purposes of (2), where a Fund Manager makes arrangements with other Authorised Firms or Persons in other jurisdictions to Offer to issue or sell the Units of a Qualified Investor Fund, then it must take reasonable steps to ensure that those Authorised Firms or other Persons do not Offer to issue or sell the Units in a manner that would result in a breach of the conditions in Article 16(5) of the Law.
 - (4) As soon as a Fund Manager becomes aware that a Qualified Investor Fund it manages no longer meets or is likely not to meet the conditions in Article 16(5) of the Law, it must immediately:
 - (a) commence proceedings relating to the winding up of the Fund, or alternatively, take necessary steps to have the Fund reconstituted as an Exempt Fund or registered as a Public Fund; and
 - (b) notify the DFSA of that fact and the measures it has taken and proposes to take under (a).

12A.2 Responsibilities of a Fund Manager of a Qualified Investor Fund

Guidance

1. While a Fund Manager of a Qualified Investor Fund is exempt from many of the detailed requirements applicable to Public Funds and Exempt Funds, it will continue to be subject to most of the main obligations of Fund Managers. Therefore, such a Fund Manager should be mindful that when managing a Qualified Investor Fund, it is subject to some of the overarching obligations applicable to Fund Managers, particularly:
 - (a) Article 22 of the Law (Fund Manager's general duties and functions);
 - (b) Article 38 of the Law and GEN chapter 5 (Systems and controls requirements); and
 - (c) GEN section 4.2 (The Principles for Authorised Firms).
2. For example, a Fund Manager of a Qualified Investor Fund needs to observe high standards of integrity and fair dealing, and apply due skill, care and diligence, in managing the Fund. Similarly, it must have adequate systems and controls to ensure that the affairs of the Fund are effectively managed, taking into account the nature, scale and complexity of the Fund's operations and the investment objectives and needs of its investors.
3. A Fund Manager of a Qualified Investor Fund, which is structured as an Open-ended Fund, is required to comply with the requirements relating to adequate systems and controls to manage, among others, the liquidity risk. See Rule 8.6A.1.

12A.3 Custody of Fund Property

- 12A.3.1**
- (1) For the purposes of Article 27(1)(e) of the Law, the Fund Manager of a Qualified Investor Fund that is not an Investment Trust must ensure that the legal title to Fund Property is registered with an Eligible Custodian.
 - (2) The requirement in Article 27(1)(e) of the Law does not apply to the Fund Manager of a Qualified Investor Fund if it is:
 - (a) a Property Fund;
 - (b) a Private Equity Fund;
 - (c) a Venture Capital Fund;
 - (d) a Credit Fund; or
 - (e) a Fund in so far as it is investing in an interest in the operation of a Real Property asset (such as investment in an infrastructure project).
 - (3) If the Fund Manager of a Qualified Investor Fund referred to in (2) itself holds Fund Property of any kind or if it uses a Fund Platform and the Incorporated Cell Company holds Fund Property of any kind, it must have in place effective arrangements which ensure that the Fund Property is not available to creditors in the event of the insolvency of the Fund Manager or the Incorporated Cell Company (as the case may be).

- (4) Nothing in (2) is to be taken as permitting Fund Property that consists of Crypto Tokens to be held by a Person other than an Eligible Custodian.

Guidance

1. Article 27(1)(e) of the Law requires a Domestic Fund that is not an Investment Trust to have legal title to the Fund Property registered with an eligible person (unless the Rules provide otherwise). Rule 12A.3.1(1) specifies that the person must be an Eligible Custodian. Rule 12A.3.1(2) disapplies the requirement in relation to Fund Property of certain kinds of Qualified Investor Funds. Regardless of who holds title to Fund Property, the Fund Manager must always ensure that, in accordance with Article 22(2)(f) of the Law, Fund Property is clearly identified as such and held separately from property of the Fund Manager and any other Funds. Where Fund Property consists of cash or liquid assets, the assets must also be held under arrangements that clearly identify them as belonging to the Fund, and must be properly segregated from similar assets belonging to the Fund Manager and any other Funds.
2. Where a Fund invests in infrastructure projects (for example, the development of public facilities such as roads, railways or bridges), the Fund Manager may hold self-custody of the Fund Property which consists of the interest in the infrastructure project. However, where it does so, the Fund Manager is not exempt from the overarching obligation under CIR 8.2.2(1) to Unitholders of the QIF to ensure safe custody of the Fund Property. This envisages proper identification and segregation of the interest in the infrastructure project as Fund Property of the QIF.

PART 6: RULES SPECIFIC TO SPECIALIST CLASSES OF DOMESTIC FUNDS

Guidance

1. Article 17 of the Law confers on the DFSA the power to prescribe any type of Domestic Fund (i.e. a Public Fund, an Exempt Fund, or a Qualified Investor Fund) as a “specialist class” of a Domestic Fund and in so doing apply any requirements as are suitable for that specialist class of Funds. This Part sets out the requirements that apply to such a Fund by virtue of being a specialist class of Fund.
2. Most of the requirements that are set out in this part as applying to specialist classes of Domestic Funds are generally in addition to the core requirements that apply to every Domestic Fund (see Part 4). Further, depending on whether it is a Public Fund, an Exempt Fund or a Qualified Investor Fund, the additional requirements in Part 5 of this module would also apply to a specialist class of Fund.
3. A Qualified Investor Fund may be constituted as a specialist class of a Domestic Fund without being subject to most of the detailed requirements that would normally apply to such specialist classes of Funds. However, there are some requirements which need to be met as the obligation to do so arises under the general provisions applicable to certain specialist classes of Funds, regardless of whether such Funds are Public Funds, Exempt Funds or Qualified Investor Funds. An example is a Fund constituted as an Islamic Fund. While some of the detailed requirements such as the appointment of a Shari’a Supervisory Board do not apply to the Fund Manager of an Islamic Qualified Investor Fund (see IFR 6.2.1), the other general requirements such as ensuring compliance with Shari’a requirements continue to apply to such Funds and the Fund Manager.
4. The only specialist class requirements in this chapter that apply to a Qualified Investor Fund are those in Rule 13.6.3, section 13.7 (Umbrella Funds), section 13.11 (Investment Token Funds) and section 13.13 (Funds investing in Crypto Tokens).
5. Generally, a Fund Manager using the Incorporated Cell Company structure can manage any specialist classes of Funds using the infrastructure of the Fund Platform. However, some types of specialist classes of Funds may not be easily established on a Fund Platform, such as a Fund of Funds, Master Fund or an Umbrella Fund because of their unique structures. If an applicant wishes to establish one of these specialist classes of Funds on a Fund Platform, the DFSA will consider what practical difficulties would arise in that context, including any additional clarification or Rule changes if needed.

13. ADDITIONAL REQUIREMENTS FOR SPECIALIST FUNDS

13.1 Application to Qualified Investor Funds

- 13.1.1** Only Rules 13.4.1, 13.5.1, 13.6.3 and sections 13.7, 13.10, 13.11, 13.12 and 13.13 of this chapter apply to, or in relation to, a Qualified Investor Fund.

13.1A Fund of Funds

Guidance

See Rule 3.1.3 for the definition of a Fund of Funds.

- 13.1.1A** (1) A Fund manager of a Fund of Funds may not invest in:
- (a) another Fund of Funds;
 - (b) a Feeder Fund;
 - (c) any Fund which is dedicated to investment in a number of Funds;
 - (d) any Fund which is dedicated to investment in a single Fund or in a single investment trust; and
 - (e) any Sub-Fund of an Umbrella Fund or Sub-Fund of any other Fund which is equivalent to a Fund within (a) to (d).
- (2) Not more than 25% in value of the Fund Property is to consist of Units in any one Fund.
- (3) For the purpose of (1) and (2), each Sub-Fund of an Umbrella Fund and of an equivalent Fund is to be treated as if it were a separate Fund.

13.2 Feeder Funds

Guidance

See Rule 3.1.4 for the definition of a Feeder Fund.

- 13.2.1** (1) A Fund Manager of a Feeder Fund must ensure that the Fund Property of a Feeder Fund, except where otherwise provided in the Rules in this chapter, only consists of:
- (a) Units or Debentures of a single Master Fund; or
 - (b) in the case of a Feeder Fund which is a Public Fund, Units or Debentures of an eligible Master Fund.
- (2) A Master Fund is eligible for the purposes of (1)(b) only if:
- (a) the borrowing of the Master Fund does not exceed 200% of the net asset value of the Master Fund or the market value of the Units of the Master Fund at the mid-value share price;
 - (b) the Units in or Debentures of the Master Fund are regularly Offered for purchase and sale by at least three market makers who are recognised or registered as members of an Exchange or an exchange regulated by a Financial Services Regulator;

- (c) the Feeder Fund owns not more than 20% of the Units (or of any class of Units in or of the Debentures or of any class of Debentures) of the Master Fund; and
- (d) the Master Fund has no limit on its duration.

13.2.2 A Fund Manager of a Feeder Fund must also ensure that the Feeder Fund invests in a Master Fund only if:

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

13.2.3 Where the Feeder Fund invests in a Master Fund managed by the same Fund Manager or by an associated or related company, the Fund Manager of the of the Feeder Fund must ensure that the Master Fund in which the investment is being made does not charge subscription or redemption fees on account of the investment; and commission or rebates received by the Fund Manager of the Feeder Fund, by virtue of the investment into the Master Fund, must be paid into the property of the Feeder Fund.

13.3 Private Equity Funds

Guidance

See Rule 3.1.6 for the definition of a Private Equity Fund.

Investment committee

- 13.3.1**
- (1) A Fund Manager of a Private Equity 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) A Fund Manager of a Private Equity Fund must call a meeting of Unitholders to vote on the election of at least three experts who are independent of the Fund Manager to sit on an investment committee of the Fund.

- (3) The committee members in (2) must not involve themselves in the day to day management of the Fund but are appointed to review investment opportunities.

Guidance

1. The DFSA expects 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 13.3.1(2), the annual report of that Fund must also include a report by that committee (see Rule 9.4.7(1)).

13.3.2 A Fund Manager of a Private Equity Fund must ensure that:

- (a) unless the purpose of the Fund is to invest in a single venture or undertaking, it does not invest more than 25% of the Fund in one such venture or undertaking; and
- (b) it does not invest in companies which are Related Parties in relation to the Fund or the Fund Manager, except where it does so in compliance with the requirements in Rule 8.3.2.

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

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

13.4 Property Funds

Guidance

See Rule 3.1.7 for the definition of a Property Fund.

Permitted form and listing

- 13.4.1** (1) A Fund Manager of a Domestic Fund which is a Property Fund must use only a Closed-ended legal structure for the investment vehicle, unless it is an Exempt Fund or a Qualified Investor Fund.
- (2) In the case of a Property Fund which is or intends to be a Public Fund, the Fund Manager:
 - (a) may only use either an Investment Company or Investment Trust as the investment vehicle of the Fund;

- (b) must ensure that it is listed and traded on an Authorised Market Institution or is listed and traded on an exchange in a Recognised Jurisdiction within 3 years from the date on which the Units of the Fund are first Offered to the public or any other shorter period as specified in the Fund's Prospectus; and
- (c) must ensure that the Constitution of the Fund includes provisions that deal with:
 - (i) the manner in which the issue and redemption of Units of the Fund will be made to ensure that the Fund is Closed ended; and
 - (ii) if applicable, the circumstances in which any Private Placements may be made.
- (3) 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 and traded on an Authorised Market Institution, or on an exchange in a Recognised Jurisdiction, it must:
 - (a) be registered as a Public Company;
 - (b) list and trade its Units on the exchange specified in its offer document or marketing material within 3 years of its registration; and
 - (c) during the period pending its listing and trading, comply with all the requirements applicable to a Public Fund other than the requirements relating to:
 - (i) the independent oversight function; and
 - (ii) the issue of a Public Fund Prospectus.

Guidance

See Article 18A of the Law for the definitions of Open-ended Fund and Closed-ended Fund.

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.
- (3) If a Fund Manager referred to in (1) uses a Fund Platform, the Incorporated Cell Company (ICC) may act as the custodian of the Real Property.
- (4) If an ICC acts as the custodian under (3), this Rule applies as if a reference to:
- (a) the Fund Manager acting as custodian is to the ICC acting as custodian; and
 - (b) the Fund Manager becoming insolvent is to the ICC becoming insolvent.

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:

- (a) the Fund Manager acts as custodian of the Real Property or, if the Fund Manager uses a Fund Platform, the Incorporated Cell Company acts as custodian of the Real Property; and
- (b) the Fund Manager has in place effective arrangements which ensure that the Real Property is not available to creditors if the Fund Manager or the Incorporated Cell Company (as the case may be) 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 or ICC 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.
 - (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 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.

Investment Committee

- 13.4.3**
- (1) A Fund Manager of a Property Fund must, subject to (2), call a meeting of Unitholders to vote on the election of at least three experts who are independent of the Fund Manager to sit on an investment committee of the Fund.
 - (2) A Fund Manager of a Fund which is constituted as an Investment Trust need not appoint an investment committee.
 - (3) The committee members in (1) are appointed to review investment opportunities and must not involve themselves in the day to day management of the Fund.

Investments

- 13.4.4**
- (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) 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
 - (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) The Fund Manager or, where appointed, the Trustee, must, subject to (5), ensure that the Fund holds good marketable legal and beneficial title in all its Real Property, whether directly or via Special Purpose Vehicles controlled by the Fund. The Fund may hold such title as joint tenants or tenants-in-common with one or more third parties provided that the Fund must hold the majority interest and control and have the freedom to dispose of its interest.
- (5) Any special arrangement entered into in respect of Fund Property for the purposes of Islamic finance arrangements where the legal title to the property is held by a financial institution will be acceptable for the purposes of (4) provided information relating to such arrangements either disclosed in the Prospectus of the Fund or approved by Special Resolution of Unitholders.
- (6) The Fund Manager and, if appointed, the Trustee, must take all reasonable care to ensure that the Fund Manager arranges adequate property insurance and public liability insurance coverage in relation to the Real Property of a Fund.

Guidance

1. Rule 13.4.4(5) enables Fund Managers and Trustees to use certain Islamic structures such as ijara for property financing which require the legal ownership of the real property to be held by the financial institution providing the financing.
2. Rule 13.4.4.(5) does not require individual transactions to be specified in the Prospectus or approved by Special Resolution of Unitholders. Instead, it would be sufficient for general information relating to such arrangements, such as their legal effect, to be included in the Prospectus, failing which Unitholder approval by Special Resolution will be required. Similarly, Unitholders can by Special Resolution grant general approval for use of such Islamic financing arrangements, obviating the need for each specific transaction to be separately approved.

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 65% of the 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.

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, 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) The legal opinion referred to in (1)(b) must include:
 - (a) a description of the significant terms of the joint ownership arrangement;
 - (b) a statement whether the Fund will have a good and marketable legal and beneficial interest in the property;
 - (c) a description of the equity and profit sharing arrangements of the parties to the agreement;
 - (d) a statement that the relevant contract and joint ownership arrangements are legal, valid, binding and enforceable under applicable law;
 - (e) a statement that all necessary licences and consents required in the location where the subject property is located have been obtained by the Fund or its Special Purpose Vehicle;
 - (f) any restriction on divestment by the Fund of its interest, in whole or in part, in the property; and
 - (e) if applicable, the implication of foreign rules and regulations that may prohibit full ownership of the property by the Fund.

13.4.8 The Fund Manager must ensure that:

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

13.4.9 The Fund Manager must disclose to Unitholders;

- (a) the ownership structure of the property interest and the material terms thereof, including restrictions on divestments and the impact or implication of such restrictions on the divestment value of the interest in the property;
- (b) the identity, background and ownership of the remaining legal and beneficial owners in the property, transactional history of these owners with the Fund in relation to the property;
- (c) financial, remuneration, fee-sharing or other material arrangements that have been or will be entered into between the Fund and the other owners of that property or their associates;
- (d) a summary of the contents of the legal opinion in Rule 13.4.7(1)(b) in relation to the property; and
- (e) where appropriate:
 - (i) the nature of restrictions on foreign ownership and the duration of them, and the impact of such restrictions on the operations and financial position of the Fund as a whole;
 - (ii) the Valuer's opinion and evaluation of the impact of such prohibitions on the value of the property; and
 - (iii) any other information which may reasonably be relevant to a Unitholder.

Use of Special Purpose Vehicles

- 13.4.10**
- (1) The Fund Manager of a Property Fund may hold Real Property for the Fund through a Special Purpose Vehicle, subject to (2) and (3), only if the Fund has majority ownership and control of the Special Purpose Vehicle.
 - (2) A Special Purpose Vehicle set up by the Fund Manager of a Fund under (1) may itself hold Real Property through another Special Purpose Vehicle (the second Special Purpose Vehicle) for the sole purpose of directly holding Real Property for the Fund or arranging financing for the Fund but the second Special Purpose Vehicle must not hold Real Property for the Fund through another Special Purpose Vehicle.
 - (3) The Fund Manager of the Fund must ensure that:
 - (a) neither the Constitution of any Special Purpose Vehicle nor the organisation, transactions or activities of such vehicles under any

circumstance contravene any requirements of the Rules in this section;

- (b) the board of directors of each of the Special Purpose Vehicles is appointed by the Fund Manager in agreement with the Trustee or Persons performing oversight functions of the Fund where applicable and, where elected, the investment committee; and
- (c) both the Fund and the Special Purpose Vehicles must appoint the same Auditor and adopt the same accounting principles and policies.

Guidance

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

- (a) a report made by the Fund's Auditor must be prepared on:
 - (i) the profit and loss of the Special Purpose Vehicle for each of the three years preceding the transaction or any shorter period as is relevant if the Special Purpose Vehicle was in existence for less than three years; and
 - (ii) the assets and liabilities of the Special Purpose Vehicle as at the last date, which is no more than 6 months old from the date of the report to which the accounts of the Special Purpose Vehicle were prepared;
- (b) the report required under (a) must:
 - (i) indicate how the profits and losses of the Special Purpose Vehicle would, in respect of the Shares to be acquired, have affected the Fund, if the Fund had at all material times held the Shares to be acquired; and
 - (ii) where the Special Purpose Vehicle has subsidiaries, deal with the profits or losses and the assets and liabilities of the Special Purpose Vehicle and its subsidiaries, either as a whole, or separately; and
- (c) a valuation report in respect of the Special Purpose Vehicle's interest in Real Property must be prepared in accordance with the requirements set out in Rules 13.4.18 to 13.4.22.

Related Party Transactions

Guidance

1. A Fund Manager of a Public Property Fund is required pursuant to Rule 8.3.2 to obtain the agreement of Unitholders by way of an ordinary resolution before undertaking a Related Party 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.

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- 13.4.12** (1) The following information in relation to Related Party Transactions must be disclosed to Unitholders and where appointed, the Trustee, by the Fund Manager of a Public Property Fund:
- (a) any beneficial interests of the Related Party, and any changes thereof, in the Fund; and
 - (b) any potential conflicts of interests involving the 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 for each of the Funds involved in the transactions.
- 13.4.13** (1) Where any 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 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 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.
- (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 a 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 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 a 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 a 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.

13.4.17 Deleted

Valuation function

- 13.4.18** (1) The Fund Manager of a Property Fund must, subject to the approval of the Trustee, appoint a Person who is able to provide professional valuation services in accordance with the Rules in this section.
- (2) The Fund Manager must ensure that the Person appointed under (1) values each Real Property prior to its acquisition and disposal.
 - (3) The Fund Manager must commission the Person referred to in (1) to produce a valuation report of the Property Fund each year in accordance with Rule 13.4.22. The net asset value of the Fund following this valuation must be reported in the annual report of the Fund.

13.4.19 For the purpose of Rule 13.4.18, a Fund Manager must appoint a Person:

- (a) who carries on the business of valuing Real Property;
- (b) who is not Related to the Fund Manager; and
- (c) whom the Fund Manager, and if appointed the Trustee, have reasonable grounds to believe would be capable of providing objective valuation of Real Property.

Guidance

1. The term “Related” has the meaning given to it in the GLO module.

2. A Fund Manager, and where appointed the Trustee, in forming the opinion required under Rule 13.4.19(c), should be satisfied that the Person to be engaged for providing valuation of Real Property meets if not all, at least most of the following criteria:
 - a. the Person is a, or has key personnel who are, fellow or associate members of a recognised professional body of surveyors or property valuers and who are qualified to perform property valuations;
 - b. the Person has or has access within the organisation to the relevant expertise, that is, knowledge of and experience in the valuation of property of the relevant kind in the relevant area where the property is situated;
 - c. the Person has robust internal controls and checks and balances to ensure the integrity of valuation reports and that these reports are properly and professionally prepared in accordance with international best practice;
 - d. the Person has adequate professional insurance to cover its usual risks;
 - e. the Person does not have ownership or other commercial links with any other Persons providing Financial Services to the Fund (such as investment advisers or investment managers appointed to the Fund), which would impair that Person's ability to provide independent and objective valuation services to the Fund; and
 - f. the Person or any of his associates has not been instrumental in relation to the finding of the Real Property for the Fund.

- 13.4.20** (1) A Fund Manager must ensure that any valuation by the Person appointed to provide valuation services to the Fund is carried out on the basis of an 'open market value' as defined in the Constitution and the most recent Prospectus of the Fund.
- (2) The valuation report under (1) must confirm that if the Real Property was acquired for the Property Fund it could be disposed of at that valuation within a reasonable period.

13.4.21 The Fund Manager must ensure that the property is acquired within a reasonable time from the date of the valuation report and in any event not later than six months from the date of valuation and at a price no more than 5% above the valuation price.

Guidance

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

Valuation Report

- 13.4.22** A Fund Manager must ensure that any valuation report prepared by the Person appointed:
- (a) includes all material details in relation to the basis of valuation and the assumptions used;

- (b) describes and explains the valuation methodologies adopted;
- (c) outlines the overall structure and condition of the relevant market including an analysis of the supply and demand situation, the market trend and investment activities;
- (d) includes a brief description of the property, its location, the nature of the interest the Fund holds in the property, its existing use, any encumbrances concerning or affecting the property, the lease expiry profile if any, the capital value in existing state at the date the valuation was performed, the net monthly income from the property, and any other matters which may affect the property or its value;
- (e) confirms the professional status of the valuer and that the valuation report is prepared on a fair and unbiased basis; and
- (f) explains the rationale for choosing the particular valuation method if more than one method is available.

13.4.23 A Fund Manager must ensure that whenever a valuation report is prepared for the Fund, the date of the valuation report must be:

- (a) the date the Fund is valued, if such report is prepared for the purpose of calculating the net asset value of the Fund; or
- (b) a date which is not more than six months before the date on which:
 - (i) an offering document is issued;
 - (ii) a circular is issued, if the circular relates to a transaction that requires Unitholders' approval; or
 - (iii) a sale and purchase agreement or other agreement to transfer legal title is signed, if the transaction does not require Unitholder approval.

Reappointment 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 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) 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.

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.
3. An Exempt Fund or Qualified Investor Fund may also be constituted as a REIT if it meets the criteria in Rule 13.5.1(2). Such a REIT also has 3 years to list and trade if its offer documents (e.g. the Information Memorandum) or its marketing material state that it intends to list and trade its Units.

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 Property Fund which is constituted in accordance with (2).
 - (2) A REIT is a 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.

(3) 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.

13.5.2 (1) A Fund Manager of a REIT must ensure that it distributes to the Unitholders as dividends each year an amount not less than 80% of its audited annual net income.

(2) The Persons providing oversight functions in respect of a Public REIT must determine if any;

(a) revaluation surplus credited to income, or

(b) gains on disposal of Real Property,

shall form part of net income for distribution to Unitholders.

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

13.5.4 (1) A Fund Manager of a Public REIT must ensure, subject to (2), that any investment made in respect of property under development whether on its own or in a joint venture is undertaken only where the REIT intends to hold the developed property upon completion.

(2) The total contract value of the property under development in (1) must not exceed 30% of the net asset value of the Fund Property of the Public REIT.

Guidance

For the purposes of Rule 13.5.4, the DFSA would not consider property development activities to include refurbishment, retrofitting and renovation.

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 13.6.3.

- 13.6.2**
- (1) The Fund Manager of a Hedge Fund must ensure functional separation and independence between:
 - (a) the functions of Fund valuation and asset pricing; and
 - (b) the investment management process.
 - (2) Where the Fund manager is unable to demonstrate adequate separation and independence in accordance with (1), the DFSA may require the Fund Manager to appoint an independent, suitably competent and experienced Fund Administrator to perform the functions specified in (1)(a).

Guidance

To provide segregation of the net asset value determination process of the Fund from the investment management process, generally personnel involved in the former should not be involved in the latter. An effective method of achieving such segregation is to delegate the calculation, determination and production of the net asset value to a suitably competent and experienced third party Fund Administrator.

Use of prime brokers

- 13.6.3**
- A Fund Manager of a Hedge Fund may only grant to a prime broker authority to combine the assets of the Fund with any other assets held by or available to the prime broker as collateral for any financing activities to be undertaken by the prime broker where, and so long as, all the following conditions are met:
- (a) the Fund is an Exempt Fund or Qualified Investor Fund;
 - (b) the Prospectus of the Fund contains, in addition to the disclosure required under chapter 14, the following mandatory disclosure and warnings:
 - (i) the identity and profile of the prime broker, including where it is located and how it is regulated;
 - (ii) the services which the prime broker provides to the Fund and the nature and extent to which the prime broker has the power and

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

Guidance

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 13.6.3(c) requires it to meet the Eligible Custodian requirements in certain circumstances. This is where it has the power to use Fund assets as collateral for its financing activities (e.g. by having a charge over the Fund assets) in conjunction with any other assets held by or available to it.
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 8, DFSA's Hedge Fund Code of Practice as well as international developments relating to Hedge Funds.

13.7 Umbrella Funds

Guidance

See Rule 3.1.10 for the definition of an Umbrella Fund.

Form of an Umbrella Fund

13.7.1 Subject to any restrictions in the Law and the Rules in this module, an Umbrella Fund:

- (a) may be formed as a Protected Cell Company (PCC); and
- (b) must be an Open-ended Fund if formed as a PCC.

Guidance

1. A Protected Cell Company (PCC) is a form of Investment Company which needs to be registered as a PCC under the Companies Regulations. An Umbrella Fund using the PCC structure has the benefit of legal segregation of Fund Property forming part of each individual cell. Accordingly, Fund Property of one cell of a PCC is not available to pay any obligations arising in relation to another cell of that PCC.
2. It is not mandatory for an Umbrella Fund to be constituted as a PCC. Instead, such Funds may be formed as a conventional Investment Company or Investment Trust. However, the legal segregation available to each cell of a PCC is not available to Sub-Funds of Umbrella Funds not formed as a PCC.

Investments of an Umbrella Fund

13.7.2 A Fund Manager of an Umbrella Fund must ensure that none of its Sub-Funds invests in another of its Sub-Funds.

Guidance

Requirements that apply to other Funds apply to Umbrella Funds equally, although there are some Umbrella Fund specific requirements. For convenience of reference, key provisions specific to Umbrella Funds are identified in the following Table.

13.7.3 Additional requirements specific to Umbrella Funds

Rule	Requirements
Rule 3.1.10	Definition
Rule 13.7.1	Form of an Umbrella Fund
Rules 9.4.2	Annual and interim reports
Rules 9.4.6	Content of the annual report of an Umbrella Fund
Rules 9.4.9	Fund Manager's Report
Rules 13.7.2	Investment restrictions applicable to Fund of Funds when investing in a Sub-Fund
App A7.1.1(2)(h) & 17	Content of a Public Fund Prospectus
Rules 14.3.5	Content of a Short Form Prospectus
Rules 16.1.1, 16.1.3(3) (4) & (5)	Transfer schemes
Rules 17.1.1 & 17.1.6	Winding up

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.

13.9 Exchange Traded Funds (ETFs)

Restriction on holding out to be an ETF

13.9.1 A Fund Manager, or any Person making an Offer of a Unit of a Fund or otherwise marketing a Fund, must not describe the Fund in its offer document or marketing material as an “Exchange Traded Fund” (or “ETF”) or otherwise hold out the

Fund as being an Exchange Traded Fund or ETF, unless the Fund meets the criteria in Rule 3.1.12.

Guidance

See also Guidance item 4 under Rule 13.9.6 for the difference between an Exchange Traded Fund or ETF and other exchange traded Open-ended Funds.

Systems and controls

- 13.9.2** A Fund Manager of an ETF must take reasonable steps to ensure that any Authorised Participant it appoints has adequate systems and controls to ensure that the Units of the ETF are traded on-market at a price that does not significantly vary from the most recent Net Asset Value (NAV) of the ETF, or the indicative Net Asset Value (iNAV) of the ETF, if available.

Guidance

See also Guidance item 3 under Rule 13.9.6 for a description of iNAV and Rule 14.4.8(f) for information relating to iNAV that is required to be included in a Prospectus.

Investment objective and strategy of an ETF

- 13.9.3** A Fund Manager of an ETF must ensure that the investment objective and strategy of the Fund is to track the performance of an index or benchmark specified in its Prospectus.

Guidance

Rule 13.9.3 requires an ETF to track the performance of an index or benchmark. It therefore does not permit a Fund that is 'actively managed' to be established as an ETF. For more discussion about actively managed Funds – see the Guidance after Rule 13.9.6.

Criteria for underlying indices or other benchmarks

- 13.9.4** (1) A Fund Manager of an ETF may use an index or other benchmark for the purposes referred to in Rule 13.9.3 only if it is provided by a Price Information Provider that meets the requirements in App 9.
- (2) In (1), a Price Information Provider is a price reporting agency or an index or benchmark provider which constructs, compiles, assesses or reports, on a regular and systematic basis, prices of Investments, Crypto Tokens, rates, indices, commodities or figures, which are made available to users, including a Fund Manager.

Index or benchmark provided by a Related Party

- 13.9.5** The Fund Manager of an ETF must treat an arrangement between the Fund Manager and a Related Party to use an index or benchmark provided by the Related Party as a Related Party Transaction.

Guidance

1. An index or other benchmark referenced by an ETF is not the property of the ETF. If the index or benchmark is provided by a Related Party (for example, if it is custom made for the Fund Manager), it can give rise to conflict of interests that may pose the risk of

distortion of information in favour of the Fund Manager, to the possible detriment of investors in the ETF. Therefore, Rule 13.9.5 also applies the Related Party Transaction provisions in Rule 8.3.2 to an arrangement under which a Fund Manager of an ETF uses or proposes to use an index or benchmark provided by a Price Information Provider which is a Related Party.

2. A Fund Manager of an ETF will also need to comply with Rule 13.9.4 in relation to a Related Party Price Information Provider which provides the index or the other benchmark it tracks.

Types of ETFs and their characteristics

- 13.9.6** A Fund Manager of an ETF must take reasonable steps to ensure that the Fund's Prospectus and marketing material describe the type of ETF in a way that is clear and not misleading to enable investors and potential investors to understand the type of ETF, and its characteristics.

Guidance

General

1. The terminology ETFs use are specific to ETFs. Depending on the type of ETF, their features could also be different. FSB, IOSCO and ESMA have issued guidance relating to types of ETFs, ETF terminology and ETF characteristics, to enable retail investors, in particular, to understand ETF terminology, different types of ETFs, and their associated characteristics better. The following Guidance is based on the material issued by those bodies, and is designed to assist Fund Managers of ETFs to meet their overarching obligation in Rule 13.9.6.

ETF terminology

(Annual) tracking difference

2. (Annual) tracking difference measures the actual performance of the ETF, compared to the annual return of the tracked index or other benchmark, generally over a 12 month period (but this could be over a shorter specified period).

Indicative Net Asset Value (iNAV)

3. iNAV is a measure of the intraday value of the net asset value (NAV) of an index-based ETF, based on the most up-to-date information. iNAV is not the value at which investors buy and sell ETF Units through the Authorised Participant. iNAV is calculated and made available by the operator of the exchange on which an ETF is traded – based on the information made available to the relevant exchange by the ETF manager and the AP relating to the underlying portfolio of ETF assets.

Exchange traded products (ETPs)

4. ETPs include a wide variety of different investment products that are traded on an exchange, such as exchange-traded commodities (ETCs), exchange-traded notes (ETNs), exchange-traded instruments (ETIs), and exchange-traded vehicles (ETVs). Most of these are debt instruments, and not equity participation rights conferred by a Unit of an ETF.

ETF features

5. While an ETF is a Collective Investment Fund (Fund), as it has special features, it has been classified as a specialist class of Fund.

6. An ETF differs from other Funds because unlike other exchange traded Funds, ETF Units have concurrent primary market and secondary market trading, primary market trading occurring in 'creation Units' between the Fund Manager and its Authorised Participant (AP), and secondary market trading between the AP and investors. See also Guidance under Rule 3.1.12.
7. Investors in an ETF may incur additional costs and fees as they have to buy and sell ETF Units through an Authorised Participant (who directly buys and sells 'creation units' in the ETF from the ETF Fund Manager). These are different to the Units of the ETF which are traded on the relevant exchange, and are generally of a larger denomination than the Units available to investors on the relevant exchange.

Types of ETFs

Index tracking ETF (Index-tracker)

8. An Index-tracking (based) ETF typically seeks to replicate the performance of an underlying index or benchmark. It may do so either as a physical ETF or as a synthetic ETF.

Physical ETF

9. The investment strategy of a physical ETF is to hold physical securities and other assets to obtain returns that correspond typically to those of an underlying index or benchmark by replicating (and where appropriate, by sampling) the component securities of the relevant index or benchmark. Replication generally involves investing in the component securities of the underlying index or benchmark in the same approximate proportions as in the underlying index or benchmark.
10. In certain cases, it may not be possible for an ETF to own every stock of an index (for example, due to, transaction costs, the index being too large, its components being illiquid, or because its market capitalisation weighting would result in the ETF violating regulatory requirements for asset diversification). In such instances, a physical ETF may rely on sampling techniques. For example, by acquiring a subset of the component securities of the underlying index, and possibly some securities that are not included in the corresponding index designed to improve the ETF's index-tracking.

Synthetic ETF

11. The investment strategy of a Synthetic ETF is to meet its investment objective by entering into a derivative contract (typically through a total return swap) with a selected counterparty. The swap contracts can take one of two forms:
 - a. an unfunded structure; or
 - b. a funded (or prepaid swap) structure,
 as described below.
12. In both models, the derivative exposure is collateralised or reduced through the use of collateral or a portfolio management process, that may involve the services of a third party as collateral agent (in the funded model) or is covered by the substitute basket as assets of the ETF (in the unfunded model).

Synthetic ETF (unfunded)

13. In a synthetic ETF adopting the unfunded structure, the ETF Fund Manager invests the cash proceeds from investors in a so-called substitute or reference basket of securities (typically bought from a bank). The basket's return is swapped via a derivative contract

with an eligible counterparty (frequently, the derivatives desk of the same bank), in exchange for the return of the index referenced in the ETF's investment objective.

Synthetic ETF (funded)

14. In a synthetic ETF adopting the funded structure, the ETF Fund Manager enters into a swap in exchange for cash (or for the entire ETF portfolio) without the creation of a substitute basket.

A leveraged ETF

15. A leveraged ETF (which is often an index-tracking ETF) can have leverage exposure to an index, or exposure to a leveraged index.

Actively managed ETF

16. An ETF is actively managed if the Fund Manager exercises discretion over the composition of the invested portfolio in an attempt to outperform a chosen index or other benchmark. The key difference, compared to an index tracking ETF, is a Fund Manager's ability to adjust the portfolio without being subject to the set rules of the index or other benchmark referenced. An actively managed ETF could be a physical ETF or a synthetic ETF – with a portfolio selected at the discretion of the Fund Manager or derivatives designed at the discretion of the Fund Manager.
17. The DFSA regime does not permit the creation of actively managed ETFs (see Rule 13.9.3) as there is less transparency relating to the underlying portfolio of assets. This gives rise to potential difficulties in clearly identifying risks associated with exposures to counterparties and any collateral used in such ETFs, compared to ETFs that passively track the performance of a specified index or other benchmark.

13.10 Venture Capital Funds

Guidance

See Rule 3.1.13 for the definition of a Venture Capital Fund.

13.10.1 A Fund Manager must ensure that the investment vehicle used for a Venture Capital Fund is:

- (a) a Closed-ended legal structure; and
- (b) either an Investment Company or an Investment Partnership.

13.10.2 (1) The requirement in Article 27(1)(e) of the Law does not apply to the Fund Manager of a Venture Capital Fund that is an Exempt Fund.

- (2) If the Fund Manager of a Venture Capital Fund referred to in (1) itself holds Fund Property, it must have in place effective arrangements which ensure that the Fund Property is not available to the creditors of the Fund Manager, or of any other Fund it manages, in the event of the Fund Manager's insolvency.

Guidance

1. Article 27(1)(e) of the Law requires a Fund Manager to appoint an Eligible Custodian with whom the legal title to the Fund Property is registered, unless the Rules provide otherwise.

Rule 12A.3.1(2)(c) provides that this requirement does not apply to a Qualified Investor Fund that is a Venture Capital Fund. Rule 13.10.2 makes similar provision for the requirement not to apply where a Venture Capital Fund is an Exempt Fund.

2. Where a Fund Manager of a Venture Capital Fund holds Fund Property of any type, whether investments, cash or other liquid assets, the Fund Manager must ensure that the property is clearly identifiable as Fund Property and is properly segregated from all other assets belonging to, or managed by, the Fund Manager, so it is not available to creditors in the event of the insolvency of the Fund Manager.
3. The Fund Manager of a Venture Capital Fund does not need to have an internal audit function (see GEN Rule 5.3.13) or a Finance Officer (see GEN Rule 7.5.1) if the Fund Manager only manages Venture Capital Funds. The DFSA may, in the case of such a Fund Manager, also consider granting temporary relief from requirements in GEN section 7.5 for the appointment of other Authorised Individuals (such as a Compliance Officer) during the period between authorisation and any initial commitment of capital.
4. The DFSA may, in the case of a Fund Manager of a Venture Capital Fund, also consider granting temporary relief from the requirements in Rule 9.2.1 for the preparation of financial statements for the Fund for the period between authorisation and any initial commitment of capital.
5. The requirements in sections 8.3 and 8.4, other than Rules 8.3.1(2) and 8.4.1(1)(a), do not apply to a Fund Manager of a Venture Capital Fund (see Rule 8.1.1(3) and (4)).
6. If a Fund Manager of a Venture Capital Fund obtains the services of special advisers, for example, to select venture capital businesses to invest in, or to monitor their on-going performance, those advisers should not be held out as being an investment committee of the type referred to in Rule 13.3.1. Such a description would be misleading, unless the Fund Manager chooses to follow the requirements in that Rule.

13.11 Funds investing in Investment Tokens

Restrictions on use of certain terms

- 13.11.1** A Fund Manager of a Fund must ensure that its offer document or marketing material does not refer to it as an “investment token fund”, or otherwise hold it out as being a Fund which has as its main purpose investing in Investment Tokens, unless the Fund meets the criterion in Rule 3.1.14.

Guidance

Other descriptions of a Fund that are likely to fall within the scope of Rule 13.11.1 include the use of terms such as ‘security token fund’, ‘derivative token fund’, ‘share token fund’ and ‘bond token fund’.

- 13.11.2** A Fund Manager of a Fund must ensure that its offer document or marketing material does not hold out that any part of the Fund Property consists or will consist of Investment Tokens, unless the relevant property consists or will consist of Investment Tokens, as defined in GEN Rule A2.1.1(3).

Guidance

Other descriptions of Fund Property that are likely to constitute the property being held out as consisting of Investment Tokens, include the use of terms such as ‘security tokens’, ‘derivative tokens’, ‘share tokens’ and ‘bond tokens’.

13.12 Credit Funds

Application

13.12.1 This section applies to the Fund Manager of a Credit Fund that is a Domestic Fund.

Guidance

See Rule 3.1.15 for the definition of a Credit Fund.

Investment vehicle

13.12.2 The Fund Manager must ensure that a Credit Fund is:

- (a) either an Investment Company or an Investment Partnership;
- (b) a Closed-ended Fund; and
- (c) either an Exempt Fund or a Qualified Investor Fund.

Eligible Custodian not required for Exempt Fund

- 13.12.3** (1) The requirement in Article 27(1)(e) of the Law does not apply to the Fund Manager of a Credit Fund that is an Exempt Fund.
- (2) If the Fund Manager of a Credit Fund referred to in (1) itself holds Fund Property, it must have in place effective arrangements which ensure that the Fund Property is not available to the creditors of the Fund Manager, or of any other Fund it manages, in the event of the Fund Manager’s insolvency.

Guidance

Article 27(1)(e) of the Law requires a Fund Manager to appoint an Eligible Custodian with whom the legal title to the Fund Property is registered, unless the Rules provide otherwise. Rule 12A.3.1(2)(d) provides that this requirement does not apply to a Qualified Investor Fund that is a Credit Fund. Rule 13.12.3 makes similar provision for the requirement not to apply where a Credit Fund is an Exempt Fund.

Restrictions on credit a fund may provide

- 13.12.4** (1) The Fund Manager must ensure that the Credit Fund does not provide any of the following Credit Facilities:
- (a) a letter of credit;
 - (b) a financial guarantee; or
 - (c) trade finance unless the finance is for the trade of goods or services that takes place wholly within the State or another country.

- (2) In (1), “trade finance” means finance provided for the purpose of buying or selling goods or services.

Guidance

Rule 13.12.4 prohibits a Credit Fund from providing certain types of credit that involve greater operational or other risk. This includes a prohibition against providing trade finance unless the finance relates solely to the trading of goods or services within the UAE or another country. The reason for the distinction between trade finance within a country and cross border trade finance is that cross border trade finance is operationally more complex and involves a higher degree of risk. The prohibition does not, however, prevent the use of certain forms of credit that are often used for trade finance such as discounting and factoring of invoices, where they are used only to finance trade within a country or for purposes unrelated to trade finance.

13.12.5 The Fund Manager must ensure that the Credit Fund does not Provide Credit to any of the following:

- (a) a natural person;
- (b) the Fund Manager, a Related Party of the Fund Manager or any other person acting for or on behalf of the Fund Manager;
- (c) another fund or fund manager;
- (d) a Financial Institution or a person Related to a Financial Institution;
- (e) a person who intends to use the credit for the purpose of trading in Investments, commodities or crypto assets; or
- (f) a person who intends to use the credit for the purpose of providing credit.

Policies and procedures for granting, acquiring, monitoring and managing credit

- 13.12.6** (1) The Fund Manager must ensure that the Credit Fund has in place appropriate policies and procedures relating to:
- (a) the assessment, pricing, granting, managing and acquiring of credit, in accordance with a defined risk appetite statement;
 - (b) credit monitoring, renewal and financing;
 - (c) the criteria, governance and decision making structures for (a) and (b);
 - (d) collateral management;
 - (e) concentration risk management;
 - (f) valuation, including collateral valuation and impairment;
 - (g) identification and management of problem debt;

- (h) forbearance;
 - (i) delegated authority; and
 - (j) documentation and security.
- (2) The Fund Manager of a Credit Fund must ensure that the policies and procedures referred to in (1) are kept up-to-date and are in writing.

13.12.7 The Fund Manager of a Credit Fund must ensure that:

- (a) credit granting and acquisition is based on sound and well-defined criteria and, for that purpose, the process for approving, amending, renewing and re-financing credit and acquiring loans is clearly established;
- (b) internal methodologies are in place to assess the credit risk of exposures to individual obligors, securities or securitisation positions and credit risk at the portfolio level, which do not rely solely or mechanistically on external credit ratings;
- (c) there is ongoing monitoring and administration of the various credit risk bearing portfolio positions and exposures, including for identifying and managing problem credits and for making adequate value adjustments and provisions;
- (d) measures are in place for the adequate diversification of credit positions having regard to the target markets and overall credit strategy;
- (e) if credit risk mitigation techniques adopted prove less effective than expected, there are measures to address and control credit risks; and
- (f) measures to address concentration risk, arising from exposure to counterparties, include indirect exposures.

Stress testing programme

13.12.8 The Fund Manager of a Credit Fund must ensure that:

- (a) the Fund has a comprehensive stress-testing programme in place;
- (b) stress testing under the programme is carried out at least annually or, if requested by the DFSA, at more frequent intervals specified by the DFSA; and
- (c) the results of stress testing are reported to the Governing Body of the Fund at least annually or, if requested by the DFSA, at more frequent intervals specified by the DFSA.

Guidance

1. The stress testing programme for a Credit Fund should, among other things, identify possible events or future changes in economic conditions that could have unfavourable effects on the Fund's credit exposures and assess the Fund's ability to withstand such changes.
2. The DFSA is likely to review the results of stress testing during the initial stages of a Fund's operation and then on an ad hoc basis once the Fund becomes established.

Risk diversification strategy

13.12.9 The Fund Manager of a Credit Fund must:

- (a) have a clear strategy which aims, within a specified period not exceeding three years from the date the Fund is established, to achieve a diversified portfolio of loans that limits exposure to any one person or Group to a maximum of 25% of net assets (the “risk diversification limit”);
- (b) take reasonable steps to ensure the risk diversification limit is achieved within the specified period referred to in (a);
- (c) if it is unable to achieve the risk diversification limit within the specified period referred to in (a), then within 30 days from the end of that period, seek Unitholder approval to amend its strategy or to extend the period for achieving its strategy;
- (d) if Unitholder approval is obtained under (c), take reasonable steps to ensure the risk diversification limit is achieved within the extended period which must not exceed four years from the date the Fund is established; and
- (e) once the risk diversification limit is achieved under (b) or (d) take reasonable steps to ensure it is not breached.

Redemptions and distributions

13.12.10 The Fund Manager of a Credit Fund must ensure that:

- (a) the Fund is established for a finite period not exceeding 10 years; and
- (b) if the Fund’s Constitution, and the laws and regulations under which it was established, permit redemptions or distributions before the end of the period referred to in (a), a redemption or distribution is made only:
 - (i) to the extent that there is unencumbered cash or liquid assets available for redemption or distribution purposes;
 - (ii) if the redemption or distribution will not result in contravention of any liquidity or other requirement under legislation administered by the DFSA; and
 - (iii) if the redemption or distribution has been approved by an ordinary resolution of Unitholders.

Borrowing limit

13.12.11 (1) The Fund Manager must not borrow money for use by the Credit Fund on terms that the borrowing is to be repayable out of the Fund Property, unless:

- (a) the borrowing is in accordance with the Fund’s Constitution;
- (b) the borrowing does not on any day exceed 10% of the net asset value of the Fund Property; and

- (c) reasonable arrangements are in place that will enable borrowings to be repaid to ensure the limit in (b) is complied with.
- (2) If the limit in (1)(b) is breached, the Fund Manager must take immediate action to rectify that breach.
- (3) In this Rule, “borrowing” also includes any arrangement involving the use of a combination of Derivatives to achieve a temporary injection of money into Fund Property in the expectation that the sum will be repaid.

Periodic reports

13.12.12 A Fund Manager of a Credit Fund must ensure that its annual report and interim report include the following information about credit provided and loans acquired:

- (a) a breakdown between senior secured debt, junior debt and mezzanine debt;
- (b) a breakdown between loans with an amortising repayment schedule and loans with bullet repayments;
- (c) a breakdown of the loan-to-value ratio for each loan;
- (d) information about non-performing exposures and aggregated information about exposures subject to forbearance activities; and
- (e) any material changes to the credit assessment and monitoring process.

Guidance

In considering what constitutes a non-performing exposure under this Rule or elsewhere under this section, the relevant classifications in PIB section 4.5 are likely to be useful to classify, manage and report problem debt.

Risk warnings in marketing materials

13.12.13 A Fund Manager must take reasonable steps to ensure that marketing material relating to a Credit Fund includes a prominent risk warning setting out:

- (a) the particular risks that arise from Providing Credit or acquiring loans;
- (b) that return of capital in an investment in the Fund is not guaranteed; and
- (c) that it is possible that investors in Units of the Fund may suffer investment losses or that the Units may become illiquid.

13.13 Funds investing in Crypto Tokens

Restrictions on use of certain terms

13.13.1 A Fund Manager of a Fund must ensure that its offer document or marketing material does not refer to it as a “Crypto Token Fund” or “Crypto Fund”, or otherwise hold it out as being a Fund which has as its main purpose investing in Crypto Tokens, unless the Fund meets the criterion in Rule 3.1.16.

Use of benchmarks for valuations

13.13.2 A Fund Manager of a Fund that has any Fund Property that consists of Crypto Tokens must ensure that it does not use an index or benchmark provided by a Price Information Provider to value the Crypto Tokens unless the Price Information Provider meets the requirements in App 9.

Guidance

1. A Fund in the DIFC is, except as specified in GEN Rule 3A.2.1(3), only permitted to invest in a Recognised Crypto Token i.e. a Crypto Token that the DFSA has recognised under GEN section 3A.
2. A “Price Information Provider” is a price reporting agency or an index or benchmark provider which constructs, compiles, assesses or reports, on a regular and systematic basis, prices of Investments, Crypto Tokens, rates, indices, commodities or figures, which are made available to users, including a Fund Manager – see the definition in Rule 13.9.4.
3. The requirement in Rule 13.13.2 applies to a Fund that has any Fund Property that consists of Crypto Tokens. That is, it does not apply only to a Fund which has investing in Crypto Tokens as its main purpose (i.e. a Crypto Token Fund).

PART 7: MARKETING OF DOMESTIC AND FOREIGN FUNDS

Guidance

1. Part 7 of the Law sets out the overarching provisions that apply to the Offer (also called marketing) of Units of both Domestic and Foreign Funds; and in the case of the latter, where Units of such Funds are marketed in or from the DIFC.
2. Article 50 of the Law contains the Marketing Prohibition. Under this prohibition, no Person is permitted to Offer a Unit of a Fund to prospective or existing Unitholders unless:
 - a. a Prospectus that complies with the relevant requirements in the Law and the Rules is made available to the person to whom the Offer is made;
 - b. the Person making the Offer of the Unit is either the Fund Manager of the Fund or an Authorised Firm whose licence authorises it to do so; and
 - c. the Offer is made in accordance with the applicable requirements in the Law or the Rules.
3. Article 19 of the Law defines the activities that constitute an Offer. Under this Article, a Person is to be regarded as making an Offer of a Unit if he:
 - a. makes an offer to another Person which, if accepted, would give rise to a contract for the issue or sale of Units by him or by another Person with whom he has made arrangements for the issue or sale of the Units; or
 - b. invites another Person to make an offer which, if accepted by him, would give rise to a contract for the issue or sale of Units by him or by another Person with whom he has made arrangements for the issue or sale of the Units,

whether or not the offer or invitation referred to in Article 19(2)(a) or (b) is made by way of a financial promotion of the Units..
4. Rules 4.1.3 and 4.1.4 exclude from being treated as Offers any Transactions undertaken by an Authorised Firm where such Transactions are Execution-only Transactions, or Transactions for the purposes of managing a Discretionary Portfolio for a Client, or for the purposes of redeeming a Unit of a Fund for a Client. Similarly, an offer made by an Authorised Firm to a Market Counterparty is also excluded from being an Offer. Finally, Rule 4.1.5 excludes an offer of a Unit of a Passported Fund from being treated as an Offer where the DIFC is the Host Jurisdiction. This is because such an offer will be subject to the requirements in the Home Jurisdiction. As a result, such excluded Transactions and offers do not attract the marketing prohibition in Article 19 of the Law and the requirements in both the Law and this module relating to the marketing of Units.
5. This Part of the module sets out the detailed requirements that apply to the Offer of Units of Domestic and Foreign Funds, including Prospectus disclosure, under respective chapters. The Rules in this chapter supplement provisions of COB which also govern the carrying on of Financial Service activities by an Authorised Firm, except where otherwise provided.
6. With the exception of Part 2 of the Markets Law 2012, that Law and Rules made for the purpose of that Law govern the listing of the Units of a Fund and continuous disclosure obligations that apply to in relation to Listed Funds.

14 MARKETING OF DOMESTIC FUNDS AND PROSPECTUS DISCLOSURE

14.1 Prospectus disclosure for Domestic Funds

Guidance

1. While a Person is required by virtue of Article 50(1) of the Law when making an Offer of a Unit of a Domestic Fund to another Person to make available to that other Person a Prospectus, the obligation to produce a Prospectus is imposed under Article 51(a) of the Law on the Fund Manager of a Domestic Fund.
2. This chapter sets out the detailed requirements that apply to the Fund Manager who is obliged to produce a Prospectus, and the obligations and liabilities relating to Prospectuses, as well as the obligation relating to making available a Prospectus which applies to the activity of making an Offer of Units.
3. Some requirements relating to Prospectus disclosure are common to all Domestic Funds. However, in other areas, particularly relating to the content of disclosure required in a Prospectus, and the manner of distribution, different requirements apply depending on whether the Fund is a Public Fund, Exempt Fund or Qualified Investor Fund. Further, specialist class of Funds attract additional disclosure requirements that are unique to their activities. This chapter sets out those requirements and where necessary by reference to the types and classes of Domestic Funds.
4. Article 14(2) of the Law provides that the requirements relating to Domestic Funds do not apply to an External Fund (i.e. a Fund established in a jurisdiction other than the DIFC by a DFSA licensed Fund Manager), unless otherwise provided in the Law or Rules. As a result, the general Prospectus requirements set out in the Law and this module do not apply to External Funds, except that:
 - a. any offer document prepared for the purposes of complying with the requirements applicable in the jurisdiction in which the External Fund is established is regarded as a Prospectus for the purposes of the requirements relating to the Offer of Units of such a Fund in or from the DIFC (see Article 50(3)(c) of the Law); and
 - b. the DFSA has the power to prescribe any additional disclosure to be included in such a document (see Article 51(2) of the Law).

Those requirements are specified in Rules 14.2.4 – 14.2.7.

5. If a Domestic Fund is a Passported Fund and the DIFC is the Home Jurisdiction of the Fund, certain requirements relating to the Prospectus for the Fund are specified in the Fund Protocol Rules (FPR), rather than in this chapter. These include requirements relating to the form of the disclaimer in the Prospectus, the minimum contents of the Prospectus and the need for a Key Investor Information Document (KIID) that summarises the key features of the Fund and is in both Arabic and English. This chapter cross-refers to requirements in those Rules where applicable.

Application

- 14.1.1** (1) This chapter applies, subject to (4), to:
- (a) a Fund Manager of a Domestic Fund;
 - (b) each Director or partner of the Fund Manager;

- (c) if the Fund Manager is a Corporate Director, the individuals who are Directors of that Corporate Director; and
 - (d) if the Fund has a Governing Body, each member of that body.
- (2) This chapter also applies to an Authorised Firm, and each of its Directors or partners, where such a Firm is not the Fund Manager and undertakes the marketing of Units of a Domestic Fund.
- (3) This chapter also applies to other specified Persons to the extent so specified.
- (4) Only this Rule and the following requirements in this chapter apply to, or in relation to, a Qualified Investor Fund:
 - (a) Rule 14.2.1;
 - (b) Rules 14.2.4 to 14.2.7;
 - (c) Rules 14.4.6, 14.4.11, 14.4.12 and 14.4.13;
 - (d) Rules 14.5.1 and 14.5.2; and
 - (e) Rules in section 14.6.

Guidance

1. An External Fund Manager must also comply with the requirements in this chapter, because it is managing a Domestic Fund (i.e. a Fund established or domiciled in the DIFC- See Article 13(2)(a) of the Law).
2. A Fund that is an Incorporated Cell of an Incorporated Cell Company (i.e. a Fund on a Fund Platform) will be a Domestic Fund as the Incorporated Cell is established under the DIFC Companies Law and the ICC Regulations.

14.2 General Requirements relating to Prospectuses

- 14.2.1**
- (1) The Prospectus must not contain any provision which is unfairly prejudicial to the interests of Unitholders generally or to the Unitholders of any class of Units.
 - (2) For the purposes of the information that must be included in a Prospectus pursuant to Article 52 of the Law:
 - (a) such information must be material information; and
 - (b) information is material if it is either:
 - (i) within the knowledge of the Directors or partners of the Fund Manager; or

- (ii) which such Directors or partners ought reasonably have obtained by making reasonable enquiries.
- (3) The Prospectus must, except as provided in (4), be in the English language.
- (4) The Key Investor Information Document (KIID) for a Passported Fund must be in both Arabic and English.
- (5) The expiry date of a Prospectus must be no later than 12 months after the date of the Prospectus.
- (6) A reference to a Director in this Rule includes the Corporate Director of an Investment Company, and the individual directors of that Corporate Director.

Guidance

In conducting inquiries relating to the obligations under (2), a Fund Manager must give particular regard to the information which would be required and expected by a Retail Client in order to make an informed decision about the merits of investing and the extent and characteristics of risk.

Supplementary and Replacement Prospectuses

Guidance

1. Article 52(4) of the Law requires a Fund manager to issue, if, at any time after the issue of a Prospectus there is a material change affecting any matter contained in the Prospectus or a significant new matter arises, a Supplementary or a Replacement Prospectus in the manner prescribed in the Rules.
2. Under Article 50(3) of the Law, any reference in the Law and the Rules to a Prospectus includes an Information Memorandum of an Exempt Fund and any Supplementary or Replacement Prospectus, unless otherwise provided. Accordingly, all requirements that apply to a Prospectus apply equally to each of those documents except where stated otherwise.

- 14.2.2**
- (1) Where a Fund Manager, for the purpose of Article 52(4) of the Law, issues a Supplementary Prospectus, the Fund Manager must:
 - (a) clearly identify in the Supplementary Prospectus the Prospectus that it supplements, the revisions to that Prospectus, the date of any material change or new matter giving rise to any revision, and the date of the document which must be the date of filing with the DFSA;
 - (b) if it is a Public Fund, file a copy with the DFSA;
 - (c) provide a copy to each Person who applied for Units under the previous Prospectus after the earliest date of any material change or new matter giving rise to the revision; and
 - (d) ensure the Supplementary Prospectus is made available in the same media and through the same channels as, and together with, the previous Prospectus.

- (2) Where a Fund Manager, for the purpose of Article 52(3) of the Law, issues a Replacement Prospectus, the Fund Manager must:
 - (a) clearly state that it is a Replacement Prospectus, and identify the Prospectus that it replaces, the date and nature of any material change or new matter giving rise to the replacement, the expiry date, and the date of the document which must be the date of filing with the DFSA;
 - (b) if it is a Public Fund, file a copy with the DFSA; and
 - (c) provide a copy to each Person who applied for Units under the previous Prospectus after the earliest date of any material change or new matter giving rise to the replacement.
- (3) The expiry date of a Supplementary Prospectus or Replacement Prospectus under (1) or (2) must be the same as that of the Prospectus it supplements or replaces.

14.2.3 When a Supplementary Prospectus or Replacement Prospectus of a Public Fund has been filed with the DFSA and made available in accordance with Rule 14.2.4, the Fund Manager must:

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

Prospectus of an External Fund

14.2.4 A Fund Manager or other Authorised Firm must not Offer in or from the DIFC a Unit of an External Fund to a Retail Client unless the Units of the External Fund can be offered, under the requirements applying to that Fund in the jurisdiction in which the Fund is established, to retail investors.

14.2.5 Where a Fund Manager or other Authorised Firm Offers a Unit of an External Fund to a Person, it must make available to that Person at the time of the Offer a copy of a current Prospectus relating to the Fund which contains the additional requirements in Rule 14.2.6.

Guidance

Under Article 50(3)(c) of the Law, a Prospectus includes, in the case of an External Fund the Units of which are marketed in or from the DIFC, any prospectus or other disclosure document prepared in accordance with the laws applicable to that Fund in the jurisdiction in which the Fund is established or domiciled.

- 14.2.6**
- (1) The Prospectus of an External Fund made available by the Fund Manager or other Authorised Firm making the Offer of the Units of that Fund in or from the DIFC 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 jurisdiction in which the Fund is established and the legislation in that jurisdiction that applies to the Fund;
 - (b) states the name of the relevant Financial Services Regulator in that jurisdiction;
 - (c) describes the regulatory status accorded to the Fund by that Regulator;
 - (d) includes the following warning:

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

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

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

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

and
 - (e) if the Offer is not directed to Retail Clients, includes a prominent statement to that effect to be incorporated within the warning in (d).
 - (3) If Units of the Fund are Security Tokens, the Prospectus must contain information equivalent to that specified in MKT App 7 in respect of those Units.
 - (4) If 10% or more of the gross asset value of the Fund consists, or will consist, of Investment Tokens, the Prospectus must include information equivalent to that specified at MKT App 7 in respect of the Investment Tokens.
 - (5) If the Fund invests in Crypto Tokens, the Prospectus must include information equivalent to that specified at MKT App 7 in respect of the Crypto Tokens.

- (6) If the External Fund is a Credit Fund, the Prospectus must include the following information:
- (a) a prominent risk warning disclosing the information referred to in Rule 13.12.13;
 - (b) information on the specific lending strategy of the Fund;
 - (c) information about the extent to which the Fund intends to be concentrated with respect to individual entities, geographic locations and sectors and risks arising from any proposed concentrations;
 - (d) the Fund's risk diversification strategy; and
 - (e) whether borrowing by the Fund is permitted, and if so, the limits on borrowing.

14.2.7 A Fund manager or other Authorised Firm which makes an Offer of a Unit of an External Fund in or from the DIFC must maintain at its place of business or other designated location in the DIFC copies of the relevant Prospectus for inspection by Clients and by the DFSA during normal business hours.

Guidance

In relation to Rule 14.2.7, copies of the Prospectus may be stored electronically so long as Clients and the DFSA have ready and immediate access.

14.3 Prospectus content

Public Fund Prospectus

- 14.3.1** (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:
- (a) the information in App 7, unless the Public Fund is a Passported Fund;
 - (b) if the Public Fund is a Passported Fund, the information in App 1 of FPR, including a Key Investor Information Document (KIID);
 - (c) 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;
 - (d) a Summary Document containing:
 - (i) information to clearly identify the Fund and its classification;
 - (ii) a short description of the Fund's investment objectives and investment policy for achieving those objectives;

- (iii) past-performance presentation or, where relevant, performance scenarios;
 - (iv) costs and associated charges; and
 - (v) risk/reward profile of the investment, including appropriate guidance and warnings in relation to the risks associated with investments in the relevant Fund;
 - (e) the mandatory statement required under Rule 14.3.3;
 - (f) if Units of the Fund are Security Tokens, information equivalent to that specified in MKT App 7 in respect of those Units;
 - (g) if 10% or more of the gross asset value of the Fund Property consists of Investment Tokens, information equivalent to that specified in MKT App 7 in respect of the Investment Tokens;
 - (h) if any Fund Property consists of Crypto Tokens, the Prospectus must include information equivalent to that specified at MKT Rule A7.1.2 (a), (c), (e), (h), (i) and (j) in respect of the Crypto Tokens; and
 - (i) if it is an Open-ended Fund, the information relating to the powers available to the Fund Manager to address liquidity risks that may arise in the Fund, and procedures, including triggers, for the exercise of such powers, required under Rule 8.6A.1(2)(d).
- (2) A Prospectus may consist of a single document, or a multi-part Prospectus containing:
- (a) a Summary;
 - (b) information relating to the Fund Manager and Trustee; and
 - (c) information relating to the Fund.
- (3) If a Prospectus is a multi-part Prospectus, the Fund Manager must ensure that the Prospectus as a whole is up-to-date.

14.3.2 Information Memorandum of an Exempt Fund or a Qualified Investor Fund

Guidance

1. Under Article 50(3)(a) of the Law, an Information Memorandum of an Exempt Fund or a Qualified Investor Fund is a Prospectus for the purposes of the Law and the Rules unless otherwise provided. In limited circumstances, the Rules prescribe additional disclosure to be included in a Prospectus of an Exempt Fund (for example Rule 13.6.3 where an Exempt Fund appoints a prime broker with certain additional powers).
2. There is no detailed prescribed disclosure content for the Information Memorandum of an Exempt Fund or a Qualified Investor Fund. However, as an Information Memorandum is a Prospectus, it is subject to the disclosure obligation in Article 52(2) of the Law. As a result, a Fund Manager of such a Fund must include all the information which Professional Clients to whom it intends to Offer Units of the Fund would reasonably require and expect to find in such a Prospectus. This is to enable such Clients to make an informed decision relating to investing in the Fund.

3. In the case of an Information Memorandum for an Exempt Fund or Qualified Investor Fund with Units that are Security Tokens, or where a material part of the Fund Property consists of Investment Tokens or Crypto Tokens, the DFSA considers that Professional Clients would reasonably require and expect to find in such a Prospectus the information specified in MKT App 7.

Mandatory statement

- 14.3.3** (1) A Fund Manager of a Public Fund must, except as provided in (1A) and (2), include in the Fund's Prospectus, the following statement displayed prominently on its front page:

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

- (1A) For a Public Fund that is a Passported Fund, instead of the statement referred to in (1), the Fund Manager must include the statement specified in FPR Rule 3.2.3(e).
- (2) In the case of a Public Fund which is a Listed Fund, the Fund Manager must include, instead of the statement referred to in (1), the statement required:
 - (a) under MKT Rule 6.3.1(1)(b)(iii) or (4) as applicable, if it is a conventional Listed Fund; and
 - (b) under IFR Rule 6.5.1(h), if it is an Islamic Fund.
- (3) If a Fund is an Exempt Fund, the Fund Manager must include, in addition to the statement referred to in (1), the following statement:

"This Information Memorandum is intended for only 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."
- (4) If an Exempt Fund is a Passported Fund, the Fund Manager must include, instead of the statement in (1), the statement specified in FPR Rule 3.1.3(d) and the statement referred to in (3).

14.4 Additional Prospectus disclosure for specialist Funds

Prospectus of a Feeder Fund

14.4.1 A Fund Manager of a Feeder Fund must ensure that the Fund's Prospectus discloses:

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

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;
- (j) full particulars of the nature and extent of the interest, if any, of Related Parties, 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.

14.4.3 A Fund Manager of a Public Property Fund must also disclose in the Fund's Prospectus, in addition to the standard disclosure requirements, in respect of investment limits, the following information:

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

14.4.4 Without limiting any other disclosure obligations of the Fund Manager under these Rules, a Fund Manager of a Property Fund which is a Public Fund that invests in a single property must prominently disclose in the Prospectus of the Fund:

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

Guidance

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

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.

Prospectus for a Private Equity Fund

14.4.5 If a Fund is a Private Equity Fund, the Fund Manager must provide the following in the Fund's Prospectus:

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

Prospectus for a Hedge Fund

14.4.6 A Fund Manager of a Hedge Fund must prominently disclose to prospective Unitholders in the Prospectus and any other financial promotions relating to the Fund, the following Mandatory Hedge Fund Disclosure Statement:

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

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

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.

Disclosure about an Exchange Traded Fund (ETF) and associated risks

14.4.8 A Fund Manager of an Exchange Traded Fund (ETF) must include in its Prospectus details relating to:

- (a) the type of ETF and its characteristics;
- (b) the risks associated with the type of ETF;
- (c) the investment methodology and strategies the ETF proposes to adopt to track the referenced index or benchmark;
- (d) a clear description of the relevant indices or other benchmark the ETF is designed to track, timely information about the underlying components (including their liquidity) of the relevant index or the benchmark and, if the Price Information Provider is a Related Party, that fact;
- (e) clear signposts to guide investors to relevant websites or sources of information provided by Price Information Providers, as specified in A9.1.2(2)(b)(i);
- (f) information about whether iNAV is made available by the relevant exchange, and if so, how this information can be accessed by investors;
- (g) information on how the referenced index or benchmark will be tracked and the risks for investors in terms of exposure they have to the underlying index and any counterparty risk;
- (h) a description of the key elements which may affect the ETF's ability to track fully the relevant index or benchmark, including, but not limited to, transaction costs, illiquid segments, and dividend re-investment;
- (i) in the case of a synthetic ETF using Derivatives to replicate the performance of an index or other benchmark:
 - (i) whether the ETF uses a funded or unfunded model to replicate the performance of the specified index or benchmark;
 - (ii) if not already disclosed, information relating to the counterparties to the Derivatives transactions, and where collateral is used, details relating to such collateral; and
 - (iii) a description of the risks associated with counterparty default and use of any collateral, the impact of those risks on the ETF's

performance and investor returns, and how such risks are to be mitigated;

- (j) to the extent an ETF is required to have a diversified portfolio, how the ETF proposes to achieve diversification of investments through its investment strategy;
- (k) if available, information about the past performance of the ETF, measured through its realised tracking difference and annual tracking error information, on the anticipated level of tracking error during normal market conditions, and how this will be effectively minimised; and
- (l) information about the ETF's Authorised Participant and if it is also a market maker in the ETF Units in the relevant exchange, that fact.

Guidance

See also the Guidance under Rule 13.9.6 for types of ETFs, including synthetic ETFs, funded and unfunded, and the definitions of iNAV in GLO.

Disclosure relating to ETF's cost structure

14.4.9 A Fund Manager of an Exchange Traded Fund (ETF) must include in its Prospectus sufficient information to enable investors to clearly understand:

- (a) the ETF's cost structure, covering:
 - (i) any performance fees of the Fund Manager, if applicable;
 - (ii) its operational costs; and
 - (iii) if applicable, costs of underlying transactions (such as swaps, brokerage commissions and additional costs associated with leverage or use of collateral, and the rebalancing of the portfolio costs); and
- (b) any revenue derived by the Fund Manager through the use of the ETF's portfolio assets, and how that revenue is distributed between the ETF and the Fund Manager.

Prospectus for a Fund on a Fund Platform

14.4.10 A Fund Manager of a Fund that is an Incorporated Cell of an Incorporated Cell Company (ICC) must ensure that the Fund Prospectus includes information that:

- (a) the Fund is an Incorporated Cell of an ICC;
- (b) the Fund, being an Incorporated Cell:
 - (i) is a separate legal entity to the ICC and to any other Incorporated Cells of the ICC; and
 - (ii) does not have a subsidiary or holding company relationship to the ICC;

- (c) the ICC, which is the Fund Platform, contains the infrastructure needed by the Fund Manager for managing the Fund; and
- (d) the Fund Manager is:
 - (i) responsible for the sound and prudent operation of the Fund Platform; and
 - (ii) liable for any acts or omissions of the Fund Platform in respect of the Fund.

Prospectus of a Venture Capital Fund

14.4.11 A Fund Manager of a Venture Capital Fund must ensure that the Fund's Prospectus includes a prominent risk warning disclosing that the small to medium size businesses in which the Fund invests are highly illiquid investments, are likely to need to be held for a considerable period by the Fund, and also are likely to have a high rate of failure as they are usually new businesses.

Guidance

1. An Information Memorandum issued by a Fund Manager of a Venture Capital Fund is a Prospectus (see Article 50(3)(a) of the Law).
2. The obligation under Article 52(2) of the Law for a Prospectus to include "all the information which an investor would reasonably require and expect to find in a prospectus to make an informed decision to become a member of the Fund" will, among other things, require disclosure of any inherent risks in the proposed investment strategy and the types of investments proposed. If the proposed investment strategy or the types of investment instruments of the Fund are complex, we expect the Prospectus to alert potential investors for the need to seek professional advice.

- 14.4.12** (1) A Fund Manager of a Venture Capital Fund must ensure that the Fund's Prospectus sets out clearly any legal requirements that ordinarily apply to Fund Managers and their Funds, but which are, by DFSA Rules, disapplied to the Fund Manager in relation to the Venture Capital Fund.
- (2) A Fund Manager is not required under (1) to disclose that a requirement is disapplied if it voluntarily complies in full with the disapplied provision.

Guidance

Examples of legal requirements that do not apply in relation to a Venture Capital Fund and therefore should be clearly set out in the Prospectus under Rule 14.4.12 include not having to appoint an Eligible Custodian, not having an internal audit function and not having a Finance Officer.

Prospectus of a Credit Fund

14.4.13 A Fund Manager of a Credit Fund must ensure that the Fund's Prospectus includes:

- (a) a prominent risk warning disclosing the information referred to in Rule 13.12.13;

- (b) information on the specific lending strategy of the Fund;
- (c) information about the extent to which the Fund intends to be concentrated with respect to individual entities, geographic locations and sectors and risks arising from any proposed concentrations;
- (d) its risk diversification strategy as required under Rule 13.12.9; and
- (e) whether borrowing by the Fund is permitted and, if so, the limitations on borrowing including those set out in Rule 13.12.11.

14.5 Obligation relating to making a Prospectus available

- 14.5.1**
- (1) A Fund Manager of a Domestic Fund must make the Fund's most recent Prospectus available free of charge to any Unitholder and to any Person who is eligible to invest in the Fund when making an Offer to issue or sell a Unit of the Fund to such a Person, and, in any case, must not enter into a Transaction relating to the issue or sale of a Unit of the Fund with a Person unless that Transaction results from an Excluded Offer as defined in section 4.1 of this module.
 - (2) A Fund Manager of a Domestic Fund which is an Exempt Fund or a Qualified Investor Fund must not, and must not cause any other Person to, make an Offer of Units of such a Fund in a manner that would result in a breach of the requirements in Article 16(4) or (5) of the Law as is applicable to that Fund.

Guidance

- 1. Section 4.1 of this module contains the definitions of Excluded Offers, such as Execution-only Transactions and Transactions with market Counterparties.
- 2. A Fund Manager should note the requirements in Article 50(1) of the Law. Accordingly, a Prospectus drawn up pursuant to Rule 14.1.3 should be made available to prospective Unitholders for as long as the Offer is open and once the Offer is closed, the Fund Manager's obligation to make the Prospectus available would cease.
- 3. Articles 16(4) and (5) of the Law set out the conditions that must be satisfied for Exempt Funds and Qualified Investor Funds. In particular, these articles require that Units in an Exempt Fund or a Qualified Investor Fund may only be Offered for issue or sale by means of a Private Placement with Professional Clients.

- 14.5.2**
- (1) Where an Authorised Firm Offers a Unit of a Domestic Fund to a Person it must make available to that Person a copy of the most recent Prospectus at the time of the Offer or before effecting the Transaction in relation to the Units, unless that Transaction results from an Excluded Offer as defined in section 4.1 of this module.
 - (2) An Authorised Firm must not make an Offer of Units of an Exempt Fund or a Qualified Investor Fund in a manner that would result in a breach of the requirements in Articles 16(4) or (5) of the Law as is applicable to that Fund.

14.5.3 A Fund Manager and an Authorised Firm making an Offer of a Unit of a Fund meet the requirement in Rule 14.5.1(1) or Rule 14.5.2(1) as is relevant by:

- (a) maintaining at its place of business in the DIFC copies of the relevant Prospectus for inspection by Clients and by the DFSA during normal business hours; or
- (b) being able to advise readily of a location in the DIFC where copies of the Prospectus are available.

Guidance

Copies of the Prospectus may be stored electronically so long as Clients and the DFSA have ready and immediate access.

14.6 Responsibility for Prospectus

Prescribed persons

- 14.6.1** (1) For the purposes of Article 58(1) of the Law, the following Persons are prescribed as being responsible for a Prospectus:
- (a) the Fund Manager;
 - (b) where the Fund is a Body Corporate which does not have a sole Corporate Director acting as its Fund Manager, each Person who is a Director of that Body Corporate at the time when the Prospectus is filed;
 - (c) where the Fund is an Investment Undertaking, each Person who is authorised to be named, and is named, in the Prospectus as a Director, General Partner or member of the Governing Body or as having agreed to become such a Person of that Fund either immediately or at a future time;
 - (d) each Person who accepts, and is stated in the Prospectus as accepting, responsibility for, or for any part of, the Prospectus;
 - (e) each Person who is deemed to accept responsibility for any part of a Prospectus under these Rules; and
 - (f) each Person not falling within any of the foregoing paragraphs who has authorised the contents of, or of any part of, the Prospectus.
- (2) A Person who has accepted responsibility for, or authorised, only part of the contents of any Prospectus, is responsible only for that part and only if it is included in, or substantially in, the form and context to which he has agreed.
- (3) Nothing in (1) makes a Person responsible for any part of a Prospectus by reason only of giving advice as to its contents in a professional capacity to a Person specified in (1)(a) to (f).

Exceptions from liability

14.6.2 The circumstances set out in the Rules in this section are prescribed for the purposes of Article 58(2) of the Law.

14.6.3 (1) A Person, with the exception of the Fund Manager, will not incur any liability under Article 58(1) of the Law for any loss in respect of Units caused by any such statement or omission if, at the time when the Prospectus was filed for registration or the notification to the DFSA, pursuant to Articles 28 or 34 as is relevant, was made or given he believed on reasonable grounds, having made any enquiries as were reasonable, that the statement was true and not misleading or that the matter whose omission caused the loss was properly omitted and:

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

(2) A Person will not incur any liability under Article 58(1) of the Law for any loss in respect of Units caused by a statement purporting to be made by or on the authority of another Person as an expert which is, and is stated to be, included in the Prospectus with that other Person's consent at the time when the Prospectus was filed for registration or the notification to the DFSA pursuant to Article 56 was given, if he believed on reasonable grounds that the other Person was competent to make or authorise the statement and had consented to its inclusion in the form and context in which it was included and:

- (a) he continued in that belief until the time when the Units were acquired;
- (b) they were acquired before it was reasonably practicable to bring the fact that the expert was not competent or had not consented to the attention of Persons likely to acquire the Units in question;
- (c) before the Units were acquired he had taken all such steps as it was reasonable for him to have taken to secure that that fact was promptly brought to the attention of Persons likely to acquire the Units in question; or
- (d) the Units were acquired after such a lapse of time that, in the circumstances, he ought reasonably to be excused.

- (3) Without prejudice to (1) and (2), a Person will not incur any liability under Article 58(1) of the Law for any loss in respect of any Units caused by any such statement or omission as is there mentioned if:
 - (a) before the Units were acquired a correction or, where the statement was such as is mentioned in (2), the fact that the expert was not competent or had not consented had been published in a manner calculated to bring it to the attention of Persons likely to acquire the Units in question; or
 - (b) he took all such steps as it was reasonable for him to take to secure such publication and believed on reasonable grounds that such publication had taken place before the Units were acquired.
- (4) A Person will not incur any liability under Article 58(1) of the Law for any loss resulting from a statement made by an official Person or contained in a public official document which is included in the Prospectus if the statement is accurately and fairly reproduced.
- (5) A Person will not incur any liability under Article 58(1) of the Law if the Person suffering the loss acquired the Units in question with knowledge:
 - (a) that the statement was false or misleading;
 - (b) of the omitted matter or of the change; or
 - (c) of the new matter or inaccuracy.

Experts

14.6.4 For the purposes of Article 58 of the Law, an expert is prescribed as a Person accepting responsibility for any statement or report reproduced (in whole or in part) in a Prospectus with that Person's written consent.

14.6.5 A Fund Manager must:

- (a) keep a record of any consent received under Rule 14.6.4; and
- (b) include a statement in the Prospectus that the expert has consented to the reproduction of his statement or report.

15 MARKETING OF FOREIGN FUNDS

15.1 Access to Foreign Funds and availability of Prospectus

Guidance

1. Rules 4.1.3 and 4.1.4 exclude from being treated as Offers any Transactions undertaken by an Authorised Firm where such Transactions are Execution-only Transactions, or Transactions for the purposes of managing a Discretionary Portfolio for a Client, or for the purposes of redeeming a Unit of a Fund for a Client. Similarly, an offer made by an Authorised Firm to a Market Counterparty is also excluded from being an Offer. Finally, Rule 4.1.5 excludes an offer of a Unit of a Passported Fund under the Fund Protocol, where the DIFC is the Host Jurisdiction, from being treated as an Offer. This is because such an offer will be subject to the requirements of the Home Jurisdiction. As a result, such excluded Transactions and offers do not attract the marketing prohibition in Article 50 of the Law and the requirements in both the Law and this module relating to the marketing of Units.
2. Article 54(1) of the Law prohibits the Offer of Units of a Foreign Fund unless one of three specified criteria in that Article are met, i.e.
 - a. the Foreign Fund meets either:
 - i. the criteria for a Designated Fund in a Recognised Jurisdiction; or
 - ii. other criteria prescribed in the Rules;
 - b. the Authorised Firm has a reasonable basis for recommending the Unit of the Foreign Fund as suitable for the particular Client to whom the Offer is made; or
 - c. the Foreign Fund is a type of Fund that:
 - i. has its Units offered to persons only by way of a private placement;
 - ii. has its Units offered to persons who meet the criteria to be classified as Professional Clients; and
 - iii. requires an initial subscription of at least US\$50,000 to be paid by a person to become a Unitholder in the Fund.
3. Under Article 54(2) of the Law, the DFSA has the power to prescribe any additional criteria, requirements or conditions that apply to the Offer of Units of a Foreign Fund, including disclosure that must be included in a Prospectus and the legal form and structure of the Fund such as being Open-ended or Closed ended or listed or not. This section contains additional criteria and requirements prescribed pursuant to Article 54(2) of the Law.
4. The DFSA has specified that Passported Funds under the Fund Protocol for which the DFSA is the Host Regulator, are Designated Funds for the purposes of Article 54(1)(a)(i) of the Law. The effect of that designation is that an Authorised Firm may Offer a Unit of such a Foreign Fund. Rule 15.1.1 specifies which requirements in this chapter apply to an Authorised Firm marketing such a Passported Fund.
5. An Authorised Firm should be mindful that, when Offering Units of a Foreign Fund, it remains subject to overarching obligations applicable to Authorised Firms, including but not limited to GEN chapters 3 (Financial Promotions) and 5 (Systems and controls requirements), GEN section 4.2 (The Principles for Authorised Firms) and COB section

3.4 (Suitability) and chapter 6 (Additional Rules - Investment Business and Crypto Business).

Application

- 15.1.1** Only Rules 15.1.1A, 15.1.2, 15.1.4, 15.1.5(a), 15.1.8, 15.1.9, 15.1.10 and 15.1.11 apply to an Offer of a Unit of a Foreign Fund that is a Passported Fund where the DIFC is the Host Jurisdiction.

Clients to whom Offers of Units of Foreign Funds can be made

- 15.1.1A** An Authorised Firm must not, in or from the DIFC, Offer a Unit of a Foreign Fund to a Retail Client unless the Units of the Foreign Fund can be offered, under the home jurisdiction regulation applying to that Fund, to retail investors.

Prospectus disclosure relating to Foreign Funds

- 15.1.2** Where an Authorised Firm Offers a Unit of a Foreign Fund to a Person, it must make available to that Person a copy of a current Prospectus relating to the Fund which complies with:
- (a) the additional requirements in Rule 15.1.3 at the time of the Offer; or
 - (b) for a Passported Fund, the relevant requirements of the Home Jurisdiction, including its relevant Fund Protocol rules or regulations.

Guidance

Under Article 50(3)(c) of the Law, a Prospectus includes, in the case of a Foreign Fund the Units of which are marketed in or from the DIFC, any prospectus or other disclosure document prepared in accordance with the laws applicable to that Foreign Fund.

- 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.”;

- (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);
 - (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; and
 - (g) in the case of an Offer of a Unit in a Venture Capital Fund, contains the risk warning referred to in Rule 14.4.11 and the additional disclosure required under Rule 14.4.12.
- (3) If Units of the Fund are Security Tokens, the Prospectus must contain, or have attached to it, information equivalent to that specified in MKT App 7 in respect of those Units.
 - (4) If 10% or more of the gross asset value of the Fund Property consists of Investment Tokens, the Prospectus must contain, or have attached to it, information equivalent to that specified in MKT App 7 in respect of those Investment Tokens.

15.1.4 An Authorised Firm which makes an Offer of a Unit of a Foreign Fund must maintain at its place of business or other designated location in the DIFC copies of the relevant Prospectus for inspection by Clients and by the DFSA during normal business hours.

Guidance

In relation to Rule 15.1.4, copies of the Prospectus may be stored electronically so long as Clients and the DFSA have ready and immediate access.

Designated Foreign Fund criteria

15.1.5 The criteria prescribed for the purposes of Article 54(1)(a)(i) of the Law to enable an Authorised Firm to Offer a Unit of a Foreign Fund are as follows:

- (a) the Fund is both established and operated in a Recognised Jurisdiction specified in the DFSA’s Recognised Jurisdictions Notice and the Fund is a Designated Fund included in that Notice;
- (b) if it is a Property Fund, the requirements in Rule 15.1.7 are satisfied;

- (c) if it is an Exchange Traded Fund, the requirements in Rule 13.9.1 are satisfied;
- (d) if it is a Venture Capital Fund, it is a Closed-ended Fund; and
- (e) if it is a Credit Fund:
 - (i) it is a Closed-ended Fund;
 - (ii) it satisfies the conditions that would be necessary for it to be an Exempt Fund or Qualified Investor Fund if it was a Domestic Fund;
 - (iii) it has in place appropriate policies and procedures for assessing, pricing, granting, managing and acquiring credit;
 - (iv) it has in place an appropriate stress testing programme; and
 - (v) it is subject to regulatory requirements that provide an equivalent level of protection to that provided under section 13.12 and Rule 14.4.13; and
- (f) The Fund does not invest in Crypto Tokens.

Guidance

For the purposes of the Rules including this Rule, the DFSA has issued and published a Recognised Jurisdictions Notice on its website which sets out the list of Recognised Jurisdictions and which also specifies the Designated Funds.

Other Foreign Fund criteria

- 15.1.6** (1) The criteria prescribed for the purposes of Article 54(1)(a)(ii) of the Law to enable an Authorised Firm to Offer a Unit of a Foreign Fund are as follows:
- (a) the Fund:
 - (i) has both a custodian who meets one of the requirements in (2) and an investment manager who meets one of the requirements in (3); or
 - (ii) has both the custody and investment management activities of the Fund being performed by a Person who meets the requirements in (4); or
 - (iii) 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, it meets the requirements in Rule 15.1.7;
 - (c) if it is an Exchange Traded Fund, the requirements in Rule 13.9.1 are satisfied; and

- (d) if it is a Credit Fund:
 - (i) it is a Closed-ended Fund;
 - (ii) it satisfies the conditions that would be necessary for it to be an Exempt Fund or Qualified Investor Fund if it was a Domestic Fund;
 - (iii) it has in place appropriate policies and procedures for assessing, pricing, granting, managing and acquiring credit;
 - (iv) it has in place an appropriate stress testing programme; and
 - (v) it is subject to regulatory requirements that provide an equivalent level of protection to that provided under section 13.12 and Rule 14.4.13; and
 - (e) the Fund does not invest in Crypto Tokens.
- (2) For the purposes of (1)(a)(i), the custodian is the Person who is responsible for providing safe custody of the Fund Property and such Person 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.

- (3) For the purposes of (1)(a)(i), the investment manager is a Person who makes investment decisions for or on behalf of the Fund and 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 its activities in relation to investment management;
 - (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.
- (4) For the purposes of (1)(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.

Foreign Property Funds

15.1.7 A Foreign Fund meets the Property Fund condition referred to in Rule 15.1.5(b) or 15.1.6(1)(b) as is applicable where:

- (a) 60% or more of the Fund's assets comprise of Real Property, Property Related Assets or Units in another Property Fund;
- (b) the Fund is a Closed-ended Fund; and
- (c) the Units of the Fund are either:
 - (i) listed and traded on an Authorised Market Institution or on an exchange regulated in a Recognised Jurisdiction; or
 - (ii) Offered only by means of a Private Placement.

Guidance

A Closed-ended legal structure is an investment vehicle used by a Fund that does not continuously issue or redeem Units based on the net asset value of the Fund.

Recommendation-Based Offers of Units of Foreign Funds

- 15.1.8** An Authorised Firm may not make an Offer of a Unit of a Foreign Fund to a particular Client under the criteria in Article 54(1)(b) of the Law unless it has made an assessment of the suitability of the investment for that Client in accordance with COB Rule 3.4.2.

Guidance

Under Article 54(1)(b) of the Law, an Authorised Firm is permitted to make an Offer of a Unit of a Foreign Fund if it has a reasonable basis for recommending that the investment in the Fund is suitable for the particular Client. To form such an opinion, the firm must undertake the assessment required under COB Rule 3.4.2.

Offer of Units of Foreign Funds under Article 54(1)(c) of the Law

- 15.1.9**
- (1) An Authorised Firm may not make an Offer of a Unit of a Foreign Fund under the criteria in Article 54(1)(c) of the Law unless:
 - (a) it has first satisfied itself on reasonable grounds that the Fund meets the criteria specified in Article 54(1)(c)(i), (ii) and (iii) of the Law;
 - (b) it makes the Offer in a manner that is in accordance with the criteria in Article 54(1)(c)(i) and (ii) of the Law; and
 - (c) the Fund meets the criteria in (3) if it invests in Crypto Tokens.
 - (2) An Authorised Firm that relies on (1) for Offering Units of a Foreign Fund must be able to demonstrate to the DFSA that it conducted adequate due diligence to ensure compliance with (1)(a).
 - (3) The criteria prescribed for the purpose of (1)(c) are as follows:
 - (a) the Fund's investment in Crypto Tokens is limited to Recognised Crypto Tokens and does not exceed 20% of the gross asset value of the Fund;
 - (b) the Fund conducts daily valuations of its investments in Crypto Tokens; and
 - (c) the Fund's investments in Crypto Tokens are safeguarded and administered by a Person who is a separate legal entity from the Fund Manager and is either:
 - (i) an Authorised Firm whose Licence authorises it to Provide Custody Services of Crypto Tokens; or
 - (ii) a Person whom the Authorised Person Offering Units of the Fund has reasonably determined to have adequate custody and asset safety arrangements after performing proper due diligence on that Person.

- (4) The due diligence and determination under (3)(c)(ii) must take into account the factors listed in Rule 8.2.6(2)(a) to (f).

Guidance

1. Rule 15.1.9 allows an Authorised Firm to make an Offer of a Unit in a Foreign Fund where the Fund and the Offer of the Unit satisfy criteria equivalent to those applicable to an Exempt Fund or Qualified Investor Fund although additional requirements apply in relation to a Foreign Fund that invests in Crypto Tokens.
2. The gross asset value of a Fund under Rule 15.1.9(3)(a) should be calculated as the total value of the Fund Property without making any deductions, such as deductions for expenses or outstanding borrowing.

Periodic Information to DFSA

- 15.1.10**
- (1) An Authorised Firm must submit to the DFSA, by the end of January each year, a report regarding any Offer or Transaction in respect of a Unit of any Domestic Fund or Foreign Fund which has been made during the preceding calendar year.
 - (2) The report required under (1) must include the details of:
 - (a) the name of the Fund and its Fund Manager; and
 - (b) if the Fund is a Foreign Fund:
 - (i) whether it is a Designated Fund and, if so, in which Recognised Jurisdiction it is authorised or approved; and
 - (ii) if it is not a Designated Fund, the other criteria under which the Authorised Firm has relied when marketing the Units of the relevant Foreign Fund.

Record keeping

- 15.1.11**
- (1) Without limiting any requirements under COB, an Authorised Firm must keep records that are sufficient to demonstrate due compliance with the requirements in the Rules in this chapter.
 - (2) The records in (1) must be maintained for a minimum of six years.

PART 8 – TRANSFER SCHEMES AND WINDING UP OF DOMESTIC FUNDS

16. TRANSFER SCHEMES RELATING TO DOMESTIC FUNDS

16.1 Application of the Regulatory Law

Guidance

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

16.1.1 This Chapter applies to a Fund Manager and, where appointed, the Trustee of a Domestic Fund and, if the Fund is an Umbrella Fund using the form of a Protected Cell Company, in respect of each cell as if though each cell is a separate Fund.

Guidance

A Fund Manager of a Fund that is an Incorporated Cell of an ICC is, in addition to the requirements in this chapter, required to comply with the requirements in the ICC Regulations that apply to the transfer of an Incorporated Cell.

16.1.2 Pursuant to Article 113 of the Regulatory Law 2004, the DFSA prescribes, in Rule 16.1.3, the modification to Part 9 of that Law necessary for the purposes of transferring a Fund's property or liability to another Fund.

- 16.1.3**
- (1) 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) Where, for the purpose of a transfer scheme, it is proposed that the property of a Fund should become the property of another Fund or the property of a Sub-Fund of an Umbrella Fund, the proposal must not be implemented without the sanction of a Special Resolution of the Unitholders in the Fund, unless (3) applies.
 - (3) Where, for the purposes of a transfer scheme, it is proposed that Fund Property attributable to a Sub-Fund of an Umbrella Fund should become the property of another Fund, the proposal must not be implemented without the sanction of:
 - (a) a Special Resolution of the Unitholders in the Sub-Fund of that Umbrella Fund; and
 - (b) in the case of an Umbrella Fund that does not use the form of a Protected Cell Company, unless implementation of the transfer scheme is not likely to result in any material prejudice to the interests of the Unitholders in any other Sub-Fund of that Umbrella Fund, a Special Resolution of the Unitholders of other Sub-Funds of that that Umbrella Fund.

- (4) If it is proposed that a Fund or a Sub-Fund of an Umbrella Fund should receive property, other than its first property pursuant to a transfer scheme, or an arrangement equivalent to a scheme of arrangement entered into with some other Fund or Sub-Fund, or a Body Corporate, the proposal must not be implemented without the sanction of a Special Resolution of the Unitholders in the relevant Fund or Sub-Fund and, in the case of an Umbrella Fund which is not in the form of a Protected Cell Company, the class or classes of Units related to the Sub-Fund, unless (5) applies.
- (5) In (4), if the Fund Manager and if appointed the Trustee agree that the receipt of the property concerned for the account of the Fund:
 - (a) is not likely to result in any material prejudice to the interest of the Unitholders of the Fund;
 - (b) is consistent with the objectives of the Fund or Sub-Fund of an Umbrella Fund; and
 - (c) could be effected without any breach of the requirements relating to the borrowing and investment restrictions relating to the Fund or Sub-Fund in chapter 10.5;

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

17 Winding up of Domestic Funds

Guidance

Part 8 of the Law sets out all the provisions relating to transfer schemes and the winding up of Funds. Article 61(c) enables the DFSA to prescribe additional circumstances to those contained in the Law in relation to when a Fund may be wound up. This section contains such Rules.

17.1 Application

- 17.1.1** This Chapter applies to a Fund Manager and, where appointed, the Trustee of a Domestic Fund and, if the Fund is an Umbrella Fund using the form of a Protected Cell Company, in respect of each cell as though each cell is a separate Fund.

Guidance

Additional requirements in the ICC Regulations apply to the winding up of a Fund that is an Incorporated Cell of an Incorporated Cell Company (ICC). In particular, the ICC Regulations provide that an ICC shall not be wound up until after all of its Incorporated Cells are either transferred or converted into another Company or wound up.

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

- 17.1.3** (1) Upon the happening of any of the events specified in (2) and not otherwise, the Fund Manager and, if appointed the Trustee must cease to issue, sell, cancel or redeem Units in the Fund or to invest or borrow for the Fund and proceed to wind up the Fund in accordance with the Law and this section.
- (2) The events referred to in (1) are:
- (a) in response to a request made to the DFSA by the Trustee, Fund Manager or other member of its Governing Body for the removal of a Fund from the list of registered Funds, the DFSA has agreed, albeit subject to there being no material change in any relevant factor, that, on the conclusion of the winding up of the Fund, the DFSA will accede to that request;
 - (b) the expiration of any period specified in the Constitution as the period at the end of which the Fund is to terminate; or
 - (c) the effective date of a duly approved transfer scheme, which is to result in the Fund that is subject to the transfer scheme being left with no property.

Guidance

The grounds for winding up of a Domestic Fund under this Rule are in addition to the grounds specified in the Law. Under Article 64(1)(a) and (b) of the Law, a Fund which is no longer commercially viable or the purpose of which is either already accomplished or cannot be

accomplished can be wound up. Similarly, under Article 34(3) of the Law, if a Domestic Fund which is an Exempt Fund or a Qualified Investor Fund can no longer meet the relevant conditions to be classified as a Fund of that type, the Fund Manager of such a Fund must either register it as a Public Fund (or alternatively reconstitute it as an Exempt Fund if it is a Qualified Investor Fund) or it must be wound up.

- 17.1.4**
- (1) In a case falling within Rule 17.1.3(2)(c), the Fund Manager and if appointed the Trustee of the Fund must wind up the Fund in accordance with the approved transfer scheme.
 - (2) In any other case falling within Rule 17.1.4 or specified in Article 64(1) or Part 8 of the Law:
 - (a) the Fund manager or Trustee must, as soon as practicable after the Fund falls to be wound up, realise the Fund Property;
 - (b) after paying therefrom or retaining adequate provision for all liabilities properly so payable and for the costs of the winding up, the Fund Manager must distribute the proceeds of that realisation to the Unitholders (upon production by them of such evidence as the Fund Manager may reasonably require as to their entitlement thereto) proportionately to their respective interests in the Fund as at the date of the relevant event referred to in Rule 17.1.3; and
 - (c) any unclaimed net proceeds or other cash (including unclaimed distribution payments) held by the Fund Manager or Trustee after the expiration of twelve months from the date on which they became payable must be paid by the Fund Manager or Trustee into court, subject to the Fund Manager or Trustee having a right to retain any expenses incurred by it relating to that payment.
 - (3) Where the Fund Manager or Trustee and one or more Unitholders agree, the requirement of (2) to realise the Fund Property does not apply to that part of the property proportionate to the entitlement of such Unitholders. The Fund Manager or Trustee may distribute that part in the form of property, after making adjustments or retaining provisions as appear to the Fund Manager or Trustee appropriate for ensuring that, that or those Unitholders bear a proportional share of the liabilities and costs.
 - (4) The Fund Manager or Trustee must as soon as practical after the winding up or termination has commenced:
 - (a) if the Unitholders have not initiated the winding up under Article 63 of the Law, inform the Unitholders of the winding up or termination; and
 - (b) publish a notice of the winding up or termination in one English and one Arabic language national newspaper and if the Fund has a website, on the Fund's website.
 - (5) On completion of the winding up in respect of the events referred to in Rule 17.1.3(2)(b) or (c) or Article 64(1) of the Law, the Fund Manager or Trustee must notify the DFSA in writing of that fact and at the same time the Fund Manager or Trustee must require the DFSA to revoke the relevant registration.

Accounting and Reports during winding up

- 17.1.5**
- (1) Subject to any order of the court, and subject to (2) and (3), while a Fund is being wound up, whether under Rule 17.1.3 or otherwise:
 - (a) the annual and half-yearly accounting periods continue to run;
 - (b) the provisions concerning annual and interim allocation of income continue to apply; and
 - (c) annual and half-yearly reports continue to be required.
 - (2) Where for any annual or half-yearly accounting period the Fund Manager, after consulting the Auditor and the DFSA, has taken reasonable care to determine that timely production of an annual or half-yearly report is not required in the interests of the Unitholders or the DFSA, the Fund Manager or Trustee may direct that immediate production of the report by the Auditor may be dispensed with.
 - (3) The period in question in (2) must be reported on together with the following period in the next report prepared for the purposes of (1) or (4).
 - (4) At the conclusion of the winding up, the accounting period then running is regarded as the final annual accounting period.
 - (5) Within two calendar months after the end of the final accounting period, the annual reports of the Fund Manager must be published and sent to each Person who was a Unitholder immediately before the end of the final accounting period.

Funds that are not commercially viable

- 17.1.6**
- (1) If the Fund Manager of a Fund believes on reasonable grounds that the Fund is not commercially viable or the purpose of the Fund cannot be accomplished, the Fund Manager must notify the DFSA and include the information specified in (2).
 - (2) The information referred to in (1) is:
 - (a) name of the Fund;
 - (b) size and type of Fund;
 - (c) number of Unitholders;
 - (d) whether dealing in the Fund's Units has been suspended;
 - (e) why the request is being made;
 - (f) what consideration has been given to the Fund entering into a transfer scheme with another Fund and the reasons why a transfer scheme is not possible;

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

App 1 DELEGATION AND OUTSOURCING

A1.1 Application

- A1.1.1** (1) This Appendix (App 1) applies to a Fund Manager and if appointed the Trustee in relation to every:
- (a) Delegation Agreement; and
 - (b) Outsourcing Agreement.
- made or entered into pursuant to these Rules.
- (2) This Appendix does not apply to a Qualified Investor Fund.

A1.2 Mandatory provisions

- A1.2.1** (1) A Fund Manager or Trustee must ensure that any agreement specified in Rule A1.1.1:
- (a) sets out the functions or activities and service standards that will be applied to the carrying out of such functions or activities;
 - (b) provides that the Service Provider cannot in turn, delegate any activities delegated to it, or outsource any functions outsourced to it, without prior approval of the Fund Manager or Trustee as applicable;
 - (c) requires the Service Provider to:
 - (i) maintain records to show and explain transactions in relation to each activity or function performed in relation to the Fund;
 - (ii) maintain such records in a manner to enable the Fund Manager or Trustee to prepare accounts in compliance with these Rules and any other applicable legislation;
 - (iii) retain the records for at least six years from the date to which they relate;
 - (iv) keep the records, at all reasonable times, open to inspection by the DFSA, the Fund's Auditor and any Person providing the oversight function for the Fund; and
 - (v) ensure that the records are, if requested by the DFSA, capable of reproduction within a reasonable period not exceeding 3 days, in hard copy and in English.

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

Guidance

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

A1.3 Provisions relating to Eligible Custodians

- A1.3.1** (1) A Fund Manager or Trustee must ensure that a Delegation Agreement in relation to Providing Custody will:
- (a) require that the title of any account of the Eligible Custodian to hold Fund Property sufficiently distinguishes that account from any account containing Investments belonging to the Eligible Custodian, and is in the form requested by the Fund Manager or Trustee;
 - (b) require that the Fund's Investments will only be credited and withdrawn in accordance with the instructions of the Fund Manager or Trustee;
 - (c) require, subject to (2), that the Eligible Custodian will hold the Fund's Investments separately from assets belonging to the Eligible Custodian;

- (d) set out the arrangements for recording and registering the Funds, claiming and receiving dividends and other entitlements and interest and the giving and receiving of instructions;
 - (e) require the Eligible Custodian to deliver a statement to the Fund Manager or Trustee (including the frequency of such statement), which details the Fund's Investments deposited to the account;
 - (f) require, subject to (2), that all the Investments standing to the credit of the account are held by the Eligible Custodian as the agent of the Fund Manager or the Trustee and the Eligible Custodian is not entitled to combine the account with any other account or to exercise any charge, mortgage, lien, right of set-off or counterclaim against Investments in that account in respect of any sum owed to the Eligible Custodian on any other account of the Fund Manager, Trustee or any other Person; and
 - (g) detail the extent of liability of the Eligible Custodian in the event of default.
- (2) Neither the Fund Manager nor the Trustee is required to meet the requirements in (1) (c) and (f), where either the Eligible Custodian or any other Person acting as the prime broker of the Fund does so in compliance with the requirements in Rule 13.6.3.

A1.4 Provisions relating to fund administration

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

- (a) holding cheques to the order of a Fund's bank account, provided such cheques are securely held for a maximum of three business days prior to being deposited into the relevant Fund's bank account or returned to the drawer of the cheque; or
- (b) where the Service Provider has control over bank accounts kept for the purposes of the Fund, the accounts must be conducted strictly in accordance with the Fund Manager's instructions and any agreed mandate with the bank.

APP 2 MEETING PROCEDURES

A 2.1 Nomination of a chair

- A2.1.1**
- (1) A Fund Manager of a Public Fund, or in the case of a Fund which is structured as an Investment Trust, the Trustee, must nominate in writing a Person to be the chairman of a meeting of Unitholders and such a Person must be a Unitholder other than the Fund Manager.
 - (2) If no such chairman is nominated or if at any meeting the Person nominated is not present within 15 minutes after the time appointed for holding the meeting, the Unitholders present must choose another chairman.
 - (3) In the case of an equality of votes cast whether on a show of hands or on a poll in respect of a resolution put to a meeting of the Unitholders, any chairman appointed in accordance with the Constitution or under these Rules is entitled to a casting vote in addition to any other vote the chairman may have.

Notice of meetings

- A2.1.2**
- (1) Unitholders of a Public Fund must be given at least 14 days written notice or any longer period of notice specified for the purpose in the Constitution or these Rules, inclusive of the date on which the notice is first served and the day of the meeting.
 - (2) The notice must specify the place, day and hour of the meeting and the terms of the resolutions to be proposed.
 - (3) In the case of an Investment Trust, unless the Trustee has convened the meeting, a copy of the notice must be sent to the Trustee no later than the time at which it is sent to the Unitholders.
 - (4) The accidental omission to give notice to, or the non-receipt of notice by, any of the Unitholders does not invalidate the proceedings at any meeting.
 - (5) Notice of any adjourned meeting of Unitholders must be given to Unitholders and, if relevant, to the Trustee.

Quorum

- A2.1.3**
- (1) In the case of an Investment Trust, the quorum at a meeting of Unitholders is the Unitholders present in person or by proxy or, in the case of a body corporate, by a duly authorised representative, of one-tenth in value or any proportion more than one-tenth in value specified for this purpose in the Trust Deed of all the Units in issue.
 - (2) In the case of an Investment Company, the quorum at a meeting of Unitholders is two Unitholders, present in Person or by proxy or, in the case of a Body Corporate, by a duly authorised representative.

- (3) Business must not be transacted at any meeting unless the requisite quorum is present at the commencement of business.
- (4) If within half an hour from the time appointed for the meeting, a quorum is not present, the meeting:
 - (a) if convened on the requisition or request of Unitholders, must be dissolved; and
 - (b) if any other case, must stand adjourned to:
 - (i) a day and time which is seven or more days after the day and time of the meeting; and
 - (ii) a place to be appointed by the chairman if a chairman has been appointed in accordance with the Constitution or otherwise by the Operator.
- (5) If, at an adjourned meeting under (4)(b), a quorum is not present within 15 minutes from the time appointed for the meeting, one person entitled to be counted in a quorum present at the meeting is a quorum.
- (6) Notice of any adjourned meeting of Unitholders must be given to Unitholders. That notice must state that one or more Unitholders present at the adjourned meeting whatever their number and whatever the number of Units held by that Unitholder or Unitholders will form a quorum.

A2.1.4

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

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.

APP 3 APPROVALS AND NOTIFICATIONS

A 3.1 Alterations to a Fund

- A 3.1.1** (1) The Fund Manager of a Public Fund must, by way of a Special Resolution, obtain prior approval from the Unitholders for any proposed change to the Domestic Fund which is a fundamental change.
- (2) In addition to the specific fundamental changes in relation to a Fund prescribed under Article 35(1) of the Law and also under Rules 8.3.2, 8.13.3, 13.4.4(2) and 16.1.3(2), a “fundamental change” under (1) is a change or event which:
- (a) changes the purpose or nature of the Fund;
 - (b) may materially prejudice a Unitholder;
 - (c) alters the risk profile of the Fund; or
 - (d) introduces any new type of payment out of Fund Property.
- (3) Notwithstanding (2) above, any change may be fundamental depending on its degree of materiality and effect on the Fund and its Unitholders. Consequently, the Fund Manager must determine whether in each case a particular change is fundamental in nature and, if the Fund is an Investment Trust, obtain the Trustee’s agreement to the outcome of the determination.

Guidance

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

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

- A 3.1.2** (1) The Fund Manager of a Public Fund must give prior written notice to Unitholders in respect of any proposed change to the operation of a Fund where the change constitutes a significant change.

- (2) A “significant change” in (1) is a change or event which is not a fundamental change under Rule A 3.1.2 but:
 - (a) affects a Unitholder's ability to exercise his rights in relation to his investment;
 - (b) would reasonably be expected to cause the Unitholder to reconsider his participation in the Fund;
 - (c) results in any increased payments out of the Fund Property to the Fund Manager, the Trustee or any other director or an associate of either; or
 - (d) materially increases other types of payment out of Fund Property.
- (3) Changes may be significant depending in each case on their degree of materiality and effect on the Fund and its Unitholders. Consequently the Fund Manager will need to determine whether in each case a particular change is significant in nature or not and if the Fund is an Investment Trust obtain the Trustee's agreement of the outcome of the determination.

Guidance

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

A3.1.3

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

Guidance

1. The circumstances causing a notifiable change may or may not be within the control of the Fund Manager.
2. For the purpose of this section, a notifiable change might include:
 - a. a change of a named investment manager where the Fund has been marketed on the basis of that investment manager's involvement;
 - b. a significant political event which impacts on the Fund or its operation;

- c. a change to the time of the valuation point;
 - d. the introduction of limited issue arrangements; or
 - e. a change in the name of the Fund.
- 3. The appropriate manner and timescale of notification in this section would depend on the nature of the change or event. Consequently, the Fund Manager will need to assess each change or event individually.
- 4. An appropriate manner of notification could include:
 - a. sending an immediate notification to the Unitholder;
 - b. publishing the information on a website; or
 - c. the information being included in the next periodical report of the Fund.

APP 4 GUIDANCE ON ASSET VALUATION AND PRICING

Guidance

General

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

Pricing controls by the Fund Manager

8. Unit prices and currency rates used in Fund valuations should be up to date and from a reputable source. The mere use of a source for prices and rates does not amount to delegation under the Rules. Although it should not be necessary to carry out significant substantive checking, the reliability of the source of prices and rates should be kept under regular review, and the use of doubtful prices or rates should be followed up.
9. The mere use of a source for prices and rates does not amount to delegation under the Rules. However, the use of a third party to carry out the pricing function, whether it is an Associate of the Fund Manager, or the Trustee or any Associate of the directors of the company or Persons providing the oversight function, or any independent third party, amounts to outsourcing. In this case the Fund Manager still retains its operating responsibilities and duties and, remains liable for the acts and omissions of that third party in performing the pricing functions as if they were the acts or omissions of the Fund Manager. The Fund Manager should ensure that the third party contracts to provide the service on a basis which takes account of the Fund Manager's responsibilities which require the Fund to be priced in accordance with the applicable Rules and the Fund's Constitution.
10. Where the pricing function is outsourced, the Fund Manager is required, in accordance with the Rules, to satisfy himself that the pricing agent remains competent to carry out the function, and that he has taken reasonable care to ensure that the pricing agent has carried out his duties in a competent manner.
11. The Fund Manager should seek assurance that the pricing agent's system is robust and will produce accurate results. The Fund Manager should review the outputs from the system at least annually, and on any significant system change. In addition, if the pricing agent is also responsible for calculation of dealing prices of Units, the Fund Manager should ensure that this system is reviewed to his satisfaction at least annually.
12. Unless the valuation and record keeping systems are integrated, the valuation output should be agreed with the Fund Manager's records of a Fund at each valuation point. In addition, the Fund Manager's records, including debtors and creditors, should be agreed with a Custodian's records of stocks and both capital and income cash at least monthly, with reconciling items followed up promptly, with debtors reviewed for recoverability.
13. Systems should be in place whereby all transactions are confirmed in writing or by electronic means to the Fund Manager or to a pricing agent as quickly as possible. It is desirable that all deals to which the Fund is committed, which have been notified, at most, one hour before a valuation, are included in that valuation, at estimated prices if necessary. Unless, however, there is likely to be significant movement in a price of a Unit, it is more important that an accurate cut-off procedure is in place to ensure that omissions or duplications do not take place, than it is to ensure that estimates are included in a valuation.
14. Where prices are obtained otherwise than from the main pricing source (e.g. unquoted, suspended, or illiquid stocks), the Fund Manager should maintain a record of the source and basis for the value placed on the investment. These should be regularly reviewed.
15. A system should be in place to ensure that investment and borrowing powers which are contained in the Rules, where applicable and in the Fund's Constitution and Prospectus are not breached, and that if breaches occur they are identified and rectified.
16. A system should be in place to ensure that dividends are accounted for as soon as stocks are quoted ex-dividend, unless, as with some foreign stocks, it is prudent to account for them only on receipt. Fixed interest dividends and interest should be accrued at each point unless the level of materiality makes a longer interval appropriate. Similar considerations apply to the expenses of the Fund.

17. The Fund Manager should ensure periodically that any charge which is levied on a Unitholder for dilution has been calculated in accordance with the methodology which has been disclosed in the Constitution or Prospectus.
18. The Fund Manager should set a percentage or absolute limit for certain key elements of the valuation, such that any movement outside these limits is investigated. The process for the investigation and a report of its outcome should be in writing and evidenced by an appropriate signature. These key elements could, where relevant, include the movement of the overall price of the Fund against relevant markets, the movement of the prices and values of individual stocks, changes in currency rates, and accrual figures for income, expenses, and tax. In addition, prices which appear not to have changed after a fixed period of time should be investigated, since this may be the result of a price movement having been missed.
19. Cash should be reconciled to the bank account regularly, with outstanding items promptly followed up, and a full reconciliation sent to the trustee or depositary monthly.
20. Controls should be in place to ensure that the correct number of Units in issue is recorded at each valuation point. This should be reconciled with the Unitholder register at least monthly.
21. A copy of the valuation should be sent to the Fund Manager or the Fund's investment manager, if applicable, at least weekly. He should specifically check that the correct securities are recorded.

Pricing and valuation checks by oversight arrangement

22. The Persons providing oversight functions have a duty under the Rules to ensure that the Fund Manager's pricing methodology and operation is properly controlled. Its main emphasis should be to ensure that the Fund Manager keeps its controls and systems for pricing under review and to obtain evidence from the Fund Manager's systems that Unit prices are calculated correctly. This would also apply where the Fund Manager has outsourced some or all of its pricing functions to a Service Provider. The following paragraphs set out the minimum checks which DFSA expects any Person providing the oversight function to carry out in order to be satisfied with the Fund Manager's pricing methodology and operation, and to ensure that the likelihood of incorrect prices will be minimised.
23. The Persons providing the oversight function should carry out a thorough review of the Fund Manager's overall system for pricing. This should include an analysis of the controls in place to determine the extent to which reliance can be placed on them. This review should be carried out at the start of the appointment of a Person who will provide oversight functions, and also when major changes are made by the Fund Manager to its system. On an ongoing basis, the systems should be kept under review to ensure that a series of minor changes do not, over a period of time, have a significant effect on the integrity of the systems.
24. The Persons providing oversight functions should conduct a review at least annually to confirm that the Fund Manager's systems and controls are satisfactory. This will need to be more frequent where the oversight arrangement knows or suspects that the Fund Manager's systems and controls are weak and unsatisfactory. The Persons providing oversight functions should ensure that any issues which are identified are properly followed up and resolved. Additionally, the Persons providing oversight functions should carry out a review of the valuation of the property of each Fund for which it is responsible, at least annually, which verifies, on a sample basis if necessary, the assets, liabilities, accruals, Units in issue, and any other relevant matters, for example, an accumulation factor or a currency conversion factor.
25. Where the Fund Manager's systems are manual, or have been installed or amended recently and are therefore unproven, the level of checking will need to be increased

accordingly. This will also be necessary where a number of instances of incorrect pricing have previously been identified.

Incorrect pricing

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

Action to be taken as regards compensation for incorrect pricing.

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

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.

A	General Information
	<p>The following information:</p> <ol style="list-style-type: none"> (1) The name of the Fund. (2) The Fund Manager's and, if the Fund is structured as an Investment Trust, the Trustee's name and the principal place of business in the DIFC as recorded by the Registrar of Companies. (3) That the Fund is a Domestic Fund, the Constitution of which is governed by the laws of the DIFC. (4) That the Fund is a Public Fund, or Exempt Fund, as the case may be. (5) The legal form of the Fund and whether it is open or closed ended. (6) If the Fund is a specialist class of a Fund as defined in chapter 3 of this module, the relevant specialist class, and if applicable, that the Fund is an Islamic Fund and consequently the Fund's entire business operations are conducted in accordance with Shari'a. (7) If the Fund is managed by an External Fund Manager, that fact and the details of the Appointed Fund Administrator or Custody Provider of the Fund. (8) If the Fund is an External Fund, the name of the jurisdiction in which the Fund is domiciled.
B	General Statements
	<p>The following information:</p> <ol style="list-style-type: none"> (1) The Fund Manager is responsible, pursuant to the Law, for

	<p>all operations concerning the Fund and may from time to time delegate activities or outsource functions, but not the responsibility for conducting those activities and functions, to another Person in accordance with the CIR Rules.</p> <p>(2) (a) The Fund Property is entrusted to the Fund Manager and the Fund Manager remains responsible for the property even when an Eligible Custodian holds the legal title to the Fund Property; or</p> <p>(b) The Fund Property is held on trust by the Fund's Trustee, as the case may be.</p> <p>(3) Whether the duration of the Fund is limited and, if so, for how long.</p> <p>(4) That fees, charges and other expenses of the Fund may be taken out of Fund Property and the basis for determination of the quantum of such fees, charges and other expenses.</p> <p>(5) The maximum and minimum sizes of the Fund's capital, if any.</p> <p>(6) That the Unitholders are not liable for the debts of the Fund, unless the applicable legislation prescribes otherwise and, if so, those circumstances.</p> <p>(7) That a Unitholder is not liable to make any further payment after he has paid the price of his Units and that no further liability can be imposed on him in respect of the Units he holds.</p> <p>(8) That payments to the Fund Manager, Trustee, any Eligible Custodian, or the Person providing the oversight function (including a Shari'a Supervisory Board) by way of remuneration are authorised to be paid (in whole or in part) out of the Fund Property.</p>
C	Where the Fund is a Trust
	<p>The following information:</p> <p>(1) The Trust Deed is made under and governed by the Investment Trust Law 2006 and:</p> <p>(a) is binding on each Unitholder as if he had been a party to it and that he is bound by its provisions; and</p> <p>(b) authorises and requires the Fund Manager and the Trustee to do the things required or permitted of them by its terms and the Investment Trust Law 2006 and the Law.</p> <p>(2) Subject to the provisions of these Rules:</p>

	<ul style="list-style-type: none"> (a) the Fund Property (other than sums held to the credit of the distribution account) is held by the Trustee on trust for the Unitholders according to the number of Units held by each Unitholder or, where relevant, according to the number of individual shares in the Fund Property represented by the Units held by each Unitholder; and (b) the sums standing to the credit of any distribution account are held by the Trustee on trust to distribute or apply in accordance with these Rules relating to income.
D	Investment Objectives
	<ul style="list-style-type: none"> (1) Information covering the investment objectives of the Fund and in particular: <ul style="list-style-type: none"> (a) whether the aim of the Fund is to spread investment risks and, if a Property Fund, whether the Fund invests in a single property; (b) the types of Investments or assets in which it and (where applicable) each Sub-Fund may invest; and (c) if the Fund is a specialist class of Fund, the class of Fund. (2) Details of any investment, borrowing or stock lending restrictions or, in the event that there are no such restrictions, a statement to that effect.
E	Units in the Fund
	<p>A statement specifying:</p> <ul style="list-style-type: none"> (a) the classes of Units which the Fund may issue; and (b) the rights attaching to Units of each class (including any provisions for the expression in two or more denominations of such rights).
F	Limitations
	<p>Details as to:</p> <ul style="list-style-type: none"> (a) the provisions relating to any restrictions on the right to redeem Units in any class; and (b) the circumstances in which the issue of the Units of any particular class may be limited.
G	Income and distribution

	<p>(1) Details of who is carrying out the calculation, transfer, allocation and distribution of income for any class of Unit issued and outstanding during the accounting period.</p> <p>(2) Information regarding the provision for the payment of income, if any, and the date on which such distribution shall be made.</p>
H	Base currency
	A statement specifying the base currency of the Fund.
I	Meetings
	Details of the procedures for the convening of meetings and the procedures relating to resolutions, voting and the voting rights of Unitholders.
J	Oversight arrangements
	Details of the oversight arrangements, and if the Fund is an Islamic Fund, details of its Shari'a Supervisory Board.
K	Termination and suspension
	<p>Details as to:</p> <p>(a) the grounds under which the Fund Manager may initiate a suspension of the Fund and any associated procedures; and</p> <p>(b) the methodology for determining the rights of Unitholders to participate in the Fund Property on winding up.</p>
L	Modification of the Constitution documents
	Details of the manner in which alterations to the Constitution may be made.
M	Responsibility statement
	A statement that nothing in the Constitution has the effect of exempting the Fund Manager and, if the Fund is structured as an Investment Trust, the Trustee, from any liability to Unitholders imposed under DIFC law and the Rules.
N	Other relevant matters
	Details of those matters which enable the Fund, Fund Manager or any Person providing the oversight function of the Fund to obtain any privilege or power conferred by the Rules which is not otherwise provided for in the Constitution.

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 .

Financial soundness

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

App 7 Content of a Public Fund Prospectus

A7.1 Application

A7.1.1 This table applies to the Persons referred to in Rule 14.1.1(1).

A7.1.2 If a Public Fund is to be a Listed Fund, there are additional requirements applicable to such a Fund under section 6.3 of the MKT module. If such a Fund is to be an Islamic Fund, please refer to section 6.5 of the IFR module. See also CIR 14.3.3(2).

A7.1.3 The Prospectus for a Public Fund must contain the information prescribed in the following table.

A7.1.4 A Prospectus is required to contain all the information an investor would reasonably require and expect to find in a Prospectus to be able to make an informed decision. CIR contains additional disclosure for Public Funds. This Table sets out the key mandatory disclosures required in a Public Fund Prospectus under the Law, CIR and IFR, including for specialist classes of Public Funds.

Mandatory disclosure for all Public Funds	
1.	Persons Responsible for the Prospectus
1.1	<p>(a) Names and details of all Persons responsible for the information given in the Prospectus.</p> <p>(b) If some Persons are responsible for only certain parts of the Prospectus (e.g. Experts), an indication of the relevant parts for which they are responsible.</p>
1.2	A statement from the Persons referred to in 1.1 that, having taken due care to ensure that such is the case, the information included in the Prospectus (or the part of the Prospectus for which the Person is responsible) is, to the best of their knowledge, accurate, and contains no material omissions likely to impact on the accuracy of the information in the Prospectus (or the relevant part).
1.3	<p>A prominent statement in the front page of the Prospectus as follows:</p> <p style="padding-left: 40px;">“This Prospectus relates to a DIFC Fund in accordance with the Collective Investment Law 2010 and Rules of the Dubai Financial Services Authority (“DFSA”).</p> <p style="padding-left: 40px;">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.</p>

	<p>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.</p> <p>If you do not understand the contents of this document you should consult an authorised financial adviser.”</p>
2.	Document Status
2.1	<p>A prominent statement that:</p> <ul style="list-style-type: none"> (a) the document is the Prospectus of the Public Fund; (b) it contains information valid as at the date of the signing of the Prospectus by the Persons referred to in 1.1; and (c) no Units will be issued on the basis of the Prospectus after the expiry date specified in the Prospectus.
2.2	The location where a copy of the Prospectus is available free of charge.
3.	Summary Document
3.1	<p>The information required under Rule 14.3.1(d), i.e.:</p> <ul style="list-style-type: none"> (a) information to clearly identify the Fund and its classification; (b) a short description of the Fund's investment objectives and investment policy for achieving those objectives; (c) past performance presentation or, where relevant, performance scenarios; (d) costs and associated charges; and (e) risk/reward profile of the investment, including appropriate guidance and warnings in relation to the risks associated with investments, in the relevant Fund.
4.	The name and description of the Fund
4.1	<ul style="list-style-type: none"> (a) The name of the Fund and whether the Fund is a Public Fund established in the DIFC or an External Fund. (b) If the Fund is a specialist class of Fund as defined in chapter 3, the relevant specialist class of the Fund. (c) The legal form of the Fund (whether it is an Investment Company, Investment Partnership or Investment Trust) and, if not attached to the Prospectus, where the Fund's Constitution and any amending instrument

	<p>to it may be inspected and copies of them may be obtained.</p> <p>(d) Whether the Fund is an Open-ended or Closed-ended Fund as defined in Article 18A of the Law.</p> <p>(e) The base currency of the Fund and, where relevant, the maximum and minimum sizes of the Fund's capital.</p>
4.2	<p>(a) The effective date of commencement of the Fund's operations.</p> <p>(b) If the duration of the Fund is limited, that duration.</p> <p>(c) The circumstances in which the Fund may be wound up under the Law and the Rules in this module and a summary of the procedure for, and the rights of Unitholders under, such a winding up.</p>
4.3	<p>(a) The basis upon which Persons are eligible to participate in the Fund and, where applicable, the minimum initial investment.</p> <p>(b) A statement that the Unitholders are not liable for the debts of the Fund unless the applicable legislation prescribes otherwise and, if so, a statement specifying those circumstances.</p>
5.	Investment objectives and policy of the Fund
5.1	<p>Sufficient information to enable a Unitholder or potential Unitholder to understand the investment objectives of the Fund and its investment policy for achieving those investment objectives, including:</p> <p>(a) the general nature of the portfolio assets and any intended specialisation;</p> <p>(b) the policy for the spreading of risk in the Fund Property including an explanation of any potential risks identified;</p> <p>(c) the Fund's policy in relation to the exercise of borrowing powers;</p> <p>(d) the Fund's policy in relation to the use of Derivatives for speculation or hedging purposes; and</p> <p>(e) whether the Fund's policy envisages remaining not fully invested at all times – and a description of such circumstances.</p>
5.2	A description of how the investment objectives and policy stated under 5.1 may be varied, and the circumstances in which such variation requires the approval of Unitholders.
5.3	If the Fund Property is to be invested in Units in Funds which are managed by the Fund Manager or an Associate of the Fund Manager, a statement of:

	<p>(a) the maximum amount of investments in each Fund;</p> <p>(b) the basis and amount of the charges in respect of the transactions referred to in (a), if not already disclosed under any other section of the Prospectus; and</p> <p>(c) the extent to which such charges will be reimbursed to the Fund.</p>
5.4	The profile of a typical investor for whom the Fund is designed.
6.	Investment restrictions
6.1	<p>(a) A statement of any investment restrictions applicable to the Fund.</p> <p>(b) An indication of how the Unitholders in the Fund will be informed of the actions taken by the Fund Manager in the event of a breach of the investment restrictions.</p>
7.	Information about the rights attached to Units of the Fund
7.1	<p>Information about:</p> <p>(a) the nature/characteristics of the Units in the Fund (i.e. shares, partnership interest or beneficial ownership) and the rights attaching to the Units (e.g. relating to voting and participation in distributions);</p> <p>(b) how Unitholders may exercise their voting rights and what they are; and</p> <p>(c) the circumstances where a mandatory redemption, cancellation or conversion of a Unit from one class to another is required.</p>
7.2	<p>If the Fund issues different classes of Units:</p> <p>(a) the names of the relevant classes of Units; and</p> <p>(b) how the rights attaching to one class of Units differ from the rights attaching to other classes of Units.</p>
7.3	How Units are held (e.g. in certificated or dematerialised form).
8.	The Register of Unitholders
8.1	Address in the DIFC where the register of Unitholders of the Fund is kept and can be inspected by Unitholders of the Fund.
9.	Information about distribution and accounting period
9.1	<p>Details of the accounting and distribution periods and a description of the procedures:</p> <p>(a) for determining and applying income (including how any distributable</p>

	income is paid); and (b) for dealing with unclaimed distributions.
10.	Information about the Fund Manager
10.1	<p>(a) The Fund Manager's:</p> <ul style="list-style-type: none"> (i) name (and, if different, its business name), place of incorporation and date of incorporation; (ii) if the Fund Manager is an External Fund Manager, that fact and the details of the Appointed Fund Administrator or Custody Provider to the Fund under Rule 6.1.3(a); and (iii) address and, if applicable, that of the Appointed Fund Administrator or Custody Provider, as the case may be, and the registered office in the DIFC. <p>(b) If the Fund Manager is a member of a Group, the name of its ultimate Holding Company and the country or territory in which that Holding Company is incorporated.</p> <p>(c) The amount of the Fund Manager's issued share capital and how much of it is paid up.</p> <p>(d) A summary of the material provisions of the contract between the Fund and its Fund Manager which may be relevant to Unitholders, including provisions relating to termination, compensation on termination and indemnity.</p>
10.2	<p>(a) In the case of an Investment Company:</p> <ul style="list-style-type: none"> (i) the names and positions held by the Directors of the Investment Company (other than those who are the Directors of the Fund Manager); and (ii) if the Fund Manager is its Corporate Director, that fact, and the names of the individual Directors of the Corporate Director. <p>(b) In the case of an Investment Partnership, the names of any General Partners who do not take part in the day-to-day management of the Fund.</p> <p>(c) The manner, amount and calculation of any remuneration of the Persons referred to in (a) or (b), as applicable.</p>
11.	Information about the Trustee of the Fund
11.1	If the Fund is an Investment Trust, the following information relating to its

	<p>Trustee:</p> <ul style="list-style-type: none"> (a) the name (and, if different, the business name) of the Trustee; (b) the names and addresses of the individuals who are Directors of the Trustee; (c) the place and date of incorporation of the Trustee and its registered place of business in the DIFC; (d) whether the Trustee is to undertake any functions in addition to the custody of the Fund Property (e.g. Fund Administration, independent oversight function); and (e) a summary of the material provisions in the trust deed between the Fund Manager and the Trustee which may be relevant to Unitholders, including provisions relating to the Trustee's remuneration, terms upon which the appointment as Trustee can be terminated, and compensation on termination and indemnity.
12.	Information about the Auditor
12.1	<ul style="list-style-type: none"> (a) The name and address of the Fund's appointed Registered Auditor. (b) The name and address of the Audit Principal responsible for the audit of the Fund. (c) If the Prospectus includes any financial reports of the Fund for a period where the Registered Auditor was different, the details referred to in (a) and (b) above relating to that Auditor.
13.	Information about the independent oversight provider
13.1	The Persons appointed under Rule 10.3.1 to provide the oversight function (i.e. an Oversight Committee, Eligible Custodian or Trustee of the Fund).
13.2	In the case of an Oversight Committee, the names and addresses of the individuals appointed to that Committee and their remuneration.
14.	Information about the Eligible Custodian
14.1	<ul style="list-style-type: none"> (a) The name and address of the Eligible Custodian. (b) If the Eligible Custodian is the Trustee of the Fund, a statement to that effect. (c) The regulated status of the Eligible Custodian and the relevant regulator.
14.2	If the Fund Manager does not appoint an Eligible Custodian under

	circumstances permitted in CIR, a statement to that effect.
15.	Information relating to other Service Providers
15.1	<p>If a Fund Manager delegates or outsources any of its activities or functions relating to the Fund to a Service Provider:</p> <ul style="list-style-type: none"> (a) its name; (b) the service or function delegated or outsourced to that Person; (c) by whom the Service Provider is regulated; and (d) the details of the arrangements, including fees and other remuneration payable to the Service Provider.
15.2	<p>If an investment adviser is retained in connection with the business of the Fund:</p> <ul style="list-style-type: none"> (a) its name; (b) by whom it is regulated; and (c) its remuneration.
15.3	If applicable, names and addresses of the banker, lawyer, registrar and any other Person undertaking any significant activities in relation to the Fund.
16.	Financial information and reports
16.1	<p>Details as to:</p> <ul style="list-style-type: none"> (a) when the Fund's annual and interim reports will be published; and (b) the address in the DIFC where the most recent annual and interim reports may be inspected and their copies obtained.
16.2	If the Fund has been in operation since its establishment, the historical financial information (and where copies can be obtained) and, if not, a statement to that effect.
16.3	A comprehensive and meaningful analysis of the Fund's portfolio of investments and, if unaudited, a statement to that effect.
16.4	If there is a profit forecast or estimate, information relating to the basis of such forecast or estimate.
17.	Remuneration, fees and other charges payable out of the Fund Property

17.1	<p>Clear and concise information in an understandable manner relating to remuneration, fees and other charges to be paid out of the Fund Property payable to:</p> <ul style="list-style-type: none"> (a) the Fund Manager; (b) the Trustee of the Fund, if applicable; (c) any Service Providers to the Fund; and (d) any other Person not covered under (a), (b) or (c).
17.2	<p>In respect of each category of remuneration, fees and other charges referred to in 17.1, details relating to:</p> <ul style="list-style-type: none"> (a) the current rates or amounts; (b) the manner of calculation; and (c) when they will accrue and be paid.
17.3	<ul style="list-style-type: none"> (a) Whether the Fund Manager has the discretion to amend the current remuneration, fees and other charges referred to in 17.1. (b) If so, a description of: <ul style="list-style-type: none"> (i) the changes to be made (e.g. the introduction of a new category of charges or a change to the basis of an existing charge); (ii) the circumstances in which such a change will be made; (iii) the procedures for making such a change (including the advance notice period to be given to Unitholders of the proposed change); and (iv) if the change is to be made, when it is intended to take effect.
17.4	<p>If all or any part of the remuneration, fees or other charges referred to in 17.1 are to be treated as a capital charge, a statement to that effect and the basis on which it may be so treated.</p>
18.	Valuation of the Fund Property
18.1	<p>Details of:</p> <ul style="list-style-type: none"> (a) the frequency and times of valuation of the Fund Property, and a description of any circumstances in which Fund Property may be specially valued; (b) the valuation principles and method applied for the establishment of the

	<p>Net Asset Value (NAV) of the Fund Property;</p> <p>(c) any circumstances in which the valuation of the Fund Property referred to in (a) may be suspended; and</p> <p>(d) how the NAV and any suspension of valuation will be communicated to Unitholders or prospective Unitholders.</p>
18.2	<p>Details of:</p> <p>(a) how the single price of Units of the Fund, and if there are different classes of Units in the Fund, the single price of each class of Units, will be determined, including whether a forward or historic price basis is to be applied; and</p> <p>(b) details as to how the prices of Units will be published following each valuation.</p>
19.	Redemption and resale of Units in Open-ended Funds
19.1	<p>In the case of an Open-ended Fund, details of:</p> <p>(a) the dealing days and the times in the dealing day on which the Fund Manager will receive requests for redemption and resale of Units;</p> <p>(b) the procedures for carrying out:</p> <ul style="list-style-type: none"> (i) redemption, reissue and resale of Units; and (ii) the settlement of transactions; <p>(c) the steps required to be taken by a Unitholder in redeeming Units before he can receive the proceeds, including any relevant notice periods, and the circumstances and periods in which a deferral of payment may be applied;</p> <p>(d) the circumstances in which the redemption of Units may be suspended;</p> <p>(e) if applicable, details of the minimum number or value of each type of Unit in the Fund which:</p> <ul style="list-style-type: none"> (i) any one Person may hold; and (ii) may be the subject of any one transaction of issue, resale or redemption by the Fund Manager; <p>(f) the circumstances and procedures if the Fund Manager may carry out in-specie redemptions; and</p> <p>(g) the circumstances in which the further issue of Units in any particular</p>

	class may be limited and the procedures relating to this.
19.2	If the Fund Manager makes any charges on sale or redemption of Units, details of the charging structure and how notice will be provided to Unitholders of any change in the relevant charge.
19.3	If the Fund Manager makes a dilution levy or dilution adjustment, how such levy or adjustment is calculated and applied to redemptions to ensure fair treatment of outgoing and remaining Unitholders.
19.4	If any class of Unitholders is subject to any limitations relating to further issue of Units of that class, procedures relating to how such restrictions are applied.
20.	Liquidity risk management in Open-ended Funds
20.1	Information relating to the powers available to the Fund Manager to address liquidity risks that may arise in the Fund and the procedures, including triggers, for the exercise of such powers, required under Rule 8.6A.1(2)(d).
21.	Listing and trading of Fund Units
21.1	Whether the Fund's Units are intended to be listed and traded and, if so, the date and the exchange on which the Units are to be admitted to trading.
21.2	Timeframe within which the listing and trading is intended to occur.
Additional mandatory disclosure for specialist classes of Public Funds	
1.	Islamic Fund
1.1	A statement that all the operations in relation to the Fund will be conducted in accordance with Shari'a.
1.2	<p>Instead of the statement referred to in 1.3 under 'Mandatory disclosure for all Public Funds', a statement as follows:</p> <p>"The DFSA does not accept responsibility for the content of the information included in the Prospectus, including the accuracy or completeness of such information. The liability for the content of the Prospectus lies with the Issuer of the Prospectus and other Persons, such as experts, whose opinions are included in the Prospectus with their consent. The DFSA has also not assessed the suitability of the Securities to which the Prospectus relates to any particular investor or type of investor and has not determined whether they are Shari'a compliant. If you do not understand the contents of this Prospectus or are unsure whether the Securities to which the Prospectus relates are suitable for your individual investment objectives and circumstances, you should consult an authorised financial advisor."</p>

1.3	The names of the members of the Shari'a Supervisory Board and their qualifications and experience.
1.4	If, pursuant to IFR 6.2.1(2), the Shari'a Supervisory Board appointed to the Fund is also the Shari'a Supervisory Board of the Fund Manager, a statement to that effect.
1.5	If the Fund does not have a Shari'a Supervisory Board appointed to it pursuant to IFR 6.2.1(3), what widely acceptable screening methodologies are used by the Fund to ensure Shari'a compliance when making investments for the Fund and the board that has approved them.
1.6	If applicable, the manner and frequency of Shari'a reviews.
1.7	How earnings or assets prohibited by Shari'a will be disposed of.
1.8	Whether Zakah is the responsibility of the Fund or the responsibility of the Unitholders.
1.9	The additional disclosure, if applicable, prescribed under IFR section A1.1 of App 1.
2.	Feeder Fund
2.1	<p>Disclosure of:</p> <ul style="list-style-type: none"> (a) a prominent risk warning to alert prospective Unitholders to the fact that they will be subject to higher fees arising from the layered investment structure; (b) the fees arising at the level of: <ul style="list-style-type: none"> (i) the Feeder Fund itself; (ii) if applicable, the Master Fund of the Feeder Fund; and (iii) if applicable, any underlying Funds into which the Master Fund invests, to the extent known.
3.	Property Fund
3.1	<p>Whether the Fund is investing in:</p> <ul style="list-style-type: none"> (a) Real Property only; (b) Securities issued by Bodies Corporate whose main activities are investing in, dealing in, developing or redeveloping Real Property only; or (c) a combination of (a) and (b).

3.2	<p>(a) What percentage of the Property Fund's net assets may consist of property related assets, referred to in 3.1(b), which are not traded in or dealt on markets provided for in the Constitution.</p> <p>(b) Unless the Constitution and the Prospectus state that the Fund invests in a single property, the maximum percentage of the Fund's net assets which may be invested in any single property or, if applicable, the conditions under which the Fund may derogate from this restriction.</p> <p>(c) The maximum percentage of the Property Fund's net assets which may be invested in properties which are vacant, in the process of development or requiring development.</p> <p>(d) The maximum percentage of the Property Fund's net assets which may be invested in properties which are subject to a mortgage.</p>
3.3	<p>For investment in Real Property:</p> <p>(a) the countries or territories in which the Fund may invest;</p> <p>(b) the types of Real Property in which the Fund may invest and the policy in relation to encumbrances and lease period, if applicable;</p> <p>(c) the policy of the Fund Manager in relation to insurance of Real Property forming part of the Fund Property;</p> <p>(d) the risks involved in this type of Fund;</p> <p>(e) details of the Property Fund's appointed valuer under Rule 13.4.18(1);</p> <p>(f) a statement to explain the standards according to which the property valuations are conducted;</p> <p>(g) a statement with respect to any material policy regarding Real Property activities;</p> <p>(h) details of significant holders and the number of units held and deemed to be held by each of them;</p> <p>(i) details of principal taxes levied on the Fund's income and capital, including tax, if any, deducted on distribution to Unitholders; and</p> <p>(j) if the Fund is a REIT, whether the investment vehicle is an Investment Company or an Investment Trust.</p>
3.4	<p>If the Fund is a single Property Fund:</p> <p>(a) a prominent statement that the Fund invests in a single property;</p> <p>(b) the details relating to the single property, such as whether the property</p>

	<p>comprises individual properties or buildings, whether there are different types of uses or businesses conducted in the property, and proportions of anticipated income to be derived from the types of uses or occupants of the property; and</p> <p>(c) any risks associated with the investment in the single property, including risks arising from or affecting income to be derived from the uses or occupants of the property.</p>
3.5	<p>If the Fund Manager itself acts as the custodian of Real Property, in accordance with Rule 13.4.2:</p> <p>(a) a prominent statement that it acts as the custodian of the Real Property;</p> <p>(b) disclosure of risks that may arise as a result of it acting as custodian rather than delegating the function to an Eligible Custodian; and</p> <p>(c) the measures and safeguards it has in place to ensure the proper segregation and protection of the Real Property.</p>
3.6	<p>Disclosure of:</p> <p>(a) details of any transactions or agreements entered into with Related Parties;</p> <p>(b) full particulars of the nature and extent of the interest, if any, of Related Parties in the property owned or proposed to be acquired by the Fund; and</p> <p>(c) whether the Fund Manager has Unitholder approval to enter into Related Party Transactions, in accordance with Rule 13.4.11A.</p>
4.	Hedge Fund
4.1	<p>A prominent warning as follows:</p> <p>“When considering investment in a Hedge Fund you should consider the fact that some Hedge Fund products use leverage and other speculative investment practices that may increase the risk of investment loss, can be illiquid, may involve complex tax structures, often charge high fees, and, in many cases, the underlying investments are not transparent and are known only to the Hedge Fund Investment Manager.</p> <p>Returns from Hedge Funds can be volatile and you may lose all or part of your investment. With respect to single manager products, the manager has total trading authority and this could mean a lack of diversification and higher risk. The Hedge Fund may be subject to substantial expenses that are generally offset by trading profits and other income. A portion of those fees is paid to the</p>

	Hedge Fund Manager.”
4.2	An explanation of the types of strategies to be employed by the Fund Manager and the associated risks.
5.	Umbrella Fund
5.1	Whether the Fund is constituted as a Protected Cell Company or is using contractual arrangements to segregate Sub-Funds.
5.2	A statement that Unitholders may exchange Units of one Sub-Fund for Units in another Sub-Fund of the Umbrella Fund.
5.3	Whether an exchange of Units in one Sub-Fund for Units in another Sub-Fund is treated as a redemption of Units, and resale or reissue of Units in the relevant Sub-Fund, and costs and fees associated with such redemption, resale or reissue.
5.4	Policy for allocating between Sub-Funds any assets of, or costs, charges and expenses payable out of, the Fund Property which are not attributable to any particular Sub-Fund.
5.5	Information relating to any cross-liability that may occur between Sub-Funds if the Fund is not using the PCC structure.
5.6	In respect of each Sub-Fund, if the currency is not the base currency of the Umbrella Fund, the currency in which the Fund Property allocated to it will be valued and the price of Units calculated and payments made.
6.	Money Market Fund
6.1	<p>A prominent warning:</p> <ul style="list-style-type: none"> (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.
7.	Exchange Traded Fund (“ETF”)
7.1	<p>Disclosure of:</p> <ul style="list-style-type: none"> (a) the type of ETF and its characteristics; (b) the risks associated with the type of ETF;

	<p>(c) the investment methodology and strategies the ETF proposes to adopt to track the referenced index or benchmark;</p> <p>(d) the relevant indices or other benchmark the ETF is designed to track, and the underlying components (including their liquidity) of the relevant index or benchmark;</p> <p>(e) relevant websites or sources of information provided by Price Information Providers, including the methodology, composition, components and value, and relative weightings, relating to the indices or benchmarks;</p> <p>(f) whether iNAV is made available by the relevant exchange and, if so, how this information can be accessed by investors;</p> <p>(g) how the referenced index or benchmark will be tracked and the risks for investors in terms of the exposure they have to the underlying index and any counterparty risk;</p> <p>(h) the key elements which may affect the ETF's ability to track fully the relevant index or benchmark, including, but not limited to, transaction costs, illiquid segments, and dividend re-investment;</p> <p>(i) in the case of a synthetic ETF using Derivatives to replicate the performance of an index or other benchmark:</p> <ul style="list-style-type: none"> (i) whether the ETF uses a funded or unfunded model to replicate the performance of the specified index or benchmark; (ii) the counterparties to the Derivatives transactions and, where collateral is used, details relating to such collateral; and (iii) the risks associated with counterparty default and use of any collateral, and their impact on the ETF's performance and investor returns, and how such risks are to be mitigated; <p>(j) if the ETF is required to have a diversified portfolio, how the ETF proposes to achieve diversification of investments through its investment strategy;</p> <p>(k) if available, information about the past performance of the ETF, measured through its realised tracking difference and annual tracking error information, on the anticipated level of tracking error during normal market conditions, and how this will be effectively minimised;</p> <p>(l) the exchange on which the ETF is admitted to trading;</p> <p>(m) the Authorised Participant/s (AP) on the relevant exchange; and</p> <p>(n) the Price Information Provider (PIP) of the index or other benchmark which the ETF tracks and, if the PIP is a Related Party, a statement to that effect.</p>
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7.2	<p>Sufficient information to enable investors to understand:</p> <p>(a) the ETF's cost structure, covering:</p> <ul style="list-style-type: none"> (i) any performance fees of the Fund Manager, if applicable; (ii) its operational costs; and (iii) if applicable, costs of underlying transactions (such as swaps, brokerage commissions and additional costs associated with leverage or use of collateral, and the rebalancing of the portfolio costs); and <p>(b) any revenue derived by the Fund Manager through the use of the ETF's portfolio assets, and how that revenue is distributed between the ETF and the Fund Manager.</p>
Additional mandatory disclosure for Funds on a Fund Platform	
1.	<p>A Fund Manager of a Fund that is an Incorporated Cell of an Incorporated Cell Company must ensure that the Fund Prospectus includes information that:</p> <p>(a) the Fund is an Incorporated Cell of an ICC;</p> <p>(b) the Fund, being an Incorporated Cell:</p> <ul style="list-style-type: none"> (i) is a separate legal entity to the ICC and to any other Incorporated Cells of the ICC; and (ii) does not have a subsidiary or holding company relationship with the ICC; <p>(c) the ICC, which is the Fund Platform, contains the infrastructure needed by the Fund Manager for managing the Fund; and</p> <p>(d) the Fund Manager is:</p> <ul style="list-style-type: none"> (i) responsible for the sound and prudent operation of the Fund Platform; and (ii) liable for any acts or omissions of the Fund Platform in respect of the Fund.

App 8 Guidance for Hedge Fund Managers

[Click here to view the DFSA's Hedge Fund Code of Practice](#)

APP9 USE OF PRICE INFORMATION PROVIDERS

A9.1 Application

A9.1.1 This Appendix applies to a Fund Manager of:

- (a) an Exchange Traded Fund; or
- (b) a Fund that has any Fund Property that consists of Crypto Tokens.

Use of price information providers

- A9.1.2**
- (1) A Fund Manager of an ETF may only use an index or other benchmark provided by a Price Information Provider for the purposes referred to in Rule 13.9.3 if it has undertaken appropriate due diligence to ensure that the Price Information Provider, on an on-going basis, meets the requirements set out in (3).
 - (2) A Fund Manager of a Fund that has any Fund Property that consists of Crypto Tokens may only use an index or other benchmark provided by a Price Information Provider to value the Crypto Tokens if it has undertaken appropriate due diligence to ensure that the Price Information Provider, on an on-going basis, meets the requirements set out in (3).
 - (3) The requirements relating to the Price Information Provider are that:
 - (a) it has fair and non-discriminatory procedures for establishing prices of Investments or Crypto Tokens which are made public.
 - (b) it can demonstrate adequate and appropriate transparency over the methodology, calculation and inputs to allow users to understand how the benchmark or index is derived and its potential limitations by:
 - (i) making publicly available all the rules that govern the methodology, composition, components and value, and relative weighting of securities in each index or benchmark within a reasonable time frame as appropriate to the nature of the index and its users; and
 - (ii) not making changes to the rules for index compilation without giving advance public notice before any changes are made;
 - (c) where appropriate, it gives priority to concluded transactions in making assessments and adopts measures to minimise selective reporting;
 - (d) it is of good standing and repute as an independent and objective price reporting agency or index provider;
 - (e) it has a sound corporate governance framework;
 - (f) it has adequate arrangements to avoid its staff having any conflicts of interest where such conflicts have, or are likely to have, a material

adverse impact on price establishment process, and in particular, it does not employ ETF staff, for the purposes relating to the creation, development or modification of the index compilation rules and their review; and

- (g) it has adequate complaint resolution mechanisms to resolve any complaints about the Price Information Provider's assessment process and methodology.

Guidance

1. A Fund Manager of an ETF or a Fund that invests in Crypto Tokens, when assessing the suitability of a Price Information Provider (the provider), should take into account factors such as:
 - a. the provider's standing and reliability in the relevant physical or derivatives markets as a credible price reporting agency;
 - b. the quality of corporate governance adopted, covering areas such as independent members of the board, independence of its internal audit and risk management function, and in the case of a Shari'a compliant index or benchmark, its Shari'a governance arrangements;
 - c. whether the methodologies and processes (including any material changes to such methodologies and processes) adopted by the provider for the purposes of pricing are made publicly available;
 - d. whether there are adequate procedures adopted to ensure that conflicts of interests between the provider's commercial interests and the users of its services, including that of its Employees involved in pricing process, are adequately addressed, including through codes of ethics;
 - e. whether there is a clear conveyance to its users of the economic realities of the underlying interest the Price Information Provider seeks to measure; and,
 - f. the degree to which the Price Information Provider has given consideration to the characteristics of underlying interests measured, such as:
 - **the size and liquidity:** Whether the size of the market informs the selection of an appropriate compilation mechanism and governance processes. For example, a benchmark or index that measures a smaller market may be impacted by single trades and therefore be more prone to potential manipulation, whereas a benchmark for a larger market may not be well represented by a small sample of participants;
 - **the relative market size.** Where the size of a market referencing a benchmark is significantly larger than the volume of the underlying market, the potential incentive for benchmark manipulation to increase; and
 - **Transparency:** Where there are varying levels of transparency regarding trading volumes and positions of market participants, particularly in non-regulated markets and instruments, whether the benchmark represents the full breadth of the market, the role of specialist participants who might be in a position to give an overview of the market, and the feasibility, costs and benefits of providing additional transparency in the underlying markets.
2. If a Price Information Provider that an ETF Fund Manager uses for tracking or outperforming an index or benchmark for the purposes of the ETF it manages is a Related Party of the Fund

Manager, the Fund Manager has additional obligations relating to Related Party Transactions under Rule 13.9.5.