

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

For more than fifteen years, the Dubai International Financial Centre (“DIFC”) has positioned itself as the centre for asset management in the Middle East. The DIFC and DFSA are providing further encouragement to regional start-up fund managers, fund managers of venture capital funds as well as General Partners (“GPs”) and Limited Partners (“LPs”) in investment funds by offering a comprehensive regulatory framework that flexes to support the industry as well as offering discounts on certain fees.

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

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The Fund Regime in the DIFC

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

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

Key Terms in the DFSA Rulebook

Capitalised terms not expressly defined below bear their meaning as set out in the DFSA Rules.

FUND MANAGER OR ASSET MANAGER

Definition of Fund Manager

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

Definition of Asset Manager

The term 'Asset Manager' (alternatively referred to as 'Investment Manager') is the person who manages the assets of a fund or other portfolios on a discretionary basis. A person who performs this financial service in the DIFC must obtain from the DFSA the regulatory permission of 'Managing Assets'. Note, however, that a person who performs the financial service of 'Managing Assets' is not, by virtue of this permission, a Fund Manager. Specific authorisation requirements, procedures and ongoing obligations, including a higher base capital requirement, apply to Asset Managers.

TYPES OF FUND MANAGER

A Domestic Fund Manager

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

An External Fund Manager

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

The External Fund Manager must appoint a Fund Administrator or Trustee in the DIFC to act as its agent in its dealings with the DFSA, Unitholders, and prospective Unitholders.

Domestic Fund Structures

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

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

Comparison of a Public Fund, Exempt Fund and Qualified Investor Fund

Domestic Funds can be managed by either a Domestic Fund Manager or an External Fund Manager.

| Type of Fund | Public Funds | Exempt Funds | QIF |
|-------------------------------|--|--|--|
| Level of regulation | Detailed regulation in line with IOSCO standards to protect a larger number of investors | Somewhat less stringent than for Public Funds | Significantly less stringent than for Public Funds |
| Investors and Offer | <ul style="list-style-type: none"> – Unitholders include Retail Clients – Some or all of its units are offered to investors by way of public offer | <ul style="list-style-type: none"> – Only Professional Clients – Units are offered to persons only by way of a Private Placement | <ul style="list-style-type: none"> – Only Professional Clients – Units are offered to persons only by way of a Private Placement |
| Minimum Subscription | N/A | US \$50,000 | US \$500,000 |
| DFSA Application Process Time | Varies | 5 business days | 2 business days |

External and Foreign Funds

A Foreign Fund is a Fund established or domiciled in a jurisdiction other than the DIFC and is not managed by a Domestic Fund Manager. An External Fund is a Foreign Fund managed by a Domestic Fund Manager. There are no specific regulations imposed by the DFSA relating to External Funds other than the need to comply with requirements in the jurisdiction in which the External Fund is established and the Fund Manager to assess and confirm that the Anti Money Laundering ("AML") regulations in that jurisdiction are comparable to those of DFSA.

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

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

The main costs relating to setting up a Fund Management entity in the DIFC relate to the regulatory licencing itself and the commercial licence. DFSA licence application fees vary from \$2,000 to establish a fund manager of a VC Fund, \$5,000 to set up a fund manager of a QIF or internally managed fund, and \$10,000 for an Exempt Fund manager. Fee discounts are offered to regional start-up Fund Managers, Fund Managers of Venture Capital Funds as well as GPs and LPs in Investment Funds where the incorporation cost is between \$100-\$1,000, rather than \$8,000 and the initial commercial licence is up to \$2,000, for the first year.

DFSA application process for Fund Managers

Becoming authorised as a Domestic Fund Manager

You will need to establish a DIFC entity and be authorised by the DFSA to provide the financial service of Managing a CIF. A Fund or Asset Manager will require a Category 3C prudential licence (unless it requires authorisation to provide certain other services which move it into a higher category e.g. Dealing in Investments as Principal).

If you apply to the DFSA to manage a Venture Capital Fund, QIF or an Exempt Fund your licence will be restricted to managing only these types of funds and an upgrade will be required should you wish, in the future, to manage a Public Fund. Applications are made online using the specific forms for Funds and Fund Managers in the DFSA ePortal. The DFSA aims to process VC Fund Manager applications within one week of receipt of a complete application, and there is no need to provide a business plan with your submission. The QIF application process should take 4-6 weeks and Exempt Funds only slightly longer, but each of the applications relies heavily on self-certification. If you are seeking a variation of licence, you will be required to complete the relevant DFSA application forms and demonstrate to the DFSA that you have the necessary systems and controls and oversight arrangements in place if setting up a Public Fund. You may also be required to apply for a Retail Endorsement.

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

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

Capital considerations

The DFSA requires Fund Managers to meet the capital requirements as set out in the Prudential rules, being the higher of (i) 13 weeks forecast audited expenditure or (ii) the minimum base capital requirements set out below. There are no base capital or minimum capital requirements for a Venture Capital Fund Manager. However, the DFSA expects the Fund Manager to maintain sufficient liquid assets and access to financial resources to meet its obligations as they fall due, based on the nature, scale and complexity of the business.

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

A Fund Manager who is also licenced to manage assets has a base capital requirement of \$500,000 and is not eligible for lower capital requirements.

Application to establish a Fund

The Application Process

The DFSA will only accept a Fund application once the Fund Manager has been authorised (in the case of a Domestic Fund Manager) or approved (in the case of an External Fund Manager). The detail required in the application process is different depending on which fund type you wish to establish and the regulatory risks involved. A Public Fund application requires regulatory approval, while applications concerning Venture Capital Funds, Exempt Funds or QIFs are made by notification and rely heavily on self-certification. DFSA requirements in relation to specialist Domestic Funds

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

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

DFSA requirements in relation to specialist Domestic Funds

Below are some of the specialist Domestic Funds that are referenced, although others are also covered in the Part 6 of the CIR. Some types of fund have specific requirements in terms of structure and governance, such as establishment of investment committees.

Islamic Funds

Islamic Funds can be Public Funds, Exempt Funds or QIFs.

The Fund Manager of an Islamic Fund must:

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

Hedge Funds

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

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

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

Private Equity Funds

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

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

Venture Capital Funds

The Venture Capital Fund regime aims at promoting investment in start-ups and small innovative businesses. A Venture Capital Fund may be established as 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.

Property Funds

Property Funds established as an Exempt Fund or QIF may be open or closed-ended. If the Property Fund is a Public Fund it must:

- be closed-ended
- invest only in Real Property or Property Related Assets, but may retain up to 40% of its investments in cash or certain specified securities
- be an Investment Company or Investment Trust
- be listed, within 3 years of its offering to the public, either on an Authorised Market Institution or an Exchange in a Recognised Jurisdiction
- ensure that the constitution of the Fund includes certain provisions regarding any private placements (if made) and the manner in which the issue and redemption of the Fund's Units will be made.

Real Estate Investment Trusts ("REITs")

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

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

A Fund Manager of a Public REIT, in addition to complying with the rules applying to Public Property Fund, must ensure that any investment made in respect of property under development (whether on its own or in a joint venture) is undertaken only where the REIT intends to hold the developed property upon completion. Furthermore, the Fund Manager must ensure that the total contract value of the property under development must not exceed 30% of the net asset value of the Fund Property of the Public REIT.

Feeder Funds and Fund of Funds

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

Non-Designated Foreign Fund

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

a) The Fund Custodian and Investment Manager

The Fund's Custodian must be:

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

The Investment Manager must be:

- regulated by the DFSA or a regulator located in a Recognised Jurisdiction
- a member of a Group that is regulated in a Recognised Jurisdiction or
- appointed by a Person who is Regulated in a Recognised Jurisdiction.

Alternatively, the Fund has been rated or graded as at least 'investment grade' by Moody's, Fitch or Standard & Poor's or such other international rating agency acceptable to the DFSA

- b) if the Fund is a Property Fund, as previously described.
- c) if it is an ETF, as previously described.

Marketing of Funds

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

Other than the usual requirements to provide all material information in a manner which is clear, fair and not misleading, and taking into account whether the recipient may be a Retail Client, the DFSA has also set out other specific requirements relating, inter alia, to mandatory statements and disclosures required in offering documentation.

There is no mandatory statement for a QIF. However, the Fund Manager must include all information that a Professional Client would reasonably require and expect to find in a prospectus to enable them to make investment decisions related to the Fund.

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

A Firm must ensure that it does not offer any Foreign Fund, including an External Fund, to any potential investor unless the Foreign Fund meets the specific criteria set out by the DFSA CIR. Authorised firms can market Foreign Funds if one of the following criteria is met:

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

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

Designated Foreign Funds

A Foreign Fund is a Designated Foreign Fund if:

- a) it is both established and operated in a Recognised Jurisdiction, as specified in the DFSA's Recognised Jurisdiction Notice
- b) it is a Property Fund, as previously described
- c) it is an Exchange Traded Fund ("ETF")
- d) it is a closed-ended Venture Capital Fund.

The Fund Protocol Rules (“FPR”)

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

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

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

The terms used in the Protocol are as follows:

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

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

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

Where the DIFC is the Home Jurisdiction

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

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

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

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

Where the DIFC is the Host Jurisdiction

Similar to above, an authorised Fund Manager in the ADGM or in the UAE or their Agents may promote the registered Fund in the DIFC without requiring additional DFSA authorisation or approvals for a Financial Promotion from the DFSA.

Once the home regulator provides the DFSA with a notice that a Private Fund or Public Fund domiciled or registered in that jurisdiction is a Passported Fund, the DFSA Register of Passported Funds will be updated to include details of the relevant Fund. The Fund Manager or its Agent can then promote the Fund while complying with the home jurisdiction requirements and follow the legislations applicable to them in the jurisdiction in which they are domiciled. An offer of a unit of a Passported Fund in the DIFC, where the DIFC is the host jurisdiction, is specified to be an excluded offer. This is necessary because the offer of the units in the fund will be subject to the requirements of the home jurisdiction relating to a prospectus and marketing. It is, therefore, unnecessary to apply duplicative requirements in the host jurisdiction.

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

Waystone Compliance Solutions provides specialist services to clients in the asset management and finance industry. As a truly global partner, we work with clients to align investment strategies and operational processes with the ever-shifting regulatory environment.

For further information please reach out to your usual Waystone representative or contact us below.