Funds in the DIFC

The DFSA has produced this document to provide you with an overview of our Funds regime. It should be read in conjunction with the DFSA Rulebook and any other relevant legislation. The information does not constitute legal advice nor does the DFSA give any express or implied warranty or assume any legal liability for the accuracy or completeness of the information herein.

The Dubai International Financial Centre (DIFC) is a purpose-built financial free-zone, located within the Emirate of Dubai. The Dubai Financial Services Authority (DFSA) is the independent regulator of financial services conducted in, or from, the DIFC, including regulation of firms responsible for managing or distributing Collective Investment Funds (Funds).

Who should read this guide?

This guide will assist the following:

- Those wishing to establish a fund management presence in the DIFC;
- Firms already either managing funds or distributing Funds in the DIFC who may wish to expand their business activities; and
- Key service providers to the funds industry, such as Fund Administrators, Trustees and custody providers.

Regulatory regime for Funds in the DIFC

The DFSA first introduced its Collective Investment Funds regime (the Funds regime) in 2006. The regime was designed to meet international standards for regulation and, where required, to provide adequate investor protection.

Thus, the DFSA has provided a facilitative, business-friendly regulatory framework, while remaining compliant with the International Organisation of Securities Commission's (IOSCO) principles for regulating collective investment schemes.

Some of the key features of the DFSA's Funds regime are as follows:

- A Public Fund regime, which provides greater protection to retail investors through requirements such as the independent oversight of a fund and detailed disclosure in a Prospectus;
- An Exempt Fund regime where Funds enjoy a fast-track notification process, where the DFSA aims to complete the process within a period of **5 business days**[1], with lesser regulatory requirements than a Public Fund;
- A Qualified Investor Fund (QIF) regime, which provides proportionate regulation, allowing flexibility for QIF managers and QIFs, by relying on key requirements in the Collective Investment Law and the DFSA Rulebook. The regime requires self-certification regarding the adequacy of systems and controls. QIFs enjoy a fast-track notification process where the DFSA aims to complete the process within a period of **2 business days**[2].
- DFSA-licensed (i.e. DIFC-based) Fund Managers are able to establish and manage funds in the DIFC, as well as in jurisdictions outside the DIFC;
- Fund Managers coming from acceptable jurisdictions are able to establish and manage Funds in the DIFC under certain circumstances;
- DFSA-licensed firms are allowed to market and sell units in a wide range of Foreign Funds in, or from, the DIFC;
- A competitive fee structure is applied to Fund Managers and Funds;

[1] For an Exempt Fund that is a Credit Fund, the process may be lengthier given that Credit Funds undertake more complex activities compared to many other Funds.
[2] For a QIF that is a Credit Fund, the process may be lengthier given that Credit Funds undertake more complex activities compared to many other Funds.

- Fund Managers of Umbrella Funds have the flexibility to use the Protected Cell Company (PCC) structure for open-ended Umbrella Funds. This gives investors in each Sub-Fund of the Umbrella legal segregation from liabilities arising in other Sub-Funds and the Umbrella;
- Ability to set up an Incorporated Cell Company with individual standalone cells and use the infrastructure of a Fund Platform;
- Bespoke Shari'a governance requirements applying to Islamic Funds, which promote high Shari'a governance standards with flexibility of application;
- Ability to set up specialist funds including Islamic Funds, Feeder Funds, Master Funds, Private Equity Funds, Property Funds, REITs, Hedge Funds, Umbrella Funds, Money Market Funds, ETFs, Venture Capital Funds and others;
- The DFSA also regulates the key players in the fund management service sector, such as Fund Administrators, custody providers and Trustees. This is to ensure adequate investor protection by promoting high industry standards that meet international best practice.

How Funds are regulated

***Fund Manager*[3]**

To establish and manage a Fund in the DIFC you need to be either:

- A DFSA-licensed Fund Manager; or
- An External Fund Manager.

DFSA-licensed Fund Manager

To obtain a DFSA Licence, you need to demonstrate to the DFSA that:

- You have adequate systems and controls to manage the type of Fund you propose to establish; and
- The individuals performing certain functions within the firm, such as its Board members, senior management and key control functions (e.g. compliance) meet the relevant suitability and integrity criteria.

Once you have been granted a Licence, the DFSA will supervise on an on-going basis, your activities which relate to the Funds you manage.

External Fund Manager

Under the applicable requirements, a Fund Manager from an acceptable jurisdiction may establish and manage a Domestic Fund (except a Domestic Fund that is a Credit Fund), without having to obtain a DFSA Licence, provided:

- It is a Body Corporate;
- It manages the Domestic Fund from a place of business located in a jurisdiction which is either:
    - included in the DFSA's Recognised Jurisdictions List; or
    - assessed by the DFSA as providing an adequate level of regulation;
- It subjects itself to the DIFC Laws and Courts so far as they apply to its activities relating to the Domestic Fund; and
- It appoints a DFSA-licensed Fund Administrator or Trustee, who will be required to undertake certain functions. Such functions include acting as the local agent of the External Fund Manager to receive, process, and deal with the DFSA for regulatory processes. The DFSA-

[3] The term Fund Manager is the equivalent of the IOSCO term fund operator.

licensed Fund Administrator or Trustee will also have to undertake certain investor-relation functions relating to the Fund (those include but are not limited to maintaining the unitholder register and making the Fund's Prospectus available to investors).

Fund Vehicle

Three types of vehicles can be used to establish a Domestic Fund in the DIFC, namely Investment Companies, Investment Trusts and Investment Partnerships.

Prompt engagement with the Dubai International Financial Centre Authority (DIFCA) and the Registrar of Companies (RoC) will help to expedite the registration process. Please refer to the DFSA Collective Investment Funds page and FAQs on the DFSA website.

Types of Funds

DIFC Funds can be managed by either a DFSA-licensed or an External Fund Manager[4]:

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

Specialist Funds[5]

Islamic Funds

The Fund Manager of an Islamic Fund needs to have a licence that authorises it to conduct Islamic Financial Business, or an Islamic Window, before setting up an Islamic Fund. The Fund Manager must, in respect of the Islamic Fund:

- Appoint a Shari'a Supervisory Board (SSB) to the Fund. It may use the firm's SSB for Shari'a governance purposes of the Islamic Fund;
- Establish and maintain Shari'a compliant systems and controls, and an Islamic financial business policy and procedures manual for the fund; and
- Ensure that the Constitution and Prospectus of the fund are approved by the Fund's or firm's SSB.

[4] Except for a Domestic Fund that is Credit Fund which cannot be managed by an External Fund Manager.
[5] The Specialist Fund requirements do not apply to QIFs.

Hedge Funds

The Fund Manager of a Hedge Fund is responsible for ensuring that 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; and
- 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, not Public Funds.

Private Equity Funds

These are generally Exempt Funds. Taking account of the practices and associated risks, the Fund Manager of an Exempt Fund, for example:

- Is not required to entrust the Fund Property to an Eligible Custodian; instead it must appoint an Investment Committee to the Fund; and
- Must make certain disclosures in its Prospectus relating to how the Fund's assets are held.

Money Market Funds

All Money Market Funds (i.e. Funds investing in high quality deposits and debentures to preserve the capital of the Fund and provide daily liquidity, while achieving returns that are in line with money market rates) must be structured as Variable Net Asset Value Funds only. Money Market Funds must only invest in certain investments.

Property Funds

All Property Funds (i.e. Funds investing predominantly in real estate or real estate-related assets) must be closed-ended Funds[6]. In addition to being a closed-ended Fund, a Property Fund which is a Public Fund must:

- Invest only in Real Property or Property Related Assets, but may retain cash, government and public Securities, up to a maximum of 40%;
- Be an Investment Company or Investment Trust;
- Be listed and traded, on an Authorised Market Institution or 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;
- Value the Fund property annually on the basis of an independent valuation, and before acquiring or disposing of any asset; and
- Limit its aggregate borrowings to 65% of the gross asset value of the Fund.

Property Funds – Real Estate Investment Trusts (REITs)

REITs are a sub-set of Property Funds, which are designed for income generation. A REIT in the form of a Public Fund[7] must:

- Be closed-ended;
- Use only an Investment Company or Investment Trust as the fund vehicle;

[6] Unless it is an Exempt Fund or a QIF.
[7] REITs can also be established in the form of Exempt Funds and QIFs.

- Be listed and traded on an AMI;
- Distribute 80% of its audited annual net income to Unitholders;
- Limit its aggregate borrowings to 65% of the gross asset value of the Fund; and
- 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. The total contract value of the property under development must not exceed 30% of the net asset value of the Fund Property REIT.

In addition to the above specialist classes of Funds, the DFSA Funds regime also has specific provisions dealing with Umbrella Funds, Feeder Funds and Fund of Funds.

Venture Capital Funds

A Venture Capital Fund is expected to finance small to medium sized businesses which are in the early stages of business development and growth. A Venture Capital Funds regime is aimed to promote investments in start-ups and small innovative businesses.

Credit Funds

A Credit Fund's investment objective is to use at least 90% of its Fund Property to Provide Credit, including by acquiring loans. A Credit Fund must be closed-ended and established for a finite period not exceeding 10 years. In addition, a Credit Fund must be structured as an Investment Company or an Investment Partnership, and it must either be an Exempt Fund or a QIF. Restrictions also apply to certain types of credit, categories of borrower and Fund borrowing limits.

Unlike other types of Funds, an External Fund Manager cannot manage a Domestic Fund that is a Credit Fund, and a Domestic Fund manager cannot manage an External Fund that is a Credit Fund.

The Fund Manager of a Credit Fund must 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"), or seek Unitholder approval to amend or extend the period.

Credit Funds are also subject to other specific requirements such as having credit policies and procedures, and a stress testing programme.

Fund distribution (Marketing of Funds)

The marketing of both Domestic and Foreign Funds is subject to disclosure through Prospectus requirements. However, the level of Prospectus disclosure required for Public Funds, which are open to retail investors, is higher than the disclosure requirements for Exempt Funds and QIFs, which are open only to professional investors.

Foreign Funds can only be marketed in, or from, the DIFC by DFSA-licensed Firms authorised to carry out the Financial Services activities of either:

- Advising on Financial Products or Credit; or
- Arranging Credit or Deals in Investments.

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

- The Foreign Fund is a regulated Fund in a jurisdiction included in the DFSA's Recognised Jurisdictions List or meets the alternative criteria of equivalent regulation prescribed by the DFSA[8]; or

[8] Firms cannot market a Foreign Fund that is a Credit Fund under the criteria unless the Credit Fund meets certain conditions.

- The Firm makes a suitability recommendation of the investment in units of the Foreign Fund to the particular investor, in light of that investor's investment objectives and circumstances; or
- The Foreign Fund is open to investors who meet the Professional Client test. The minimum subscription for each investor is USD 50,000 and Fund units are not offered to investors by way of public offer.

Foreign Funds which in their home jurisdiction cannot be marketed to retail investors are prohibited from being marketed to retail investors in, or from, the DIFC.

Fee structure

The table below highlights the regulatory fees applicable to Fund Managers and to Funds. For details of the DFSA's fees, please refer to the Fees Module (FER) on the DFSA website.

Fund Manager	Licence Application Fees	Annual Fees
Fund Manager managing Qualified Investor Funds Only	$5,000	$5,000
Fund Manager managing Exempt and Public Funds	$10,000	$10,000
Fund Manager managing Venture Capital Funds only	$2,000	$ 2,000
Fund Manager managing Credit Funds	$10,000	$10,000
Managing a Collective Investment Fund if it is an Investment Company managed by its Corporate Director (internally managed Fund)	$5,000	$5,000

Fees for a Fund	Qualified Investor Fund	Exempt Fund	Venture Capital Fund	Public Fund
Application Fee	Nil	Nil	Nil	$1,000
Annual fee per Fund	$4,000	$4,000	$1,000	$4,000

Capital Requirements for Fund Managers

The table below summarises the usual Capital Requirements:

Licenced Fund Manager	**Base Capital Requirement (BCR)**	**Expenditure Base Capital Minimum (EBCM)* fraction**	**Capital Requirement**
Fund Manager that manages any Public Fund or Credit Fund (whether or	$140,000	13/52	Higher of BCR (US $140,000) or EBCM

not it also manages other types of Funds)			
Fund Manager managing a QIF and/or Exempt Fund only	US $70,000	13/52	Higher of BCR (US $70,000) or EBCM
Fund Manager managing Venture Capital Funds only	Nil	Nil	The DFSA will require a Fund Manager of a Venture Capital Fund to maintain sufficient liquid assets and access to financial resources that enable them to meet their obligations as they fall due, based upon the nature, size and complexity of their business.
Fund Manager who is also Licenced to Manage Assets of other portfolios	US $500,000	13/52	Higher of BCR (US $500,000) or EBCM

* Fund Managers are required to maintain expenditure-based capital equal to their 13 weeks expenses.

Getting help

DFSA Rulebook: The DFSA website contains more information about the DFSA Rulebook. Relevant Modules for Funds include the Collective Investment Rules (CIR) and the Islamic Financial Rules (IFR).

Specific enquiries:

- Firms who hold a Licence from the DFSA should direct any enquiries through their relationship manager. If you do not have a relationship manager please contact the DFSA through the Supervised Firm Contact Form, which is available on the DFSA website, under the section Contact Us
- Visit the DFSA's Collective Investment Funds page on the website.
- If you are not an Authorised Firm please contact the Funds Team at dfsafunds@dfsa.ae

General enquiries:

- Via telephone +971 4 362 1500
- **www.dfsa.ae**