Dubai Financial Services Authority

Funds in the DIFC

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 and ancillary 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 **five business days,** 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 **two business days**;
- 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;
- 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;
- Bespoke Shari'a governance requirements applying to Islamic Funds, which promote high Shari'a governance standards with flexibility of application;
- Bespoke regulatory requirements to accommodate specialist funds, such as Private Equity, Property and Hedge Funds[1]; and
- 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 [2]

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 ongoing 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, without having to obtain a DFSA licence, provided:

- It is a body corporate;

1. *Specialist fund requirements do not apply to QIFs.*
2. *The term Fund Manager is the equivalent of the IOSCO term fund operator.*

- 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; 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-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:

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	Significantly less stringent than for Exempt Funds
Investors and Offer	• Unitholders include Retail Clients; or • Has, or intends to have, more than 100 unitholders; or • Some or all of its units are offered to investors by way of public offer	• Only Professional Clients; • Has 100 or fewer unitholders; and • Units are offered to persons only by way of a Private Placement	• Only Professional Clients; • Has 50 or fewer unitholders; and • Units are offered to persons only by way of a Private Placement
Minimum subscription	N/A	USD 50,000	USD 500,000

Specialist Funds[3]

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.

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 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 disclosure in its Prospectus relating to how the Fund's assets are held.

Property Funds

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

3. The specialist Fund requirements do not apply to QIFs.

- 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 six months of its establishment, either on an Authorised Market Institution or an Exchange in a Recognised Jurisdiction;
- Have the Fund property valued annually;
- Value the Fund property on the basis of an independent valuation of the relevant property, before acquiring or disposing of any asset; and
- Limit its borrowings to 80% of its total net asset value.

Property Funds – Real Estate Investment Trusts (REITs)

REITs are a sub-set of Property Funds, which are designed for income generation. A REIT must, in addition to being closed-ended:

- Use only Investment Company or Investment Trust as the fund vehicle;
- Be a Public Fund that is listed and traded on an Authorised Market Institution;
- Distribute 80% of its audited annual net income to Unitholders;
- Not borrow beyond 70% of net asset value; and
- Invest only up to 30% of its total assets in 'property under development.

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

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 Service activities of either:

- Advising on financial products or credit; or
- Arranging credit or deals in investment.

Such firms can now 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 meeting the alternative criteria of equivalent regulation prescribed by the DFSA; or
- 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 100 or fewer 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 fees, please refer to the Fees Module (FER) on the DFSA website.

Type of Fee	Fees (in USD)
Fund Manager licensing application fee	10,000
Fund Manager annual licence fee	10,000
Annual fee per fund	4,000
Annual ongoing fee per fund	4,000
Public Fund registration fee	1,000
Umbrella Fund (licensing and annual)	8,000
Each Sub-Fund (annual)	1,000

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 under the section Doing Business with the DFSA.*

General enquiries:

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