



# **The Collective Investment Fund Regime in the DIFC**

## **Unlocking the Middle East**

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# Topics

- Key considerations
- Investment vehicles
- Operating a CIF in the DIFC
- Regulation of Funds
- Public and Private Funds
- Listing of Funds
- Marketing of Foreign Funds
- Specialist Funds
- Recent developments

# Key Considerations in Developing the Funds Regime

- Develop the DIFC as a major internationally recognised Funds centre;
- Ensure compliance with IOSCO principles for CIS to permit pass-porting to and from DIFC;
- Ensure flexibility: permit a variety of recognised investment vehicles;
- Limit product regulation only to where appropriate;
- Permit appropriate delegation and outsourcing;
- Ensure marketing of Foreign Funds in a manner competitive with international practice; and
- Facilitate licensing and registration of participants in an efficient manner.

# Legislation which Facilitates the Funds Regime

- **The Collective Investment Law 2006**  
Collective Investment Rules
- **Companies Law 2004**  
Investment Companies Regulations
- **Limited Partnership Law 2006**  
Limited Partnership Regulations
- **The Investment Trust Law 2006**
- **Regulatory Law 2004**  
Regulatory Law Amendment Law 2006
- **The DFSA Rulebook**  
Amendments to COB Module, OSR and other Modules 4

# Definition of a Collective Investment Fund

- Arrangements with respect to property including money where:
  - purpose or effect is to enable participants to receive profits or income;
  - contributions of unit holders and profits or income are pooled;
  - participants do not have day-to-day control over management, property is managed as a whole by or on behalf of Operator of the Fund.
- Rules in CIR Module exclude certain arrangements from being Funds i.e. PSIA's.

# Investment Vehicles

## 3 types of Investment Vehicles:

### Investment Company:

- Incorporated in the DIFC;
- Requires Memorandum and Articles of Association;
- Composed of Directors and Shareholders;
- The Operator is a Corporate Director authorised by the DFSA.

### Investment Trust:

- Incorporated in the DIFC;
- Requires a written Trust Deed;
- Both Operator and Trustee are responsible for maintaining the written Trust Deed;
- Trustee holds the Fund Property in Trust;
- Trustee is responsible for maintaining the register of Unitholders.

### Investment Partnership:

- Incorporated in the DIFC;
- Requires Partnership Deed or Agreement;
- Composed of General Partner and Limited Partners;
- The Operator is a General Partner authorised by the DFSA.

# Funds in the DIFC

- International Standards for Fund regulation
- Domestic and Foreign Funds
- Variety of Investment Vehicle structures
- Operators and Trustees must be in the DIFC
- Disclosure
- Corporate Governance
- Valuations
- Service providers.

# Operating a Collective Investment Fund in the DIFC

- To Operate a CIF is to be establishing, operating or winding up a CIF in the DIFC;
- A Domestic Fund is one which is established or incorporated in the DIFC;
- All Domestic Funds must have an Operator which is an Authorised Firm;
- The Operator must have the following Authorisations on its licence:
  - “Operating a Collective Investment Fund”

# Regulation of Funds

## Domestic Funds

- are Funds (both Public and Private) established in the DIFC;
- the Operation of which is regulated under the CIF regime;
- Marketing of Units of which is regulated under the CIF regime.

## Foreign Funds

- are not Funds established in the DIFC;
- Operation of which is not regulated by the DFSA;
- Marketing of Units of which is regulated.

# Key Regulatory Features

- Operator and Trustees must be Authorised
- Public Funds must be registered; Private Funds only notified
- Annual and Interim reporting requirements
- Valuation of Fund
- Appointment of Eligible Custodian
- Appointment of Registered Auditor.

# “Public Funds” and “Private Funds”

## Public Funds:

- Units are offered by way of a public offering;
- There are no limits on the number of Unitholders;
- Requires a long form Prospectus;
- Requires oversight arrangements to be implemented and maintained;
- May be listed on an Authorised Market Institution;
- Requires registration with the DFSA; and
- Subject to DFSA specific restrictions on investments and borrowing powers. For a Public Fund (excluding a Property Funds) borrowing must not exceed 20% of NAV.

# “Public Funds” and “Private Funds” Cont.

## Private Funds:

- Units may only be offered by way of a private placement;
- Participation to a Private Fund is limited to 100 unitholders;
- Requires less detailed disclosure in the Short Form Prospectus;
- No requirement on Private Funds to implement and maintain oversight arrangements;
- May NOT be listed on an Authorised Market Institution;
- Merely requires notification to the DFSA; and
- Permitted by its Constitution and Rules to borrow money in excess of 200% of the NAV provided full details of the manner in which risk posed will be managed.

# Marketing of Foreign Funds

Units of Foreign Funds can be marketed only:

- by an Authorised Firm; and
- where the Foreign Fund is either:
  - a Designated Fund from a Recognised Jurisdiction (COB 6.9.4); or
  - a Non Designated Fund that meets alternative eligibility criteria based on adequate comparable regulation of the custodian and investment manager of the Fund (COB 6.9.5); or
  - the “investment grade” rating of the Fund (COB 6.9.5).
- Recognised Jurisdictions List : [www.dfsa.ae](http://www.dfsa.ae);
- COB 6.9.7 - Periodic Reporting.

# Specialist Funds

- The DFSA has prescribed specific additional provisions to match the special features of the following funds:
  - Islamic Funds;
  - Fund of Funds;
  - Private Equity Funds;
  - Property Funds (including REITS);
  - Feeder Funds; and
  - Hedge Funds.

# Specialist Funds - Domestic Islamic Funds

- Operator of an Islamic Fund must establish and maintain Systems and Controls which ensure that the management and fund are Shari'a Compliant;
- The Operator must ensure that both Constitution and Prospectus are approved by the fund's Shari'ah Supervisory Board (SSB);
- The Operator must implement and maintain an Islamic financial Business Policy and procedures manual for the fund;
- Shari'a Supervisory Board has at least 3 members; and
- The governing body of the fund is responsible for appointing, dismissing and changing any of the members of the Shari'a Supervisory Board.

# Specialist Funds - Domestic Hedge Funds

- A DIFC Hedge Fund can invest in a number of Hedge Funds or sub-funds of one or more Hedge Funds;
- The Operator is responsible for making sure that the risks associated with Hedge Funds are adequately managed;
- The Operator is responsible that there is adequate segregation of duties in the net asset value process;
- The Operator should observe best practice standards and guidance issued by both the DFSA and by leading international trade bodies in relation to Hedge Funds;
- An Operator may grant to a prime broker authority to combine the assets of the Fund with any other assets providing certain conditions are met i.e. Limited to Private Funds; and
- DFSA Hedge Fund Code of Practice (15 Jan 2008).

# Specialist Funds - Domestic Property Funds

- Must be a closed-ended legal structure for investment vehicles;
- If the fund is a Public Fund, it must be:
  - An Investment Company or Investment Trust;
  - Listed on an Authorised Market Institution;
- The property must be valued by an independent valuer before acquisition and disposal;
- An investment committee of 3 experts must be voted on by the unitholders prior to the establishment of the fund unless it is an Investment trust;
- Transactions with affected Persons;
- Use of Special Purpose Vehicles;
- Joint Ownership Arrangements; and
- Borrowing up to 80% for a Public and 100% for a Private Property Fund.

# Specialist Funds - Domestic Property Funds - REITS

DIFC REITS general features are:

- be a Public Fund;
- be an Investment Company or Investment Trust;
- be closed ended, listed and traded;
- distribute at least 80% of annual income;
- limit borrowing to 70% net asset value; and
- 30% cap on investments in property under development.

# Prospectus Offers

## OSR Requirements:

- Filing a Prospectus
  - DFSA has 3 days to file (generally) but does not review/approve- OSR 4.2.1
- Appointment of an Underwriter - OSR 4.2.5
- Becomes Reporting entity on filing (unless exemption applies)- OSR 4.2.1
- Appointment of a Sponsor - OSR 4.2.6
- Disclosure of a sell down by Governing Body - OSR 4.2.8

Prospectus- see also Markets Law- Article 15.

# Prospectus Requirements

Prospectus – Article 15(2) of the Markets Law 2004:

*“all information as investors would reasonably require for the purpose of making an informed assessment of:*

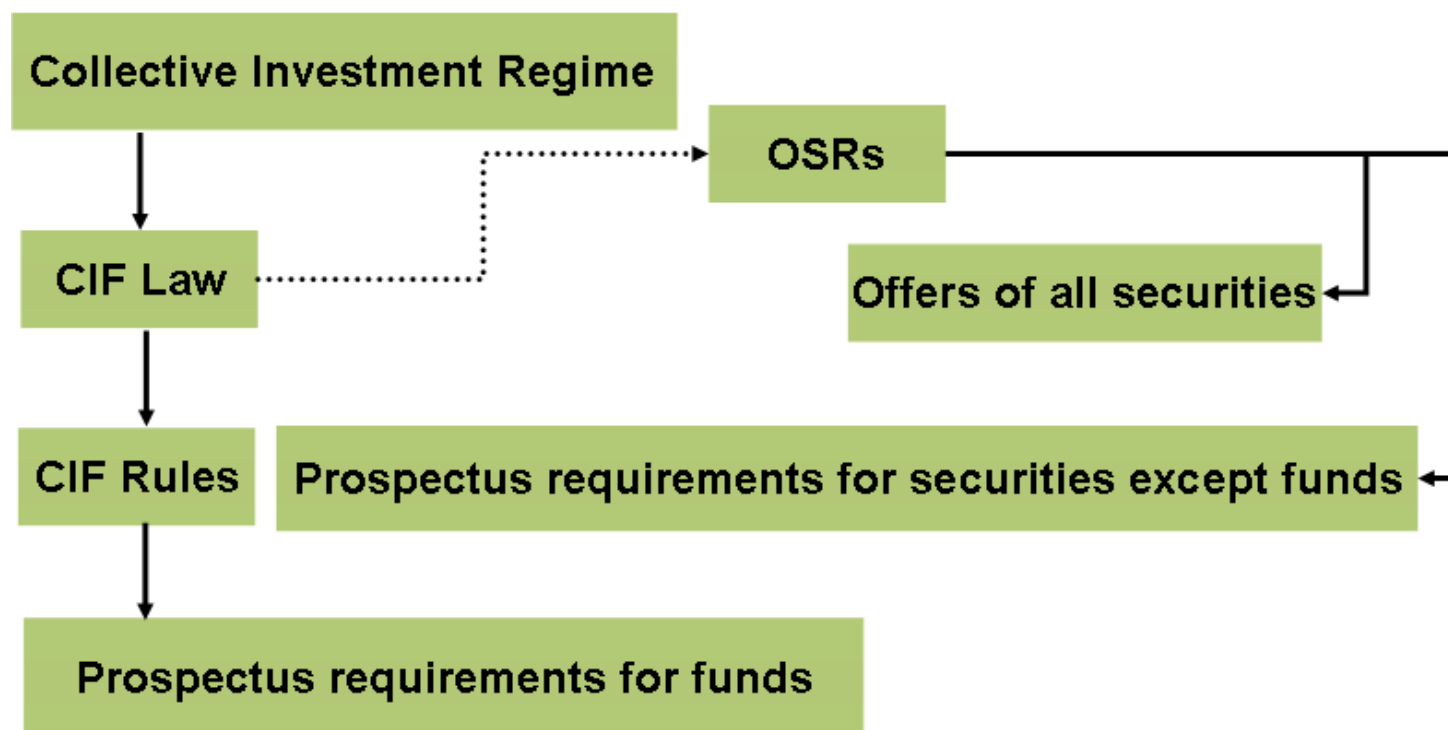
- (a) the assets and liabilities, financial positions, profits and losses and prospect of the offeror or issuer or both; and*
- (b) the nature of the securities and the rights attached to those securities”.*

Also obligation to comply with OSR.

# Prospectus

- Prescription of content requirements in Appendix 1 of OSR
- Valid for 6 months
- Structure:
  - Registration Statement – Information about the issuer
  - Issue Note – Information about the security
- Incorporation by reference
- Up to date and accurate - Supplementary Prospectus
- Responsibility for Prospectus:
  - Person who files
  - Directors of the Issuer
  - Expert Statements
  - Exceptions of Liability
  - Civil compensation under Article 51 Markets Law.

# OSR Prospectus - Not For All Securities



# Offers from DIFC to Another Jurisdiction

## Markets Law Article 13

- Must be made “in accordance with” OSR
- Person making the offer is in DIFC
- Directed at or received by person outside DIFC
- Offer is capable of acceptance

## OSR 2.7

- Must advise DFSA of nature and jurisdiction within 5 business days
- Comply with obligations of other jurisdiction in relation to offer
- Disclaimer that not reviewed or approved by DFSA
- OSR requirements do not apply if offer would be personal exempt in DIFC.

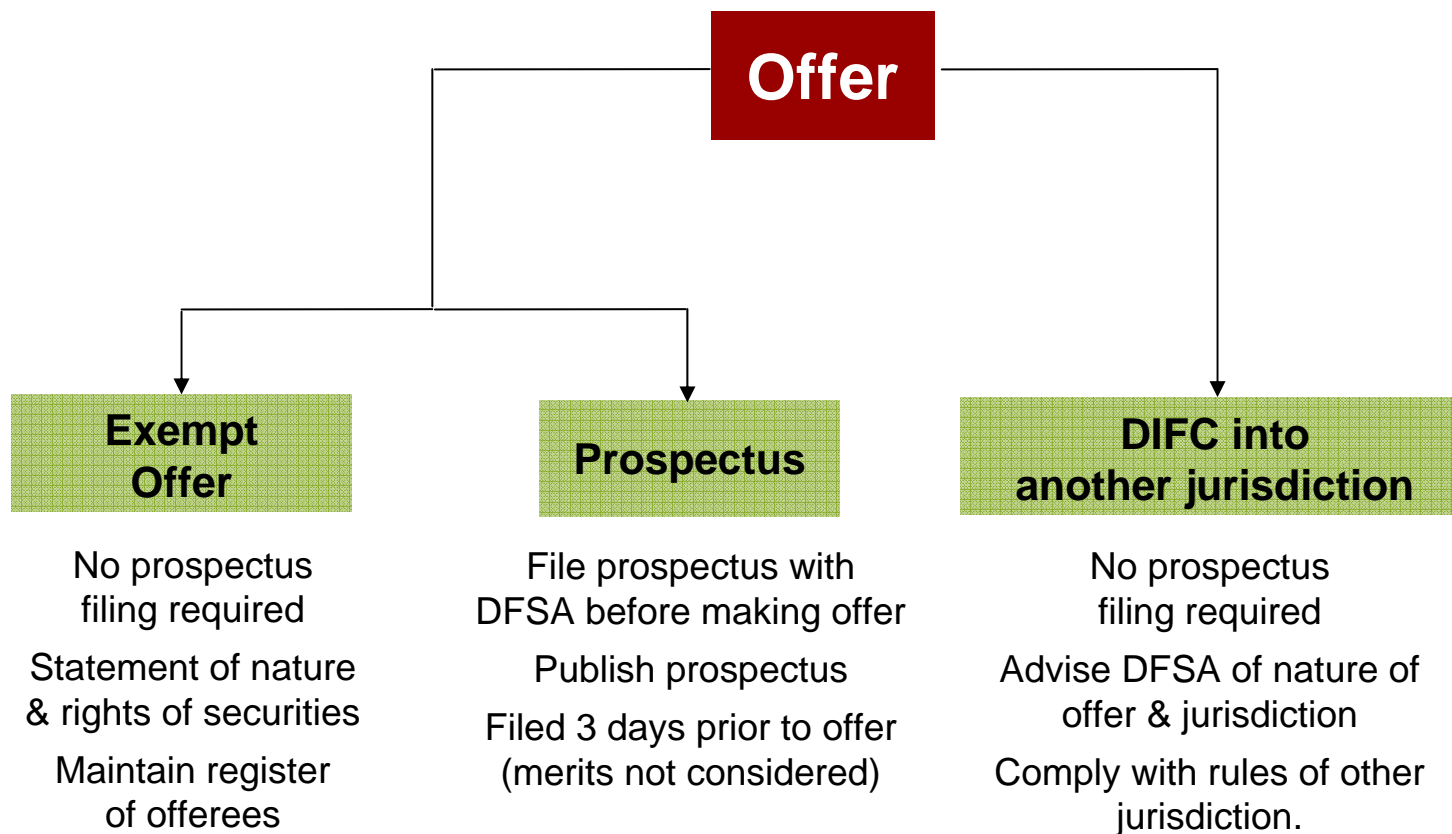
# Reporting Entities- Obligations - OSR Ch 8 & Appendices

- Reporting entities- all Prospectus Offerors (including Funds) in the DIFC - and/or those who have securities listed on DIFX
- Disclosure obligations:
  - Price Sensitive Information
  - Changes to Governing Body
  - Changes to Business
  - Connected Persons Transaction
  - Financial Information
  - Matters relating to Capital
  - Security holders Decisions
  - Insolvency Events
  - Corporate Governance Rules.

# OSR and Listed Securities

- Markets Law Article 17- DFSA may object to an admission of securities to an official list (of AMI), impose conditions or restrictions on admission
- OSR 7.2.1 - *at least 5* business days prior to admission of securities to official list notice and information to be provided to DFSA
- OSR 7.2.2 - grounds for decision and rights to make representation
- OSR 7.4 - directions to delist or suspend.

# Process For Offering Through\* (in or from) the DIFC



\* Clarified in Cabinet Resolution No. (28) of 2007 - Concerning Financial Free Zones

# Exempt Offers

- Basis for exemption - OSR 2.4.1 (one of):
  - i) Commercial paper, certificates of deposit or bills of exchange;
  - ii) Made to no more than 50 offerees in DIFC in 12 months\*;
  - iii) Total consideration payable is less than USD1m\*; or
  - iv) Debentures with minimum consideration of USD50k.

\*constitutes Personal Exempt Offer ( may only be accepted by person to whom made)
  
- Other exemptions:
  - i) Employee share plans;
  - ii) Intra-group offers of securities for structuring purposes; and
  - iii) Issue of securities resulting from a conversion.

# Hedge Fund Code of Practice

- Addresses operational and conduct of business issues for HFs;
- Is principles-based (flexibility);
- Does not address financial stability;
- Does not impose fixed obligations;
- Is in line with both the HFWG and AIMA work; and
- 9 principles.

# Hedge Fund Code of Practice Cont.

- Have or have access to appropriate skills and resources...
- Implement a robust and flexible investment process...
- Systems and controls to mitigate trading-related risks...
- Adequate back office systems and controls
- Identify and manage portfolio risks
- Integrity, accuracy and timeliness of valuation.. Processes
- Conflicts and fair treatment - e.g. side letters
- Systems and controls re- market sensitive information
- Fund of Funds.

# Recent Developments

- Public Funds - open to Retail Clients
- Private Funds - only to Professional Clients
- Fund Administration - Restriction removed
- Delegation of Fund Administration - only to a firm in Zone 1 or Rec Jurisdiction if a Public Fund - No restriction for Private Funds
- No DFSA prior approval required for delegation of activities.

## Recent Developments Cont.

- Replace single property fund prohibition with disclosure regime
- Reduced base capital for custodians from \$10 million to \$4 million
- Supplementary Prospectuses on annual basis unless replacement prospectus
- 12 month end dates for Prospectuses (where units still on offer)
- Replace Shari'a Board conflicts prohibition with a disclosure regime.

# Thank You

For further information - [www.dfsa.ae](http://www.dfsa.ae)

Telephone: 04 362 1500 (Supervision Department)

