Q&A – The DFSA's Collective Investment Fund regime

This document is not intended to be a complete guide to the DFSA's Collective Investment Fund regime ("Funds regime"). It merely addresses some possible questions. Accordingly, we recommend that you read the Collective Investment Fund related Laws and Rules which can be found on the DFSA website, and especially the amended CIR and IFR Rules. Please see Question 2 below for navigation to these Rules.

Implementation of the changes to the Funds regime

1. **When does the Collective Investment Fund regime come into effect?**

   The new Collective Investment Fund regime comes into effect on 11 July 2010.

2. **When will the new Collective Investment Fund regime related laws and rules be available?**
   The new laws and rules are available now. They are located in the "Legal Framework" section of the DFSA website under "Legislation". The Funds Regime is mainly contained in the Collective Investment Law 2010 and the Collective Investment Rules (CIR) module of the DFSA Rulebook. Other modules of the Rulebook are also relevant, for example, the IFR module, which contains the Rules relating to Islamic Funds and the FER module, which details the fees applicable to Funds and Fund Managers.

   Click here to view the DFSA Rulebook

3. **CIR regulations and definitions are contained in several different places; has the enhancement project tried to address this?**
   Yes, generally CIR has been thematically grouped to bring related topics together e.g. defined fund terms are now located in CIR Part 2.

Rationale behind the new regime

4. **Why has the DFSA implemented changes to the Funds Regime?**
   The DFSA has implemented changes to make the regime easier to deal with. It did so, taking account of recommendations made by a panel of industry practitioners, appointed by the DFSA whilst remaining true to the International Organisation of Securities Commissions (IOSCO) principles for regulating collective investment schemes.

5. **Why are you allowing Funds, Fund Managers and Trustees to be located outside the DIFC?**
   Under the old regime Fund Managers were prevented from managing Foreign Funds and Trustees could not act for Foreign Funds. Similarly, foreign fund managers or trustees were prevented from acting as Fund Managers or Trustees of Domestic Funds without establishing a base in the DIFC and obtaining a DFSA Licence. We wanted to remove these prohibitions to foster the growth and development of the DIFC as a truly international hub for the funds industry and its

participants such as fund administrators, custodians, asset managers and valuers. By removing these barriers DIFC based Fund Managers will now have the flexibility to establish Funds outside the DIFC. Additionally adequately regulated foreign fund managers will have the flexibility to domicile Funds in the DIFC without having to establish a place of business in the DIFC.

6. **Have you lowered the cost of setting up and carrying on fund management business in the DIFC?**
   Yes, reducing fund related costs was a major consideration in the implementation of the new regime. Firms will find the new costs competitive and comparable with other jurisdictions. A firm applying to become a Domestic Fund Manager will find that the application fee is now only 25% of what it was under the old regime. A Fund Manager seeking to register a Domestic Public Fund will find that the new registration fee is 20% of the same fee under the previous regime. All other relevant fees have also been greatly reduced relative to the old regime.

New Terminology

7. **What has happened to the term 'Fund Operator'?**
   The term 'Fund Operator' has been replaced with 'Fund Manager' to make the DFSA regime more consistent with international terminology.

8. **What is the difference between a 'Fund Manager' and an Investment/Asset Manager?**
   Fund Manager refers to the firm who will be undertaking the Financial Service of 'Managing a Collective Investment Fund' (formerly 'Operating a Collective Investment Fund'). It carries the main responsibility to investors for the operation of the Fund. The term Investment/Asset Manager is commonly used across most jurisdictions for the person carrying out the more limited role of managing the assets of the fund. This may be done under a delegation from the Fund Manager (and if it is done in the DIFC will constitute the Financial Service of 'Managing Assets'.) However a Fund Manager may also manage the assets of a Fund itself and if so will not need to be separately licensed to do so.

9. **What will happen to the Financial Service of 'Operating a Collective Investment Fund' on my licence?**
   The term 'Operating a Collective Investment Fund' will now change to 'Managing a Collective Investment Fund'. If you are already an Authorised Firm with an Operator's Licence, you do not need to take any action. We have changed the language on the DFSA register at launch of the new regime, but we will not issue a replacement licence.

Types of Funds

10. **What is a Domestic Fund?**
    A Fund is either a Domestic Fund or a Foreign Fund. A Fund is a Domestic Fund if it is either established or domiciled in the DIFC, or it is managed from the DIFC by a DFSA Licenced Fund Manager ("External Fund"). Types of Domestic Funds include Public, Private or Exempt Funds. However Private Funds will be phased

out within 2 years as the new category Exempt Funds replaces the Private Funds regime.

11. I am a Domestic Fund Manager and would like to act as a Fund Manager for a non-DIFC domiciled Fund, is this possible?
Yes, a Fund Manager can establish funds in other jurisdictions. Such a Fund is referred to as an External Fund and must comply with the requirements noted below.

12. What is an External Fund?
An External Fund is a Fund that is established in a jurisdiction other than the DIFC and is managed by a Fund Manager which is an Authorised Firm. The Fund Manager of an External Fund must 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. The Fund Manager is also obliged to 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. A Fund Manager of an External Fund is generally not subject to the requirements that apply to other Domestic Funds established in the DIFC. While, some limited requirements apply to External Funds they are not DFSA regulated Funds.

13. What is the difference between a Public Fund and an Exempt Fund?
Public Funds are open to retail investors called "Retail Clients", and can be marketed by way of public offer. Because Public Funds are open to retail investors, more extensive regulatory requirements apply to such Funds. These requirements meet international standards for retail protection, in particular, IOSCO principles for regulating collective investment schemes. These include detailed disclosure in the Fund's Prospectus to enable retail investors to make an informed investment decision relating to the Fund and independent oversight of the Fund management either by a three member oversight committee or by the Trustee or Eligible Custodian of the Fund.

The Exempt Funds regime replaces the former Private Funds regime. Exempt Funds are open only to Professional Clients who make at least a minimum subscription of USD $50,000 each. Such Funds can only have 100 or fewer Unitholders and cannot be offered to the public – distribution being only by way of private placement.

14. Can I offer an Exempt Fund to a Retail Client?
No, Exempt Funds are aimed at Professional Clients only. If you wish to offer Units to a Retail Client, you will need to upgrade your Fund to Public Fund status. Of course you will be required to demonstrate to the DFSA that you have the necessary systems and controls and oversight arrangements in place for this. To do this you would complete the relevant sections of the new DFSA Fund application forms.

15. Why have you introduced the Protected Cell Company Structure?

A Protected Cell Company is a company which has separate legal cells embedded in it and investments in each cell are segregated from investments and liabilities in other cells. We have introduced the PCC Structure for umbrella Funds which have separate sub funds to provide different investment strategies and therefore can benefit from the PCC structure.

16. How does it work?

A PCC provides legal segregation of assets and liabilities of each separate cell, thereby minimizing the impact on other cells should one of the cells fail. While a PCC may be used to operate an Umbrella Fund, a more conventional Investment Company or Investment Trust structure may also be used as an Umbrella Fund.

Types of Fund Manager

17. What is a Domestic Fund Manager?

A Domestic Fund Manager is a Fund Manager incorporated in the DIFC, licensed and regulated by the DFSA for the Financial Service of Managing a Collective Investment Fund which enables it to act as the Fund Manager of a particular type or specialist class of Fund.

18. What is an External Fund Manager?

An External Fund Manager is a foreign fund manager permitted to establish and manage a Domestic Fund in the DIFC without having to establish a place of business in the DIFC. It must 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 Funds. It is also a requirement for the firm to 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. Additionally the firm must appoint a Fund Administrator or Trustee in the DIFC to act as its agent. The DFSA will issue a no objection notice confirming that the firm may act in this capacity.

19. I am an External Fund Manager, how do I interact with the Unitholders of the Fund and the DFSA?

An External Fund Manager must put in place an agreement with a DFSA authorised Fund Administrator or Trustee who will act as its agent in its dealings with the DFSA and with Unitholders. This agreement will also require and empower the agent to facilitate:

- 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 from a place of business in the DIFC;
- the sending to Unitholders of the Fund of the reports required under the Law and the Rules;
- access in the DIFC to the Constitution and most recent Prospectus of the Fund to Unitholders and Prospective Unitholders;
- access to the Unitholder register in the DIFC; and

- access in the DIFC to the books and records relating to the Fund as required by the DFSA and any person providing the oversight functions of the Fund.

20. I am an External Fund Manager, do I have to have premises in the DIFC?
No, you will rely on your Appointed Agent (DFSA licensed Fund Administrator / Trustee) to the Fund to liaise with DFSA and Unitholders or potential Unitholders. Your premises will remain in your host jurisdiction unless you wish to become a Domestic Fund Manager.

Types of Trustee

21. I would like to establish an Investment Trust domiciled in the DIFC; do I have to use a DFSA licensed Trustee?
No, the new regime now permits you to use either a DFSA Licensed firm to act as Trustee or Provide Custody or an appropriately regulated Trustee or Custody provider in a DFSA Recognised Jurisdiction.

Specific Costs

22. How much will it cost to become a Domestic Fund Manager?
The application fee for a Domestic Fund Manager will be $10,000 along with an initial annual fee pro rata for the first year of authorisation. Thereafter, annual fees will be $10,000 plus $1,000 for each $1,000,000 of the Manager's expenditure.

23. How much will it cost to become an External Fund Manager?
There are no fees directly applicable to the External Fund Manager itself. However it will of course be responsible for the payment of all Fund related fees payable to the DFSA set out below.

24. How much will it cost to register a Public Fund?
The registration fee for a Fund has been reduced from $5,000 to $1,000. Thereafter, there is an annual fee of $4,000 per Fund. (There is no longer an annual fee linked to Net Asset Value.) The fees due for year one should be paid at the time of submitting your Fund Registration application to the DFSA.

25. How much will it cost to Notify the DFSA of an Exempt Fund
There is no charge for submitting a Notification to the DFSA that you want to establish an Exempt Fund. Thereafter, there is an annual fee of $4,000 per Fund. (There is no longer an annual fee linked to Net Asset Value.) The fees due for year one should be paid at the time of submitting your Notification to the DFSA.

How to apply to be a new Domestic Fund Manager

26. How do I get authorised
An applicant should follow the existing approach for Authorised Firms by contacting DIFCA and DFSA Authorisation Enquiries.

27. **I will be regulated for the first time by DFSA. Which application form should I use and when will the form be available?**
The forms are available now. The forms are structured on the basis of the type of fund to be managed. As a result the DFSA has two separate forms to cover Public and Exempt funds respectively. The schematic chart in appendix 1 of this document should assist you in deciding which forms are to be completed depending upon the type of Fund Manager structure and Fund you are seeking to establish, inside or outside the DIFC.

28. **I want to establish an External Fund Manager and notify DFSA of an Exempt Fund, is there a fast track process?**
Yes, we have created a stand alone Exempt Fund form of 12 pages. You will only complete certain parts of the form depending on whether you are applying as a Domestic Fund Manager or External Fund Manager and indeed whether you are merely Notifying DFSA of an additional fund you are seeking to establish. You will not be required to submit a regulatory business plan in relation to an Exempt Fund. The form relies heavily on self-certification and reflects the level of regulatory risks involved.

As a result the process should be much faster now provided you complete the form correctly. Where an existing Fund Manager is looking to establish an additional Exempt Fund, the Exempt Fund Notification process will be completed within 5 days. We recommend that you submit the relevant documentation to the DIFC Registrar of Companies at the same time as submitting the relevant documentation to DFSA.

Application for a Variation of Licence

29. **I am currently regulated by DFSA, which application form should I use and when will the form be available?**
The Variation of Licence form should be used by an existing Authorised Firm wishing to vary its Licence. The current Variation of Licence Form has been revised slightly to incorporate the new regime's terminology. This form is available now. However if you are merely seeking a variation of your licence to allow you to Manage Exempt Funds only you should only complete the relevant sections of the Exempt Fund Form and not the Variation of Licence Form.

Application to become an External Fund Manager

30. **To become an External Fund Manager to a DIFC Domestic Fund, what will the licensing process be and are there any special requirements?**
An External Fund Manager will not be a DFSA licensed firm and as a result the process for reviewing the application will be shorter than for a Domestic Fund Manager. A letter of good standing from the home state financial services regulator, a copy of your licence and the Appointed Fund Administrator/Trustee agreement should be provided with the relevant Public Fund Supplement or Exempt Fund Form as is relevant.

31. **I would like to apply to the DFSA to become an External Fund Manager. Where can I find a list of DFSA Fund Administrators / Trustees who could act as the agent for my DFSA domiciled Fund?**
The DFSA Public Register has search criteria which can be refined to produce the required list.

32. **I am an External Fund Manager, will my details be on the DFSA Public Register?**
Yes a new section has been added to the DFSA Public Register to reflect any firm issued a no objection notice permitting it to act as an External Fund Manager. Attached to the firm will also be details of the Appointed Fund Administrator or Appointed Trustee acting as its agent in the DIFC.

Launching Additional Funds

33. **I am an existing Fund Manager and wish to establish an additional Fund, what am I required to do?**
You will need to complete the relevant sections of the Public Fund supplement or Exempt Fund form and submit this to the DFSA for Registration/Notification purposes. You will not be required to complete any other forms.

Upgrading your Exempt Fund to Public Fund status

34. **Currently, I manage an Exempt Fund but would like to upgrade this to Public Fund status. What am I required to do?**
You will need to complete the Public Fund supplement and submit this to the DFSA. If you are not already Licensed to manage Public Funds, you will also need to submit the Core Information form.

Supervisory Process

35. **What will be the DFSA's supervisory approach to the Funds regime?**
DFSA's supervisory process for Domestic Fund Managers and Domestic Funds will remain unchanged. For External Fund Managers the relationship will be conducted through the Appointed Fund Administrator or Trustee, and a large degree of reliance will be placed on the home state regulator.

Oversight Arrangements

36. **Do I require oversight arrangements for a Public Fund?**
Yes, oversight arrangements will still be required for Domestic Public Funds although the requirements are generally less prescriptive than the older regime.

37. **Do I require oversight arrangements for an Exempt Fund?**
No, but certain specialist funds i.e. Private Equity and Property Funds which are Exempt Funds require Investment Committees.

38. **I propose to manage a Shari'a compliant Fund, will I still be required to have a Shari'a Supervisory Board ("SSB") at both firm and fund level?**

No; one SSB may be used both for the Firm and the Fund. In addition, an Exempt Fund is not required to appoint an SSB (though its Constitution and Prospectus must be approved by the SSB of the Fund Manager, who has an obligation to ensure that it remains Shari'a compliant).

39. I have an Islamic Fund which invests solely in Shari'a compliant assets that have been screened already, do I still need to appoint an SSB?
No, there will no longer be a requirement to appoint an SSB if the Fund's portfolio relies on widely accepted Shari'a screening processes. It will, however, have to make disclosures about these processes and the board that approved them as Shari'a compliant.

Other Changes

40. What changes have been made relating to valuation of Property Funds?
We have made the requirements relating to valuations less prescriptive. However, the valuer must still be independent of the Fund Manager and capable and suitably qualified for the task.

Marketing Foreign Funds

41. I would like to market Foreign Funds in the DIFC which do not meet the previous requirements?
There have been important changes in the way Foreign Funds can be marketed in or from the DIFC. In particular, any Foreign Fund can be marketed if it meets the Exempt Fund criteria and the firm meets the parameters applying to the Offer of a Unit in such a Fund, or if the firm makes a personal recommendation that the investment in the relevant Foreign Fund is suitable for the Client in light of that particular Client's investment needs, objectives and circumstances.

Transitional Arrangements

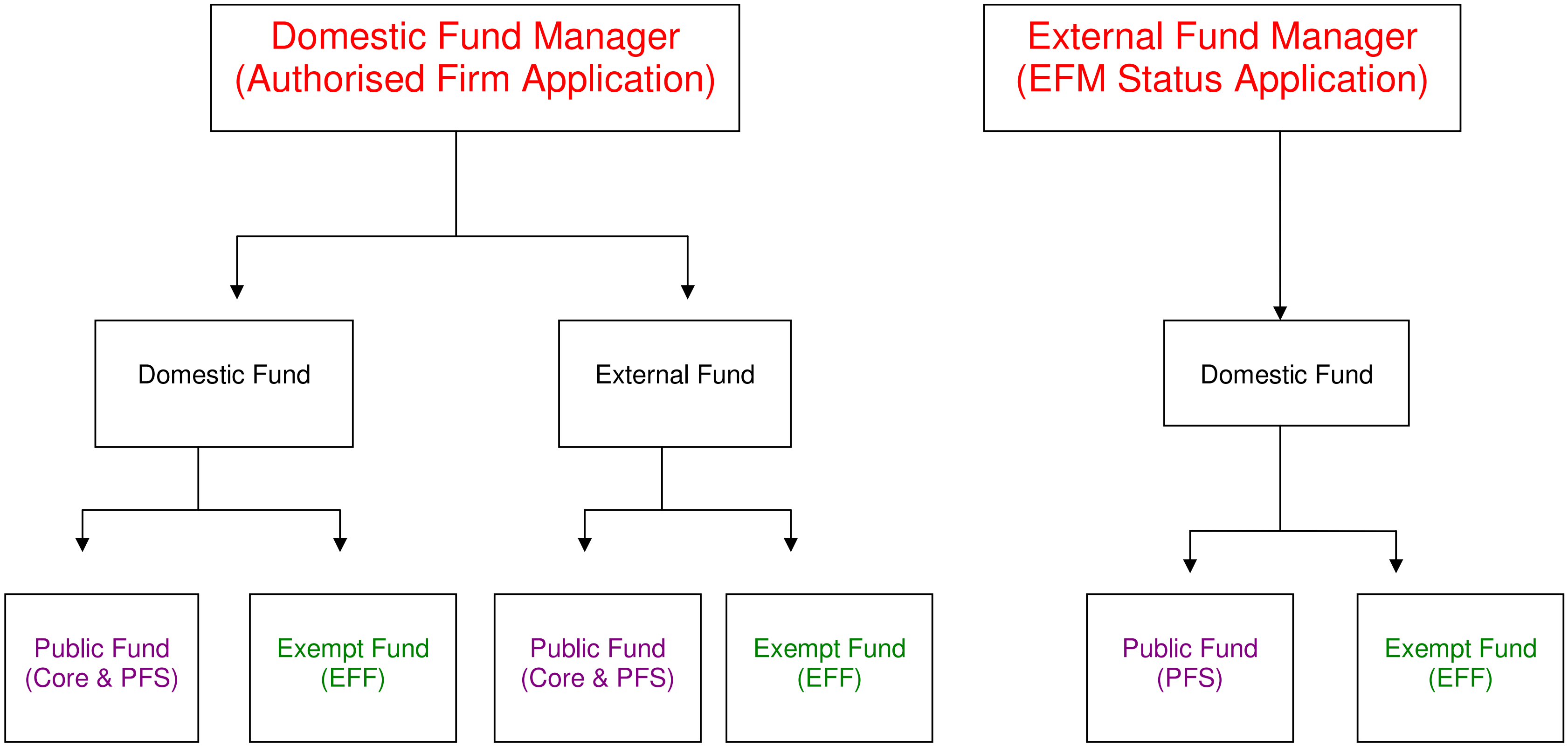
42. I am currently the Fund Manager of a Private Fund. Will I be forced to change or wind up the Fund?
Eventually all Private Funds will have to convert to either Exempt or Public Fund status or be wound up. We sought feedback from existing Private Fund Managers and have acted to minimise the disruption to them as well as providing them with a transitional period of two years.

DFSA Contacts

If you have a question regarding the new DFSA Collective Investment Funds regime that is not answered above please provide your written question to ccameron@dfsa.ae and/or jreid@dfsa.ae and we will endeavour to answer it.

Please direct all applications to become a Fund Manager to rolson@dfsa.ae unless your firm is already authorised in which case you should direct your Variation of Licence application to your usual Supervision Relationship Manager.

Appendix



- Core: AUT Core Form (currently completed by all firms applying for authorisation plus any applicable supplements)
- PFS: Public Fund Supplement (which also incorporates questions for external fund manager of public fund)
- EFF: Exempt Fund Form (standalone form which also incorporates relevant questions for external fund manager of exempt fund)