



**AIFC COLLECTIVE INVESTMENT SCHEME RULES  
(CIS)**

**AIFC RULES NO. FR0009 OF 2017**  
(with amendments as of 2 July 2019, which commence on 5 August 2019)

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**Approval Date: 10 December 2017**

**Commencement Date: 1 January 2018**



## AIFC COLLECTIVE INVESTMENT SCHEME RULES

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## AIFC COLLECTIVE INVESTMENT SCHEME RULES

### **Guidance: Purpose of this rulebook**

The purpose of this rulebook, the “Collective Investment Scheme Rules”, is to complement the regulatory framework established by the Financial Services Framework Regulations (“the Framework Regulations”) as follows

- To provide that certain arrangements do not amount to Collective Investment Schemes for the purposes of the Framework Regulations.
- To require the registration of certain Collective Investment Schemes with the AFSA before those Collective Investment Schemes can be established or promoted.
- To make provisions regarding:
  - the constitution, management and operation; and
  - the investment and borrowing powers; and
  - the procedure for registration; and
  - the operating duties and responsibilities of Fund Managers; and
  - the registration of offering materials and particulars and reporting requirements; and suspension of dealings in and termination of Collective Investment Schemes.

### **Guidance: Listed Funds**

Funds Managers of Listed Funds should note that, inter alia, the AIFC Market Rules (MAR) contains additional rules that apply to Listed Funds. In addition, the Business Rules apply to Listed Funds; such rules include requirements in relation to the constitution, offering materials, governance, disclosure and other applicable provisions of Listed Funds. The Rules do not apply to Overseas Listed Funds.



## AIFC COLLECTIVE INVESTMENT SCHEME RULES

### 1. INTRODUCTION

#### 1.1. Application of these Rules

These Rules apply to:

- (a) a Domestic Fund Manager which manages:
  - (i) a Domestic Fund; or
  - (ii) a Foreign Fund; or
- (b) a Foreign Fund Manager which manages a Domestic Fund; and
- (c) a Centre Participant which markets a Collective Investment Scheme in or from the AIFC.

#### 1.2. Self-managed Funds

A Fund which has not appointed an external Fund Manager is its own Fund Manager for the purposes of these Rules.

##### **Guidance**

For the purposes of these Rules, a Self-Managed Fund shall be treated as a Domestic Fund that is managed by a Domestic Fund Manager in accordance with Rule 2.3.

#### 1.3. Waivers

A Person may apply to the AFSA to waive any specific requirement of these Rules in respect of a Fund Manager or a Fund.

#### 1.4. Interrelationship with the laws of Kazakhstan

The general laws of Kazakhstan will not apply to the management or marketing of a Fund in the AIFC in accordance with these Rules. However, the general laws of Kazakhstan will apply to the management or marketing of a Fund in Kazakhstan outside the AIFC notwithstanding compliance with these Rules in the AIFC.

#### 1.5. Foreign Fund Managers

A Foreign Fund Manager is permitted to manage a Domestic Fund in accordance with these Rules, and if the Units of such Fund are Offered in the AIFC, then it must be an Exempt Fund as defined in Rule 2.2(a).

##### **Guidance**

A Foreign Fund Manager is not permitted to manage a Non-Exempt Fund where it offers the Units of a Fund in the AIFC. If a Foreign Fund Manager markets the Units of a Domestic Fund in jurisdictions other than the AIFC, the marketing of that Domestic Fund will be subject to the rules of the relevant non-AIFC jurisdiction.



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### 2. CLASSIFICATION OF FUNDS AND APPLICATION OF THE RULES

#### 2.1. Prohibition on establishment, promotion and marketing of Collective Investment Schemes

- (a) Any Collective Investment Scheme established, promoted or marketed in the AIFC must comply with these Rules.
- (b) A Collective Investment Scheme may only be established, promoted or marketed in the AIFC by a Person which is:
  - (i) a Domestic Fund Manager;
  - (ii) a Foreign Fund Manager; or
  - (iii) another Centre Participant,except that any Person may establish a Self-managed Fund that will be subject to these Rules.

#### 2.2. Exempt Funds and Non-Exempt Funds

- (a) An Exempt Fund is a Collective Investment Scheme the Units of which are Offered in the AIFC only by way of a private placement:
  - (i) to Persons who are Professional Clients; and
  - (ii) in minimum subscription amounts of US\$ 50,000.
- (b) A Non-Exempt Fund is any Collective Investment Scheme:
  - (i) the Units of which are Offered in the AIFC; and
  - (ii) which is not an Exempt Fund.

#### 2.3. Self-managed Funds

- (a) A Self-managed Fund must be:
  - (i) an Exempt Fund; and
  - (ii) established as an Investment Company in accordance with Part 6 of the Companies Rules.
- (b) The board of directors of the Self-managed Fund:
  - (i) must consist of at least two directors;
  - (ii) may include Directors who are individuals or Bodies Corporate; and
  - (iii) will be responsible for carrying on fund management activities in relation to that Fund.
- (c) The AFSA must be notified if any Person ceases to be a director of a Self-managed Fund.
- (d) A Self-managed Fund is prohibited from managing other Funds.

#### 2.4. Specialist Funds

- (a) A Fund (whether a Non-Exempt Fund or an Exempt Fund) may be a Specialist Fund.
- (b) The following types of Funds are Specialist Funds:
  - (i) an Islamic Investment Fund, which is a Fund whose entire operations are conducted, or held out as being conducted, in a Shari'ah-compliant manner;
  - (ii) a Private Equity Fund, which is an Exempt Fund that:
    - (A) is closed-ended (unless otherwise approved by the AFSA); and





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- (B) primarily invests in unlisted businesses, by means of shares, convertible debt or other equity-related investments;
- (iii) a Venture Capital Fund, which is an Exempt Fund and a Domestic Fund that:
  - (A) primarily invests in the equity share capital of unlisted businesses which are at an early stage of development;
  - (B) is closed-ended; and
  - (C) limits total subscriptions to an amount not to exceed US\$100 million (or currency equivalent) or a higher amount approved by the AFSA.
- (iv) a Real Estate Investment Trust (or REIT), which is a Fund which:
  - (A) invests at least 80% of its assets in investments in income-generating Real Property, with the remainder invested in cash or other securities;
  - (B) derives at least 50% of its net income from the rental of Real Property; and
  - (C) distributes to the Unitholders [each year] at least 80% of its audited annual net income; and
- (v) any other Fund which complies with any specific rules or guidelines that may be published by the AFSA from time to time regarding the requirements for specific types of Specialist Funds.

### **Guidance**

IFR contains the additional requirements that apply to a Domestic Fund by virtue of it being an Islamic Investment Fund.

- (c) A Fund which does not comply with any requirements applicable to specific types of Specialist Funds may not describe itself as a Specialist Fund.

### **2.5. Secondary transactions and excluded Offers**

A Person does not market a Collective Investment Scheme in the AIFC for the purposes of these Rules by Offering to sell or transfer a Unit that is owned by that Person if the Offer to sell or transfer is capable of acceptance only by the Person to whom that Offer is made.

### **Guidance**

Rule 2.5 is intended to exclude personal sales or transfers of Units from being subject to the requirements in CIS relating to the marketing of Collective Investment Schemes. As a result, an offer to sell Units that is made by a Unitholder to a sole other Person will not be caught by the rules on requirements (for example, the seller is not required to be a Domestic Fund Manager, Foreign Fund Manager or Centre Participant in accordance with Rule 2.1 merely in order to sell the Units that it owns). However, depending on the nature of the transaction, the seller may be subject to the rules in financial promotion and may need to be licensed for another Regulated Activity, such as Dealing in Investments as Principal.



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### **3. ARRANGEMENTS NOT AMOUNTING TO A COLLECTIVE INVESTMENT SCHEME**

#### **3.1. Application**

This chapter sets out arrangements that do not amount to a Collective Investment Scheme in specified circumstances and specific categories of arrangements that do not constitute Collective Investment Schemes.

#### **3.2. Exclusions**

An arrangement is not a Collective Investment Scheme if it falls within one or more of the circumstances or categories of arrangement specified in this chapter.

#### **3.3. Schemes not operated by way of business**

An arrangement is not a Collective Investment Scheme if it is not operated by way of business.

##### **Guidance**

For the purposes of Rule 3.3, a person shall be treated as operating an arrangement by way of business if that person:

- (a) operates the arrangement in a manner which in itself constitutes the carrying on of a business;
- (b) holds himself out as willing and able to engage in the business of operating a Collective Investment Scheme; or
- (c) regularly solicits other persons to engage with him in transactions related to that activity.

#### **3.4. Deposits**

An arrangement is not a Collective Investment Scheme if the whole amount of each participant's contribution is a deposit which is accepted by a Person who is licensed to accept deposits.

#### **3.5. Common accounts**

An arrangement is not a Collective Investment Scheme if:

- (a) the rights or interests of each participant in the arrangement are rights or interests in money held in a common account; and
- (b) the money is held in the account on the understanding that an amount representing the contribution of each participant is to be applied in making payments to him or in satisfaction of sums owed by him or in the acquisition of property for him or the provision of services to him.

##### **Guidance**

The exclusion in Rule 3.5 is intended to apply to an arrangement where each participant has a right or interest to an amount of money in a common account. For example, this will apply where a firm has a general client account that receives money from the firm's clients that is used to pay for services or is set off against amounts owed by those clients.

#### **3.6. Commercial activities unrelated to Regulated Activities**

An arrangement is not a Collective Investment Scheme if each of the participants in the arrangement:

- (a) carries on a business which does not involve the carrying on of any Regulated Activity or an activity which would be such an activity were it not for any applicable exclusion; and
- (b) enters into the arrangement for commercial purposes related to that business where that participant carries on that business by virtue of being a participant in the arrangement.



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### **3.7. Group arrangements**

- (a) Subject to (b), an arrangement is not a Collective Investment Scheme if each of the participants is a Body Corporate in the same Group as the Person undertaking the Collective Investment Scheme management function in relation to the arrangement.
- (b) Prior to setting up the arrangement, the participants may elect to treat the arrangement as a Collective Investment Scheme by notifying the AFSA of their intention to do so.

### **3.8. Franchise arrangements**

An arrangement is not a Collective Investment Scheme if the arrangement is a franchise arrangement.

### **3.9. Clearing services**

An arrangement is not a Collective Investment Scheme if the purpose of the arrangement is the provision of clearing services and the services are operated by an Authorised Market Institution.

### **3.10. Certificates or Options**

An arrangement is not a Collective Investment Scheme if the rights or interests of the participants in the arrangement are Certificates or Options.

### **3.11. Time-share and other 'property-enjoyment' related arrangements**

An arrangement is not a Collective Investment Scheme:

- (a) if the rights or interests of each of the participants in the arrangement are time share rights; or
- (b) if:
  - (i) the predominant purpose of the arrangement is to enable the participants to share in the use or enjoyment of property or to make its use or enjoyment available gratuitously to others; and
  - (ii) the property to which the arrangement relates does not consist of or include Investments of the currency of any country or territory or which would be Investments if not for any applicable exclusion.

### **3.12. Bodies corporate not undertaking investment management**

An arrangement is not a Collective Investment Scheme if the arrangement comprises a closed-ended Partnership or closed-ended Body Corporate, unless on reasonable grounds the purpose or effect of such an arrangement appears to be the investment management, in the exercise of discretion for a collective purpose, of investments, for the benefit of the shareholders or partners.

### **3.13. Debentures and Warrants of a single issuer**

- (a) An arrangement is not a Collective Investment Scheme if the rights or interests of the participants in the arrangement are represented by a Debenture or Warrant:
  - (i) where the issuer of the Debenture or Warrant is a single issuer, and if that issuer is:
    - (1) a Body Corporate, it is neither an open-ended investment company nor a closed-ended investment company the intent or purpose of which is investment management; or
    - (2) not a Body Corporate, the rights and interests of the Debenture or Warrant holder are guaranteed by the government of any country or territory; and



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- (ii) which, if it is a convertible Security, the underlying Securities to which the Debenture or Warrant holder is entitled are Shares or Debentures issued, or to be issued, by the same issuer as the issuer of the Debenture or Warrant or single other issuer.
- (b) An arrangement that is not a Collective Investment Scheme by virtue of Rule 3.13(a) does not become a Collective Investment Scheme merely because one of the participants in the arrangement is a person:
  - (i) whose ordinary business involves him engaging in an activity that is a Regulated Activity or that would fall within an applicable exclusion from a Regulated Activity; and
  - (ii) whose rights or interests in the arrangement are, or include, rights or interests in a swap arrangement under which he facilitates the making of payments to participants whether in a particular amount or currency or at a particular time or rate of interest or all or any combination of those things in settlement of the rights and interests of the other participants in the arrangement.

### **3.14. Insurance**

An arrangement is not a Collective Investment Scheme if it is a contract of insurance.

### **3.15. Profit Sharing Investment Accounts (PSIAs)**

An arrangement is not a Collective Investment Scheme if it is an account or portfolio which is either an Unrestricted or Restricted Profit Sharing Investment Account offered by an Authorised Firm licensed by the AFSA to manage such PSIAs.

### **3.16. Discretionary Portfolio Accounts**

An arrangement is not a Collective Investment Scheme if it is a portfolio or account managed under a discretionary portfolio management agreement.

### **3.17. Close Relative accounts**

- (a) Subject to (b), an arrangement is not a Collective Investment Scheme if every participant in the arrangement is a Close Relative. For the purposes of this Rule, the defined term "Close Relative" includes grandchildren.
- (b) Prior to setting up the arrangement, the participants may elect to treat the arrangement as a Collective Investment Scheme by notifying the AFSA of their intention to do so.

### **3.18. Sukuk**

An arrangement is not a Collective Investment Scheme if the rights or interests of the participants are evidenced by sukuk certificates where the holders of the certificates are entitled to rely on the credit worthiness of:

- (a) the issuer of the sukuk certificates; or
- (b) any other Person who has assumed obligations under the sukuk certificates,

for obtaining their rights and benefits arising under the certificates.

### **3.19. Employee reward schemes**

An arrangement is not a Collective Investment Scheme if the arrangement is for the purposes of enabling or facilitating the operation of an employee compensation or reward scheme where the arrangement:

- (a) makes securities available only to:



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- (i) an Employee or former Employee of the Issuer or of another member of the same Group as the issuer of such securities; or
  - (ii) a Close Relative of any such Employee; and
- (b) is operated by the issuer of the securities or by a member of the same Group as the issuer or by a trustee who, in pursuance of the arrangements, holds the securities issued by the issuer for the benefit of any eligible Persons referred to in Rule 3.19(a)(i) or (ii).

### **3.20. Carried interest vehicles**

An arrangement is not a Collective Investment Scheme if it is a carried interest vehicle which is established solely for the purposes of enabling any officers, directors or employees of a Fund Manager or their related persons, to participate in carried interest or similar profit generated by one or more Collective Investment Schemes or other investment management arrangements.

### **3.21. Other circumstances**

The AFSA may determine that a specific form of arrangements is not a Collective Investment Scheme on the application of any Person with an interest in those arrangements. Any such determination by the AFSA may apply in the case of individual arrangements or generally in respect of arrangements that share similar characteristics.



## AIFC COLLECTIVE INVESTMENT SCHEME RULES

### **4. REGISTRATION AND NOTIFICATION REQUIREMENTS**

#### **4.1. Application and requirement for registration and notification**

This chapter applies to:

- (a) any Domestic Fund that is managed by a Domestic Fund Manager;
- (b) any Domestic Fund that is managed by a Foreign Fund Manager;
- (c) any Foreign Fund managed by a Domestic Fund Manager; and
- (d) any Centre Participant that wishes to market a Fund in the AIFC.

#### **4.2. Application for registration**

- (a) The following entities must apply to the AFSA to register the following types of Fund:
  - (i) a Domestic Fund Manager that intends to manage a Non-Exempt Fund;
  - (ii) a Centre Participant that wishes to market a Non-Exempt Fund in the AIFC; and
  - (iii) a Foreign Fund Manager that intends to manage an Exempt Fund.
- (b) The Fund Manager or Centre Participant must complete and submit the appropriate registration form or forms to the AFSA (which registration form(s) must be in such form as the AFSA may from time to time prescribe).
- (c) The Fund Manager or Centre Participant must specify in the registration form if the Fund is to be registered as a Specialist Fund.
- (d) The registration form must be accompanied by:
  - (i) copies of the Fund's Constitution and Offering Materials; and
  - (ii) certification by the Fund Manager that the Constitution and Offering Materials comply with any relevant requirements prescribed under these Rules and any other applicable regulations of the AFSA; and
  - (iii) such other information as the AFSA may from time to time request.
- (e) If, at any time between the filing of an application for registration and the grant of a registration, the Fund Manager or Centre Participant becomes aware of any material change, error, or omission reasonably likely to be relevant to the application under consideration, it must inform the AFSA in writing of such change without delay.
- (f) In assessing an application for registration, the AFSA may:
  - (i) make any enquiries which it considers appropriate, including enquiries independent of the relevant Fund Manager or Centre Participant; and
  - (ii) require the relevant Fund Manager or Centre Participant to provide further information in support of the application for registration.

#### **4.3. Requirements for registration**

The AFSA will register a Fund only if:

- (a) the incorporation or other legal formalities relating to the formation of the Fund are completed; and
- (b) the fund manager is either:
  - (i) authorised as a Fund Manager by the AFSA; or



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- (ii) a Foreign Fund Manager that is authorised by a Financial Services Regulator:
  - (1) in a Recognised Jurisdiction; or
  - (2) in a jurisdiction that is otherwise acceptable to the AFSA pursuant to Schedule 3; and
- (c) the Fund has arrangements satisfactory to the AFSA in relation to the administration of the Fund and custody and valuation of the Fund's property; and
- (d) the Fund has appointed an auditor satisfactory to the AFSA; and
- (e) the name and purpose of the Fund is not, in the opinion of the AFSA, undesirable or misleading and the purpose of the Fund is reasonably capable of being successfully carried into effect; and
- (f) if the Fund Manager is a Foreign Fund Manager, the Foreign Fund Manager has:
  - (i) appointed a Fund Administrator and Eligible Custodian in accordance with the requirements of CIS 8;
  - (ii) included in its application for registration a declaration stating that it is subject to regulation by a Financial Services Regulator:
    - (A) in a Recognised Jurisdiction; or
    - (B) in a jurisdiction that is not recognised by the AFSA; and
  - (iii) submitted to the AFSA a copy of its licence to manage funds granted by its home state Financial Services Regulator.

### 4.4. Rejection of an application

- (a) The AFSA may refuse to grant an application for the registration of a Fund if it is not satisfied that the requirements referred to in these Rules have been met or if it otherwise considers that registration of the Fund is undesirable.
- (b) The AFSA will provide notice of any refusal to register a Collective Investment Scheme to the relevant Fund Manager or Centre Participant.
- (c) A Fund Manager or Centre Participant may refer the refusal to register any Collective Investment Scheme to the AFSA for review.

### 4.5. Granting registration

- (a) The AFSA will provide notice of the grant and effective date of registration of a Fund to the relevant Fund Manager or Centre Participant.
- (b) The AFSA will maintain publicly available lists of all Funds which have been registered with the AFSA as:
  - (i) Non-Exempt Funds; or
  - (ii) Exempt Funds managed by a Foreign Fund Manager.

### 4.6. Withdrawal of registration

- (a) The AFSA may withdraw the registration of a Fund in the circumstances specified in section 94 of the Framework Regulations.
- (b) The Fund Manager of a registered Fund or relevant Centre Participant may request that the AFSA withdraws the registration of that Fund. The AFSA may withdraw the registration of a Fund if the AFSA is satisfied that to do so would not prejudice the interests of participants in that Fund.



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### 4.7. Requirements for notification

- (a) A Fund Manager must notify the AFSA of its intention to manage a Fund as soon as reasonably practicable before launch if that Fund is not required to be registered in accordance with Rule 4.2.
- (b) The AFSA may prescribe the form of the notification, which must include the following information:
  - (i) the Constitution of the Fund;
  - (ii) the Offering Materials relating to the Fund; and
  - (iii) such other information as the AFSA may prescribe.

#### **Guidance**

For the purposes of Rule 4.7(a), "as soon as reasonably practicable before launch" will require a minimum of at least seven days' notice before the launch of the Fund.





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### 5. MARKETING REQUIREMENTS

#### 5.1. Application

- (a) Rules 5.2(c) and 5.3 (excluding 5.3(b)(i) and (j)) apply to all Funds (whether Exempt or Non-Exempt Funds) that are Offered to investors in the AIFC.
- (b) Rules 5.2(b) and 5.3(b)(i) and (j) apply to Exempt Funds only.
- (c) Rule 5.2(a) applies to Non-Exempt Funds only.

#### 5.2. General requirements

The following requirements apply:

- (a) In respect of Non-Exempt Funds:
  - (i) The Units or other securities of a Non-Exempt Fund may not be Offered prior to the effective date of registration of that Non-Exempt Fund under these Rules.
  - (ii) Copies of any Offering Materials relating to a Non-Exempt Fund must be filed with the AFSA prior to their use (including any amendments to those Offering Materials) and must comply with the content requirements for Offering Materials specified by these Rules.
- (b) In respect of Exempt Funds:
  - (i) The Units or other securities of an Exempt Fund managed by a Foreign Fund Manager may not be Offered prior to the date of registration of that Exempt Fund to the AFSA under these Rules.
  - (ii) A Fund Manager or other Centre Participant which Offers Units or other securities of an Exempt Fund is responsible for ensuring that the requirements of this chapter are complied with in respect of that Fund before commencing the Offering of that Fund and must maintain appropriate written records verifying that compliance which must be made available to the AFSA on request.
- (c) In respect of all Funds (Exempt and Non-Exempt Funds):
  - (i) Any person Offering Units or other securities of a Fund must comply with the Rules regarding Financial Promotions.

#### 5.3. Content requirements for Offering Materials

- (a) All Offering Materials relating to a Fund must be clear, fair and not misleading.
- (b) Prior to investing in a Fund, a potential investor must be supplied with Offering Materials and other documentation that contain all the information which a person and his professional advisers would reasonably require and expect to be able to make an informed decision to become a Unitholder of the Fund, including the following:
  - (i) a description of the investment objective, policy and strategy of the Fund, information on where any master fund is established and where the underlying funds are established if the Fund is a fund of funds, a description of the types of assets in which the Fund may invest, the techniques it may employ and all associated risks, any applicable investment restrictions, the circumstances in which the Fund may use leverage, the types and sources of leverage permitted and the associated risks, any restrictions on the use of leverage and any collateral and asset reuse arrangements, and the maximum level of leverage which the Fund may utilise; and



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- (ii) a description of the procedures by which the Fund may change its investment strategy or investment policy, or both; and
  - (iii) a description of the main legal implications of the contractual relationship entered into for the purpose of investment, including information on jurisdiction, on the applicable law and on the existence or not of any legal instruments providing for the recognition and enforcement of judgments in the territory where the Fund is established; and
  - (iv) the identity of the Fund Manager, custodian or depositary, auditor and any other service providers for the Fund and a description of their duties and Unitholder's rights in respect of those persons; and
  - (v) a description of any functions that have been delegated by the Fund Manager and any other of the Fund's service providers, the identification of each such delegate and any conflicts of interest that may arise from such delegations; and
  - (vi) a description of the Fund's valuation procedure and of the pricing methodology for valuing assets; and
  - (vii) a description of the Fund's liquidity risk management, including the redemption rights both in normal and in exceptional circumstances, and the existing redemption arrangements with Unitholders; and
  - (viii) a description of all fees, charges and expenses and of the maximum amounts thereof which are directly or indirectly borne by Unitholders; and
  - (ix) a description of how the Fund ensures a fair treatment of Unitholders and, whenever a Unitholder obtains preferential treatment or the right to obtain preferential treatment, a description of that preferential treatment, the type of Unitholders who obtain such preferential treatment and, where relevant, their legal or economic links with the Fund or the Fund Manager; and
  - (x) the latest annual report for the Fund, if applicable; and
  - (xi) the procedure and conditions for the issue and sale of units or shares of the Fund; and
  - (xii) where available, the latest net asset value of the Fund and its units or shares or the latest market price per unit or share of the Fund; and
  - (xiii) where available, information regarding the historical performance of the Fund; and
  - (xiv) if relevant, the identity of any prime broker for the Fund and a description of any material arrangements with that prime broker and the way the conflicts of interest in relation thereto are managed, information about the possibility of transfer and reuse of the Fund's assets by the prime broker, and information about any transfer of liability to the prime broker that may exist; and
  - (xv) the total amount of leverage employed by the Fund; and
  - (xvi) the life of the Fund, the ability to terminate the Fund and the process by which the Fund may be terminated; and
  - (xvii) a description of the arrangements in place for the safekeeping of cash held by or on behalf of the Fund pending investment or distribution to Unitholders.
- (c) All Offering Materials relating to a Foreign Fund must include information on the jurisdiction and regulatory regime applicable to the Foreign Fund and its fund manager.



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- (d) If a Fund is a Listed Fund, the Fund Manager must provide in the Fund's Offering Materials a description of the arrangements for listing of the Units and the listing venues on which Units of the Listed Fund may be traded.
- (e) If a Foreign Fund is required to provide a summary or key information document to investors in any jurisdiction, that document must also be provided to potential investors in the AIFC.
- (f) If at any time, there is a material change affecting any matter contained in the Offering Materials for a Fund or a significant new matter arises, the Fund must either before or promptly following the effective date of such material change or new matter, issue updated Offering Materials which clearly explain the material change or significant new matter.
- (g) All Offering Materials relating to a Fund, including the information required under these Rules (as applicable) must be made available in the English language.
- (h) All Offering Materials relating to a Fund must include the following statement displayed prominently on its front page:

"The Astana Financial Services Authority has no responsibility for reviewing or verifying any offering materials, particulars or other documents in connection with this Fund. Accordingly, the Astana Financial Services Authority has not reviewed, nor taken any steps to verify, this document, the information it contains, or any other documents relating to the Fund and has no responsibility for it. The securities to which this document relates may be illiquid or subject to restrictions on their resale. Prospective purchasers should conduct their own due diligence. If you do not understand the contents of this document you should consult an authorised financial adviser."
- (i) All Offering Materials relating to an Exempt Fund must prominently disclose the following statement to prospective Unitholders:

"This Fund is an Exempt Fund for the purposes of the Collective Investment Scheme Rules. It is intended only for sophisticated investors and is not subject to many of the requirements of the Collective Investment Scheme Rules."
- (j) All Offering Materials relating to an Exempt Fund managed by a Foreign Fund Manager must prominently disclose the following statement to prospective Unitholders:

"The fund manager of this Fund is not subject to regulation by the Astana Financial Services Authority."



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### 6. RULES REGARDING THE CONSTITUTION AND INVESTMENT POWERS OF FUNDS

#### 6.1. Application

This chapter applies to all Domestic Fund Managers in respect of all Funds managed by those Fund Managers.

#### 6.2. General requirements

- (a) Every Fund must have:
  - (i) a written Constitution which complies with these Rules and, if the Fund is a Non-Exempt Fund, contains the contents specified in Schedule 1; and
  - (ii) a purpose that is reasonably capable of being successfully carried into effect; and
  - (iii) in the case of an open-ended Non-Exempt Fund, single pricing for the purposes of redemption and re-issue or sale of Units in the Fund where the price of a Unit is calculated by reference to the net asset value of the property of the Fund to which the Units relate and in accordance with these Rules.
- (b) Any provision in the Constitution of a Fund is void in so far as it would have the effect of exempting the Fund or the Fund Manager from liability for any failure to discharge their obligations under these Rules, the FSFR or any other rules made under the FSFR.

#### Guidance

For the avoidance of doubt, single pricing for these purposes means that the buying and selling prices for Units in a Fund are the same (that is, there is no spread between the buy and sell prices). This is in contrast with dual-priced Funds that offer different buy and sell prices.

#### 6.3. Name of the Fund

- (a) The Fund Manager must ensure that the name of a Non-Exempt Fund or any sub-fund or class of units in a Non-Exempt Fund or its sub-funds, is not:
  - (i) undesirable, misleading or in conflict with the name of another Fund or another sub-fund or class of units in the Fund or sub-fund; and
  - (ii) substantially similar to the name of another Fund in the AIFC or elsewhere; or
  - (iii) is in the opinion of the AFSA likely to mislead or offend the public.
- (b) Before using as part of or in connection with the name of a Non-Exempt Fund, sub-fund or class of units in a Non-Exempt Fund the words "guaranteed", "protected" or any other words with a similar meaning implying a degree of security in relation to the capital or income, the Fund Manager must demonstrate to the satisfaction of the AFSA that:
  - (i) the guarantor has the authority and resources to honour the terms of the guarantee; and
  - (ii) all the terms of the guarantee and the credentials of the guarantor are clearly set out in detail in the Offering Materials for the Fund and that any exclusions such as force majeure are highlighted.

#### 6.4. Spread of risk

A Fund Manager must take reasonable steps to ensure that a Fund provides a spread of risk that is consistent with the investment objectives and policy of the Fund as stated in its Constitution or most recently published Offering Materials.



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### **6.5. Breach of investment policy**

On becoming aware of any breach of the investment objectives or policy of a Fund, a Fund Manager must immediately inform the Unitholders and, in the case of a Non-Exempt Fund, the AFSA of the magnitude of the breach, the cause of the breach, and the proposed method of rectification. The Fund Manager must take action, at its own expense, to rectify that breach except in circumstances where it decides doing so would not be in the best interests of Unitholders, in which case the action must be taken as soon as such circumstances cease to apply.

### **6.6. Investment in other Funds**

A Fund may invest in Units of another collective investment vehicle if expressly permitted to do so by, and in accordance with any limits contained in, the Fund's investment policy.

### **6.7. Investment in Derivatives**

A Fund may invest in Derivatives if expressly permitted to do so by, and in accordance with any limits contained in, the Fund's investment policy. If not so permitted, a Fund may only use Derivatives for the purposes of efficient portfolio management. If a Fund utilises Derivatives for any purposes, then the Fund Manager's systems and controls must include adequate risk management processes which enable it to monitor and measure as frequently as appropriate the risk of the Derivative positions and their contribution to the overall risk profile of the Fund.

### **6.8. Securities lending and borrowing**

A Fund may lend or borrow Securities if expressly permitted to do so by, and in accordance with any limits contained in, the Fund's investment policy.

### **6.9. Borrowing**

A Fund may borrow money for investment or other purposes if expressly permitted to do so by, and in accordance with any limits contained in, the Fund's investment policy. In the event that any limit on borrowing by the Fund is exceeded, the Fund Manager must immediately inform the Unitholders and, in the case of a Non-Exempt Fund, the AFSA of the magnitude of the breach, the cause of the breach, and the proposed method of rectification. The Fund Manager must use its best endeavours to reduce, as soon as reasonably possible, the excess borrowings, whether by liquidating assets to repay borrowings or otherwise, to the extent practicable without having a material adverse effect on the Fund or investors as a whole.

### **6.10. Specific rules regarding investment in Real Property by Non-Exempt Funds and Real Estate Investment Trusts**

- (a) A Non-Exempt Fund or Real Estate Investment Trust may invest in Real Property if expressly permitted to do so by, and in accordance with any limits contained in, the Fund's investment policy.
- (b) Before a Non-Exempt Fund or Real Estate Investment Trust invests in any piece of Real Property or prior to disposing of a piece of Real Property, the relevant Fund Manager must appoint an independent professional Valuer with relevant expertise to ensure that the relevant Real Property is expertly valued.
- (c) The Fund Manager must ensure that the Valuer procures the proper valuation of all Real Property held by the Non-Exempt Fund or Real Estate Investment Trust, on the basis of a full valuation with physical inspection including, where the Real Property is or includes a building, an internal inspection at least once a year.
- (d) If any event occurs which may on reasonable grounds have a material effect on the valuation of the relevant property the Fund Manager must consult with the Valuer with a view to arranging a



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fresh valuation before any Units in the Non-Exempt Fund or Real Estate Investment Trust are issued or redeemed after the date of the event.

- (e) The Fund Manager must require that any valuation by the Valuer is on the basis of a 'open market value' of the relevant Real Property consistent with an authoritative text such as the current edition of the Royal Institute of Chartered Surveyors' Appraisal and Valuation Standards ("Red Book") or similar practitioners text used by surveyors.

### 6.11. Rules relating to Real Estate Investment Trusts

- (a) A Fund Manager, or any other Person making an Offer of a Unit of a Fund or otherwise marketing a Fund, must not include the term "Real Estate Investment Trust" or "REIT" or refer to a Fund or otherwise hold out a Fund as being a Real Estate Investment Trust or a REIT, unless it is a Fund which complies with Rule 2.4(b)(iv).
- (b) If at any time during its operation of the Real Estate Investment Trust, the requirements in Rule 2.4(b)(iv) are not met, the Fund Manager must immediately notify the AFSA of the failure to meet the requirements in these Rules, and of what measures have been or will be taken to remedy the breach. If the breach is not remedied within six months, the Fund will cease to meet the criteria of being a Real Estate Investment Trust. The Fund Manager shall notify Unitholders promptly:
  - (i) of it becoming aware that the Fund is reasonably likely to cease to qualify as a Real Estate Investment Trust (such notice to include the expected date of such cessation); and
  - (ii) on the date of such cessation.
- (c) The Fund Manager of a Real Estate Investment Trust is responsible for appointing a Property Manager for the Real Estate Investment Trust and such Property Manager shall either be a:
  - (i) a third party that is permitted under law or regulation (where applicable) to provide Real Estate Management and Servicing Activities; or
  - (ii) a subsidiary of the Fund Manager, which has been established for the purpose of carrying on Real Estate Management and Servicing Activities.
- (d) The Fund Manager of a Real Estate Investment Trust must ensure that it distributes to the Unitholders each year an amount equal to not less than 80% of its audited annual net income.
- (e) The Fund Manager of a Real Estate Investment Trust must determine if any:
  - (i) revaluation surplus credited to income, or
  - (ii) gains on disposal of Real Property,shall form part of the annual net income for distribution to Unitholders.
- (f) A Real Estate Investment Trust may only use leverage or borrow:
  - (i) in aggregate, up to a maximum of 60% of its net asset value (as determined at the time of drawdown of funds); and
  - (ii) for investment purposes or to meet its short-term working capital.
- (g) A Real Estate Investment Trust is permitted to own, and its Fund Manager is permitted to establish, special purpose vehicles for the purpose of holding Real Property, provided that a Real Estate Investment Trust must own directly or indirectly not less than 60% of the shares, and be entitled to exercise directly or indirectly at least 60% of the voting rights, of any such special purpose vehicle.



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- (h) Where a Real Estate Investment Trust holds any Real Property via one or more special purpose vehicles, the Fund Manager must ensure that each special purpose vehicle distributes to the Fund all of the Fund's proportionate share of the special purpose vehicle's net income to the maximum extent permitted by the laws and regulations of the jurisdiction where the special purpose vehicle is established.
- (i) A Fund Manager of a Real Estate Investment Trust that is an Exempt Fund shall be permitted to accept non-cash consideration for the purchase of Units in the Real Estate Investment Trust, subject to complying with Rule 6.11(l). Non-cash consideration for the purchase of Units is not permitted in Real Estate Investment Trusts that are Non-Exempt Funds.
- (j) Real Estate Investment Trusts are not permitted to invest in property under development.
- (l) A Fund Manager of a Real Estate Investment Trust must include in the Fund's Offering Materials:
  - (i) a detailed description of how the Fund intends to acquire and hold its investments in Real Properties (including the maximum number of special purpose vehicles through which Real Properties may be held);
  - (ii) the maximum percentage of the Real Estate Investment Trust's assets (by reference to the Real Estate Investment Trust's net asset value) that may be deployed for the purposes of property refurbishment, retrofitting and renovation, or a statement that no such activities are permitted; and
  - (iii) (where applicable under Rule 6.11(i)), a statement that the Fund Manager may accept non-cash consideration for the purchase of units in the Real Estate Investment Trust and a description of the lock-up period (if any) applicable to Units acquired for non-cash consideration.

### **6.12. Rules relating to Private Equity Funds**

A Fund Manager, or any other Person making an Offer of a Unit of a Fund or otherwise marketing a Fund, must not include the term "Private Equity Fund" or refer to a Fund or otherwise hold out a Fund as being a Private Equity Fund unless it is a Fund which complies with Rule 2.4(b)(ii).

### **6.13. Rules relating to Venture Capital Funds**

A Fund Manager, or any other Person making an Offer of a Unit of a Fund or otherwise marketing a Fund, must not include the term "Venture Capital Fund" or refer to a Fund or otherwise hold out a Fund as being a Venture Capital unless it is a Fund which complies with Rule 2.4(b)(iii).



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### 7. RULES REGARDING THE MANAGEMENT AND OPERATION OF FUNDS

#### 7.1. Application

This chapter applies to all Domestic Fund Managers in respect of all Funds managed by those Fund Managers.

#### 7.2. General management duties

- (a) A Fund Manager must:
  - (i) manage the Fund including the Fund's property in accordance with the Fund's Constitution and its most recent Offering Materials;
  - (ii) perform the functions conferred on it by the Fund's Constitution and by or under these Rules;
  - (iii) comply with any conditions or restrictions imposed by the AFSA including those on its Licence or in respect of the Fund; and
  - (iv) comply with any requirements or limitations imposed under these Rules including any limits relating to financial interests it or any of its associates may hold in a Fund, for which it acts as the appointed Fund Manager.
- (b) In exercising its powers and carrying out its duties, a Fund Manager must:
  - (i) act honestly; and
  - (ii) exercise the degree of care and diligence that a reasonable person would exercise if he were in the Fund Manager's position; and
  - (iii) act in the best interests of the Unitholders and, if there is a conflict between the Unitholders' interests and its own interests, give priority to the Unitholders' interests; and
  - (iv) treat the Unitholders who hold interests of the same class equally and Unitholders who hold interests of different classes fairly; and
  - (v) not improperly make use of information acquired through being the Fund Manager in order to:
    - (A) gain an advantage for itself or another person; or
    - (B) cause detriment to the Unitholders in the Fund; and
  - (vi) ensure that the Fund's property is clearly identified as Fund property and held separately from the property of the Fund Manager and the property of any other Fund it manages; and
  - (vii) in the case of a Non-Exempt Fund, report to the AFSA any breach of these Rules or relevant provisions of any other law administered by the AFSA, or of any Rules made under those laws, that:
    - (A) relates to the Non-Exempt Fund; and
    - (B) has had, or is likely to have, a materially adverse effect on the interests of Unitholders;as soon as practicable after it becomes aware of the breach;
  - (viii) in the case of a Non-Exempt Fund, report to the AFSA any breach of any other laws or requirements that apply to that Fund Manager in any other jurisdiction, that:
    - (A) relates to the Non-Exempt Fund; and





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- (B) has had, or is likely to have, a materially adverse effect on the interests of Unitholders;  
as soon as practicable after it becomes aware of the breach;
- (viii) comply with any other duty or obligation as may be prescribed by or under these Rules or any other law administered by the AFSA; and
- (ix) carry out or comply with any other duty, not inconsistent with any enactment or rule of law in the AIFC, that is conferred on the Fund Manager by the Fund's Constitution.
- (c) Every officer, employee or agent of the Fund Manager must:
  - (i) not make improper use of information acquired through being such an officer, employee or agent of the Fund Manager in order to:
    - (A) gain an advantage for himself or another person; or
    - (B) cause detriment to Unitholders in the Fund;
  - (ii) not make improper use of his position as such an officer, employee or agent to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the Unitholders in the Fund;
  - (iii) comply with any other duty or obligation as may be prescribed by or under these Rules or any other law administered by the AFSA; and
  - (iv) carry out or comply with any other duty, not inconsistent with any enactment or rule of law in the AIFC that is conferred on him or her by the Fund's Constitution.
- (d) A Fund Manager must take reasonable steps to ensure that its officers, employees and agents comply with their obligations referred to above.

### **7.3. Duties in relation to Fund property**

- (a) A Fund Manager must make decisions as to the constituents of the Fund's property that are in accordance with the Fund's Constitution and investment objectives and policy stated in the Fund's Offering Materials.
- (b) A Fund Manager must take all steps and execute, or procure the execution of, all documents to ensure that transactions relating to the Fund's property are properly entered into for the account of the relevant Fund or sub-fund.
- (c) The Fund Manager is responsible to the Unitholders for ensuring the safekeeping of the Fund's property in accordance with these Rules.
- (d) Subject to Rule (e), and without removing the generality of the obligation under (c), the Fund Manager must delegate the Regulated Activity of Providing Custody in relation to the Fund's property to a service provider who is an Eligible Custodian in accordance with Rule 8.2.
- (e) A Self-managed Fund is not required to delegate the Regulated Activity of Providing Custody to an Eligible Custodian and may hold the Fund's property itself, provided that the Self-managed Fund:
  - (i) holds a Licence for the Regulated Activity of Providing Custody;
  - (ii) to the extent practicable, ensures that the function Providing Custody operates independently from its fund management function;
  - (iii) take effective steps to identify, manage and monitor any conflicts of interest arising as a result; and



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- (iv) must disclose to Unitholders:
  - (A) the arrangements for Providing Custody;
  - (B) the nature of any conflict that arises; and
  - (C) how the conflict will be managed, including the measures and safeguards in place to ensure proper segregation and protection of the Fund's property.

### **7.4. Use of prime brokers**

- (a) A Fund Manager may only grant to a prime broker authority to combine the assets of a Fund with any other assets held by or available to the prime broker as collateral for any financing activities to be undertaken by the prime broker where, and so long as the Fund's Offering Materials include:
  - (i) the identity and profile of the prime broker, including where it is located and how it is regulated;
  - (ii) the services provided by the prime broker to the Fund and the nature and extent to which the prime broker has the power and authority to commingle the assets of the Fund with any other assets held by or available to the prime broker as collateral for any financing activities undertaken by the prime broker; and
  - (iii) a prominent warning to alert prospective Unitholders to the fact that the prime broker has the power and authority to use as collateral the assets of the Fund in conjunction with any other assets held by or available to the prime broker and where the prime broker uses the Fund's assets as collateral pursuant to the above power, the Unitholders may lose all the assets of the Fund in the event of the insolvency of the prime broker.
- (b) Any Person appointed as a prime broker to a Fund must qualify as an Eligible Custodian.

### **7.5. Risk management**

- (a) A Fund Manager must ensure that the risks inherent in the operation of a Fund are adequately managed, with due regard to the nature of the strategies and investment process employed by the Fund Manager and the role of Administrators and Eligible Custodians and where appointed, prime brokers.
- (b) The Fund Manager must, to the extent proportionate given the nature of the Fund and the nature and scale of the Fund Manager, ensure functional and hierarchical separation and independence between:
  - (i) the risk management functions (Fund valuation and asset pricing); and
  - (ii) the portfolio management functions (the investment management process).
- (c) Where the Fund Manager is unable to demonstrate adequate separation and independence in accordance with (b), the AFSA may require the Fund Manager to appoint an independent, suitably competent and experienced Administrator to perform the functions specified in (b)(i).

### **7.6. Conflicts of interest**

- (a) The Fund Manager must take reasonable steps to ensure that any dealing in relation to a Fund does not give rise to a conflict of interest.
- (b) Where a conflict of interest arises, whether in dealings with Associates or otherwise, the Fund Manager must disclose to Unitholders the nature of the conflict and how the conflict will be managed.



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### **7.7. Transactions between a Fund and its Fund Manager and the Fund Manager's Associates or other Funds managed by the Fund Manager**

- (a) A Fund Manager must ensure that a Fund does not enter into a transaction with the Fund Manager, any Associate of a Fund Manager or any other Fund managed by the Fund or any of its Associates (each, a "Related Person Transaction") unless it is in accordance with the requirements in this Rule 7.7.
- (b) A Fund Manager must ensure that any Related Person Transaction is on terms at least as favourable to the Fund as any comparable arrangement on normal commercial terms negotiated at arm's length with an independent third party.
- (c) The Fund Manager must provide written notice to Unitholders before a Fund enters into any Related Person Transaction.
- (d) The Fund Manager must obtain the approval of a majority of independent Unitholders of a Fund prior to the implementation of a Related Person Transaction or series of Related Person Transactions which involve the acquisition, disposal or commitment of asset of the Fund in excess of 5 per cent. of the net assets of the Fund. For these purposes, the "independent Unitholders" of a Fund exclude the Fund Manager, any Associate of a Fund Manager and any other Fund managed by the Fund or any of its Associates.
- (e) The Fund Manager must include a brief summary of any Related Person Transaction in the relevant Fund's next published interim or annual report, including the total value of the transaction, its nature and the identity of the persons with whom such transaction was made. Where no such transactions take place during the financial year covered by an annual report, an appropriate negative statement to that effect must be made in the Fund's annual report.

### **7.8. Best execution and fair allocation**

A Fund Manager's systems and controls must include policies and procedures which are designed to ensure that:

- (a) when executing or procuring execution of trades for or on behalf of the Fund, the transactions are executed:
  - (i) as soon as reasonably practicable after a decision to effect a transaction has been made; and
  - (ii) on the best terms available at the time of dealing;
- (b) where the Fund Manager undertakes investment transactions for or on behalf of a Fund which it operates and one or more other Clients, there is timely and fair allocation of trades to the Fund and each other Client; and
- (c) trading of the Fund's investment portfolio is not excessive in light of its investment objective and policy.

### **7.9. Maintenance of records**

- (a) A Fund Manager must make and retain accounting and other records that are necessary to enable it to comply with these Rules in respect of each Fund for which it is the Fund Manager and to demonstrate at any time that such compliance has been achieved.
- (b) A Fund Manager must make the records referred to in (a) available for inspection by the AFSA free of charge at all times during ordinary office hours and must supply a copy of the records or any part of them to the AFSA on request.



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### 7.10. Unitholder register

- (a) A Fund Manager must ensure that in respect of each Fund of which it is the Fund Manager, a register of Unitholders is maintained which contains:
  - (i) the name and address of each Unitholder; and
  - (ii) the number of Units including fractions of a Unit of each class held by each Unitholder; and
  - (iii) the date on which the Unitholder was registered in the register for the Units standing in his name.
- (b) The Fund Manager must take all reasonable steps and exercise all due diligence to ensure that the Unitholder register is kept complete and up to date.
- (c) The Fund Manager must make the Unitholder register in electronic or hard copy form available for inspection by Unitholders during normal business hours at the Fund Manager's place of business in the AIFC or otherwise in a designated location in the AIFC that has been notified to Unitholders.

### 7.11. Ability to delegate or outsource

- (a) A Fund Manager may, subject to any restriction in the relevant Fund's Constitution or any applicable agreement between the Fund Manager and the Fund and any provisions of these Rules, delegate or outsource any of its Regulated Activities or delegate or outsource any of its other functions to another Person, which may be located in or outside the AIFC.
- (b) Delegation or outsourcing by a Fund Manager does not relieve the Fund Manager from any of its obligations in respect of a Fund.
- (c) A Fund Manager may only delegate or outsource a Regulated Activity on prior written notification to the AFSA at least 30 days before the outsourcing or delegation is scheduled to take effect (the "specified date"). The outsourcing or delegation may only proceed if the Fund Manager does not receive an objection by the AFSA to the delegation or outsourcing prior to the specified date.
- (d) When delegating or outsourcing, a Fund Manager must carry out due diligence on a proposed service provider prior to effecting a delegation or outsourcing and conclude on reasonable grounds that proposed service provider is suitable to perform the relevant functions.

### 7.12. Requirements for delegation or outsourcing

- (a) Any delegation or outsourcing by a Fund Manager must be made on the basis of a written agreement with the relevant service provider.
- (b) If a Fund Manager delegates any activity or outsources any function to a service provider, it must take reasonable steps to ensure that it implements and maintains systems and controls to monitor the relevant service provider.
- (c) A Fund Manager which has delegated or outsourced any functions, must review at least every six months the carrying out of the relevant activities or functions by the relevant service provider.
- (d) If a Fund Manager discovers any non-compliance in respect of a delegation or outsourcing agreement, the Fund Manager must take immediate action to remedy the matter and, where the non-compliance is material, notify the AFSA promptly.

### 7.13. Contents of delegation or outsourcing agreement

- (a) A Fund Manager must ensure that any delegation or outsourcing agreement:



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- (i) sets out the functions or activities and service standards that will be applied to the carrying out of such functions or activities;
- (ii) provides that the service provider cannot in turn delegate any activities delegated to it, or outsource any functions outsourced to it;
- (iii) requires the service provider to maintain records to show and explain transactions in relation to each activity or function performed in relation to the Fund and to enable the Fund to prepare accounts in compliance with these Rules and any other applicable law; and
- (iv) requires the service provider to:
  - (A) retain the records for at least six years from the date to which they relate; and
  - (B) keep the records, at all reasonable times, open to inspection by the Fund Manager, the Fund's auditor and the AFSA; and
  - (C) ensure that the records are, if requested by the AFSA, capable of reproduction within a reasonable period not exceeding 3 days in hard copy and in English.
- (b) A Fund Manager must ensure that a delegation or outsourcing agreement contains an undertaking by the relevant service provider to comply with any Rules applicable to the activity and to disclose to the AFSA and to the Fund Manager any material information that it would disclose to its Financial Services Regulator, if relevant, in relation to the conduct of the delegated or outsourced activity.
- (c) A Fund Manager must maintain records of all agreements, and any instructions given to a service provider under the terms of a delegation or outsourcing agreement, for at least six years.

### **7.14. Permissible fees, charges, levies and expenses**

- (a) A Fund Manager must not make any charge or levy in connection with the issue or sale of Units of a Fund except in accordance with the Fund's Constitution and Offering Materials.
- (b) A preliminary or redemption charge must not be made by the Fund Manager unless it is permitted by the Fund's Constitution and it is expressed either as a fixed amount or calculated as a percentage of the price of a Unit.
- (c) Any preliminary charge must not exceed the amount or rate stated in the current Offering Materials in respect of any class of Units.
- (d) No payment may be made, or benefit given, to the Fund Manager out of the Fund's property, whether by way of remuneration for its services, reimbursement of expenses or otherwise, unless it is permitted by the Fund's Constitution and the Fund's Offering Materials specify how it will be calculated, accrued, when it will be paid and the maximum and current rates or amount of such remuneration.
- (e) A Fund Manager must give not less than 90 days' written notice to Unitholders of a Fund of any proposed increase in its remuneration, reimbursement of expenses or otherwise in respect of that Fund.
- (f) A Fund Manager must not introduce a new category of remuneration for its services or make any increase in the current rate or amount of its remuneration in respect of a Fund unless it has given not less than 90 days' written notice of that introduction or increase and of the date of its commencement to the Unitholders of that Fund and the Unitholders approve such new category or increase by such majority as is provided for in the Fund's Constitution.



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### **7.15. Reimbursement of remuneration and expenses**

- (a) A Fund Manager must take reasonable steps to ensure that any payment to any custodian or administrator of a Fund, whether by way of remuneration, reimbursement of expenses or otherwise, is consistent with the disclosure in the Fund's Offering Materials regarding how that payment will be calculated, accrued, when it will be paid and the maximum and current rates or amount of such remuneration.

### **7.16. Promotional payments, performance fees and set up costs**

- (a) No promotional payment, performance fee or benefit may be made out of or given at the expense of a Fund to its Fund Manager unless it is permitted by the Fund's Constitution and specified in the Fund's Offering Materials.
- (b) Costs of the registration, exemption and incorporation of a Fund and of its initial offer or issue of Units, including Units in respect of a sub-fund, may be amortised over a period not exceeding five years.

### **7.17. Allocation of payments to capital or income**

- (a) A Fund Manager may determine that all or any part of any permitted payments, charges and expenses of the Fund may be treated as a capital expense or income expense and allocated to the capital account or income account of the Fund respectively.
- (b) The Fund Manager must ensure that any determination in (a) is permitted by the relevant Fund's Constitution and specified in its Offering Materials in sufficient detail for a Unitholder or a prospective Unitholder to make an informed decision in relation to the allocation of such charges and expenses to be paid from the capital property or the income property as the case may be.



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### **8. ADDITIONAL SERVICE PROVIDERS**

#### **8.1. Application**

This chapter applies to:

- (a) all Domestic Fund Managers in respect of all Non-Exempt Funds and Real Estate Investment Trusts managed by those Fund Managers; and
- (b) all Foreign Fund Managers that manage an Exempt Fund.

#### **8.2. Requirement for Eligible Custodian and Fund Administrator**

- (a) A Fund to which this chapter applies must have an Eligible Custodian and a Fund Administrator, in both cases acceptable to the AFSA. This is subject to the exception to appoint an Eligible Custodian contained in Rule 8.2(b) and Rule 8.2(e).
- (b) A Fund Manager is not required to appoint an Eligible Custodian where, due to the nature of the Fund and the type of assets which it holds, it is neither practical nor proportionate to appoint an Eligible Custodian, in which case the Fund Manager may choose not to appoint an Eligible Custodian, provided that title to such assets is either registered in the name of the Fund or is registered in the name of a nominee company (provided that in this latter case (i) such nominee company declares that it holds title to such assets on trust for the Fund; and (ii) the Fund Manager, vis-à-vis the Fund, takes full responsibility for the acts and omission of such nominee company).
- (c) A Fund Manager of a Fund to which this chapter applies must use appropriate care, skill and diligence when appointing an Eligible Custodian or Administrator. In conducting its due diligence, at a minimum, the Fund Manager must consider the Eligible Custodian's or Administrator's legal and regulatory status, financial resources and organisational capabilities.
- (d) A Fund Manager must monitor the Eligible Custodian and Administrator on an on-going basis for compliance with the terms of the custody agreement and administration agreement for the relevant Fund.
- (e) The AFSA may waive the requirement to appoint an Eligible Custodian or Administrator on a case-by-case basis on application by the Fund Manager of the relevant Fund.

#### **8.3. Eligible Custodian**

For the purposes of these Rules, an Eligible Custodian is a Person who is a separate legal entity from the Fund Manager for the relevant Fund and who also meets one of the following criteria:

- (a) an Authorised Person whose Financial Services Permission authorises it to Provide Custody Services; or
- (b) an Authorised Person that is a Bank; or
- (c) a legal entity that is authorised and supervised by a Financial Services Regulator in a Recognised Jurisdiction for providing custody services in respect of a Fund; or
- (d) any other legal entity otherwise acceptable to the AFSA.

#### **8.4. Contents of a custody agreement**

A custody agreement with an Eligible Custodian in respect of a Fund must:

- (a) require that the title of any account of the Eligible Custodian to hold Fund property sufficiently distinguishes that account from any account containing Investments belonging to the Eligible Custodian, and is in the form requested by the Fund Manager; and



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- (b) require that the Fund's property will only be credited and withdrawn in accordance with the instructions of the Fund Manager; and
- (c) require that the Eligible Custodian will hold the Fund's property separately from assets belonging to the Eligible Custodian; and
- (d) set out the arrangements for recording and registering the Fund's property, claiming and receiving dividends and other entitlements and interest and the giving and receiving of instructions; and
- (e) not permit the delegation of the activities and functions of the Eligible Custodian without the prior written consent of the Fund Manager; and
- (f) require the Eligible Custodian to deliver a statement to the Fund Manager (including the frequency of such statement), which details the Fund's Investments deposited to the account;
- (g) require that all the Investments standing to the credit of the account are held by the Eligible Custodian as the agent of the Fund Manager or the Fund and the Eligible Custodian is not entitled to combine the account with any other account or to exercise any charge, mortgage, lien, right of set-off or counterclaim against Investments in that account in respect of any sum owed to the Eligible Custodian on any other account of the Fund Manager, the Fund or any other Person; and
- (h) detail the extent of liability of the Eligible Custodian in the event of default.

### **8.5. Functions of an Administrator**

- (a) The AML module applies to an Administrator of a Fund in respect of its activities regarding that Fund as if each reference in AML to a "customer" is a reference to a "Unitholder" or "prospective Unitholder" as appropriate to the context.
- (b) An Administrator of a Fund must not hold or control monies or assets belonging to third parties in connection with such administration except in the following circumstances:
  - (i) holding cheques to the order of a Fund's bank account, provided such cheques are securely held for a maximum of three business days prior to being deposited into the relevant Fund's bank account or returned to the drawer of the cheque; or
  - (ii) where a mandate over a Fund's or other third party's bank account is granted to the Administrator and the mandate has been agreed in writing with the bank concerned, and transfers out of the relevant bank account may be made only in circumstances where the mandate restricts instructions to make such payments to being made solely in accordance with the payment of invoiced fees and expenses, made in accordance with the relevant Fund's Constitution or Offering Materials and are not remitted to the account of the Administrator except by express instructions of the Fund Manager.
- (c) An Administrator of a Fund must maintain records which are sufficient to show and explain transactions in relation to each of the specific activities and functions which are being provided to each Fund, in respect of Unitholders or potential Unitholders of the Fund as appropriate. The records must be retained by the Administrator for at least 6 years from the date to which they relate and at all reasonable times, open to inspection by the Fund Manager, the Fund's auditor and the AFSA and, if requested by the AFSA, be capable of reproduction within a reasonable period not exceeding 3 days, in hard copy and in English.

### **8.6. Contents of an administration agreement**

An administration agreement with an Administrator in respect of a Fund must:





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- (a) set out the functions and service standards that will be applied to the provision of the administration of the Fund; and
- (b) must not permit the delegation of the activities and functions of the Administrator without the prior written consent of the Fund Manager; and
- (c) require the Fund Administrator to retain any relevant work or records relating to its activities and functions where the contract is terminated either by the Fund Manager or the Administrator.

### **8.7. Requirements for notification**

The AFSA must be notified when a Person ceases to be an Administrator or Eligible Custodian, and any Offering Materials must be updated accordingly.



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### **9. RULES REGARDING DEALINGS IN OPEN-ENDED FUNDS AND LIQUIDITY**

#### **9.1. Application**

This chapter applies to:

- (a) all Funds managed by Domestic Fund Managers; and
- (b) all Exempt Funds managed by Foreign Fund Managers.

#### **9.2. Pricing of Units of open-ended Funds**

- (a) A Fund Manager of an open-ended Fund must take all reasonable steps and exercise due diligence to ensure that the Units in the Fund are correctly priced in accordance with the applicable accounting procedures and the valuation policies of the Fund to ascertain an accurate single price for a Unit.
- (b) The price of a Unit must be calculated in a manner that is fair and reasonable as between Unitholders.
- (c) A Fund Manager must take immediate action to rectify any incorrect pricing of Units. Unless the incorrect pricing is of minimal significance, the Fund Manager must promptly inform the AFSA, and if appointed, the Eligible Custodian of the Fund, of such a rectification.

#### **9.3. Suspension of dealings in Units**

- (a) A Fund Manager may, in the case of an open-ended Fund, temporarily suspend the issue, cancellation, sale and redemption of Units ("dealings in Units") in the Fund in accordance with the Constitution of the Fund where due to exceptional circumstances it is in the interest of the Unitholders in the Fund to do so.
- (b) The Fund Manager may continue the suspension of dealings in Units only for so long as it reasonably believes that the suspension is in the interests of the Unitholders of the Fund.
- (c) Upon any suspension of dealings in Units, the Fund Manager must notify the Unitholders of the Fund and the AFSA as soon as practicable in writing of the suspension and its reasons for doing so.



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### 10. AUDIT, FINANCIAL AND VALUATION REQUIREMENTS

#### 10.1. Application

This chapter applies to:

- (a) all Funds managed by Domestic Fund Managers; and
- (b) all Exempt Funds managed by Foreign Fund Managers,

except that:

- (i) Rule 10.4 applies to Non-Exempt Funds and Real Estate Investment Trusts only; and
- (ii) Rule 10.5 applies to Non-Exempt Funds only.

#### 10.2. Financial Statements

A Fund Manager must ensure that each Fund that it manages prepares financial statements for each financial year of the Fund in accordance with International Financial Reporting Standards (IFRS) or US GAAP.

#### 10.3. Accounting Records

- (a) A Fund Manager must ensure that each Fund that it manages keeps accounting records that are:
  - (i) sufficient to show and explain transactions undertaken by the Fund; and
  - (ii) capable of determining the financial position of the Fund on an on-going basis; and
  - (iii) record the financial position of the Fund as at its financial year end.
- (b) The Accounting Records must be:
  - (i) retained by the Fund Manager or Fund for at least six years from the date to which they relate;
  - (ii) at all reasonable times, open to inspection by the AFSA and the auditor of the Fund; and
  - (iii) capable of reproduction, within a reasonable period not exceeding 3 business days, in hard copy and available in English.

#### 10.4. Auditor of a Non-Exempt Fund and a Real Estate Investment Trust

- (a) Every Non-Exempt Fund and Real Estate Investment Trust must appoint an external auditor to conduct an audit of the Fund's annual financial statements in accordance with the requirements of the relevant standards published by the International Auditing and Assurance Standards Board (IAASB) and to produce an auditor's report on those audited financial statements.
- (b) A Fund Manager must prior to the appointment of the auditor, take reasonable steps to ensure that the auditor has the required skills, resources and experience to audit the type of Non-Exempt Fund and/or Real Estate Investment Trust for which the auditor has been appointed.
- (c) A Fund Manager must notify the AFSA of the appointment, resignation or termination of an auditor of a Non-Exempt Fund or a Real Estate Investment Trust.
- (d) A Non-Exempt Fund and a Real Estate Investment Trust must appoint an auditor to fill any vacancy in the office of auditor and ensure that the replacement auditor can take up office at the time the vacancy arises or as soon as reasonably practicable.
- (e) A Non-Exempt Fund and a Real Estate Investment Trust must take reasonable steps to ensure that the auditor and the relevant audit staff of the auditor are independent of, and not subject to,



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any conflict of interest with respect to the Fund Manager or any other service provider to the Fund.

- (f) A Fund Manager must notify the AFSA if it or any Non-Exempt Fund or Real Estate Investment Trust that it manages becomes aware, or has reason to believe, that the auditor or the relevant audit staff of the auditor of the relevant Non-Exempt Fund or Real Estate Investment Trust are no longer independent of the Fund Manager or any other service provider to the Non-Exempt Fund or Real Estate Investment Trust, or have a conflict of interest which may affect their judgement in respect of the Non-Exempt Fund or Real Estate Investment Trust.
- (g) A Fund Manager must take reasonable steps to ensure that it and its employees:
  - (i) provide any information to the Non-Exempt Fund's or Real Estate Investment Trust's auditor that the auditor reasonably requires, or is entitled to receive as auditor;
  - (ii) give the auditor right of access at all reasonable times to relevant records and information within its possession regarding the Fund and allow the auditor to make copies of those records and information;
  - (iii) do not interfere with the auditor's ability to discharge its duties in respect of the Non-Exempt Fund or Real Estate Investment Trust;
  - (iv) report to the auditor any matter which may significantly affect the financial position of the Non-Exempt Fund or Real Estate Investment Trust; and
  - (v) provide such other assistance as the auditor may reasonably request it to provide.
- (h) A Fund Manager must, in writing, require any Person to whom the Fund Manager has delegated or outsourced any functions to co-operate with the Non-Exempt Fund's or Real Estate Investment Trust's auditor in accordance with the provisions specified in (g).

### **10.5. Periodic Reports of Non-Exempt Funds**

- (a) Each Non-Exempt Fund must produce an annual report and interim report in respect of each of its accounting periods.
- (b) An annual report must be produced within four months after the end of each annual accounting period for the Non-Exempt Fund.
- (c) An interim report within one month after the end of each interim accounting period for the Non-Exempt Fund.
- (d) Each annual and interim report of a Non-Exempt Fund must:
  - (i) be available free of charge to the Non-Exempt Fund's Unitholders;
  - (ii) be available in English; and
  - (iii) be sent to the AFSA.
- (e) The annual and interim report for a Non-Exempt Fund must be clear, complete and true and contain information for the relevant period and must include:
  - (i) the name of the Non-Exempt Fund, its investment objective and investment policy;
  - (ii) a brief assessment of the Non-Exempt Fund's risk profile;
  - (iii) a review of the Non-Exempt Fund's investment activities and investment performance during the period;



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- (iv) sufficient information to enable Unitholders to form a view on where the Non-Exempt Fund's property is invested at the end of the period and the extent to which that has changed over the period; and
  - (v) any other significant information which would reasonably enable Unitholders to make an informed judgment on the activities of the Non-Exempt Fund during the period and the results of those activities at the end of the reporting period.
- (f) An annual report of a Non-Exempt Fund must contain:
- (i) the full audited financial statements of the Fund for the annual accounting period; and
  - (ii) the auditor's report on the financial statements; and
  - (iii) a report of the Fund Manager containing the following information:
    - (A) a review of the Non-Exempt Fund's investment activities during the period to which the report relates; and
    - (B) particulars of any significant change to the Non-Exempt Fund since the date of the last report; and
    - (C) any other information which would enable Unitholders to make an informed judgment on the development of the activities of the Non-Exempt Fund during the relevant period and the results of those activities as at the end of that period; and
    - (D) for a Non-Exempt Fund which invests a substantial proportion of its assets in other Funds, a statement as to the maximum proportion of management fees charged to the Non-Exempt Fund itself and to other Funds in which that Fund invests.

### **10.6. Valuation of Fund property**

- (a) A Fund must have comprehensive and well documented valuation policies and procedures in place to ensure the production of timely and accurate valuation of the Fund and Units of the Fund.
- (b) A Fund Manager must ensure that the investment portfolio of each Fund managed by that Fund Manager is valued at regular intervals as appropriate to the nature of the Fund, market practice and investor expectations, and in accordance with the valuation procedures set out in the Fund's Constitution or Offering Materials, except where such valuation is suspended in any circumstances that are set out in the Fund's Constitution or Offering Materials.
- (c) A Fund Manager must ensure that as soon as practicable after each valuation point for each Fund it manages, the Fund notifies Unitholders of the value per Unit of the Fund.
- (d) Where required by these Rules, a Fund Manager must appoint an independent third party valuer which is expert in valuing the type of investments held by the Fund to value the Fund's investments.



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### SCHEDULE 1: CONTENT REQUIREMENTS FOR CONSTITUTION

The Constitution of a Non-Exempt Fund must contain all of the information specified below:

- (a) the name of the Fund;
- (b) the Fund Manager's name and its principal place of business;
- (c) a statement that the Fund is a Domestic Fund, the Constitution of which is governed by the laws of the AIFC;
- (d) the legal form of the Fund and whether it is open- or closed-ended;
- (e) a statement to the effect that:
  - (i) the Fund Manager is responsible for all operations concerning the Fund and may from time to time delegate activities or outsource functions, but not the responsibility for conducting those activities and functions, to another Person in accordance with these Rules; and
  - (ii) the Fund Property is entrusted to the Fund Manager and the Fund Manager remains responsible for the property even when an Eligible Custodian holds the legal title to the Fund Property;
- (f) if the duration of the Fund is limited, the length of such duration;
- (g) a statement that fees, charges and other expenses of the Fund may be taken out of Fund Property and the basis for determination of the amount of such fees, charges and other expenses;
- (h) the maximum and minimum sizes of the Fund's capital, if any;
- (i) a statement that a Unitholder is not liable:
  - (i) for the debts of the Fund, unless the applicable legislation prescribes otherwise and, if so, those circumstances;
  - (ii) to make any further payment after he has paid the price of his Units and that no further liability can be imposed on him in respect of the Units he holds;
- (j) information on the investment objectives of the Fund, including:
  - (i) whether the aim of the Fund is to spread investment risks and, if a Property Fund, whether the Fund invests in a single property;
  - (ii) the types of Investments or assets in which it and (where applicable) each Sub-Fund may invest; and
  - (iii) if the Fund is a specialist class of Fund, the class of Fund;
- (k) details of any investment, borrowing or stock lending restrictions or, in the event that there are no such restrictions, a statement to that effect;
- (l) a statement specifying:
  - (i) the classes of Units which the Fund may issue; and
  - (ii) the rights attaching to Units of each class (including any provisions for the expression in two or more denominations of such rights);
- (m) details as to:
  - (i) the provisions relating to any restrictions on the right to redeem Units in any class; and
  - (ii) the circumstances in which the issue of the Units of any particular class may be limited;



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- (n) details of who is carrying out the calculation, transfer, allocation and distribution of income for any class of Unit issued and outstanding during the accounting period;
- (o) information regarding the provision for the payment of income, if any, and the date on which such distribution shall be made;
- (p) a statement specifying the base currency of the Fund;
- (q) details of the procedures for the convening of meetings and the procedures relating to resolutions, voting and the voting rights of Unitholders;
- (r) details of oversight arrangements;
- (s) details as to:
  - (i) the grounds under which the Fund Manager may initiate a suspension of the Fund and any associated procedures; and
  - (ii) the methodology for determining the rights of Unitholders to participate in the Fund Property on winding up;
- (t) details of the manner in which amendments to the Constitution may be made;
- (u) a statement that nothing in the Constitution has the effect of exempting the Fund Manager from any liability to Unitholders imposed under AIFC law and the Rules; and
- (v) details of those matters which enable the Fund, Fund Manager or any Person providing the oversight function of the Fund to obtain any privilege or power conferred by the Rules which is not otherwise provided for in the Constitution.



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### SCHEDULE 2: RECOGNISED JURISDICTIONS

- (a) The AFSA will consider eligibility criteria when determining the assessment of a Recognised Jurisdiction, namely whether:
  - (i) the jurisdiction is listed as a Non-Compliant Country or Territory by the Financial Action Task Force;
  - (ii) the jurisdiction complies with OECD standards for the exchange of tax information, including adherence to multilateral agreements in respect of the exchange of information;
  - (iii) the jurisdiction's financial services regulatory regime achieves broadly similar outcomes to that of the AFSA; and
  - (iv) the jurisdiction has appropriate co-operation arrangements in place with the AFSA to ensure co-operation including the exchange of information between regulatory authorities.
- (b) The AFSA will publish on its website a list of Recognised Jurisdictions that it considers as having met the eligibility criteria in (a).
- (c) The AFSA may determine that a jurisdiction no longer satisfies one or more of the eligibility criteria in (a), and that jurisdiction will cease to be a Recognised Jurisdiction and may be removed accordingly from the list of Recognised Jurisdictions on the AFSA's website.





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### **SCHEDULE 3: ACCEPTABILITY ASSESSMENT**

The AFSA will consider whether a non-AIFC jurisdiction is acceptable by assessing the following factors, after the Foreign Fund Manager has submitted documentation:

- (a) containing a comparative analysis of its jurisdiction's regulatory regime in relation to Funds and Fund Managers compared with that of the AFSA;
- (b) that identifies any gaps between the home state and the AFSA's fund management and regulatory regimes; and
- (c) demonstrates the controls intended to remedy any gaps identified in order to satisfy the AFSA's regulatory requirements.