



## **AMENDMENTS No. 3**

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

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Astana, Kazakhstan



## AIFC COLLECTIVE INVESTMENT SCHEME RULES

In this document, an underlining and blue indicates new text and strikethrough indicates deleted text, unless otherwise indicated.

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##### ~~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.~~

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

(a) ...

(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.~~

##### ~~2.3. 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.~~

##### 2.4-1. Other Specialist Funds

The following types of Funds are considered as other Specialist Funds for purposes of CIS 2.4.(b)(v):

(a) Umbrella Fund, which is a Fund where:

- (i) may be formed as a Protected Cell Company (PCC) and must be an Open-ended Fund if formed as a PCC.
- (ii) contributions of Unitholders in the Fund and the profits or income out of which payments are to be made to the Unitholders are pooled separately in a number of Sub-Funds constituting separate parts of the Fund Property; and

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(iii) a Fund Manager of an Umbrella Fund must ensure that none of its Sub-Funds invests in another of its Sub-Funds.

Guidance:

1. An Umbrella Fund may be constituted as a Protected Cell Company and/or Investment Company; and

2. Unitholders of an Umbrella Fund are entitled to exchange rights they have in one Sub-Fund for rights in another Sub-Fund of the same Umbrella Fund; and

3. A Sub-Fund of an Umbrella Fund is not a feeder fund (a Fund dedicated to investing in the Units or Debentures of a single other fund – master fund) or any other form of a discrete Fund; and

4. A Protected Cell Company (PCC) is a form of Investment Company which needs to be registered as a PCC under the Companies Regulations. An Umbrella Fund using the PCC structure has the benefit of legal segregation of Fund Property forming part of each individual cell. Accordingly, Fund Property of one cell of a PCC is not available to pay any obligations arising in relation to another cell of that PCC.

2. It is not mandatory for an Umbrella Fund to be constituted as a PCC. Instead, such Funds may be formed as a conventional Investment Company or Limited Partnership. However, the legal segregation available to each cell of a PCC is not available to Sub-Funds of Umbrella Funds not formed as a PCC.

(b) A Fund of Funds, which is a Fund where:

(i) A Fund Manager of a Fund of Funds may not invest in:

(A) another Fund of Funds; and

(B) a Feeder Fund; and

(B) any Fund which is dedicated to investment in a number of Funds; and

(D) any Fund which is dedicated to investment in a single Fund or in a single investment trusts; and

(E) any Sub-Fund of an Umbrella Fund or Sub-Fund of any other Fund which is equivalent to a Fund within (A) to (E); and

(ii) not more than 25% in value of the Fund Property is to consist of Units in any other Fund; and

(iii) for the purposes of (i) and (ii), each Sub-Fund of an Umbrella Fund and of an equivalent Fund is to be treated as if it were a separate Fund.

Guidance: A Fund of Funds does not cease to be a Fund of Funds merely because it holds some investments in cash or transferable securities to meet its on-going obligations such as for redemption purposes.

(c) A Feeder Fund, which is a Fund where:

(i) a Fund Manager of a Feeder Fund must ensure that the Fund Property of a Feeder Fund, except where otherwise provided in CIS, only consists of:

(A) Units or Debentures of a single Master Fund; or

(B) in the case of a Feeder Fund which is a Public Fund, Units or Debentures of an eligible Master Fund;

(ii) a Master Fund is eligible for the purposes of (i)(B) only if:

(A) the borrowing of the Master Fund does not exceed 200% of the net asset value of the Master Fund or the market value of the Units of the Master Fund at the mid-value share price; and

(B) the Units in or Debentures of the Master Fund are regularly Offered for purchase and sale by at least three market makers who are recognised or registered as members of an Authorised Market Institution or an exchange regulated by a Financial Services Regulator; and

(C) the Feeder Fund owns not more than 20% of the Units (or of any class of Units in or of the Debentures or of any class of Debentures) of the Master Fund; and

(D) the Master Fund has no limits on its duration;

(iii) a Fund Manager of a Feeder Fund must also ensure that the Feeder Fund invests in a Master Fund only if:

(A) the Fund Manager of the Master Fund is regulated by a Financial Services Regulator; and



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- (B) the Master Fund is itself registered or authorised by a Financial Services Regulator and is itself subject to independent oversight; and
- (C) the investment objectives of the Master Fund have been disclosed in detail in the Prospectus of the Feeder Fund;
- (D) it has made available to prospective Unitholders in the Feeder Fund copies of the Prospectus and the last audited annual reports and accounts of the Master Fund; and
- (E) the Fund Manager of the Master Fund has waived any initial charges which it is otherwise entitled to make in relation to the acquisition of Units in its Fund;
- (iv) Where the Feeder Fund invests in a Master Fund managed by the same Fund Manager or by an associated or related company, the Fund Manager of the Feeder Fund must ensure that the Master Fund in which the investment is being made does not charge subscription or redemption fees on account of the investment; and commission or rebates received by the Fund Manager of the Feeder Fund, by virtue of the investment into the Master Fund, must be paid into the property of the Feeder Fund;
- (v) a Fund Manager of a Feeder Fund must ensure that the Fund's Prospectus discloses:
  - (A) a prominent risk warning to alert prospective Unitholders to the fact that they will be subject to higher fees arising from the layered investment structure;
  - (B) the fees arising at the level of:
    - (1) the Feeder Fund itself; and
    - (2) if applicable, the Master Fund of the Feeder Fund; and
    - (3) if applicable, any underlying Funds into which the Master Fund invests, to the extent known.

### Guidance:

1. A Domestic Feeder Fund may have as its Master Fund a Foreign Fund.
2. A Sub-Fund of an Umbrella Fund is not a Feeder Fund.

(d) A Master Fund, which is a Fund which issues its Units or Debentures only to other Funds which are dedicated to investing in that Master Fund.

Guidance: A Domestic Master Fund may have Foreign Funds as its Feeder Funds.

### **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.

## **4-1. RECOGNITION OF FOREIGN FUND MANAGERS**

### **4-1.1. Application procedure**

A Foreign Fund Manager may apply to the AFSA for recognition by the AFSA for the purposes of managing a Fund by:

- (a) completing the form prescribed in Schedule 4 and filing the form with the AFSA accompanied by such documents as are specified in the Form;
- (b) providing such further information as the AFSA may require; and
- (c) paying the Fee prescribed in the Fees Rules to the AFSA.

### **4-1.2. Recognition requirements**

An applicant for recognition as a Foreign Fund Manager must satisfy the AFSA that the requirements of CIS 4.3 (b)(ii) and (f) are met.

## **5.3 Content requirements for Offering Materials**



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- (a) ...
- ...
- (j) ...
- (k) Information relating to an Umbrella Fund:
- (i) Whether the Fund is constituted as a Protected Cell Company or is using contractual arrangements to segregate Sub-Funds.
- (ii) A statement that Unitholders may exchange Units of one Sub-Fund for Units in another Sub-Fund of the Umbrella Fund.
- (iii) Whether an exchange of Units in one Sub-Fund for Units in another Sub-Fund is treated as a redemption of Units, and resale or reissue of Units in the relevant Sub-Fund, and costs and fees associated with such redemption, resale or reissue.
- (iv) Policy for allocating between Sub-Funds any assets of, or costs, charges and expenses payable out of, the Fund Property which are not attributable to any particular Sub-Fund.
- (v) Information relating to any cross-liability that may occur between Sub-Funds if the Fund is not using the PCC structure.
- (vi) In respect of each Sub-Fund, if the currency is not the base currency of the Umbrella Fund, the currency in which the Fund Property allocated.
- (l) Information relating to a Feeder Fund:
- (i) Whether the Fund is investing in:
- (A) Real Property only; or
- (B) Securities issued by Bodies Corporate whose main activities are investing in, dealing in, developing or redeveloping Real Property only; or
- (C) a combination of (A) and (B).
- (ii) What percentage of the Property Fund's net assets may consist of property related assets, referred to in 3.1(b), which are not traded in or dealt on markets provided for in the Constitution.
- (iii) Unless the Constitution and the Offering Materials state that the Fund invests in a single property, the maximum percentage of the Fund's net assets which may be invested in any single property or, if applicable, the conditions under which the Fund may derogate from this restriction.
- (iv) The maximum percentage of the Property Fund's net assets which may be invested in properties which are vacant, in the process of development or requiring development.
- (v) The maximum percentage of the Property Fund's net assets which may be invested in properties which are subject to a mortgage.
- (vi) For investment in Real Property:
- (A) the countries or territories in which the Fund may invest;
- (B) the types of Real Property in which the Fund may invest and the policy in relation to encumbrances and lease period, if applicable;
- (C) the policy of the Fund Manager in relation to insurance of Real Property forming part of the Fund Property;
- (D) the risks involved in this type of Fund;
- (E) details of the Property Fund's appointed valuer under CIS 6.10.(b);
- (F) a statement to explain the standards according to which the property valuations are conducted;
- (G) a statement with respect to any material policy regarding Real Property activities;
- (H) details of significant holders and the number of units held and deemed to be held by each of them;
- (I) details of principal taxes levied on the Fund's income and capital, including tax, if any, deducted on distribution to Unitholders; and
- (J) if the Fund is a REIT, whether the investment vehicle is an Investment Company or Limited Partnership.
- (vii) If the Fund is a single Property Fund:
- (A) a prominent statement that the Fund invests in a single property;



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(B) the details relating to the single property, such as whether the property comprises individual properties or buildings, whether there are different types of uses or businesses conducted in the property, and proportions of anticipated income to be derived from the types of uses or occupants of the property; and

(C) any risks associated with the investment in the single property, including risks arising from or affecting income to be derived from the uses or occupants of the property.

(viii) If the Fund Manager itself acts as the custodian of Real Property, in accordance with CIS 7.3.(e):

(A) a prominent statement that it acts as the custodian of the Real Property;

(B) disclosure of risks that may arise as a result of it acting as custodian rather than delegating the function to an Eligible Custodian; and

(C) the measures and safeguards it has in place to ensure the proper segregation and protection of the Real Property.

(ix) Disclosure of:

(A) details of any transactions or agreements entered into with Related Parties;

(B) full particulars of the nature and extent of the interest, if any, of Related Parties in the property owned or proposed to be acquired by the Fund; and

(c) whether the Fund Manager has Unitholder approval to enter into Related Party Transactions.

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

(a) ...

...

(j) Real Estate Investment Trusts are not permitted to invest in property under development can only invest in property under development full completion of construction of which is guaranteed by a relevant state authority or institution or acceptable by the AFSA guarantee issued by a credible bank. The total contract value of the property under development must not exceed 10% of the net asset value of the Fund property of the REIT.

### 7.3. Duties in relation to Fund property

(a) ...

...

~~(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~~

~~(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.~~

### 10.5. Periodic Reports of Non-Exempt Funds and Umbrella Funds

(a) ...

...

(c) ...

(c-1) For a Fund which is an Umbrella Fund, the Fund Manager must prepare an interim report for each Sub-Fund, but this is not necessary for the Umbrella Fund as a whole.





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- (d) ...
- (e) The annual and interim report for a Non-Exempt Fund or the Sub-Funds of an Umbrella 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 or Sub-Fund, its investment objective and investment policy;
  - (ii) a brief assessment of the Non-Exempt Fund's or Sub-Fund's risk profile;
  - (iii) a review of the Non-Exempt Fund's or Sub-Fund's investment activities and investment performance during the period;
  - (iv) sufficient information to enable Unitholders to form a view on where the Non-Exempt Fund's or Sub-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 or Sub-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, other than a Fund which is an Umbrella Fund, must contain:
- (i) ...
  - ...
  - (j) An annual report of a Fund which is an Umbrella Fund must contain:
    - (i) for each Sub-Fund:
      - (A) the full audited financial statements for the annual accounting period;
      - (B) the report of the Fund Manager in accordance with requirements set out in CIS 10.5-1.; and
      - (C) if the Fund is a Public Fund, the comparative table in accordance with CIS 10.5-2.;
    - (ii) an aggregation of the financial statements required by (j)(i)(A) for each Sub-Fund;
    - (iii) the report produced by the auditor in accordance with CIS 10.4.; and
    - (iv) if the Fund is a Public Fund, the Oversight Report in accordance with CIS 10.5-3.

### 10.5-1. Fund Manager's report

The matters set out in (a) to (h) must be included in any Fund Manager's report:

- (a) a restatement of the investment objectives of the Fund;
- (b) a restatement of the policy for achieving those objectives;
- (c) a review of the investment activities, including in relation to (a) and (b), during the period to which the report relates;
- (d) particulars of any fundamental change requiring prior approval by Unitholder meeting made since the date of the last report;
- (e) particulars of any significant change requiring pre-event notification since the date of the last report;
- (f) any other information which would enable Unitholders to make an informed judgement on the development of the activities of the Fund during this period and the results of those activities as at the end of that period;
- (g) for a report on an Umbrella Fund, the information required in (a) to (h) must be given for each Sub-Fund if it would vary from that given in respect of the Umbrella Fund as a whole; and
- (h) for a 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 Fund itself and to other Funds in which that Fund invests.

### 10.5-2. The comparative table for the annual report for an Umbrella Fund

The comparative table for the annual report for an Umbrella Fund must set out:

- (a) the performance record over the last five calendar years, or if the Fund has not been in existence during the whole of that period, over the whole period in which it has been in existence, showing:



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- (i) the highest and the lowest price of a Unit of each class in issue during each of those years; and
- (ii) the net income distributed or, for accumulation Units, allocated for a Unit of each class in issue during each of those years, taking account of any sub-division or consolidation of Units that occurred during that period;
- (b) as at the end of each of the last three annual accounting periods or all of the Fund's annual accounting periods, if less than three:
  - (i) the total net asset value of the Fund Property at the end of each of those years;
  - (ii) the net asset value per Unit of each class; and
  - (iii) for a report of the directors of an Investment Company, the number of Units of each class in issue; or
  - (iv) for a report of the Fund Manager of any other Fund, the number of Units of each class in existence or treated as in existence; and
- (c) if, in the period covered by the table:
  - (i) the Fund Manager has been the subject of any event such as a transfer scheme having a material effect on the size of the Fund, but excluding any issue or cancellation of Units for cash; or
  - (ii) there have been changes in the investment objectives of the Fund;  
an indication, related in the body of the table to the relevant year in the table, of the date of the event or change in the investment objectives and a brief description of its nature.

### **10.5-3. Oversight report**

- (a) The Person providing the oversight function of a Public Fund must make a report to Unitholders of the Fund which must be included in the Fund's annual report referred to in CIS 10.5-1.
- (b) The oversight report must contain:
  - (i) a description, which may be in summary form, of the duties of the Person carrying out the oversight functions and in respect of the safekeeping of the Fund Property; and
  - (ii) a statement whether, in any material respect:
    - (A) the issue, sale, redemption and cancellation, and calculation of the price of the Units and the application of the Fund's income, have not been carried out in accordance with the Rules and, the Constitution; and
    - (B) the investment and borrowing powers and restrictions applicable to the Fund.

### **SCHEDULE 4: Forms**

For the purposes of the CIS the prescribed Forms are listed in the following table.

<u>Purpose</u>	<u>Relevant section or Rule</u>	<u>Form</u>
<u>Application Form for Recognition of Foreign Fund Managers</u>	<u>CIS 4-1.1</u>	