The Dubai International Financial Center – DIFC Category 3C License – Fund manager & Fund

DIFC FINANCIAL LICENSE

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"A DIFC Fund Investment Fund is set up as a collective investment pool enabling investors to participate in the same investment strategy and benefit from the highest international standards for risk management and legal protection"

IN BRIEF

With a number of different options for establishing investment funds in the United Arab Emirates (UAE), the Dubai International Financial Center (DIFC) remains a top jurisdiction of choice for the set up of a variety of Investment Funds.

The DIFC has a Regulatory regime for Funds and has been designed to meet international standards for regulation and, where required, to provide adequate investor protection.

The DIFC as a premium International Financial Free Zone has an independent risk-based regulator, the Dubai Financial Services Authority (DFSA), which provides a facilitative, business-friendly regulatory framework, while remaining compliant with the International Organisation of Securities Commission's (IOSCO) principles for regulating Funds

1. WHY IS THE DIFC THE TOP JURISDICTION OF CHOICE?

The **DUBAI INTERNATIONAL FINANCIAL CENTER (DIFC)** is one of the two Financial Free Zones within the UAE with its own civil and commercial laws. At the heart of the DIFC model is an independent risk-based regulator, the Dubai Financial Services Authority (DFSA), which grants licenses and regulates the activities of all banking and financial institutions in DIFC. The DIFC is a broadly based recognized and renowned international financial center serving local, regional and international institutions. As a financial free zone with an independent jurisdiction, DIFC has three independent authorities:

- Dubai Financial Services Authority (DFSA);
- Dubai International Financial center Authority (DIFCA) and;
- DIFC Courts operating under common law;

These three authorities ensure that DIFC offers a highly professional yet business-friendly environment
operating with the best practices and recognized by all the major financial centers across the world.

DIFC is unique in that it has a legislative system consistent with English Common law. DIFC has its own set of civil and commercial laws -Companies Law DIFC Law No. 5 of 2018 including UK Companies Act 2006 plus policy decisions on where to deviate or apply lighter touch than UK or other common law positions)- and regulations and has developed a complete code of law governing financial services regulation.

As part of its autonomy, DIFC has created an independent judicial system. The DIFC Courts is the entity responsible for the independent administration and enforcement of justice in DIFC. The Courts have exclusive jurisdiction over all civil and commercial disputes arising within DIFC and or relating to bodies and companies registered in DIFC.

2. WHAT IS THE REGULATORY REGIME FOR FUNDS IN THE DIFC?

- A Public Fund regime, which provides greater protection to retail investors through requirements such as the independent oversight of a fund and detailed disclosure in a Prospectus;
- An Exempt Fund regime where Funds enjoy a fast-track notification process, where the DFSA aims to complete the process within a period of five business days, with lesser regulatory requirements than a Public Fund;
- A Qualified Investor Fund (QIF) regime, which provides proportionate regulation, allowing flexibility for QIF managers and QIFs, by relying on key requirements in the Collective Investment Law and the DFSA Rulebook. The regime requires self-certification regarding the adequacy of systems and controls. QIFs enjoy a fast-track notification process where the DFSA aims to complete the process within a period of two business days;
- DFSA-licensed (i.e. DIFC-based) Fund Managers are able to establish and manage funds in the DIFC, as well as in jurisdictions outside the DIFC;
- Fund Managers coming from acceptable jurisdictions are able to establish and manage funds in the DIFC under certain circumstances;

- DFSA-licensed firms are allowed to market and sell units in a wide range of foreign funds in, or from, the DIFC;
- A competitive fee structure is applied to Fund Managers and funds;
- Fund Managers of Umbrella Funds have the flexibility to use the Protected Cell Company (PCC) structure for open-ended Umbrella Funds. This gives investors in each Sub-Fund of the Umbrella legal segregation from liabilities arising in other SubFunds and the Umbrella;
- Bespoke Shari'a governance requirements applying to Islamic Funds, which promote high Shari'a governance standards with flexibility of application;
- Bespoke regulatory requirements to accommodate specialist funds, such as Private Equity, Property and Hedge Funds1 ; and
- The DFSA also regulates the key players in the fund management service sector, such as fund administrators, custody providers and trustees. This is to ensure adequate investor protection by promoting high industry standards that meet international best practice.

3. WHAT ARE THE TYPE OF FUNDS DIFC?

DIFC Funds can be managed by either a DFSA-licensed or an External Fund Manager:

Funds	Minimum Subscription	Maximum Unit Holders	Regulatory Level	Offer
Public Funds (PF) Fund available to retail clients.	No Minimum	No Maximum	Higher regulatory requirements.	Units Offered to the general public.
Exempt Funds (EF) Fund only available to professional clients.	$50,000	100	Slightly less Stringent than PF.	Units Offered to persons by way of private placement.
Qualified Investor Funds (QIF) Fund only available to professional clients.	$500,000	50	Significantly less stringent than PF & EF.	Units Offered to persons by way of private placement.

4. WHAT ARE THE OTHER TYPE OF FUNDS?

❖ **Special Funds**

- **Islamic Funds** require a fund manager to be authorized by the DFSA to carry out Islamic Financial business and must appoint a Sharia supervisory board. Appoint a Sharia Supervisory board to the Fund; Have Sharia-compliant systems and controls; Maintain Islamic business policies and procedures manuals; and obtain approvals from the Sharia Supervisory board, for the relevant fund documents.

The specialist Fund requirements do not apply to QIFs.

❖ **Hedge Funds** are also a type of investment fund which invest their clients' money in alternative investments to beat the market or hedge against market uncertainties as risk management measures.

Making sure that certain duties are adequately segregated (for example, the of the investment function and the Fund valuation processes) Adhering to the best practice guidelines stipulated in the DFSA Hedge Fund Code of Practice.

- **Private Equity Funds** are basically collective investment schemes used for making investments in various securities. In the DIFC, Private Equity Funds are closed ended. A private equity fund makes investments in the equity and debt of privately-held companies (sometimes listed entities as well), focusing on the long-term potential of the acquisition, much like private-equity firms. In the **DIFC, Private Equity Funds are closed-ended** and open to only Professional Investors.
  A DIFC PE Fund can be either an Exempt Fund or a Qualified Investor Fund.

❖ **Venture Capital Funds** come into the picture when wealthy individuals make an investment in potential startups for long term future growth of their capital. The VC-stage of the investment cycle of a startup comes before a PE stage, and hence these investments are characterized by smaller ticket sizes and higher risks. In the DIFC, Venture Capital Funds are also closed-ended and open to only Professional Investors. *A DIFC Venture Capital Fund can be either an Exempt Fund or a Qualified Investor Fund.*

❖ **Property funds** are investments in commercial property e.g. offices, factories and warehouses.

a Property Fund which is a Public Fund must invest only in Real Property or Property Related Assets, but may retain up to 40% of its investments in cash or certain specified Securities; Be an Investment Company or Investment Trust; Be listed, within six months of its establishment, either on an Authorised Market Institution or an Exchange in a Recognised Jurisdiction; Have the Fund property valued annually; Value the Fund property on the basis of an independent valuation of the relevant property, before acquiring or disposing of any asset; and Limit its borrowing to 80% of its total net asset value

Property Funds – Real Estate Investment Trusts (REITs) REITs are a sub-set of Property Funds, which are designed for income generation. A **REIT** must, in addition to being closed-ended: Use only Investment Company or Investment Trust as the fund vehicle; Be a Public Fund that is listed and traded on an Authorised Market Institution; Distribute 80% of its audited annual net income to Unitholders; Not borrow beyond 70% of net asset value; and Invest only up to 30% of its total assets in 'property under development.

5. How to Set Up a Fund?

- ❑ Set up your own Fund Manager (CAT 3C) in DIFC OR
- ❑ Co – operate with an existing Fund Manager offering services to 3rd parties.

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- ❑ Drafting of Fund Documentation: Prospectus, Articles as per Regulations

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- ❑ Set up the Fund vehicle with the Company Registrar

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- ❑ Appoint a Fund Administrator and if applicable, a Custodian

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- ❑ Open a bank account, set up signatories (Fund Administrator)

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- ❑ Notify the Regulator (Note: Approval is required in case of Public Funds)

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- ❑ Now it is allowed to promote the Fund as per the Regulations. (as a Public Fund, Exempt Fund or Qualified Investor Fund)

6. What are the fund vehicles & structures?

DIFC 's funds framework is comprehensive and offers fund managers the maximum range of options when choosing fund vehicles and structures.

OPEN OR CLOSED ENDED INVESTMENT COMPANIES

Allowing for incorporation of a fund vehicle using a corporate entity under the DIFC Companies Regulations, open ended investment companies allow for operation of traditional funds with regular subscription and redemption possibilities whilst closed ended investment companies may be used to structure a listed fund vehicle.

INVESTMENT TRUSTS

Investment trusts can be used as the basis for funds in DIFC. A fund manager may appoint an eligible trustee through a trust deed in order to establish an investment trust in accordance with provisions in the Financial Services and Markets Regulations 2015.

LIMITED PARTNERSHIPS

As in other leading fund jurisdictions limited partnership structures can be used as the basis for DIFC fund structures.

PROTECTED CELL COMPANIES (PCC) AND INCORPORATED CELL COMPANIES (ICC)

DIFC allows the structuring of funds and fund umbrellas using PCCs and ICCs. This allows fund managers to legally segregate the assets and liabilities of each cell whilst operating under common management.

RESTRICTED SCOPE COMPANIES

To supplement the range of fund vehicles available, DIFC allows the incorporation of a private limited company designated as a Restricted Scope Company. These are unique DIFC special purpose vehicles which benefit from quick and inexpensive incorporation, and limited public disclosure requirements.

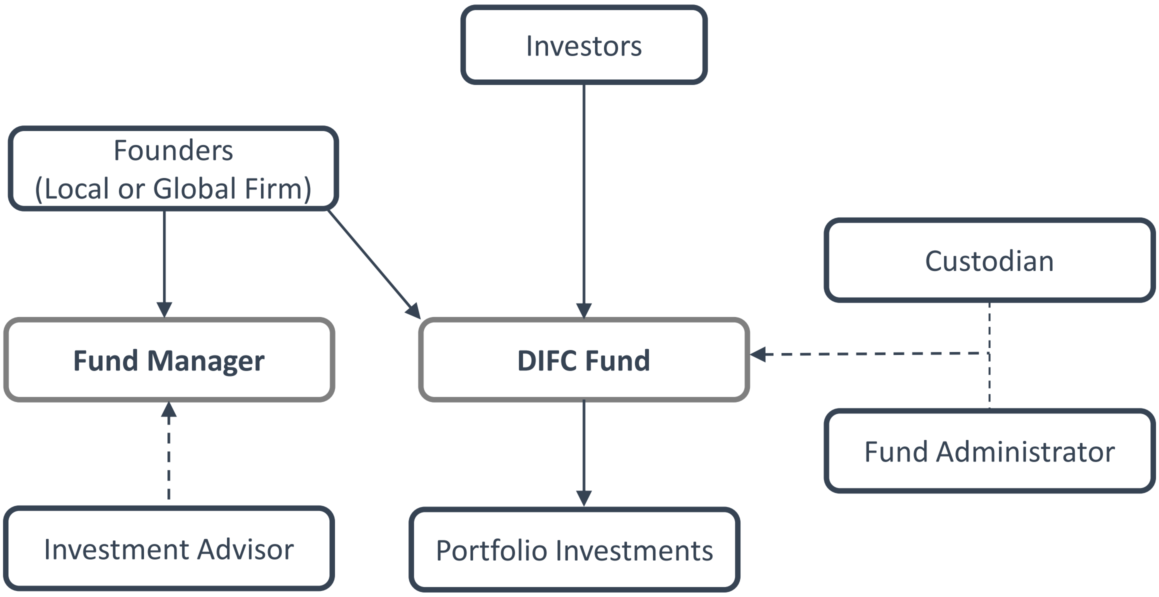
MASTER/FEEDER STRUCTURES

DIFC funds may act as a master fund, a feeder to a foreign fund or as a feeder to another DIFC fund.

UMBRELLA FUNDS

DIFC's framework allows for umbrella structures, where a single umbrella fund may have more than one distinct sub-fund, each with its own investment objective and policy.

7. What is the standard fund structure?



- **Fund manager:** creates, manages and winds up funds
- **Fund administrator:** on boards investors in fund, in charge of payments from the fund account, calculates NAV
- **Fund custodian:** holds fund securities and money in custody (not applicable to PE/VC/RE funds)
- **Fund advisor** (optional): can provide advice to the fund if appointed by the fund manager
- **Fund asset manager:** can manage fund assets if appointed by the fund manager

Let's Get in Touch

If you wish to discuss the many benefits of the Fund Regime or any other legal entity, feel free to contact us.

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ABOUT WINCORE ADVISORY GROUP

Wincore Advisory Group is a multi-disciplinary aggregate of tax planning, corporate services, corporate finance and wealth structuring advisory services provider. Our group was founded by prior executives and directors of major banks, trust, CSP and law firms to provide unmatched on-the-ground competences in the Middle East, Africa, US and Europe.

Under a private and independent ownership, our goal and commitment is to provide high quality pragmatic, confidential, flexible and efficient solutions to address our clientele's specific needs in the fast-moving international business and tax law environment.

Our corporate, finance and tax structuring team comprises multidisciplinary experts who have gained significant experience in the GCC, Africa and Europe in large and reputable international firms and financial institutions.

To keep pace with the changing international marketplace, we also continuously work to strengthen our international networks to deliver seamless and first-class services.