

Fund Rulebook (FUNDS)

*In this attachment underlining indicates new text and striking through indicates deleted text.



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7.2 Authorisation Requirements for Authorised Fund Managers of Foreign Funds

Regulator Notification

7.2.1

An Authorised Fund Manager to which this Chapter applies must give notice to the Regulator of its intention to manage a Foreign Fund by submitting a notification to the Regulator as soon as reasonably practicable before launch in accordance with the requirements of this Chapter.

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Guidance

1. For the purposes of Rule 7.2.1, "as soon as reasonably practicable before launch" requires, at a minimum, at least seven calendar days' notice to be given before the commencement of management functions by the Authorised Fund Manager.
2. An Authorised Fund Manager must submit a Periodic Fund Return to the Regulator in respect of each Foreign Fund it manages in accordance with Rule 16.6.

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Eligible Custodian and Fund Administrator

12.3.7

(1) A Fund Manager to whom this Chapter applies must:

- (a) ensure that there is appointed to the Fund a Fund Administrator, or, if the Fund is an Investment Trust, a Trustee licensed by the Regulator or such other administrator as is otherwise acceptable to the Regulator (hereafter referred to as the "Appointed Fund Administrator" or "Appointed Trustee"); and
- (b) subject to Rules 12.3.2 and 12.3.3 ensure that there is appointed to the Fund an Eligible Custodian,

before commencing the management of that Fund.

Guidance

A Fund Manager of a Domestic Fund may be able to perform fund administration for the Fund in circumstances where risk management and portfolio functions are adequately separated (Rule 12.3.10).

12.3.8

For the purposes of these Rules, an Eligible Custodian is a ~~Person who~~ person that is a separate legal entity from the Fund Manager and ~~who~~ that also meets one or more of the following criteria:

- (a) an Authorised Person whose Financial Services Permission authorises it to Provide Custody Services;

- (b) an Authorised Person that is a Bank;
- (c) a Recognised Body or Remote Body;
- (d) a legal entity that is authorised and supervised by a Non-ADGM Financial Services Regulator in a Recognised Jurisdiction for ~~providing custody services~~ Providing Custody in respect of a Fund and is subject to a minimum capital requirement of US\$4 million or its equivalent in any other currency at the relevant time and has had surplus revenue over expenditure for the last two financial years;
- (e) a legal entity where it, or its holding company, is:
 - (i) in respect of its financial strength, rated or graded as at least "investment grade" by Moody's, Fitch or Standard & Poor's or such other international rating agency as may be recognised by the Regulator; and
 - (ii) authorised and supervised by a Non-ADGM Financial Services Regulator in another jurisdiction ~~which~~ that is a Zone 1 country; or
- (f) a legal entity that is authorised or recognised by a Financial Services Non-ADGM Regulator to operate as an exchange or a clearing house in a Recognised Jurisdiction;
- (g) a legal entity that is and remains:
 - (i) controlled and wholly owned by one or more of the national governments of the six member states of the Gulf Cooperation Council;
 - (ii) authorised and supervised by a Financial Services Regulator or Central Bank ~~financial services regulator or central bank~~ of at least one of the said national governments; and
 - (iii) rated or graded as at least "investment grade" by Moody's, Fitch or Standard & Poor's or such other international rating agency as may be recognised by the Regulator; or
- (h) any other legal entity otherwise acceptable to the Regulator.

Guidance

Where an Eligible Custodian is also an Authorised Person, relevant Rules in COBS Chapters 15 and 16 apply.

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General oversight duties

13.3.5 The Fund Manager shall ensure that each person undertaking the oversight function for the Fund is appointed with the necessary powers and resources to discharge its duties and functions and is required to:

(a) monitor whether the Fund Manager:

(i) is managing the Fund in accordance with the Constitution and the most recent Prospectus of the Fund, including in particular, any investment and borrowing limitations, requirements relating to the valuation of Fund Property and any other requirements or restrictions imposed on the Fund under FSMR or these Rules; and

(ii) if it is a Foreign Fund Manager, is complying with the specific requirements that apply to such a Person by virtue of being a Foreign Fund Manager;

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(d) report to the Regulator if:

(i) the Fund Manager has failed, or is reasonably likely to fail, to take appropriate action to rectify or remedy a matter reported to it within 30 days of that matter being so reported; and

(ii) that Person believes on reasonable grounds that the matter has had, or is likely to have, a materially adverse impact on the interests of the Unitholders of the Fund;:

(e) provide such assurance as the Regulator requires as to the accuracy and completeness of the Fund's Periodic Fund Return.

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16. ACCOUNTING, AUDIT AND PERIODIC REPORTING OF A FUND

16.1 Application

16.1.1 (1) This Chapter applies in its entirety to a Fund Manager and a Trustee of a Domestic Fund.

(2) In this Chapter, references to a "Fund" mean a "Domestic Rules 16.6.1 to 16.6.6 apply to the Authorised Fund Manager of a Foreign Fund".

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16.3 **Auditors of a Fund**

Guidance

1. Rule 11.1.2 requires every Domestic Fund to have an auditor appointed to it in accordance with Section 189 of FSMR and any Rules made for the purposes of that Part.
2. Section 189 of FSMR sets out how an Auditor must be appointed to each Domestic Fund and Part 15 of FSMR sets out the main duties and functions of the Auditor. This Chapter sets out additional requirements that apply in relation to auditors of a Domestic Fund.

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16.6 **Periodic Fund Return**

16.6.1 A Fund Manager must complete and submit a Periodic Fund Return to the Regulator in respect of:

- (a) each Domestic Fund that it manages; and
- (b) each Foreign Fund that it manages, where that Fund Manager is an Authorised Fund Manager.

16.6.2 A Periodic Fund Return must be submitted in the form and manner prescribed by the Regulator.

16.6.3 The reporting dates for the Periodic Fund Return are as follows:

- (a) 31 March, 30 June, 30 September and 31 December each calendar year in respect of:
 - (i) a Public Fund; or
 - (ii) an Exempt Fund that is an open-ended Fund;
- (b) 30 June and 31 December each calendar year in respect of:
 - (i) an Exempt Fund that is a closed-ended Fund;
 - (ii) a Qualified Investor Fund; or
 - (iii) a Foreign Fund.

16.6.4 For those Funds referred to in Rule 16.6.3(a), the Fund Manager must submit the Periodic Fund Return within one month of each reporting date.

16.6.5 For those Funds referred to in Rule 16.6.3(b), the Fund Manager must submit the Periodic Fund Return within six months of each reporting date.

16.6.6 The Regulator may require a Fund Manager to complete and submit a Periodic Fund Return in respect of different reporting dates than those specified in Rule 16.6.3.

16.6.7 The Regulator may require a Fund Manager to provide information supplemental to that described in the Periodic Fund Return.

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APP 4 GUIDANCE ON ASSET VALUATION AND PRICING

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Property Fund Valuation function.

Valuation function

3334. The Fund Manager of a Property Fund must, subject to the approval of the Trustee, appoint a Person who is able to provide professional valuation services in accordance with the Rules set out herein.

3435. The Fund Manager must ensure that the Person appointed under paragraph 3334. values each Real Property prior to its acquisition and disposal.

3536. The Fund Manager must commission the Person referred to in paragraph 3334. to produce a valuation report of the Property Fund each year in accordance with paragraph 4041 below. The net asset value of the Fund following this valuation must be reported in the annual report of the Fund.

3637. For these purposes, a Fund Manager must appoint a Person:

- a. who carries on the business of valuing Real Property;
- b. who is not Related to the Fund Manager; and
- c. whom the Fund Manager, and if appointed the Trustee, have reasonable grounds to believe would be capable of providing objective valuation of Real Property. A Fund Manager, and where appointed the Trustee, in this opinion, should be satisfied that the Person to be engaged for providing valuation of Real Property meets if not all, at least most of the following criteria:
 - (i) the Person is a, or has key personnel who are, fellow or associate members of a recognised professional body of surveyors or property valuers and who are qualified to perform property valuations;
 - (ii) the Person has or has access within the organisation to the relevant expertise, that is, knowledge of and experience in the valuation of property of the relevant kind in the relevant area where the property is situated;
 - (iii) the Person has robust internal controls and checks and balances to ensure the integrity of valuation reports and that these reports are

properly and professionally prepared in accordance with international best practice;

- (iv) the Person has adequate professional insurance to cover its usual risks;
- (v) the Person does not have ownership or other commercial links with any other Persons carrying on Regulated Activities in relation to the Fund (such as investment advisers or investment managers appointed to the Fund), which would impair that Person's ability to provide independent and objective valuation services to the Fund; and
- (vi) the Person or any of his associates has not been instrumental in relation to the finding of the Real Property for the Fund.

3738. A Fund Manager must ensure that any valuation by the Person appointed to provide valuation services to the Fund is carried out on the basis of a 'market value' as defined in the Constitution and the most recent Prospectus of the Fund. This valuation report must confirm that if the Real Property was acquired for the Property Fund it could be disposed of at that valuation within a reasonable period.

3839. The Fund Manager must ensure that the property is acquired within a reasonable time from the date of the valuation report.

3940. The Regulator would expect the Fund Manager to define 'market value' to be based on 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; or International Valuation Standards issued from time to time by the International Valuation Standards Committee.

Valuation Report

4041. A Fund Manager must ensure that any valuation report prepared by the Person appointed:

- a. includes all material details in relation to the basis of valuation and the assumptions used;
- b. describes and explains the valuation methodologies adopted;
- c. outlines the overall structure and condition of the relevant market including an analysis of the supply and demand situation, the market trend and investment activities;
- d. includes a brief description of the property, its location, the nature of the interest the Fund holds in the property, its existing use, any encumbrances concerning or affecting the property, the lease expiry profile if any, the capital value in existing state at the date the valuation

was performed, the net monthly income from the property, and any other matters which may affect the property or its value;

- e. confirms the professional status of the valuer and that the valuation report is prepared on a fair and unbiased basis; and
- f. explains the rationale for choosing the particular valuation method if more than one method is available.

4142. A Fund Manager must ensure that whenever a valuation report is prepared for the Fund, the date of the valuation report must be:

- a. the date the Fund is valued, if such report is prepared for the purpose of calculating the net asset value of the Fund; or
- b. a date which is not more than three months before the date on which:
 - (i) an offering document is issued;
 - (ii) a circular is issued, if the circular relates to a transaction that requires Unitholders' approval; or
 - (iii) a sale and purchase agreement or other agreement to transfer legal title is signed, if the transaction does not require Unitholder approval.

Retirement of valuer

4243. A Fund Manager must ensure that where a Person appointed pursuant to paragraph 3637 has conducted valuations of the Real Property for the Fund for five consecutive years, that Person is retired.

4344. A Person retired under paragraph 42-43 must not be re-appointed by the Fund Manager to perform Fund valuation unless a period of two years has elapsed from the date of the retirement of that Person.

4445. The Fund Manager, and if appointed the Trustee on instructions of the Fund Manager, may at any time remove the Person appointed to provide the valuation services by notice in writing in any of the following events:

- a. the Person enters into liquidation, becomes bankrupt or has a receiver appointed over its assets; or
- b. the Fund Manager, in consultation with the Trustee, determines on reasonable grounds that it is necessary to remove that Person in the interests of the Fund and the Unitholders; or
- c. an ordinary resolution is passed by the Unitholders to dismiss that Person.

4546. Upon the retirement or dismissal of the Person appointed to provide the valuation services to the Fund, the Fund Manager must appoint another Person

to provide valuation services to the Fund where the Fund Manager and where appointed the Trustee are satisfied that the Person meets the requirements specified in paragraph 3637.

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