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FINANCIAL CENTRE  

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REGULATORY AUTHORITY

# **Collective Investment Funds Rulebook (COLL)**

**COLL-VER1-July 07**



# Collective Investment Funds Rulebook (COLL)

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## **Collective Investments Funds Rulebook (COLL)**

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made under the

Financial Services Regulations

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## General

### Part 1.1 General provisions

#### 1.1.1 What is a collective investment fund

- (1) *Collective investment fund* has the meaning given by the *Financial Services Regulations*, schedule 3, part 3, paragraph 6.

*Note on FSR definition of collective investment fund*

Paragraphs 6.2 – 6.6 provide as follows:

- 6.2 Subject to paragraphs 6.5 and 6.6, a collective investment fund is any arrangement:
- (1) the purpose or effect of which is to enable persons taking part in the arrangements (the participants) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of property or sums paid out of such profits or income;
  - (2) that meets the property condition in paragraph 6.3 and the investment condition in paragraph 6.4.
- 6.3 An arrangement will meet the property condition referred to in paragraph (2) if:
- (1) the arrangement is made with respect to property of any description, including money, whether the participants become owners of the property or any part of it or otherwise; and
  - (2) any of the participants do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or give directions in respect of the property.
- 6.4 An arrangement will meet the investment condition referred to in paragraph 6.2 if:
- (1) the contributions of the participants and the profits or income out of which payments to be made are pooled; and
  - (2) the property is managed as a whole by or on behalf of the operator of the scheme.
- 6.5 Arrangements for such pooling as is mentioned in paragraph 6.4(1) in relation to separate parts of the property are not to be regarded as constituting a single collective investment fund unless the participants are entitled to exchange rights in one part for rights in another.



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6.6 The Regulatory Authority may make Rules specifying the circumstances in which particular arrangements do not constitute a collective investment fund for the purposes of paragraph 6.1.

- (2) However, a *collective investment fund* does not include an arrangement mentioned in schedule 1.

### 1.1.2 Registered and foreign funds

- (1) A **registered fund** is a *collective investment fund* that is established in the *QFC* and registered under *COLL*.
- (2) A **foreign fund** is a *collective investment fund* that is not established in the *QFC*.

### 1.1.3 Legal forms for registered funds

- (1) A *registered fund* must be 1 of the following:
- (a) a *collective investment company*;
  - (b) a *collective investment partnership*;
  - (c) a *collective investment trust*;
  - (d) *another permitted fund entity*.
- (2) A **collective investment company (CIC)** is an open-ended company with variable share capital incorporated under the *Companies Regulations 2005* if its *articles of association* provide that the company is established for the sole purpose of constituting a collective investment fund.
- (3) A **collective investment partnership (CIP)** is a limited partnership registered under *regulations* if its *partnership agreement* provides that the partnership is established for the sole purpose of constituting a collective investment fund.
- (4) A **collective investment trust (CIT)** is an express trust created under the *Trust Regulations 2007* if its *trust instrument* provides that the trust is established for the sole purpose of constituting a collective investment fund.

- 
- (5) **Another permitted fund entity** is an entity (other than a *CIC*, *CIP* or *CIT*) if—
- (a) the legal form of the entity is permitted under *regulations* or a *rule* or otherwise permitted under an approval, authorisation or licence given by the *QFC Authority* under the *QFC Law*; and
  - (b) an instrument creating the legal form of the entity provides that the entity is established for the sole purpose of constituting a collective investment fund.

- (6) In this rule:

**collective investment fund** has the meaning given by the *FSR*, schedule 3, part 3, paragraph 6.

**entity** means any form of entity, and includes a *body corporate*, *partnership* and unincorporated association.

#### 1.1.4 Types of registered funds

- (1) A **registered CIC** is a *collective investment company* that is a *registered fund*.
- (2) A **registered CIP** is a *collective investment partnership* that is a *registered fund*.
- (3) A **registered CIT** is a *collective investment trust* that is a *registered fund*.
- (4) A **registered qualified investor fund** is a *collective investment fund* that is registered under *COLL* as a qualified investor fund.

*Note* A *private placement fund* is a type of *registered qualified investor fund* and is defined in r 1.2.1.

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## Part 1.2 Private placement fund exemptions

### 1.2.1 What is a private placement fund

- (1) A *registered fund* is a **private placement fund** if—
  - (a) the fund is a *registered qualified investor fund*; and
  - (b) the number of *unitholders* does not at any time exceed 100; and
  - (c) the fund's *constitutional document* contains the statements required by part S2.3 (Additional constitution requirements for private placement funds).
- (2) For the purposes of this rule and the *constitutional document* of the *registered fund*, in working out the number of *unitholders* that the fund has at any time—
  - (a) joint holders of a *unit* count as a single *unitholder*; and
  - (b) a *unit* held on trust for a beneficiary is taken to be held by the beneficiary (rather than the trustee) if—
    - (i) the beneficiary is presently entitled to a share of the trust estate or of the income of the trust estate; or
    - (ii) the beneficiary is, individually or together with other beneficiaries, in a position to control the trustee.

### 1.2.2 Exemptions for private placement funds

- (1) The following provisions of *COLL* do not apply in relation to a *private placement fund*:
  - rule 2.1.3 (2) (e) (Decision on application for registration of fund established in QFC)
  - rule 4.1.3 (c) (Functions of operator generally)
  - rule 4.2.1 (Requirements for independent entity)
  - rule 4.2.2 (Independent entity must comply with legal and regulatory requirements)

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- rule 4.2.3 (Oversight functions of independent entity)
  - rule 4.2.4 (Duty of independent entity to report certain breaches of law etc)
  - rule 4.2.6 (Particular duties of independent entity)
  - rule 4.2.7 (Records of independent entity)
  - rule 4.2.8 (Independent entity must give information etc to operator and auditor)
  - division 4.2.B (Non-QFC independent entities)
  - rule 5.6.2 (1) (c), (2) (c) and (4) (b) (Content of annual reports)
  - rule 5.6.5 (Independent entity's reports)
  - chapter 6 (Investment and borrowing)
  - rule 7.1.6 (2) (a) (Issue and cancellation of shares in multiple classes)
  - rule S3.8 (Independent entity).

(2) The following provisions apply in relation to a *private placement fund* as if—

- (a) the modifications mentioned in schedule 4 were made; and
- (b) any other necessary changes were made:
  - rule 3.1.3 (Relationship between constitutional document and COLL)
  - rule 4.1.1 (Requirements of operator)
  - rule 4.1.4 (Particular duties of operator)
  - rule 4.1.7 (Records of the operator)
  - rule 4.1.8 (Operator must give information etc to independent entity and auditor)
  - rule 4.2.5 (Property safekeeping functions of independent entity)
  - part 4.3 (Other provisions relating to operator and independent entity)
  - rule 5.6.8 (Appointment and removal of auditor etc)

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- rule 7.1.3 (Prices of units)
  - rule 7.1.5 (Issue and cancellation of units generally)
  - rule 7.2.1 (Requirements for unitholder register)
  - part 7.3 (Appointment and replacement of operator and independent entity)
  - part 7.4 (Outsourcing)
  - rule 7.6.1 (Accounting periods)
  - rule 7.7.1 (Name of fund etc)
  - part 8.2 (Winding up)
  - rule 8.3.2 (Transfer schemes)
  - rule S2.12 (Investment and borrowing restrictions)
  - rule S2.7 (Unitholder's liability to pay)
  - rule S2.16 (Functions of operator and independent entity)
  - rule S2.17 (Responsibility statement)
  - rule S2.20 (CIP partnership agreement binding etc)
  - rule S2.21 (CIT trust deed binding etc)
  - rule S2.22 (CIT declaration of trust)
  - rule S2.28 (Other relevant matters)
  - rule S3.2 (Description of fund etc)
  - rule S3.4 (Investment objectives and policy etc)
  - rule S3.17 (Mandatory statement for all funds)
  - rule S3.20 (Additional statements and information for property funds).

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## Chapter 2            Registration of funds

### 2.1.1        Funds established in QFC must be registered

(1) A *person* must not operate a *collective investment fund* that is established in the *QFC* unless the fund is registered under *COLL*.

(2) In this rule:

*operate a collective investment fund* includes being responsible for the management of any property subject to the fund.

### 2.1.2        Application for registration of fund established in QFC

(1) The *person* who is to become the initial *operator* of a *collective investment fund* established in the *QFC* may apply to the *Regulatory Authority* for registration of the fund as a qualified investor fund.

(2) The application must be made in the form approved or prescribed by the *Regulatory Authority* from time to time.

*Note* See also the following provisions:

- r 3.1.4 (Constitutional document and checklist to be filed with Regulatory Authority)
- r 5.2.5 (Prospectus, checklist and any translations to be filed with Regulatory Authority).

(3) The *Regulatory Authority* may, in writing, require the applicant to give the authority additional information or *documents* that the authority reasonably needs to decide the application.

(4) If the applicant does not comply with the requirement, the *Regulatory Authority* may refuse to consider the application.

(5) The applicant may withdraw the application by written notice given to the *Regulatory Authority* at any time before the application is decided.

(6) If, at any time between the making of the application and the application being withdrawn or decided, the applicant becomes

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aware of a material change that is reasonably likely to be relevant to the *Regulatory Authority's* consideration of the application, the applicant must tell the authority in writing about the change without delay.

### **2.1.3 Decision on application for registration of fund established in QFC**

- (1) On an application under rule 2.1.2 for registration of a *collective investment fund*, the *Regulatory Authority* must register the fund as a qualified investor fund or refuse to register the fund.
- (2) The *Regulatory Authority* must register the fund unless it considers that—
  - (a) the *constitutional document* does not comply with rule 3.1.2 (Matters to be included in constitutional document) or contains a provision that conflicts with any provision of *COLL*; or
  - (b) any of the following names is undesirable or misleading, or conflicts with the name of, a *registered fund*, a *subfund* of an *umbrella fund* or a class of *units* of a *registered fund*:
    - (i) the name of the fund;
    - (ii) if the fund is to be an *umbrella fund*—a part of the fund that is to be a *subfund*;
    - (iii) the name of a *class* of *units*; or
  - (c) for a *CIC*—the name of the fund does not clearly identify its status as an open-ended company with variable share capital; or
  - (d) the *person* named in the application as the *person* who is to become the initial *operator* of the fund is not eligible to be the *operator* of the fund under rule 4.1.1 (Requirements for operator) on its registration; or

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(e) the *person* appointed by the *operator*, and named in the application, as the *person* who is to become the initial *independent entity* of the fund is not—

(i) an *authorised firm* that is eligible to be the *independent entity* of the fund under rule 4.2.1 (Requirements for independent entity) on its registration; or

(ii) otherwise an appropriate *person* to be the *independent entity* of the fund; or

*Note 1* This paragraph does not apply in relation to a *private placement fund* (see r 1.2.2 (1)).

*Note 2* For par (e) (ii), see r 4.2.9 (Non-QFC independent entities—criteria for Regulatory Authority action).

(f) the *person* named in the application as the person who is to become the initial auditor of the fund is not eligible to be the auditor of the fund under *GENE 9.7* as applied by rule 5.6.8 (6) (Appointment and removal of auditor etc); or

(g) the *prospectus* drawn up for the fund does not comply with *COLL*; or

(h) the fund does not otherwise comply with *COLL*; or

(i) if the fund's *constitutional document* contains a statement that the fund is a private placement fund—either of the following:

(i) the dominant purpose of the fund becoming a *private placement fund* is to avoid the application of provisions of *COLL* that should apply to the fund in the interests of *participants* or potential *participants* in the fund;

(ii) it is otherwise inappropriate for the fund to become a *private placement fund*, having regard to the interests of *participants* and potential *participants* in the fund; or



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- (j) it is otherwise inappropriate for the fund to be registered under *COLL*.

*Note* The *Regulatory Authority* has power under the *FSR*, art 105 to give certain directions in relation to *collective investment funds*, including a direction to cease the *issue* or *redemption* of *units* in the fund and to wind up the fund.

- (3) The *Regulatory Authority* may register the fund either—
  - (a) without conditions, restrictions or requirements; or
  - (b) with the conditions, restrictions or requirements it considers appropriate.
- (4) The *Regulatory Authority* must give the applicant written notice of its decision on the application.
- (5) If the *Regulatory Authority* refuses to register the fund or registers the fund with conditions, restrictions or requirements not agreed to by the applicant, the notice must—
  - (a) give reasons for the decision; and
  - (b) tell the applicant that the applicant may appeal to the *Regulatory Tribunal* against the decision.
- (6) The applicant may appeal to the *Regulatory Tribunal* against a decision—
  - (a) to refuse to register the fund; or
  - (b) to register the fund with conditions, restrictions or requirements not agreed to by the applicant.

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## Chapter 3            Constitution

### Part 3.1            Constitutional document

#### 3.1.1            What is the constitutional document

- (1) The *constitutional document* is—
  - (a) for a *CIC*—the *articles of association* of the company; and
  - (b) for a *CIP*—the *partnership agreement* of the partnership; and
  - (c) for a *CIT*—the *trust instrument* of the trust; and
  - (d) for another permitted fund entity—any instrument creating the legal form of the entity.
- (2) In this rule:

*another permitted fund entity* has the meaning given by rule 1.1.3 (5) (Legal forms for registered funds).

#### 3.1.2            Matters to be included in constitutional document

The *constitutional document* of a *registered qualified investor fund* must include the statements and provisions required by—

- (a) part S2.1 (Constitution requirements for all funds); and
- (b) part S2.2 (Additional constitution requirements for qualified investor funds); and
- (c) for a *private placement fund*—part S2.3 (Additional constitution requirements for private placement funds).

#### 3.1.3            Relationship between constitutional document and COLL

- (1) A provision of the *constitutional document* of a *registered fund* has no effect to the extent that conflicts with any provision of *COLL*.

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- (2) However, a provision of the *constitutional document* of a *registered fund* must not be taken to conflict with a provision of *COLL* to the extent it can operate concurrently with the provision of *COLL*.
  - (3) The *constitutional document* of a *registered fund* must not contain a provision that conflicts with any provision of *COLL*.
  - (4) Any power given by *COLL* to a *registered fund*, or to the *operator* or *independent entity* of a *registered fund*, is subject to any restriction in the fund's *constitutional document*.

*Note* Subrule (4) applies in relation to a *private placement fund* with the modification mentioned in sch 4 (see r 1.2.2 (2)).

#### **3.1.4 Constitutional document and checklist to be filed with Regulatory Authority**

The *person* who is to become the *operator* of a *collective investment fund* established in the *QFC* must file with the application for registration of the fund—

- (a) a copy of the fund's *constitutional document*; and
- (b) a checklist prepared by the *person* listing all the statements and provisions required by *COLL* and indicating where they are in the *constitutional document*.

#### **3.1.5 Amendments of constitutional document**

- (1) This rule applies if the *constitutional document* of a *registered fund* is amended.
- (2) Not later than 21 days after the day the amendment is made, the *operator* must file with the *Regulatory Authority*—
  - (a) a copy of the amendment and the *constitutional document* as amended; and
  - (b) a written certificate by the *operator* stating that—
    - (i) the amendment was made in accordance with *COLL* and the fund's *constitutional document*; and

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(ii) the *constitutional document* as amended does not contain a provision that conflicts with any provision of *COLL*.

*Note* Under pt 5.4 (Unitholder approvals and notifications) fundamental changes in relation to a *registered qualified investor fund* require the prior approval of an *ordinary resolution* of the *unitholders*. Significant changes require the giving of reasonable notice to *unitholders* to become effective.

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## **Part 3.2                      Units**

### **3.2.1            Classes of units**

The *operator* of a *registered qualified investor fund* may issue the *classes of units* that are set out in the *constitutional document* if the rights of *unitholders* of any *class* are not unfairly prejudiced as against the interests of the *unitholders* of any other *class of units*.

### **3.2.2            Limited issue**

- (1) This rule applies to *units* in a *registered qualified investor fund* if, under the *constitutional document*, the *issue* of the *units* may be limited.
- (2) The *operator* may only *issue* the *units* if the *issue*—
  - (a) is permitted by the *constitutional document*; and
  - (b) is in accordance with the conditions set out in the *latest filed prospectus*; and
  - (c) will not materially prejudice any existing *unitholders*.

### **3.2.3            Fractions of units**

The *constitutional document* of a *registered fund* may authorise the fund to issue fractions of *units*.

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## Chapter 4            The operator and independent entity

### Part 4.1            The operator

#### 4.1.1            Requirements for operator

The *operator* of a *registered fund* must be an *authorised firm* that—

- (a) is a *body corporate*; and
- (b) has an *authorisation* covering each of the following:
  - (i) *operating a collective investment fund*;
  - (ii) *dealing in investments*;
  - (iii) *managing investments*; and
- (c) is permitted under the scope of its *authorisation* to be the *operator* of the fund, *registered funds* of that kind or any *registered fund*; and
- (d) is a different *person* from the *independent entity*; and
- (e) if the fund is a *CIC* or *CIP*—is a different person from the fund; and
- (f) is independent of the *independent entity*.

*Note* This rule applies in relation to a *private placement fund* with the modifications mentioned in sch 4 (see r 1.2.2 (2)).

#### 4.1.2            Operator must comply with legal and regulatory requirements

- (1) The *operator* of a *registered fund* must comply with every legal and regulatory requirement applying to the *operator*—
  - (a) in relation to the fund; or

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- (b) as the *operator* of a *registered fund*; or
  - (c) as an *authorised firm*.
- (2) Without limiting subrule (1), the *operator* must act in accordance with the following:
- (a) *COLL*;
  - (b) the *regulations* under which the *registered fund* is established, including any law applied by, or that supplements, those *regulations*;
  - (c) the other provisions of the law applying in the *QFC* in relation to—
    - (i) the fund; or
    - (ii) the *operator* as the *operator* of a *registered fund* or as an *authorised firm*;
  - (d) the scope of the *operator's authorisation*, including any conditions, restrictions or requirements;
  - (e) the scope of the fund's registration, including any conditions, restrictions or requirements;
  - (f) the *constitutional document*;
  - (g) the *latest filed prospectus*.

#### **4.1.3 Functions of operator generally**

The *operator* of a *registered fund* must—

- (a) ensure that decisions about *investments* and borrowings by the fund are made in accordance with the fund's objectives, especially the fund's investment and borrowing strategies; and
- (b) ensure the *fund property* is—
  - (i) clearly identified as *fund property*; and

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- (ii) held separately from the *operator's* own property, and the property of any other *collective investment fund*; and
  - (c) give the *independent entity* instructions about the exercise of rights in relation to the *fund property*.

*Note 1* The *operator* has *functions* under a number of other provisions of *COLL* eg see pt 7.1 (Valuation, pricing and dealing).

*Note 2* Par (c) does not apply in relation to a *private placement fund* (see r 2.2.2 (1)).

#### **4.1.4 Particular duties of operator**

The *operator* of a *registered fund* must—

- (a) act honestly; and
- (b) exercise the degree of care and diligence that a reasonable person would exercise in the *operator's* position; and
- (c) 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
- (d) treat *unitholders* who hold *units* in the same *class* equally and *unitholders* who hold *units* in different *classes* fairly; and

*Note* Par (d) applies in relation to a *private placement fund* with the modification mentioned sch 4 (see 1.2.2 (2)).

- (e) not make improper use of information acquired through being the *operator*—
  - (i) to gain, directly or indirectly, a personal advantage or an advantage for another *person*; or
  - (ii) to cause detriment to the *unitholders*; and
- (f) not make improper use of the position of *operator*—
  - (i) to gain, directly or indirectly, a personal advantage or an advantage for another *person*; or



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(ii) to cause detriment to the *unitholders*.

#### **4.1.5 Duty of operator to report certain breaches of law**

- (1) This rule applies if—
  - (a) the *operator* of a *registered fund* becomes aware that the *operator*, the *independent entity* or any other *person* has breached, or is about to breach, *COLL*, any other law applying in the *QFC* or the applicable law of any other *jurisdiction*; and
  - (b) the breach has had, or is likely to have, a material adverse effect on the fund or the interests of *unitholders*.
- (2) The *operator* must—
  - (a) immediately tell the *Regulatory Authority* in writing about the breach; and
  - (b) give the authority any information about the breach that it reasonably requires.

*Note* Under *GENE* 4.4 an *authorised firm* must also advise the *Regulatory Authority* of certain significant events.

#### **4.1.6 Register of unitholders**

- (1) The *operator* of a *registered fund* must ensure that a register of *unitholders* is kept as part of the operator's records under rule 4.1.7.
- (2) The *operator* must exercise all due diligence and take reasonable care to ensure that—
  - (a) the register is accurate, complete and up to date; and
  - (b) only a *person* who is a *qualified investor* is recorded in the register.

*Note* Rule 7.2.1 specifies the information that must be included in the register.

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#### 4.1.7 Records of operator

- (1) The *operator* of a *registered fund* must make the records necessary—
  - (a) to enable the *operator* to comply with—
    - (i) *COLL*; and
    - (ii) the other provisions of the law applying in the *QFC*—
      - (A) in relation to the fund; or
      - (B) in relation to the *operator* as the *operator* of a *registered fund*; and
  - (b) to demonstrate at any time whether compliance with *COLL* has been achieved.
- (2) Without limiting subrule (1), the *operator* must make a record of—
  - (a) the *units* in the fund (including their *classes*) held, acquired and disposed of by the *operator*; and
  - (b) the balance of any acquisitions and disposals.
- (3) The *operator* must keep records made for subrules (1) and (2) for at least 6 years after they are made.
- (4) The *operator* must, on request —
  - (a) make the records available for inspection by the *Regulatory Authority, independent entity* and auditor of the fund free of charge within a reasonable period of not longer than 3 days; and
  - (b) give the authority, *independent entity* or auditor free of charge a copy, in the requested form (if any), of any part of the records within a reasonable period of not longer than 3 days.

*Note 1* *GENE 6* also contains provisions about recordkeeping.

*Note 2* Subrule (4) applies in relation to a *private placement fund* with the modifications mentioned in sch 4 (see r 1.2.2 (2)).

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**4.1.8 Operator must give information etc to independent entity and auditor**

The *operator* of a *registered fund* must, on request, immediately give the *independent entity* or auditor of the fund the information and explanations in relation to the fund that the *independent entity* or auditor reasonably requires.

*Note* This rule applies in relation to a *private placement fund* with the modification mentioned in sch 4 (see r 1.2.2 (2)).

**4.1.9 Maintenance of capital notification**

The *operator* of a *registered CIC* must immediately tell the *Regulatory Authority* in writing if the *CIC's* capital falls below the minimum, or exceeds the maximum, stated in the *constitutional document*.

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## Part 4.2 The independent entity

### Division 4.2.A The independent entity generally

#### 4.2.1 Requirements for independent entity

- (1) The *independent entity* of a *registered fund* must be—
  - (a) appointed by the *operator*; and
  - (b) either—
    - (i) an *authorised firm* that—
      - (A) has an *authorisation* covering both *providing custody services* and *operating a collective investment fund*; and
      - (B) is permitted under the scope of its *authorisation* to be the *independent entity* of the fund, *registered funds* of that kind or any *registered fund*; and
      - (C) is a *body corporate*; or
    - (ii) a *body corporate* that is not an *authorised firm* or *QFC licensed firm* if the *operator* has certified in writing that, after performing due diligence, it is satisfied that—
      - (A) the *body corporate* is an appropriate *person* to be the *independent entity* of the fund; and
      - (B) the *body corporate* can effectively carry out the *independent entity's functions* under *COLL*; and
      - (C) the appointment of the *body corporate* as *independent entity* of the fund is in the interest of *participants* and potential *participants* in the fund; and
  - (c) a different *person* from the *operator* and, if the fund is a *CIC* or *CIP*, the fund; and

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- (d) independent of the *operator* and, if the fund is a *CIC* or *CIP*, the fund's *directors* or members; and
  - (e) for a *CIT*—the trustee of the trust.
- (2) In deciding whether to give a certificate under subrule (1) (b) (ii) in relation to a *body corporate*, the *operator* must consider each of the following matters:
- (a) anything the *Regulatory Authority* could consider in assessing the *body corporate's fitness and propriety* if the *body corporate* were an applicant for an *authorisation* under the *FSR*, including the following:
    - (i) the *body corporate's* expertise and market reputation;
    - (ii) the *body corporate's* credit rating, capital and financial resources;
    - (iii) the *body corporate's* regulatory status and history;
    - (iv) the other members of the *body corporate's group* and their activities;
  - (b) the need to ensure that the *body corporate* provides protection for *unitholders* at least equivalent to the protection that would be provided by an *independent entity* that is an *authorised firm*;
  - (c) the regulatory regimes and legal systems (including insolvency laws) to which the *body corporate* is subject;
  - (d) the regulatory authorisations (however described) held by the *body corporate*;
  - (e) whether the *body corporate* has entered into an agreement with the *operator* and, if so, the terms of the agreement;
  - (f) the *body corporate's* arrangements for safekeeping the *fund property* and its use of agents and service providers;
  - (g) the obligations applying to the *body corporate*, and the recourse available against the *body corporate* by the *operator*,

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the *Regulatory Authority* and *participants*, under those regulatory regimes and legal systems in relation to anything done or not done by the *body corporate* in relation to the fund;

- (h) whether the *body corporate* has submitted to the jurisdiction of the *Regulatory Authority*, the *Court* or both.
- (3) Subrule (2) does not limit the matters the *operator* may consider.

*Note* This rule does not apply in relation to a *private placement fund* (see r 1.2.2 (1)).

#### **4.2.2 Independent entity must comply with legal and regulatory requirements**

- (1) The *independent entity* of a *registered fund* must comply with every legal and regulatory requirement applying to the *independent entity*—
- (a) in relation to the fund; or
  - (b) as the *independent entity* of a *registered fund*; or
  - (c) if the *independent entity* is an *authorised firm*—as an *authorised firm*.
- (2) Without limiting subrule (1), the *independent entity* must act in accordance with the following:
- (a) *COLL*;
  - (b) the *regulations* under which the *registered fund* is established, including any law applied by, or that supplements, those *regulations*;
  - (c) the other provisions of the law applying in the *QFC* in relation to—
    - (i) the fund; or
    - (ii) the *independent entity* as the *independent entity* of a *registered fund*; or

- 
- (iii) if the independent entity is an authorised firm—the independent entity as an authorised firm;
  - (d) if the *independent entity* is an *authorised firm*—the scope of the *independent entity's authorisation*, including any conditions, restrictions or requirements;
  - (e) the scope of the fund's registration, including any conditions, restrictions or requirements;
  - (f) the *constitutional document*;
  - (g) the *latest filed prospectus*.

*Note* This rule does not apply in relation to a *private placement fund* (see r 1.2.2 (1)).

#### **4.2.3 Oversight functions of independent entity**

- (1) The *independent entity* of a *registered fund* must take reasonable care to ensure that the fund is managed by the *operator* in accordance with—
  - (a) the following provisions of *COLL*:
    - part 5.1 (Transactions with affected persons)
    - rule 5.6.4 (Operator's reports)
    - chapter 6 (Investment and borrowing)
    - part 7.1 (Valuation, pricing and dealing)
    - part 7.6 (Income—accounting, allocation and distribution); and
  - (b) the provisions of the *constitutional document*, and the *latest filed prospectus*, that relate to any of the following matters:
    - (i) transactions with *affected persons* for the fund or the *operator*;
    - (ii) reports of the *operator* about the fund;

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- (iii) investment and borrowing by the fund;
  - (iv) *dealing in units*;
  - (v) valuation of the *fund property* and *pricing of units*;
  - (vi) income of the fund, including its distribution;
- (2) Without limiting subrule (1), the *independent entity* must take reasonable care to ensure on a continuing basis that—
- (a) the *operator* is adopting appropriate procedures to ensure that the *price* of a *unit* is calculated for each *valuation point* in accordance with *COLL*; and
  - (b) the *operator* has made and kept sufficient records to show that the *price* of a *unit* has been calculated for each *valuation point* in accordance with *COLL*.

*Note* This rule does not apply in relation to a *private placement fund* (see r 1.2.2 (1)).

#### **4.2.4 Duty of independent entity to report certain breaches of law etc**

- (1) This rule applies if the *independent entity* of a *registered fund* becomes aware that the *operator* or any other *person* has breached, or reasonably suspects that the *operator* or any other *person* may have breached, in relation to the fund any provision of *COLL*, any other law applying in the *QFC* or the applicable law of any other *jurisdiction*
- (2) The *independent entity* must immediately tell the *operator* in writing about the breach or suspected breach.
- (3) The *independent entity* must also immediately tell the *Regulatory Authority* in writing about the breach or suspected breach if—
  - (a) the *independent entity* is of the opinion that the *operator* has not taken, or does not propose to take, appropriate action in relation to the breach or suspected breach; and



- 
- (b) the breach or suspected breach—
    - (i) is of a provision mentioned in rule 4.2.3 (1); or
    - (ii) has had, or is likely to have, a material adverse effect on the interests of *unitholders*.
  - (4) The *independent entity* must give the *Regulatory Authority* any information about the breach or suspected breach that the authority reasonably requires.

*Note* This rule does not apply in relation to a *private placement fund* (see r 1.2.2 (1)).

#### **4.2.5 Property safekeeping functions of independent entity**

- (1) The *independent entity* of a *registered fund* is responsible for the safekeeping of all of the *fund property*.
- (2) Without limiting subrule (1), the *independent entity* must—
  - (a) ensure that all of the *fund property* is properly accounted for; and
  - (b) ensure that all of the *fund property* is—
    - (i) clearly identified as *fund property*; and
    - (ii) held separately from the *independent entity's* own property, the *operator's* own property and the property of any other *person*; and
  - (c) ensure that transactions properly entered into for the account of the fund are completed; and
  - (d) ensure that instructions properly given by the *operator* about the exercise of rights in relation to *fund property* are carried out; and
  - (e) ensure that any *fund property* in registrable form is registered as soon as practicable in its own name or in the name of its nominee or delegate, as appropriate; and

- 
- (f) take into its custody or control all *documents evidencing title to fund property*, other than in relation to *derivatives* and forward transactions; and
  - (g) ensure that any resulting benefit of a *derivatives* or forward transaction is received by it for the *fund property*; and
  - (h) collect, hold and deal with income in relation to *fund property*.
- (3) If the *independent entity* is of the opinion that a deal in property in relation to the fund breaches *COLL* or the *constitutional document*, the *independent entity* may require the *operator*—
- (a) to cancel the transaction or make a disposal or acquisition to restore the previous situation; and
  - (b) to meet any resulting loss or expense.
- (4) If the *independent entity* is of the opinion that—
- (a) an acquisition of property necessarily involves *documents evidencing title* being kept in the custody of a *person* other than the *independent entity*; and
  - (b) the *independent entity* cannot reasonably be expected to accept the responsibility that would otherwise be placed on it if it were to permit custody by the other *person*;
- the *operator* must either cancel the transaction or make a corresponding disposal if the *independent entity* asks it to take action under this subrule.

*Note* This rule applies in relation to a *private placement fund* with the modifications mentioned in sch 4 (see r 1.2.2 (2)).

#### **4.2.6 Particular duties of independent entity**

The *independent entity* of a *registered fund* must—

- (a) act honestly; and

- 
- (b) exercise the degree of care and diligence a reasonable person would exercise in the *independent entity*'s position; and
  - (c) be independent of the *operator*; and
  - (d) act as *independent entity* solely in the interests of the *unitholders*; and
  - (e) treat *unitholders* who hold *units* in the same *class* equally and *unitholders* who hold *units* in different *classes* fairly; and
  - (f) not make improper use of information acquired through being the *independent entity*—
    - (i) to gain, directly or indirectly, a personal advantage or an advantage for another *person*; or
    - (ii) to cause detriment to the *unitholders*; and
  - (g) not make improper use of the position of *independent entity*—
    - (i) to gain, directly or indirectly, a personal advantage or an advantage for another *person*; or
    - (ii) to cause detriment to the *unitholders*.

*Note* This rule does not apply in relation to a *private placement fund* (see r 1.2.2 (1)).

#### **4.2.7 Records of independent entity**

- (1) The *independent entity* of a *registered fund* must make the records necessary—
  - (a) to enable the *independent entity* to comply with—
    - (i) *COLL*; and
    - (ii) the other provisions of the law applying in the *QFC*—
      - (A) in relation to the fund; or
      - (B) in relation to the *independent entity* as the *independent entity* of a *registered fund*; and

- 
- (b) to demonstrate at any time whether compliance with *COLL* has been achieved.
- (2) The *independent entity* must keep records made for subrule (1) for at least 6 years after they are made.
- (3) The *independent entity* must, on request—
- (a) make the records available for inspection by the *Regulatory Authority, operator* and auditor of the fund free of charge within a reasonable period of not longer than 3 days; and
  - (b) give the authority, *operator* and auditor free of charge a copy, in the requested form (if any), of any part of the records within a reasonable period of not longer than 3 days.

*Note 1* *GENE 6* also contains provisions about recordkeeping by *independent entities* that are *authorised firms*.

*Note 2* This rule does not apply in relation to a *private placement fund* (see r 1.2.2 (1)).

#### **4.2.8 Independent entity must give information etc to operator and auditor**

The *independent entity* of a *registered fund* must, on request, immediately give the *operator* or auditor of the fund the information and explanations in relation to the fund that the *operator* or auditor reasonably requires.

*Note* This rule does not apply in relation to a *private placement fund* (see r 1.2.2 (1)).

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## Division 4.2.B Non-QFC independent entities

*Note for div 4.2.B*

This division does not apply in relation to a *private placement fund* (see r 1.2.2 (1)).

### 4.2.9 Non-QFC independent entities—criteria for Regulatory Authority action

- (1) This rule applies in relation to the making of a decision by the *Regulatory Authority* under *COLL* about whether a *body corporate* that is not an *authorised firm* or *QFC licensed firm* is an appropriate *person* to be the *independent entity* of a *registered fund* (or a *collective investment fund* established in the *QFC* that is proposed to become a *registered fund*).

*Note* This rule applies to decisions under the following provisions:

- r 2.1.3 (2) (e) (ii) (Decision on application for registration of fund established in QFC)
  - r 4.2.13 (2) (a) (Non-QFC independent entities—removal by Regulatory Authority).
- (2) The *Regulatory Authority* may consider all or any of the following:
    - (a) anything the *Regulatory Authority* could consider in assessing the *body corporate's fitness and propriety* if the *body corporate* were an applicant for an *authorisation* under the *FSR*, including the following:
      - (i) the *body corporate's* expertise and market reputation;
      - (ii) the *body corporate's* credit rating, capital and financial resources;
      - (iii) the *body corporate's* regulatory status and history;
      - (iv) the other members of the *body corporate's group* and their activities;

- 
- (b) the need to ensure that the *body corporate* provides protection for *unitholders* at least equivalent to the protection that would be provided by an *independent entity* that is an *authorised firm*;
  - (c) the regulatory regimes and legal systems (including insolvency laws) to which the *body corporate* is subject;
  - (d) the regulatory authorisations (however described) held by the *body corporate*;
  - (e) whether the *body corporate* has entered into an agreement with the *operator* and, if so, the terms of the agreement;
  - (f) the *body corporate's* arrangements for safekeeping the *fund property* and its use of agents and service providers;
  - (g) the obligations applying to the *body corporate*, and the recourse available against the *body corporate* by the *operator*, the *Regulatory Authority* and *participants*, under those regulatory regimes and legal systems in relation to anything done or not done by the *body corporate* in relation to the fund;
  - (h) whether the *body corporate* has submitted to the jurisdiction of the *Regulatory Authority*, the *Court* or both.
- (3) Subrule (2) does not limit the matters the *Regulatory Authority* may consider.

#### **4.2.10 Non-QFC independent entities—annual compliance certificate**

- (1) This rule applies in relation to the *independent entity* of a *registered fund* if the *independent entity* is not an *authorised firm*.
- (2) The *independent entity* must, not later than 1 February in each year, give the *operator* a certificate about its compliance with its functions under rule 4.2.3 (Oversight functions of independent entity) and rule 4.2.5 (Property safekeeping functions of independent entity) in relation to the *registered fund* during the previous year (the **reporting year**).

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- (3) The certificate must—
- (a) name the *registered fund*; and
  - (b) state whether the *independent entity* complied with all relevant provisions in relation to its *functions* under rule 4.2.3 and rule 4.2.5 and, if it did not fully comply with those provisions, the details of any material non-compliance.
- (4) The certificate must be signed by a *director* of the *independent entity*.
- (5) In this rule:
- relevant provisions*** means the provisions of—
- (a) *COLL*; and
  - (b) any other law applying in the *QFC*; and
  - (c) the applicable law of any other *jurisdiction*.

**4.2.11 Non-QFC independent entities—oversight of property safekeeping functions by operators**

- (1) This rule applies in relation to the *independent entity* of a *registered fund* if the *independent entity* is not an *authorised firm*.
- (2) The *operator* must take reasonable care to ensure that the *independent entity* carries out its functions under rule 4.2.5 (Property safekeeping functions of independent entity) in accordance with *COLL*, any other law applying in the *QFC* and the applicable law of any other *jurisdiction*.

**4.2.12 Non-QFC independent entities—removal by operators**

- (1) This rule applies in relation to the *independent entity* of a *registered fund* if—
  - (a) the *independent entity* is not an *authorised firm*; and

- 
- (b) the *operator* considers that the *independent entity* is not, or is no longer, an appropriate person to be the *independent entity* of the fund
  - (2) In making a decision for subrule (1) (b), the *operator* must consider the matters mentioned in rule 4.2.1 (2) (a) to (h) (Requirements for independent entity).
  - (3) Subrule (2) does not limit the matters the *operator* may consider.
  - (4) If this rule applies, the *operator* must—
    - (a) by written notice given to the *independent entity*, remove the *independent entity*; and
    - (b) appoint another *person* as the *independent entity* of the fund.
  - (5) The *person* appointed must be eligible to be the *independent entity* of the fund under rule 4.2.1.
  - (6) The *operator* must immediately give written notice of the removal and appointment to the *Regulatory Authority*.

#### **4.2.13 Non-QFC independent entities—removal by Regulatory Authority**

- (1) The rule applies in relation to the *independent entity* of a *registered fund* if the *independent entity* is not an *authorised firm*.
- (2) The *Regulatory Authority* may, by written notice given to the *operator*, require the *operator* to remove the *independent entity* and appoint another *person* as the *independent entity* if satisfied that—
  - (a) the *independent entity* is not, or is no longer, an appropriate *person* to be the *independent entity* of the fund; or
    - Note* See r 4.2.9 (Non-QFC independent entities—criteria for Regulatory Authority action)).
  - (b) it is desirable to remove the *independent entity* to protect *participants* or potential *participants* in the fund or the *financial system*; or



- 
- (c) the *independent entity* is in breach of, or has been in breach of, the *QFC Law*, any *regulations* or *rule*, or other relevant legislation of any *jurisdiction*; or
  - (d) a request has been received under the *FSR*, article 20 (International Relations and Co-operation) from an *overseas regulator* in relation to the *independent entity*.
- (3) The *Regulatory Authority* may give a notice under subrule (2) only if it has—
- (a) given the *independent entity* and *operator* prior notice of its intention to give the notice; and
  - (b) given the *independent entity* and *operator* a reasonable opportunity to make representations; and
  - (c) considered any representations made.
- (4) However, subrule (3) does not apply if—
- (a) the *Regulatory Authority* considers that any delay likely to arise because of the application of the subrule would be prejudicial to *participants* or potential *participants* in the *registered fund* or the *financial system*; or
  - (b) the power is to be exercised following a decision by the *Regulatory Authority* under the *FSR*, part 9 (Disciplinary and Enforcement Powers), or by the *Regulatory Tribunal* or the *Court*, in relation to the *independent entity*.
- (5) If subrule (4) (a) applies, the *Regulatory Authority* must—
- (a) give the *independent entity* and the *operator* an opportunity to make representations promptly after the notice under subrule (2) has been given; and
  - (b) consider any representations made.

- 
- (6) If the *Regulatory Authority* gives a notice under subrule (2), it must give the *independent entity* a written notice —
- (a) stating that it has given the notice under subrule (2); and
  - (b) giving reasons for the notice; and
  - (c) tell the *independent entity* that the *independent entity* may appeal to the *Regulatory Tribunal* against the decision.
- (7) The *independent entity* may appeal to the *Regulatory Tribunal* against the decision.
- (8) The *operator* must give effect to a notice under subrule (2).
- (9) The *person* appointed by the *operator* as the replacement *independent entity* must be eligible to be the *independent entity* of the fund under rule 4.2.1 (Requirements for independent entity).

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## Part 4.3 **Other provisions relating to operator and independent entity**

*Note for pt 4.3*

This part applies in relation to a *private placement fund* with the modifications mentioned in sch 4 (see r 1.2.2 (2)).

### 4.3.1 **Duties of officers etc of operator and independent entity**

- (1) This rule applies to a *person* who is an officer, *employee* or agent of the *operator* or *independent entity* of a *registered fund*.
- (2) The *person* must not—
  - (a) make improper use of information acquired through being a *person* to whom this rule applies—
    - (i) to gain, directly or indirectly, a personal advantage or an advantage for another *person*; or
    - (ii) to cause detriment to *unitholders*; or
  - (b) make improper use of the *person's* position as a *person* to whom this rule applies—
    - (i) to gain, directly or indirectly, a personal advantage or an advantage for another *person*; or
    - (ii) to cause detriment to *unitholders*.

### 4.3.2 **Provisions of ch 4 do not limit other functions**

- (1) This rule applies to a provision of this chapter that gives a *function* (however expressed) to the *Regulatory Authority*, the *operator* or *independent entity* of a *registered fund* or another *person*.
- (2) To remove any doubt, the provision is additional to, and does not limit, any *function* given to the *Regulatory Authority*, *operator*, *independent entity* or other *person* under—
  - (a) any other provision of *COLL*; or

- 
- (b) any other law applying in the *QFC*; or
  - (c) for the *operator*—the *constitutional document*.

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## Chapter 5      Investor relations

### Part 5.1      Transactions with affected persons

#### 5.1.1      Transactions with affected persons—general rule

- (1) This rule applies to a transaction by the *operator* of a *registered fund* in relation to *fund property* if the transaction is with an *affected person* for the *operator* or the fund.
- (2) The *operator* must ensure that the transaction—
  - (a) is on terms at least as favourable to the fund as any comparable transaction on normal commercial terms negotiated at arm's length with an independent third party; and
  - (b) does not contravene any other provision of this part; and
  - (c) is not prohibited by the *constitutional document* or the *latest filed prospectus*.

#### 5.1.2      Transactions with affected persons—prior notice to unitholders

- (1) This rule applies to a transaction by the *operator* of a *registered fund* in relation to *fund property* if the transaction is with an *affected person* for the *operator* or the fund.
- (2) The *operator* must not enter into the transaction unless the *operator* has given the *unitholders* prior written notice of the transaction (or transactions that include the transaction), including an explanation of how rule 5.1.1 has been complied with in relation to the transaction (or the transactions).

**Example of written notice**

notice given in the fund's *latest filed prospectus*

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**5.1.3 Transactions with affected persons—transactions involving 5% or more of fund’s net asset value**

- (1) This rule applies to a transaction by the *operator* of a *registered fund* in relation to *fund property* if—
  - (a) the transaction is with an *affected person* for the *operator* or the fund; and
  - (b) the total consideration for, or value of, the transaction (or the transaction and all earlier such transactions within the last 12 *months*) is 5% or more of the latest net asset value of the fund, as disclosed in the fund’s latest audited accounts.
- (2) The *operator* must ensure that the transaction is not entered into unless the *unitholders* have given prior approval to the transaction at a general meeting in accordance with the *constitutional document*.

**5.1.4 Transactions with affected persons—details required for annual report**

- (1) If the *operator* of a *registered fund* enters into any transaction with an *affected person* for the *operator* or the fund in relation to *fund property* during an *annual accounting period*, the fund’s report for the period must include—
  - (a) a summary of the total value of transactions with *affected persons* for the *operator* or the fund in relation to *fund property* during the period; and
  - (b) a summary of the nature of the transactions; and
  - (c) a summary of the identities of the *affected persons*; and
  - (d) if the *unitholders* voted at a general meeting held during the period to approve a transaction with an *affected person*—details of the approval and the results of the voting in relation to the approval.

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- (2) If the *operator* of a *registered fund* does not enter into a transaction with an *affected person* for the *operator* or the fund in relation to *fund property* during an *annual accounting period*, the fund's report for the period must include a statement to that effect.

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## Part 5.2 Prospectus requirements

### 5.2.1 Prospectus to be drawn up

The *operator* of a *registered fund* must ensure that a *prospectus* is drawn up for the fund in accordance with *COLL*.

### 5.2.2 Prospectus to be made available

The *operator* of a *registered fund* must make available free of charge the *latest filed prospectus*, and the *latest filed translation* of the *prospectus* in each language for which there is a translation prepared by or for the *operator*, to any *person* eligible to invest in the fund before the *person buys units* (or additional *units*) in the fund.

### 5.2.3 General information requirements for prospectus

- (1) The *operator* of a *registered fund* must ensure that the fund's *prospectus* at all times contains all the information that investors and their professional advisers would reasonably require, and reasonably expect to have drawn to their attention, in the *prospectus* for the purpose of making an informed judgment about—
  - (a) the merits and risks of participating in the fund; and
  - (b) the extent and characteristics of the risks accepted by participating in the fund.
- (2) The *operator* must ensure that at all times the *prospectus* contains a clear and easily understandable explanation of any risks that investment in the fund may reasonably be regarded as presenting to investors in the fund.
- (3) Without limiting subrules (1) and (2), the *operator* must ensure that at all times the *prospectus* includes the information and statements required by—



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- (a) for a *registered qualified investor fund* that is not a *private placement fund*—part S3.1 (Prospectus content required for all qualified investor funds); or
  - (a) for a *private placement fund*—part S3.1 and part S3.2 (Additional prospectus content required for private placement funds).

#### **5.2.4 Other general requirements for prospectus**

- (1) The *operator* of a *registered fund* must ensure that any *prospectus* for the fund—
  - (a) is in English; and
  - (b) presents information about the fund clearly and fairly; and
  - (c) does not contain any untrue, deceptive or misleading statement; and
  - (d) otherwise complies with *COLL*.
- (2) Subrule (1) (a) does not prevent the *operator* preparing, or arranging for the preparation of, a translation of the *prospectus* in any other language.
- (3) However, the *operator* must ensure that any translation of a *prospectus* prepared by or for the *operator*—
  - (a) presents information about the fund clearly and fairly; and
  - (b) does not contain any untrue, deceptive or misleading statement; and
  - (c) is otherwise a correct translation; and
  - (d) prominently displays the date of the translation; and
  - (e) states that it is a translation authorised by the *operator*; and
  - (f) otherwise complies with *COLL*.

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### 5.2.5 Prospectus, checklist and any translations to be filed with Regulatory Authority

- (1) The *person* who is to become the *operator* of a *collective investment fund* established in the *QFC* must file with the application for registration of the fund—
  - (a) the original *prospectus* for the fund; and
  - (b) a checklist prepared by the *person* listing all the statements and information required by *COLL* and indicating where they are in the original *prospectus*; and
  - (c) each translation of the original *prospectus* that has been prepared by or for the *person*; and
  - (d) for each translation mentioned in paragraph (c)—a certificate by the person who made the translation stating that the translation is a correct translation of the original *prospectus*.
- (2) If the *person* mentioned in subrule (1) (either before or after becoming the initial *operator* of the fund), or a *person* who is a later *operator* of the fund, prepares another translation of the original *prospectus* or has another translation prepared, the *person* must immediately file with the *Regulatory Authority*—
  - (a) the translation; and
  - (b) a certificate by the person who made the translation stating that the translation is a correct translation of the original *prospectus*.
- (3) The certificate of a person under subrule (1) (d) or (2) (b) must state, in English, the person's—
  - (a) full name and address; and
  - (b) qualifications for making the translation.

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### 5.2.6 Revisions of prospectus etc

- (1) The *operator* of a *registered fund* must keep the *latest filed prospectus* under review.
- (2) If the *operator* becomes aware of the happening of any materially significant change affecting a statement or information required to be included in the *prospectus*, the *operator* must—
  - (a) immediately revise the *prospectus* and immediately file a revised or supplementary *prospectus* with the *Regulatory Authority*; and
  - (b) if a translation of the *latest filed prospectus* has been filed with the authority in a particular language — the *operator* must immediately prepare, or arrange for the preparation of, a translation of the revised or supplementary prospectus in that language and immediately file the translation with the authority.
- (3) Without limiting subrules (1) and (2), the *operator* must, at least once every 12 *months*—
  - (a) review the *latest filed prospectus*, make any revisions necessary and, whether or not revisions are necessary, immediately file a *prospectus* or revised *prospectus* with the *Regulatory Authority*; and
  - (b) if a translation of the *latest filed prospectus* has been filed with the authority in a particular language—file with any revised or supplementary *prospectus* filed under paragraph (a) a translation of that *prospectus* in the same language.
- (4) Subrule (3) does not apply in relation to a period of at least 12 *months* if the *operator* does not sell, or offer to *sell*, *units* in the fund at any time during the period.

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- (5) To remove any doubt, subrules (2) and (3) do not prevent the *operator*—
- (a) revising the *latest filed prospectus* at any other time; or
  - (b) preparing, or arranging for the preparation of, a translation or revised translation of the *latest filed prospectus* in any language.
- (6) If the *operator* revises the *latest filed prospectus* otherwise than under subrule (2) or (3), the *operator* must immediately file a revised or supplementary *prospectus* with the *Regulatory Authority*.
- (7) If the *operator* prepares, or arranges for the preparation of, a translation or revised translation of the *latest filed prospectus* otherwise than under subrule (2) or (3), the *operator* must immediately file the translation with the *Regulatory Authority*.
- (8) A *prospectus* filed under this rule must be accompanied by a checklist prepared by the *operator* listing all the statements and information required by *COLL* and indicating where they are in the *prospectus*.
- (9) A translation of a *prospectus* filed under this rule must be accompanied by a certificate signed by the person who made the translation stating that the translation is a correct translation of the *prospectus*.
- (10) The certificate of a person under subrule (9) must state, in English, the person's—
- (a) full name and address; and
  - (b) qualifications for making the translation.

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## Part 5.3 Responsibility for prospectus

### 5.3.1 Persons responsible for prospectus

- (1) Each of the following *persons* is responsible for a *registered fund's prospectus*:
  - (a) the *operator*;
  - (b) each *director* or member (however described) of the *governing body* of the *operator*;
  - (c) subject to subrules (2) and (3), each *person* who has accepted, and is stated in the *prospectus* to have accepted, responsibility for the *prospectus* or any part of it;
  - (d) subject to subrules (2) and (3), each *person* who is taken under rule 5.3.2 (Responsibility for expert statements in prospectus) to have accepted responsibility for part of the *prospectus*;
  - (e) subject to subrules (2) and (3), each *person* not mentioned in paragraphs (a) to (d) who has authorised, and is stated in the *prospectus* to have authorised, the *prospectus* or any part of it.
- (2) If a *person* accepts (or is taken under rule 5.3.2 to have accepted) responsibility for, or authorises, only part of a *prospectus*, the *person* is responsible only for that part of the *prospectus*.
- (3) However, the *person* is responsible for that part of the *prospectus* only if it is included in, or substantially in, the form and context in which the *person* accepted responsibility for it, consented to its inclusion or authorised it.
- (4) This rule does not make a *person* responsible for a *prospectus* only because the *person* gave advice about its contents, in a professional capacity, to a *person* mentioned in subrule (1) (a) to (e).

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### 5.3.2 Responsibility for expert statements in prospectus

- (1) For this rule, an *expert* is a *person* whose profession or reputation gives authority to statements made by the *person*.
- (2) For rule 5.3.1 (1) (d), an expert is taken to have accepted responsibility for a part of a *registered fund's prospectus* if—
  - (a) the part is a statement made by, or is based on a statement made by, the expert; and
  - (b) the expert gave the *operator* written consent for the statement to be included in the *prospectus*; and
  - (c) the *prospectus* states that the expert authorised the statement; and
  - (d) the expert does not withdraw the consent, by written notice given to the *operator*, before the *prospectus* is filed with the *Regulatory Authority*.
- (3) The *operator* must keep, for at least 6 years after the day the *prospectus* is last made available to a *person* eligible to invest in the fund—
  - (a) the expert's consent; and
  - (b) any written notice given to the *operator* withdrawing the expert's consent.

### 5.3.3 Liability for prospectus

- (1) A *person* responsible under rule 5.3.1 (Persons responsible for prospectus) for a *prospectus* is liable to pay compensation to another *person* who acquired (or contracted to acquire) *units* in the fund for any loss or damage arising from—
  - (a) any untrue, deceptive or misleading statement in the *prospectus*; or
  - (b) the omission from the *prospectus* of any matter required by *COLL* to have been included in it.

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- (2) However, if rule 5.3.1 (1) (c), (d) or (e) applies to the *person*, the *person* is only liable to pay compensation in relation to a part of the prospectus for which the *person* is responsible under rule 5.2.1 (2) and (3).
  - (3) Also, this rule is subject to rule 5.3.4.
  - (4) To remove any doubt, this rule does not limit any liability that exists apart from this rule.
  - (5) In this rule:  
*prospectus* includes a translation of the *prospectus* prepared by or for the *operator*.

#### **5.3.4 Exceptions from liability for prospectus**

- (1) A *person* (other than the *operator*) is not liable under rule 5.3.3 to pay compensation, in relation to a statement in, or omission from, a *registered fund's prospectus*, to another *person* who acquired *units* in the fund if—
  - (a) at the time the *prospectus* was filed with the *Regulatory Authority*, the *person* believed on reasonable grounds, after having made any inquiries that were reasonable, that the statement was true and not deceptive or misleading or that the omitted matter was properly omitted; and
  - (b) 1 or more of the following subparagraphs apply:
    - (i) the *person* continued in that belief until the *units* were acquired;
    - (ii) the *units* were acquired before it was reasonably practicable to bring a correction to the attention of potential purchasers of the *units*;
    - (iii) before the *units* were acquired, the *person* had already taken all reasonable steps to ensure that a correction was brought to the attention of potential purchasers of the *units*;

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- (iv) the *person* who acquired the *units* was not materially influenced or affected by the statement or omission in making the decision to invest.

*Note* See defs *acquire* and *prospectus* in r (6)

- (2) A *person* (the ***first person***) is not liable under rule 5.3.3 to pay compensation, in relation to a statement in a *registered fund's prospectus*, to another *person* who acquired *units* in the fund if—
  - (a) the statement is a part of the *prospectus* for which a third *person* (the ***expert***) is taken, under rule 5.3.2 (Responsibility for expert statements in prospectus), to have accepted responsibility; and
  - (b) at the time the *prospectus* was filed with the *Regulatory Authority*, the *first person* believed on reasonable grounds, after having made any inquiries that were reasonable—
    - (i) that the expert was competent to make the statement; and
    - (ii) that the expert gave the *operator* written consent to include the statement in the *prospectus*; and
    - (iii) that the expert had not withdrawn the consent; and
    - (iv) that the statement was included in, or substantially in, the form and context in which the expert consented to its inclusion; and
  - (c) 1 or more of the following subparagraphs apply:
    - (i) the *first person* continued in that belief until the *units* were acquired;
    - (ii) the *units* were acquired before it was reasonably practicable to bring a correction to the attention of potential purchasers of the *units*;
    - (iii) before the *units* were acquired, the *first person* had already taken all reasonable steps to ensure that a



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- correction was brought to the attention of potential purchasers of the *units*;
- (iv) the *person* who acquired the *units* was not materially influenced by the statement in making the decision to invest.
- (3) For the application of subrule (1) (b) (iii) or (2) (c) (iii) in relation to a *person*, it is sufficient if, before the *units* were acquired—
- (a) the correction had been published in a way likely to bring it to the attention of potential purchasers of the *units*; or
- (b) the *person* took all reasonable steps to ensure that such a correction was published and believed on reasonable grounds the correction had been published.
- (4) A *person* is not liable under rule 5.3.3 to pay compensation, in relation to a statement in or omission from a *registered fund's prospectus*, to another *person* who acquired *units* in the fund if the other *person* knew, at the time of acquisition, that the statement was untrue, deceptive or misleading or of the omission.
- (5) For this rule—
- (a) a revised or supplementary *prospectus* is taken to be a different *prospectus* from the original *prospectus*, and
- (b) each revised or supplementary *prospectus* filed with the *Regulatory Authority* is taken to be a different *prospectus* from each other revised or supplementary *prospectus* filed with the authority.
- (6) In this rule:
- acquire units*** includes contract to acquire them.
- prospectus*** includes a translation of the *prospectus* prepared by or for the *operator*.

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## Part 5.4 Unitholder approvals and notifications

### 5.4.1 Changes in relation to funds

- (1) Any proposed change that would reasonably be considered a fundamental change in relation to a *registered qualified investor fund* requires the prior approval of an *ordinary resolution* of the *unitholders*.
- (2) Any proposed change that would not reasonably be considered a fundamental change in relation to a *registered qualified investor fund*, but that would reasonably be considered a significant change, requires the giving of reasonable notice to *unitholders* to become effective.
- (3) If a change mentioned in subrule (1) or (2) affects only a particular *subfund* or *class* of *units*, it is sufficient to comply with the subrule only in relation to *unitholders* of the *subfund* or *class* of *units*.
- (4) For subrule (3), the provisions of *COLL* apply in relation to the change as if—
  - (a) a reference to *unitholders* of the fund were a reference to the *unitholders* of the *subfund* or *class* of *units*; and
  - (b) all other necessary changes were made.
- (5) The *operator* of a *registered qualified investor fund* must ensure this rule is complied with.
- (6) If a fundamental change in relation to a *registered qualified investor fund* happens, the *operator* must give the *Regulatory Authority* written notice of the change not later than 21 days after the day the change happens.

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## **Part 5.5                      Meetings of unitholders**

### **5.5.1            Unitholder meetings**

- (1) For a *registered qualified investor fund*, details of the procedures for the calling and conducting of meetings, and for resolutions, must be set out in the *constitutional document*.
- (2) The procedures must be reasonable and fair as between the parties.
- (3) The *operator* must record minutes of all proceedings to which rule 5.4.1 (Changes in relation to funds) or this rule apply.
- (4) The *operator* must keep the minutes at least for 6 years after the day they are made.

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## Part 5.6 Reports, accounts and auditor

### 5.6.1 Reports and accounts generally

- (1) The *operator* of a *registered qualified investor fund* must prepare a report for each *annual accounting period* and *half-yearly accounting period* in accordance with this part.
- (2) However if the first *annual accounting period* is less than 12 *months*, a half-yearly report need not be prepared for that period.
- (3) A report for an *annual accounting period* must be prepared within 4 months after the end of the period, and a report for a *half-yearly accounting period* must be prepared within 2 months of the end of the period.
- (4) The *operator* must give a copy of an annual or half-yearly report free of charge to any *unitholder* on request.
- (5) If a *person* eligible to invest in the fund asks for a copy of the latest annual or half-yearly report, the *operator* must give a copy free of charge to the *person* before any sale (or further sale) of *units* to the *person* is concluded.
- (6) The *operator* must give a copy of each annual and half-yearly report to the *Regulatory Authority* within 21 days after the day the report is prepared.
- (7) For a *registered qualified investor fund* that is an *umbrella fund*, any annual report given to a *unitholder* or other *person* under subrule (4) or (5) may be a report prepared under rule 5.6.2 (3).
- (8) However, the *operator* must also give the *unitholder* or other *person* a copy of the report prepared under rule 5.6.2 (2) for the period if the *unitholder* or other *person* asks for it.

### 5.6.2 Content of annual reports

- (1) An annual report for a *registered qualified investor fund*, other than a fund that is an *umbrella fund*, must contain the following:

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- (a) the full audited accounts for the *annual accounting period*;
  - (b) the *operator's* report for the period in accordance with rule 5.6.4 (Operator's reports);
  - (c) the *independent entity's* report for the period in accordance with rule 5.6.5 (Independent entity's reports);
  - (d) the auditor's report for the period in accordance with rule 5.6.6 (Auditor's reports).
- (2) An annual report for a *registered qualified investor fund* that is an *umbrella fund* must be prepared for the fund as a whole and must contain the following:
- (a) for each *subfund*—the full audited accounts for the *annual accounting period* required by subrule (1) (a) and the *operator's* report for the period in accordance with rule 5.6.4;
  - (b) an aggregation of the accounts for the period required by paragraph (a);
  - (c) the *independent entity's* report for the period in accordance with rule 5.6.5;
  - (d) the auditor's report for the period in accordance with rule 5.6.6.
- (3) The *operator* of a *registered qualified investor fund* that is an *umbrella fund* may, in addition to complying with subrule (2), prepare a further annual report for any 1 or more individual *subfunds*.
- (4) A report under subrule (3) must contain the following:
- (a) for the *subfund*—the full audited accounts for the *annual accounting period* required by subrule (1) (a) and the *operator's* report for the period in accordance with rule 5.6.4;
  - (b) the *independent entity's* report for the period in accordance with rule 5.6.5;

- 
- (c) the auditor's report for the period in accordance with rule 5.6.6.
  - (5) The *operator* of a *registered qualified investor fund* must ensure that the accounts mentioned in subrule (1) (a), (2) (a) and (4) (a) give a true and fair view of—
    - (a) the net income and the net gains and losses on the *fund property* of the fund or *subfund* for the *annual accounting period*; and
    - (b) the financial position of the fund or *subfund* as at the end of the period.

*Note* Subrules (1) (c), (2) (c) and (4) (b) do not apply in relation to a *private placement fund* (see r 1.2.2 (1)).

### **5.6.3 Content of half-yearly reports**

- (1) A half-yearly report for a *registered qualified investor fund*, or a *subfund* of a *registered qualified investor fund* that is an *umbrella fund*, must contain—
  - (a) the full accounts for the *half-yearly accounting period*; and
  - (b) the *operator's* report for the period in accordance with rule 5.6.4.
- (2) For an *umbrella fund*, the *operator* may choose whether the half-yearly report is prepared for the fund as a whole, for each individual *subfund*, or both.

### **5.6.4 Operator's reports**

A report of the *operator* of a *registered qualified investor fund* for a period must include the following:

- (a) a review of the investment activities of the fund during the period against the *prospectus* applying to the period;

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- (b) particulars of any changes in relation to the fund since the date of the *operator's* last report that are fundamental or significant changes;
  - (c) any other information that would enable *unitholders* to make an informed judgment on the development of the activities of the fund during the period and the results of those activities as at the end of the period.

#### **5.6.5 Independent entity's reports**

- (1) The *independent entity* of a *registered qualified investor fund* must make an annual report to the *unitholders*.
- (2) The report for an *annual accounting period* must include the following:
  - (a) a description, which may be in summary form, of the duties of the *independent entity* under *COLL*;
  - (b) a statement whether, in any material respect, the provisions mentioned in rule 4.2.3 (1) (Oversight functions of independent entity) have not been complied with during the period;
  - (c) a statement whether, in any material respect, the investment and borrowing powers and restrictions applying to the fund have been exceeded during the period.
- (3) The *independent entity* must give the report to the *operator* for inclusion in the annual report prepared under rule 5.6.1 (Reports and accounts generally) for the *annual accounting period*.

*Note* This rule does not apply in relation to a *private placement fund* (see r 1.2.2 (1)).

#### **5.6.6 Auditor's reports**

The *operator* of a *registered qualified investor fund* must ensure that the report of the auditor to the *unitholders* for an *annual accounting period* includes the following statements:

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- (a) whether, in the auditor's opinion, the accounts have been properly prepared in accordance with *COLL* and the *constitutional document*;
  - (b) whether, in the auditor's opinion, the accounts give a true and fair view of—
    - (i) the net income and the net gains or losses of the *fund property* (or the *fund property* attributable to the relevant *subfund*) for the period; and
    - (ii) the financial position of the fund (or *subfund*) as at the end of the period;
  - (c) whether the auditor is of the opinion that proper accounting records for the fund (or *subfund*) have been kept and whether the accounts are in agreement with the accounting records;
  - (d) whether the auditor has been given all the information and explanations that, to the best of the auditor's knowledge and belief, are necessary for the purposes of the audit;
  - (e) whether the auditor is of the opinion that the information given in the *operator's* report for the period is consistent with the accounts.

#### **5.6.7 Accounting standards for funds**

- (1) Unless subrule (2) or (3) applies, the *operator* of a *registered fund* must prepare and keep all financial accounts and statements in accordance with—
  - (a) *US GAAP*; or
  - (b) *UK GAAP* or *IFRS* as supplemented, if appropriate, by the Statement of Recommended Practice issued from time to time by the United Kingdom Investment Managers Association.
- (2) If the fund is an *Islamic fund*, the *operator* must prepare and keep all financial accounts and statements in accordance with the accounting standards of *AAOIFI FAS 14*.



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- (3) If the *operator* of an *umbrella fund* operates 1 or more *Islamic subfunds*, it must prepare and keep all financial accounts and statements in accordance with *IFRS*, as supplemented by *AAOIFI FAS 14*.

*Note* *AAOIFI FAS 14* sets out the accounting rules for recognising, measuring and presenting the assets managed and funds mobilised on the basis of Islamic Shari'a rules and principles in the financial accounts and statements of conventional institutions that offer Islamic financial services, as well as the income generated from these services. The standard also sets out the necessary disclosures related to these services.

#### **5.6.8 Appointment and removal of auditor etc**

- (1) The *operator* of a *registered fund* must ensure that there is an auditor of the fund at all times.
- (2) The *operator* of a *registered fund* may, from time to time with the *independent entity's* approval, appoint a *person* as auditor of the fund.
- (3) The audit fees of the auditor are as decided by the *operator* with the *independent entity's* approval.
- (4) The *operator* may remove the auditor at any time with the *independent entity's* approval.
- (5) The power under subrule (4) has effect despite anything in any agreement between the auditor and all or any of the following:
- (a) the *operator*;
  - (b) the *independent entity*;
  - (c) the fund.
- (6) *GENE 9.7* (Appointment and removal of Auditors) applies to the appointment and removal of the auditor of the fund as if the fund were an *authorised firm*.

*Note* Subrules (2), (3), (4) and (5) apply in relation to a *private placement fund* with the modifications mentioned in sch 4 (see r 1.2.2 (2)).

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## Chapter 6 Investment and borrowing

*Note for ch 6*

This chapter does not apply in relation to a *private placement fund* (see r 1.2.2 (1)).

### 6.1.1 Spread of risk

The *operator* of a *registered qualified investor fund* must take reasonable steps to ensure that the *fund property* provides a spread of risk, taking into account the investment objectives and policy of the fund as stated in the *constitutional document* and the *latest filed prospectus*, and, in particular, any investment objective about return to the *unitholders* (whether through capital appreciation, income or both).

### 6.1.2 General investment powers

- (1) The *operator* of a *registered qualified investor fund* must ensure that *investments* included in the *fund property* are *investments* to which the fund is *dedicated*.
- (2) Subrule (1) is subject to the other provisions of this chapter.
- (3) The *constitutional document* and the *latest filed prospectus* may further restrict—
  - (a) the types of assets in which the *fund property* may be invested; and
  - (b) the types of transactions permitted and any relevant limits; and
  - (c) the borrowing power of the fund.
- (4) The *operator* must ensure that any restrictions are complied with.

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### 6.1.3 Investments in collective investment funds

- (1) The *operator* of a *registered qualified investor fund* must ensure that the fund invests in *units* in a *collective investment fund* (the *second fund*) only if—
  - (a) the second fund is a *registered fund*; or
  - (b) the second fund is a *foreign fund*, and the *operator* has taken reasonable care to decide that the second fund satisfies each of the following requirements:
    - (i) it is subject to an independent annual audit conducted in accordance with international accounting standards;
    - (ii) it has its value verified by a *person* independent of the fund's *fund manager* in relation to each *day* on which dealing in the fund's *units* may take place;
    - (iii) there are mechanisms in place to enable *unitholders* of the fund to redeem their *units* within a reasonable time;
    - (iv) it is prohibited from having more than 15% of its value in *units of collective investment funds*;
    - (v) it operates in accordance with the principle of risk spreading.
- (2) If the second fund is an *umbrella fund*, subrule (1) applies to each *subfund* as if it were a separate *collective investment fund*.

### 6.1.4 Delivery of property under transactions in derivatives and commodity contracts

- (1) The *operator* of a *registered qualified investor fund* must take reasonable care to decide the following when entering into any transaction in *derivatives*, or any *commodity* contract, that may result in any asset becoming part of the *fund property*:
  - (a) if it is an asset in which the *fund property* could be *invested*—that the transaction—

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- (i) can be readily *closed out*; or
  - (ii) would at the expected time of delivery relate to an asset that could be included in the *fund property* under the provisions of this chapter;
- (b) in any other case—that the transaction can be readily *closed out*.
- (2) If the *operator* makes a decision under subrule (1) in relation to an asset that proves to be incorrect, the *operator* may nevertheless acquire the asset for the fund if the *operator* decides on reasonable grounds that the acquisition is in the interest of the *unitholders*.
  - (3) An asset acquired under subrule (2) may form part of the *fund property* until the position can be rectified.
  - (4) Subrule (3) applies despite any other provision of this chapter.

#### **6.1.5 Cover for transactions in derivatives and forward transactions**

- (1) A transaction in *derivatives* or a forward transaction may be entered into by the *operator* of a *registered qualified investor fund* only if the maximum exposure, in terms of the *principal* or *notional principal* created by the transaction to which the fund is or may be committed by another *person*, is covered globally under subrule (2).
- (2) Exposure is covered globally if adequate cover from within the *fund property* is available to meet the fund's total exposure taking into account any reasonably foreseeable market movement.
- (3) The total exposure relating to *derivatives* held in the fund may not exceed the net value of the *fund property*.
- (4) No element of cover may be used more than once.

#### **6.1.6 Valuation of OTC derivatives**

- (1) The *operator* of a *registered qualified investor fund* must ensure that a transaction by the fund in an *OTC derivative* can be valued.

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- (2) For subrule (1), the transaction *can be valued* only if the *operator* having taken reasonable care decides that, if the transaction were to be entered into, the *operator* could value the *investment* throughout the life of the *OTC derivative* with reasonable accuracy on a basis that—
- (a) either—
    - (i) is the pricing model; or
    - (ii) is some other reliable basis reflecting an up-to-date market value; and
  - (b) has been agreed between the *operator* and *independent entity*.

**6.1.7 Continuing nature of limits and requirements for derivatives and forward transactions**

- (1) The *operator* of a *registered qualified investor fund* must, as frequently as necessary to ensure compliance with rule 6.1.5 (3) (Cover for transactions in derivatives and forward transactions), recalculate the amount of cover required in relation to *derivatives* and forwards positions.
- (2) *Derivatives* and forward positions may be kept in the *fund property* only so long as they remain covered globally under rule 6.1.5.
- (3) The *operator* must use a risk management process enabling it to monitor and measure as frequently as appropriate the risk of the fund's *derivatives* positions and their contribution to the fund's overall risk profile.

**6.1.8 Permitted stock lending etc**

- (1) The *independent entity* of a *registered qualified investor fund* may, at the *operator's* request, enter into a *repo agreement* or *stock lending* arrangement.
- (2) Subrule (1) is subject to the *constitutional document* and the *latest filed prospectus*.

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- (3) The *independent entity* must ensure that the value of any collateral for the *stock lending* arrangement is at all times at least equal to the value of the *securities* transferred by the *independent entity*.
  - (4) If the validity of any collateral expires, the *independent entity's* duty under subrule (3) is satisfied if the *independent entity* or the *operator*, as appropriate, takes reasonable care to ensure that sufficient collateral will be transferred by close of business on the *day* of the expiry.
  - (5) In this rule:  
*collateral* means—
    - (a) a transfer of assets (otherwise than by way of a sale) subject to a right of the transferor to have transferred back to it the same, or equivalent, assets or the assets transferred by the original transferor; or
    - (b) a letter of credit.

### **6.1.9 Borrowing**

- (1) The *operator* of a *registered qualified investor fund* must—
  - (a) ensure that the fund's borrowing does not, on any *day*, exceed the permitted percentage of the net value of the *fund property*; and
  - (b) take reasonable care to ensure that arrangements are in place that will enable borrowings to be closed out to ensure compliance with paragraph (a).
- (2) For subrule (1) (a), the *permitted percentage* is—
  - (a) 100 %; or
  - (b) if the *Regulatory Authority*, in writing, sets a different percentage (whether higher or lower) for the fund (whether at the time of registration or later) or for *registered qualified investor funds* that include the fund—the percentage set.

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- (3) If the *Regulatory Authority* sets a different percentage applying to a *registered qualified investor fund*, the authority must tell the *operator* of the fund in writing.
  - (4) If the limit in subrule (1) is breached, the *operator* must take action in accordance with rule 6.1.13 (2) to (4) (Breaches of ch 6).
  - (5) In this rule:  
*borrowing* includes any arrangement (including a combination of *derivatives*) designed to achieve a temporary injection of *money* into the *fund property* in the expectation that the amount will be repaid.

#### **6.1.10 Investment in property**

- (1) The *operator* of a *registered qualified investor fund* must ensure that any *investment* in land or a building held as part of the *fund property* must be in an immovable to which subrule (2) applies.
- (2) This subrule applies to an immovable if the following requirements are satisfied:
  - (a) it must be located in a country or territory identified in the *latest filed prospectus*;
  - (b) the *operator* must have taken reasonable care to decide that the title to the interest in the immovable is a good marketable title;
  - (c) the *operator* or *independent entity* must have received a report from an appropriate valuer valuing the interest in the immovable (with or without any relevant existing mortgage) and stating either—
    - (i) that, in the valuer’s opinion, the interest in the immovable could, if acquired by the fund, be disposed of reasonably quickly at that valuation; or
    - (ii) that—

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- (A) the immovable is adjacent to or in the vicinity of another immovable included in the *fund property*; and
  - (B) in the valuer's opinion, the total value of the interests in both immovables would at least equal the total of the price payable for the interest in the immovable and the existing value of the interest in the other immovable.
- (3) However, subrule (2) does not apply to the immovable if—
    - (a) it becomes apparent to the *operator* that the report under subrule (2) (c) can no longer reasonably be relied on; or
    - (b) the price of the immovable is more than 105% of the valuation of the interest in the immovable in the report under subrule (2) (c).
  - (4) For this rule, any contents of a building may be regarded as part of the relevant immovable.
  - (5) For this rule, an ***appropriate valuer*** is a person who—
    - (a) has knowledge of and experience in the valuation of immovables of the relevant kind in the relevant area; and
    - (b) is qualified to be a *standing independent valuer* of a *registered fund* or is considered by the fund's *standing independent valuer* to hold an equivalent qualification; and
    - (c) is independent of the *operator* and *independent entity*; and
    - (d) was not personally engaged, and does not have an *associated person* who was engaged, in relation to finding the immovable for the fund or finding the fund for the immovable.

### **6.1.11 Investment limits for immovables**

- (1) The following limits apply in relation to immovables held as part of the *fund property* of a *registered qualified investor fund*:



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- (a) the amount secured by mortgages over any immovable must not exceed 100% of the latest valuation in a report under rule 6.1.10 (2) (c) (Investment in property) or by the fund's *standing independent valuer*;
  - (b) no option may be granted to a *person* to buy or obtain an interest in any immovable if this might unduly prejudice the ability to provide *redemption*;
  - (c) the total of all premiums paid for options to purchase immovables must not exceed 10% of the fund's value in any 12-month period, calculated at the date of the granting of the option.
- (2) The *operator* must ensure that these limits are complied with.

#### **6.1.12 Standing independent valuer and valuation**

- (1) This rule applies in relation to a *registered qualified investor fund* if the fund holds immovables as part of the *fund property*.
- (2) The *operator* must, from time to time and with the *independent entity's* approval, appoint a valuer for the fund (the ***standing independent valuer***).
- (3) The *operator* must ensure that any immovables held as part of the *fund property* are valued by the *standing independent valuer* in accordance with this rule.
- (4) The following provisions apply in relation to the *standing independent valuer*:
  - (a) the *operator* must ensure that, at least once a year, the *standing independent valuer* values all the immovables held as part of the *fund property*, on the basis of a full valuation with physical inspection (including, if the immovable is or includes a building, internal inspection);

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- (b) for paragraph (a), any inspection in relation to adjacent properties of a similar nature and value may be limited to the inspection of only a single representative property;
  - (c) the *operator* must ensure that, at least once a *month*, the *standing independent valuer* values all of the immovables held as part of the *fund property*, on the basis of a review of the last full valuation;
  - (d) if either the *operator* or *independent entity* becomes aware of any matter that appears likely to—
    - (i) affect the valuation of an immovable; or
    - (ii) cause the *standing independent valuer* to decide to value on the basis mentioned in paragraph (a) instead of on the basis mentioned in paragraph (c);it must immediately tell the *standing independent valuer* about the matter;
  - (e) the *operator* must use its best endeavours to ensure that any other *affected person* for the fund or the *operator* immediately tells the *standing independent valuer* if the *affected person* becomes aware of a matter mentioned in paragraph (d);
  - (f) any valuation by the *standing independent valuer* must be on the basis of market value, as defined in the *constitutional document* or the *latest filed prospectus*.
- (5) The valuation of an immovable under this rule has effect for *COLL* until the next valuation of the immovable under this rule.
- (6) An arrangement to transfer an immovable, or an interest in an immovable, must be disregarded for its valuation unless the arrangement reasonably appears to the *operator* to be legally enforceable.

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### **6.1.13 Breaches of ch 6**

- (1) The *operator* of a *registered qualified investor fund* must ensure that the *fund property* is not used or *invested* in breach of this chapter.
- (2) If the *operator* becomes aware of a breach of this chapter, the *operator* must take action to rectify the breach at its own expense.
- (3) The *operator* must take action under subrule (2) immediately unless subrule (4) applies.
- (4) If the *operator* believes on reasonable grounds that taking action under subrule (2) immediately would not be in the best interests of the *unitholders*, the *operator* must take the action as soon as it is the interests of *unitholders* to take the action.

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## Chapter 7            Operating duties and responsibilities

### Part 7.1            Valuation, pricing and dealing

#### 7.1.1            Valuation

- (1) The value of the *fund property* of a *registered qualified investor fund* must, except as otherwise provided in this part, be decided in accordance with the provisions of the *constitutional document* and the *latest filed prospectus*.
- (2) Any part of the *fund property* that is not an *investment* (other than an immovable) must be valued by the *operator* at a fair value.
- (3) For subrule (2), any charges that were paid, or would be payable, on acquiring or disposing of an asset must be excluded from the value of the asset.
- (4) The value of the *fund property* of a *registered qualified investor fund* is its net value after deducting any outstanding borrowings (including any capital outstanding on a mortgage of an immovable).

#### 7.1.2            Valuation points

- (1) A *registered qualified investor fund* must have a *valuation point* on each *dealing day*, other than a *dealing day* during the period of any *initial offer*.
- (2) The *operator* must prepare a valuation in accordance with rule 7.1.1 for each relevant type of *unit* at each relevant *valuation point*.

#### 7.1.3            Prices of units

- (1) The price of a *unit* in a *registered qualified investor fund* must be calculated by the *operator* on the basis of the valuation under rule 7.1.2 (2) in a way that is fair and reasonable as between *unitholders*.

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- (2) The *operator* must publish in an appropriate way the *price* of any type of *unit* based on the valuation under rule 7.1.2 (2).
  - (3) The *operator* must also, on request, at any time provide to any *unitholder* an estimated price for any type of *unit* in the fund.

*Note* Subrules (2) and (3) apply in relation to a *private placement fund* with the modification mentioned in sch 4 (see r 1.2.2 (2)).

#### **7.1.4 Initial offer**

The period of any *initial offer*, and how it ends, must be set out in the *latest filed prospectus* and must not be of unreasonable length.

#### **7.1.5 Issue and cancellation of units generally**

- (1) The *operator* of a *registered qualified investor fund* must—
  - (a) ensure that at each *valuation point* there are at least as many *units* in *issue* of any *class* as there are *units* registered to *unitholders* of that *class*; and
  - (b) not do, or fail to do, anything that would or might give the *operator*, or an *associated person* for the *operator*, a benefit or advantage at the expense of a *unitholder* or potential *unitholder*.
- (2) For subrule (1), the *operator* may take into account *sales* and *redemptions* after the *valuation point*, if the *operator* has systems and controls to ensure compliance with the subrule.
- (3) The *operator* must arrange for the *issue* and *cancellation* of *units*, and the payment of *money* or transfer of assets to or from the *independent entity* for the account of the fund, as required by the *latest filed prospectus*.
- (4) The *operator* must keep a record of *issues* and *cancellations* made under this rule.

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- (5) The *operator* may arrange for the *independent entity* to *issue* or *cancel units* if the *operator* would otherwise be obliged to *sell* or *redeem* the *units* in the way provided in the *latest filed prospectus*.
  - (6) If the *operator* breaches subrule (1), it must correct the breach as soon as possible and must reimburse the fund any costs the fund may have incurred in correcting the breach, subject to any reasonable minimum level for the reimbursement provided in the *latest filed prospectus*.

*Note* Subrules (3) and (5) apply in relation to a *private placement fund* with the modifications mentioned in sch 4 (see r 1.2.2 (2)).

#### **7.1.6 Issue and cancellation of units in multiple classes**

- (1) This rule applies to a *registered qualified investor fund* if the fund has 2 or more *classes* of *units* in *issue*.
- (2) The *operator* may treat all, or any 2 or more, of the *classes* (the ***relevant classes***) as a single class for the purpose of deciding the number of units to be *issued* or *cancelled* by reference to a particular *valuation point* if—
  - (a) the *independent entity* gives its prior agreement; and
  - (b) either—
    - (i) the relevant classes have the same entitlement to participate in, and the same liability for charges, expenses, and other payments that may be recovered from, the *fund property*; or
    - (ii) the relevant classes differ only as to whether income is distributed or accumulated by periodic credit to capital, and the *price* of the *units* in each *class* is calculated by reference to undivided shares in the *fund property*.

*Note* Subrule (2) (a) does not apply in relation to a *private placement fund* (see 1.2.2 (1)).

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### **7.1.7 Sale and redemption**

- (1) The *operator* of a *registered qualified investor fund* must, at all times during a *dealing day*, be willing to *sell units* to any eligible investor in accordance with any conditions in the *constitutional document* and the *latest filed prospectus*, unless the *operator* has reasonable grounds to refuse the *sale*.
- (2) Conditions mentioned in subrule (1) must be fair and reasonable as between all *unitholders* and potential *unitholders*.
- (3) The *operator* of a *registered qualified investor fund* must, at any time during a *dealing day*, on the request of an eligible *unitholder* *redeem units* owned by the *unitholder* in accordance with any conditions in the *constitutional document* and the *latest filed prospectus*, unless the *operator* has reasonable grounds to refuse the *redemption*.
- (4) On agreeing to a *redemption* of *units* under subrule (3), the *operator* must pay the full proceeds of the *redemption* to the *unitholder* within any reasonable period provided in the *constitutional document* or the *latest filed prospectus*, unless the *operator* has reasonable grounds for withholding payment.
- (5) Payment of proceeds on *redemption* must be made by the *operator* in any way provided in the *latest filed prospectus*.
- (6) The way provided for in the *latest filed prospectus* for subrule (5) must be fair as between redeeming *unitholders* and continuing *unitholders*.

### **7.1.8 Limited issue**

If a *registered qualified investor fund* limits the *issue* of *units* of any *class*, *units* of the *class* can only be issued by the *operator* if the *issue*—

- (a) is in accordance with the *constitutional document* and the *latest filed prospectus*;

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(b) will not materially prejudice any existing *unitholders*.

**7.1.9 Issue and sale only to qualified investors**

To remove any doubt, the *operator* of a *registered qualified investor fund* must not *issue* or *sell units* in the fund to a *person* who is not a *qualified investor*.



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## Part 7.2 Title and register

### 7.2.1 Requirements for unitholder register

- (1) The *operator* of a *registered fund* must ensure that the *unitholder register* includes—
  - (a) the name and address of each *person* (a **relevant person**) who is or has been a *unitholder* (for joint *unitholders*, no more than 4 persons need to be included); and
  - (b) the number of *units* (including fractions of a *unit*) of each *class* held by each relevant *person*; and
  - (c) the date each relevant *person* was registered for the *units* in the *person's* name and, if relevant, ceased to registered for the *units* in the *person's* name; and
  - (d) the number of *units* of each *class* currently in *issue*.
- (2) The *operator*—
  - (a) must not enter notice of any trust (whether express, implied or constructive) on the register; and
  - (b) is not bound by notice of any trust.
- (3) The *operator* and the *independent entity* must rely on the register as conclusive evidence of the *persons* entitled to the *units* entered on it.
- (4) The *operator* must do the following in relation to the register:
  - (a) take reasonable steps to update the register on receiving written notice of a change of name or address of a *unitholder*;
  - (b) ensure that the register, or a copy of the register, is available for inspection in the *QFC* during ordinary business hours by or on behalf of any *unitholder*, the *Regulatory Authority*, the *independent entity* or the auditor of the fund;

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- (c) on request by or on behalf of any *unitholder*, give the *unitholder* a copy of the entries on the register relating to the *unitholder*;
  - (d) if a *unitholder* defaults in paying for the *issue* or *sale* of a *unit*—amend the register to take account of the default;
  - (e) carry out the conversion of units allowed under rule 7.2.5 (Conversion of units) after consultation with the *independent entity*.
- (5) If the *operator* receives written notice of a change of name of a *unitholder* and a certificate has been issued for the *unitholder's* *units*, the *operator* must also either endorse the existing certificate or issue an updated one.
  - (6) On the making of an amendment of the register under subrule (4) (d) in relation to a *unit*, the *operator* becomes entitled to the *unit* until it is either *cancelled* or resold and paid for.

*Note* Subrules (3) and (4) (b) and (e) apply in relation to a *private placement fund* with the modifications mentioned in sch 4 (see r 1.2.2 (2)).

### **7.2.2 Operator as unitholder**

- (1) If no *person* is entered in the *unitholder register* of a *registered fund* as the *unitholder* of a *unit* in *issue*, the *operator* must be treated as the *unitholder* of the *unit*.
- (2) If a *unit* is transferred to the *operator*, the *unit* need not be *cancelled* and the *operator* need not be entered in the register as the new *unitholder*.

### **7.2.3 Transfer of units by act of parties**

- (1) Every *unitholder* of a *registered fund* is entitled to transfer *units* entered in the *unitholder register* by an instrument of transfer in any form that the *operator* approves, but the *operator* is under no duty to accept the transfer unless it is permitted by the *constitutional document* and the *latest filed prospectus*.

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- (2) However, the *operator* of a *registered qualified investor fund* must not accept the transfer of *units* entered in the *unitholder register* unless the transferee is a *qualified investor*.
  - (3) Every instrument of transfer of *units* in a *registered fund* must be signed by, or on behalf of, the *unitholder* transferring the *units*.
  - (4) Unless the transferee is the *operator*, the transferor must be treated as the *unitholder* until the name of the transferee is entered in the *unitholder register*.
  - (5) Every instrument of transfer must be left for registration with the *operator* accompanied by—
    - (a) any document required by the law applying in the *QFC*; and
    - (b) any other evidence reasonably required by the *operator*.
  - (6) The *operator* must keep an instrument of transfer for at least 6 years after the day it is registered.
  - (7) On registration of an instrument of transfer, a record of the transferor, the transferee and the date of transfer must be made in the *unitholder register*.

#### **7.2.4 Certificates for units**

- (1) If *units* of a *registered fund* are *sold* or rule 7.2.3 (Transfer of units by act of parties) is complied with in relation to the transfer of *units* of a *registered fund*, the *operator* may issue a *document evidencing title* to the *units* in accordance with the *constitutional document*.
- (2) The *operator* must issue any *document evidencing title* or provide relevant information in a timely way if the procedures for *redeeming units* require the *unitholders* to surrender any *document evidencing title*.

#### **7.2.5 Conversion of units**

- (1) This rule applies in relation to a *registered fund* if there are 2 or *classes of units* offered for *issue* or *sale*.

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- (2) A *unitholder* has the right to convert the *units* from a *class* to another *class* if converting the *units* does not contravene the *latest filed prospectus*.

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## Part 7.3

## Appointment and replacement of operator and independent entity

*Note for pt 7.3*

This part applies in relation to a *private placement fund* with the modifications mentioned sch 4 (see 1.2.2 (2)).

### 7.3.1 Initial appointment of operator and independent entity

On the registration of a *collective investment fund* established in the *QFC*—

- (a) the *person* named in the application for registration as the *person* who is to become the *operator* becomes the initial *operator* of the fund; and
- (b) the *person* appointed by the *operator*, and named in the application for registration, as the *person* who is to become the *independent entity* becomes the initial *independent entity* of the fund.

### 7.3.2 Replacement of operator

- (1) The *independent entity* of a *registered fund* may, by written notice given to the *operator*, remove the *operator* if any of the following events happens:
  - (a) a meeting is called to consider a resolution for winding up the *operator*;
  - (b) an application is made to dissolve the *operator* or strike it off the register of companies;
  - (c) a petition is presented for winding up the *operator*;
  - (d) a composition is made or proposed by the *operator* with any of the *operator's* creditors;
  - (e) an administrator is appointed for the *operator*;

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- (f) anything equivalent to an event mentioned in paragraphs (a) to (e) happens in relation to the *operator* outside the *QFC*;
  - (g) the *independent entity* forms the reasonable opinion, and states in writing, that a change of *operator* is desirable in the interest of the *unitholders*;
  - (h) a *special resolution* of the *unitholders* is passed to remove the *operator*;
  - (i) the *unitholders* of 75% in value of the *units* in existence (excluding *units* held or treated as held by the *operator* or an *associate* of the *operator*) make a written request to the *independent entity* for the *operator's* removal.
- (2) The *independent entity* must, by written notice given to the *operator*, remove the *operator* if the *operator* is no longer eligible to be the *operator* of the fund under rule 4.1.1 (Requirements for *operator*) because of action taken by the *Regulatory Authority* under the *FSR*, whether under article 31 (Own initiative action by the *Regulatory Authority*) or otherwise.
  - (3) The *independent entity* must immediately give a copy of a notice under subrule (1) or (2) to the *Regulatory Authority*.
  - (4) On receipt of a notice by the *independent entity* under subrule (1) or (2) —
    - (a) the *operator* ceases to be the *operator* of the fund; and
    - (b) is released from all further obligations under *COLL* and the *constitutional document*.
  - (5) Subrule (4) (b) does not affect the rights of the *independent entity* or any other *person* in relation to an act or omission by the *operator* before its removal.
  - (6) The *independent entity* must appoint another *person* as the *operator* of the fund.

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- (7) The person appointed must be eligible to be the *operator* of the fund under rule 4.1.1.
  - (8) If the name of the fund contains a reference to the name of the former *operator*, the former *operator* is entitled to require the new *operator* and the *independent entity* to propose a change to the name of the fund.

### **7.3.3 Retirement of operator**

- (1) The *operator* of a *registered fund* is entitled to retire as *operator* in favour of another *person* if—
  - (a) the *operator* appoints the *person* as *operator* and assigns all its rights and *functions* as *operator* to the *person*; and
  - (b) the *person* is eligible to be the *operator* of the fund under rule 4.1.1 (Requirements for operator); and
  - (c) the *independent entity* approves the appointment of the *person* as *operator*.
- (2) On the appointment of the *person* taking effect, the former *operator*—
  - (a) is released from all further obligations under *COLL* and the *constitutional document*; and
  - (b) may keep any consideration paid to it in relation to the change without having to account for it to any *unitholder*.
- (3) Subrule (2) (a) does not affect the rights of the *independent entity* or any other *person* in relation to an act or omission by the former *operator* before its retirement.
- (4) On the retirement of the former *operator*, the replacement *operator* must immediately give written notice of the retirement, and the replacement *operator's* appointment, to the *Regulatory Authority*.

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#### **7.3.4 Consequences of removal or retirement of operator**

- (1) On the removal or retirement of the *operator* of a *registered fund*, the former *operator*—
  - (a) is entitled to be recorded in the *unitholder register* for the *units* it continues to hold; and
  - (b) may require the *independent entity* to issue to it a certificate for the *units* if it is entitled to have the certificate issued under the *constitutional document* and it has not previously been issued with a certificate for the *units*.
- (2) Subrule (1) is subject to any restriction in the *latest filed prospectus* relating to the permitted categories of *unitholders*.

#### **7.3.5 Retirement of independent entity**

- (1) The *independent entity* of a *registered fund* may retire voluntarily only if the *operator* has appointed another *person* as the *independent entity*.
- (2) The *person* appointed must be eligible to be the *independent entity* of the fund under rule 4.2.1 (Requirements for independent entity).
- (3) The voluntarily retirement of the *independent entity* takes effect only when the appointment of another *person* as *independent entity* takes effect.
- (4) On the retirement of the *independent entity*, the *operator* must immediately give written notice of the retirement, and of the appointment of the other *person* as *independent entity*, to the *Regulatory Authority*.

#### **7.3.6 Removal of independent entity by unitholders**

- (1) The *independent entity* of a *registered fund* may be removed by a *special resolution* of the *unitholders*.
- (2) On the removal of the *independent entity*, the *operator* must—



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- (a) immediately give written notice of the removal to the *Regulatory Authority*; and
  - (b) appoint another *person* as the *independent entity*.
- (3) The *person* appointed must be eligible to be the *independent entity* of the fund under rule 4.2.1 (Requirements for independent entity).
  - (4) On the appointment of the other *person* as *independent entity*, the *operator* must immediately give written notice of the appointment to the *Regulatory Authority*.

#### **7.3.7 Removal of independent entity that ceases to be eligible for appointment**

- (1) This rule applies if the *independent entity* of a *registered fund* that is an *authorised firm* is no longer eligible to be the *independent entity* of the fund under rule 4.2.1 (Requirements for independent entity) because of action taken by the *Regulatory Authority* under the *FSR*, whether under article 31 (Own initiative action by the *Regulatory Authority*) or otherwise.
- (2) The *operator* must, by written notice given to the *independent entity*, remove the *independent entity*.
- (3) On the removal of the *independent entity*, the *operator* must—
  - (a) immediately give written notice of the removal to the *Regulatory Authority*; and
  - (b) appoint another *person* as the *independent entity*.
- (4) The *person* appointed must be eligible to be the *independent entity* of the fund under rule 4.2.1.
- (5) On the appointment of the other *person* as *independent entity*, the *operator* must immediately give written notice of the appointment to the *Regulatory Authority*.

*Note* If the *independent entity* is not an *authorised firm*, the *independent entity* may also be removed under the following rules:

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- r 4.2.12 (Non-QFC independent entities—removal by operators)
  - r 4.2.13 (Non-QFC independent entities—removal by Regulatory Authority).

### **7.3.8 Consequences of retirement or removal of independent entity**

- (1) If the *independent entity* of a *registered fund* retires or is removed, the *independent entity* must, without any delay, transfer or deliver the assets of the fund held by it to the replacement *independent entity* unless the *Court* otherwise orders.
- (2) Until the assets are transferred or delivered, the *independent entity* is accountable to the *unitholders* for the assets.

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## Part 7.4                      Outsourcing

*Note for pt 7.4*

This part applies in relation to a *private placement fund* with the modifications mentioned sch 4 (see 1.2.2 (2)).

### 7.4.1                      Outsourcing by operator

- (1) The *operator* of a *registered fund* may *outsource* its *functions* under *COLL* in accordance with this part.
- (2) However, the *operator* must not *outsource* to the *independent entity*, or to a *related person* for the *independent entity*, any of the *functions* of the *operator*.
- (3) Also, the *operator* must not *outsource functions* if the *outsourcing* may adversely impact on the *Regulatory Authority's* ability to supervise the *operator's* activities.

### 7.4.2                      Outsourcing by independent entity

- (1) The *independent entity* of a *registered fund* may *outsource* its *functions* under *COLL* in accordance with this part.
- (2) However, the *independent entity* must not—
  - (a) *outsource* to the *operator* (or, if the *registered fund* is a *CIC* or *CIP*, to a *director* or member of the fund) any of the *functions* of the *independent entity* under rule 4.2.3 (Oversight functions of independent entity) or rule 4.2.5 (Property safekeeping functions of independent entity); or
  - (b) *outsource* to a *related person* for the *operator* (or, if the *registered fund* is a *CIC* or *CIP*, to a *related person* for a *director* or member of the fund) any of the *functions* of the *independent entity* mentioned in paragraph (a); or
  - (c) *outsource* to a *person* the *function* of holding *documents evidencing title to fund property* unless the person is prohibited

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under the *outsourcing* agreement from giving them to a third party without the *independent entity's* agreement.

- (3) Also, the *independent entity* must not *outsource functions* if the *outsourcing* may adversely impact on the *Regulatory Authority's* ability to supervise the *independent entity's* activities.

#### **7.4.3 Notification of outsourcing etc**

- (1) The *operator* or *independent entity* of a *registered fund* must give the *Regulatory Authority* written notice of its intention to *outsource* a *function* under this part.
- (2) The *operator* or *independent entity* of a *registered fund* must give the *Regulatory Authority* any information about the proposed *outsourcing* that the authority reasonably needs.

#### **7.4.4 Provisions applying to outsourcing by operator and independent entity**

- (1) This rule applies in relation to an *outsourcing* of *functions* made by the *operator* or *independent entity* (the ***regulated entity***) of a *registered fund* under this part to another *person* (the ***service provider***).
- (2) The *outsourcing* must be in writing and in the form of, or part of, an agreement between the regulated entity and the service provider (the ***outsourcing agreement***);
- (3) The *outsourcing* agreement must—
  - (a) describe in adequate detail the *functions* (the ***outsourced functions***) to be *exercised* by the service provider under the *outsourcing*; and
  - (b) describe in adequate detail the service standards to be applied by the service provider in *exercising* the *outsourced functions*; and
  - (c) state that it is an *outsourcing* agreement under *COLL*; and

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- (d) ensure that the *operator* and *independent entity* can, at all times, monitor effectively the *exercise* of the *outsourced functions* by the service provider; and
  - (e) authorise the regulated entity—
    - (i) to give further instructions to the service provider about the *exercise* of the *outsourced functions*; and
    - (ii) to withdraw the *outsourcing* at any time, including with immediate effect, if this is in the interests of the *unitholders*; and
  - (f) not prevent the *operator* or *independent entity* from acting in the best interests of the *unitholders* in relation to the *outsourced functions*; and
  - (g) not prevent the fund from being managed in the best interests of the *unitholders*; and
  - (h) ensure that the fund’s auditor can effectively carry out its role in relation to the fund; and
  - (i) require the service provider to comply with *COLL*, and any other law applying in the *QFC*, in relation to the *outsourced functions*; and
  - (j) apply the law of the *QFC* to the agreement; and
  - (k) ensure that the regulated entity and its internal and external auditors have access to books, records and data relating to the exercise of *functions* under the *outsourcing*; and
  - (l) ensure that the *outsourcing* provides appropriate protection for confidential information and *personal data*; and
  - (m) provide appropriate contingency arrangements; and
  - (n) require the service provider to deal with the *Regulatory Authority* in an open and cooperative way in relation to the *exercise* of the *outsourced functions*; and

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- (o) require the service provider to give the *Regulatory Authority* access to books, records and data relating to the *exercise* of the *outsourced functions*; and
  - (p) require the service provider to give the *Regulatory Authority* any information it reasonably requires about the *outsourced functions*; and
  - (q) require the service provider to keep any records made by the service provider in relation to the *outsourced functions* for at least 6 years after they are made; and
  - (r) prevent the service provider from further *outsourcing* any of the *outsourced functions* to another *person* without the prior approval of—
    - (i) if the regulated entity is the *operator*—the *operator*; or
    - (ii) if the regulated entity is the *independent entity*—the *independent entity* and the *operator*.
- (4) Without limiting subrule (3), the regulated entity must take the steps necessary to mitigate against any operational risks in relation to the *outsourcing*.
- (5) The *outsourcing* agreement may provide that it has effect only in stated circumstances or subject to stated conditions, limitations and directions.
- (6) The *outsourcing* of the *outsourced functions* to the service provider—
- (a) does not relieve the regulated entity from responsibility to ensure that the *outsourced functions* are properly *exercised*; and
  - (b) does not prevent the regulated entity from *exercising* all or part of the *outsourced functions*, despite anything in the *outsourcing* agreement or any other agreement.

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- (7) The service provider must *exercise* the *outsourced functions* subject to the terms of the *outsourcing* agreement, including any conditions, limitations and directions in the *outsourcing* agreement.
  - (8) So far as the *outsourcing* agreement is expressed to operate as a delegation, *COLL*, and all other laws applying in the QFC, apply to the service provider in exercising the *outsourced functions* as if the service provider were the regulated entity.
  - (9) Without limiting subrule (7), if the exercise of a *function* of the regulated entity under *COLL* is dependent on the regulated entity's state of mind, the *function* is included in the *outsourced functions* and the *outsourcing* agreement is expressed to operate as a delegation in relation to the *function*, the *function* may be exercised by the service provider on the service provider's state of mind.
  - (10) So far as the *outsourcing* agreement is expressed to operate as a delegation, anything done by or in relation to the service provider in relation to the *outsourced functions* is taken to have been done by or in relation to the regulated entity.
  - (11) In this rule:  
*state of mind* includes knowledge, intention, opinion, belief or purpose.

#### **7.4.5 Management of outsourcing**

- (1) The *operator* and *independent entity* of a *registered fund* must exercise appropriate skill, care and diligence in selecting, entering into and exiting from *outsourcings* by them under this part.
- (2) The *operator* or *independent entity* must ensure that—
  - (a) 1 or more *senior managers* approve and periodically review its policy for *functions outsourced* under this part, including its procedures for the following:
    - (i) the assessment of feasibility;
    - (ii) the assessment of risk;

- 
- (iii) the assessment of impact on its *functions*;
  - (iv) the costing of *outsourcings*;
  - (v) the criteria for selecting service providers; and
- (b) every service provider has the ability and capacity to *exercise* the *functions* to be *outsourced* to the service provider reliably and professionally at the start of the life cycle of the *outsourcing*, having regard to the following non-exhaustive factors:
- (i) whether the service provider is regulated, to what extent and by whom;
  - (ii) whether the *exercise* of the *outsourced functions* is subject to specific regulation or supervision;
  - (iii) the risk that *outsourced functions* are not properly *exercised* because of the number of other *persons* using the service provider;
  - (iv) the financial stability and expertise of the service provider;
  - (v) potential conflicts of interest that may arise in relation to the *outsourced functions*.
- (3) The *operator* or *independent entity* must ensure that it has a comprehensive contingency arrangement to allow business continuity if there is a significant loss of services from the service provider, including an exit strategy and, if appropriate, partial exit and step-in clauses.
- (4) The contingency arrangement must cover, among other things, the following:
- (a) a significant loss of resources by the service provider;
  - (b) financial failure of the service provider;
  - (c) an expected termination of the *outsourcing*.



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- (5) In this rule:

*senior manager*, in relation to an *independent entity* that is not an *authorised firm*, means an individual employed by the *independent entity* or a member of the *independent entity's group* who has responsibility either alone or with others for management and supervision of 1 or more elements of the *independent entity's* business relevant to its *functions* as *independent entity* of the *registered fund*.

#### **7.4.6 Application of pt 7.4 to further outsourcing**

- (1) This part applies to the further *outsourcing* of an *outsourced function* by the service provider to another *person* as if—
- (a) the further outsourcing of the *function* were an *outsourcing* of the *function*; and
  - (b) all necessary changes were made.
- (2) To remove any doubt, this rule is subject to rule 7.4.4 (3) (r) (Provisions applying to outsourcing by operator and independent entity).

#### **7.4.7 Outsourcing of functions etc under CTRL**

- (1) *CTRL 5* (Outsourcing) does not apply to the *outsourcing* by the *operator* or *independent entity* of a *registered fund* of any of its *functions* under *COLL*.
- (2) To remove any doubt, *CTRL 5* continues to apply in relation to any other *outsourcing* by the *operator* or *independent entity* of a *registered fund*.
- (3) If the *independent entity* of a *registered fund* is not an *authorised firm*, *CTRL 5* and this rule apply to it, subject to subrule (1), as if—
- (a) a reference to an *authorised firm* included a reference to the *independent entity*; and

- 
- (b) a reference to *outsourcing* were a reference to an arrangement that would be *outsourcing* if the *independent entity* were an *authorised firm*; and
  - (c) a reference to *material outsourcing* were a reference to an arrangement that would be *material outsourcing* if the *independent entity* were an *authorised firm*; and
  - (d) all other necessary changes were made.
- (4) Before the *operator* or *independent entity* of a *registered fund* *outsources a function* to a third party service provider under *CTRL* 5, it must enter into an *outsourcing* agreement with the service provider.
- (5) The agreement must—
- (a) be in writing; and
  - (b) set out the *functions* to which it applies; and
  - (c) set out the service standards to be applied by the third party service provider in *exercising functions* under the agreement; and
  - (d) require the service provider to keep any records made by the service provider in relation to *exercising the functions* for at least 6 years after the day they are made; and
  - (e) prevent the service provider from further *outsourcing* the *functions* to another *person* without the approval of the *operator* or *independent entity*, as appropriate.
- (6) Before the *operator* or *independent entity* enters into the agreement, it must undertake an assessment of the third party service provider and have concluded on reasonable grounds that the service provider is suitable to *exercise* the *functions* proposed to be *outsourced* to it.
- (7) Subrule (4) to (6) are additional to *CTRL*.

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(8) In this rule:

*exercise* a *function* includes carry out an activity.

*function* includes activity.

#### **7.4.8 Systems and controls for outsourcings**

- (1) This rule applies if the *operator* or *independent entity* of a *registered fund* *outsources* a *function* under *COLL* in relation to the fund.
- (2) The *operator* or *independent entity* must ensure that, as part of its risk management framework, it implements and maintains systems and controls to monitor the *exercise* of the *outsourced function*.

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## Part 7.5                      Payments

### 7.5.1        Payments

- (1) The *operator* of a *registered qualified investor fund* must ensure that the fund does not incur any expense in relation to the use of any movable or immovable property unless—
  - (a) the *investments* to which the fund is *dedicated* include the property; or
  - (b) the property is necessary for the direct pursuit of the fund's business.
- (2) Payments made by the *operator* out of the *fund property* may be made from *capital property* rather than from income if the basis for this is set out in the *latest filed prospectus*.

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## Part 7.6                      Income—accounting, allocation and distribution

### 7.6.1      Accounting periods

- (1) A *registered qualified investor fund* must have—
  - (a) an *annual accounting period*; and
  - (b) a *half-yearly accounting period*; and
  - (c) an *accounting reference date*.
- (2) The details of these must be set out in the *latest filed prospectus*.
- (3) A *half-yearly accounting period* starts on the first *day* of an *annual accounting period* and ends—
  - (a) on the *day 6 months* before the last *day* of the *annual accounting period*; or
  - (b) on another reasonable date stated in the *latest filed prospectus*.
- (4) The first *annual accounting period* starts—
  - (a) on the first *day* of any period of *initial offer*; or
  - (b) if there is not an *initial offer* for the fund—on the date the fund is registered;and, in either case, ends on the next *accounting reference date* unless subrule (5) applies.
- (5) If the *accounting reference date* falls less than *6 months* after the start of the first *annual accounting period*, the *operator* may extend the period to the next *accounting reference date*.
- (6) Each *annual accounting period* after the first period is for *12 months*, starting on the next *day* after the *accounting reference date*, unless subrule (7) applies.

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- (7) If the *accounting reference date* stated in the fund's *prospectus* is changed, the *operator* may shorten or extend the *annual accounting period* by up to 6 months to end on the next *accounting reference date*.
  - (8) The *operator* must consult the *independent entity* and fund's auditor, and give the *Regulatory Authority* reasonable notice, before shortening or extending an accounting period under subrule (5) or (7).

*Note* Subrule (8) applies in relation to a *private placement fund* with the modification mentioned in sch 4 (see r 1.2.2 (2)).

- (9) If the *annual accounting period* is extended under subrule (5) or (7) and this results in a longer than usual period before the publication of reports to *unitholders*, the *operator* must make summary information about the fund's *investment* activities available to *unitholders* during the period in accordance with *PRIN* 2.1.7 (Customers' Interests) and 2.1.8 (Communications with Clients).
- (10) This rule applies to each *subfund* of an *umbrella fund* as if it were a separate *registered qualified investor fund*.

#### **7.6.2 Income allocation and distribution**

- (1) A *registered qualified investor fund* must have an *annual income allocation date*.
- (2) The *annual income allocation date* must be within 4 months after the fund's *accounting reference date*.
- (3) A *registered qualified investor fund* may have an *interim income allocation date* and *interim accounting periods*.
- (4) An *interim income allocation date* must be within 4 months after the day the relevant *interim accounting period* ends.
- (5) A *registered qualified investor fund* must have a *distribution account* to which the *income property* is transferred at the end of the relevant accounting period.

- 
- (6) If income is allocated and distributed during an accounting period—
- (a) with effect from the end of the accounting period, the income allocated to *unit classes* that accumulate income becomes part of the *capital property* and requires an adjustment to the proportion of the value of the *fund property* to which they relate if other *unit classes* are in *issue* during the period; and
  - (b) the adjustment under paragraph (a) must ensure that the *price* remains unchanged despite the transfer of income; and
  - (c) the amount of any interim distribution must not be more than the amount that, in the *operator's* opinion, would be available for allocation if the *interim accounting period* and all previous *interim accounting periods* in the same *annual accounting period* were, taken together, an *annual accounting period*.

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## Part 7.7 Names

### 7.7.1 Name of fund etc

- (1) The *operator* of a *registered fund* must ensure that—
  - (a) the following names are not undesirable or misleading or conflict with the name of another *collective investment fund*, a *subfund* of an *umbrella fund* or a *class of units* of a *collective investment fund*:
    - (i) the name of the fund;
    - (ii) if the fund is an *umbrella fund*—the name of a *subfund*;
    - (iii) the name of a *class of units*; and
  - (b) if the fund is a *CIC*—the name of the fund clearly identifies its status as an open-ended company with variable share capital.
- (2) If the *Regulatory Authority* is of the opinion that the *operator* is in breach of subrule (1) in relation to a name, the authority may direct the *operator* to take the steps necessary to have the name changed.
- (3) In deciding whether to give a direction under subrule (2) in relation to a name for a breach of subrule (1) (a), the *Regulatory Authority* must consider whether the name—
  - (a) implies that the fund (or a part of the fund) has merits that might, or might not, be justified; or
  - (b) implies that the *operator* has merits that might, or might not, be justified; or
  - (c) is inconsistent with the fund's investment objectives or policy; or
  - (d) might mislead investors into thinking that a *person* other than the *operator* is responsible for managing the fund (or part of the fund); or



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- (e) implies that the fund is not a *collective investment fund* or a *registered fund*; or
  - (f) is, in the *Regulatory Authority's* opinion, likely to offend the public or a part of the public; or
  - (g) is substantially similar to the name of another *collective investment fund*, a *subfund* of an *umbrella fund* or a *class* of *units* of a *collective investment fund*; or
  - (h) implies a degree of security in relation to the capital or income that is not justified.

**Examples of names for par (e)**

names that include the word 'plan' or 'account'

**Examples of names for par (h)**

names that include the word 'guaranteed', 'protected' or 'secured'

- (4) Subrule (3) does not limit the matters the *Regulatory Authority* may consider.
- (5) If the name includes the word 'guaranteed', 'protected' or 'secured' (or a similar word), the *Regulatory Authority* may regard the name as undesirable or misleading unless the *operator* satisfies it of the matters mentioned in subrules (8) and (9).
- (6) If the name indicates or implies a guaranteed capital return, income return or both, the *Regulatory Authority* may regard the name as undesirable or misleading unless the *operator* satisfies it—
  - (a) that the total amount paid for a *unit* is guaranteed under a guarantee; and
  - (b) of the matters mentioned in subrules (8) and (9).
- (7) If the name indicates or implies a degree of capital security (for example, the words 'capital protected' or words with a similar meaning), the *Regulatory Authority* may regard the name as undesirable or misleading unless the *operator* satisfies it—

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- (a) that an amount not materially less than the total amount paid for a *unit* is guaranteed under a guarantee; and
  - (b) that the fund's investment objectives and policy show a clear intention to provide a material degree of security in relation to the total amount paid for a *unit*; and
  - (c) that the degree of capital security is apparent from the name and clearly stated in the *latest filed prospectus*; and
  - (d) of the matters mentioned in subrules (8) and (9).
- (8) For subrule (5), (6) or (7), the *operator* must satisfy the *Regulatory Authority* that the fund has a guarantee in relation to which each of the following requirements is met:
- (a) the guarantee is given by a *person* other than the *operator*, the *independent entity* or an *associated person* for the *operator* or *independent entity*;
  - (b) the guarantor has the authority and resources to honour the terms of the guarantee;
  - (c) the guarantee covers all *unitholders* of the fund and is legally enforceable by each *unitholder* or by a *person* acting on the *unitholder's* behalf;
  - (d) the guarantee relates to the total amount paid for a *unit*;
  - (e) the guarantee provides for payment at a stated date or dates and is unconditional although reasonable commercial exclusions such as force majeure may be included;
  - (f) if the guarantee applies to different *classes* of *units*—it is identical in its application to all *classes* except for differences attributable to income already received, or charges already incurred, by the different *classes* of *units*.

*Note* Par (a) applies in relation to a *private placement fund* with the modification mentioned in sch 4 (see r 1.2.2 (2)).

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- (9) For subrule (5), (6) or (7), the *operator* must also satisfy the *Regulatory Authority* that the terms of the guarantee and the credentials of the guarantor are clearly set out in detail in the *latest filed prospectus* and that any exclusions such as force majeure are highlighted.
- (10) In deciding whether it is satisfied for subrule (7), the *Regulatory Authority* must take into account whether the degree of capital security implied by the name fairly reflects the nature of the arrangements for providing the security.
- (11) Subrule (10) does not limit the matters the *Regulatory Authority* may take into account for subrule (7).
- (12) In this rule:  
***total amount paid***, for a *unit*, includes any charge or other cost paid or incurred when the *unit* was bought.

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## Chapter 8                      Suspension, winding up and transfer schemes

### Part 8.1                      Suspension of dealings

*Note for pt 8.1*

The *Regulatory Authority* has power under the *FSR*, art 105 to give certain directions in relation to *collective investment funds*, including a direction to cease the *issue* or *redemption* of *units* in the fund and to wind up the fund.

#### 8.1.1                      Suspension and restart of dealings

- (1) The *operator* of a *registered qualified investor fund* may, within any parameters that are fair and reasonable to all *unitholders* and are set out in the *latest filed prospectus*, suspend *dealings* in all *units*, a *subfund* or a *class of units*.
- (2) The *operator* may suspend *dealings* under subrule (1) only if the *operator* has decided, on reasonable grounds, that there is a good and sufficient reason for the suspension in the interests of *unitholders* or potential *unitholders*.
- (3) If the *operator* decides to suspend *dealings*, the *operator* must immediately tell the *Regulatory Authority* and the *unitholders* in writing about the suspension and the reasons for it.
- (4) A suspension of *dealings* ends—
  - (a) 28 *days* after the *day* it starts; or
  - (b) if earlier, as soon as the *operator* decides that there is not, or is no longer, an appropriate reason for the suspension in the interests of *unitholders* or potential *unitholders*.
- (5) If a suspension of *dealings* ends under subrule (4) (b), the *operator* must immediately tell the *Regulatory Authority* in writing about the restart of *dealings*.

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- (6) In making a decision for subrule (2) or (4), the *operator* must have regard to the interests of all the *unitholders* of the fund.

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## Part 8.2 Winding up

*Note for pt 8.2*

This part applies in relation to a *private placement fund* with the modifications mentioned in sch 4 (see 1.2.2 (2)).

### 8.2.1 Application of pt 8.2 to subfunds

This part applies to a *subfund* of an *umbrella fund* as if—

- (a) a reference to a *registered fund* were a reference to the *subfund*; and
- (b) a reference to *units* were a reference to *units* of the *class* or *classes* related to the *subfund*; and
- (c) a reference to a meeting of *unitholders* were a reference to a meeting of *unitholders* of the *class* or *classes* mentioned in paragraph (b); and
- (d) a reference to a *special resolution* were a reference to a *special resolution* passed at a meeting of *unitholders* mentioned in paragraph (c); and
- (e) a reference to the *fund property* were a reference to the *fund property* allocated or attributed to the *subfund*; and
- (f) a reference to liabilities were a reference to liabilities of the fund allocated or attributable to the *subfund*; and
- (g) all other necessary changes were made.

### 8.2.2 When fund may be wound up

A *registered fund* may be wound up—

- (a) by order of the *Court* under the *Insolvency Regulations 2006* or any other *regulations*; or
- (b) if not inconsistent with any *regulations* or *COLL*— in the way and circumstances provided in the *constitutional document*; or

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- (c) in the way and in any other circumstances provided by *COLL* or any other *rulebook*.

### **8.2.3 Winding-up required by constitutional document**

- (1) The *constitutional document* of a *registered fund* may provide that the fund is to be wound up—
  - (a) at a stated time; or
  - (b) in stated circumstances or on the happening of a stated event.
- (2) However, a provision of the *constitutional document* that purports to provide that the fund is to be wound up if a particular *person* ceases to be the *operator* or *independent entity* is of no effect.

### **8.2.4 Winding-up at direction of unitholders**

The *unitholders* of a *registered fund* may, by *special resolution*, direct the *operator* or *independent entity* to wind up the fund.

### **8.2.5 Notification to Regulatory Authority that fund not commercially viable etc**

- (1) If the *operator* of a *registered fund* believes, on reasonable grounds, that the fund is not commercially viable or the fund's purpose cannot be accomplished, the *operator* must immediately give written notice of the belief to the *Regulatory Authority*.
- (2) The notice must include the following information:
  - (a) the name of the fund and its registration number given by the *Regulatory Authority*;
  - (b) the size and type of fund;
  - (c) the number of *unitholders*;
  - (d) whether *dealing* in the fund's *units* has been suspended;
  - (e) why the *operator* believes that the fund is not commercially viable or the fund's purpose cannot be accomplished;

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- (f) what consideration has been given to the fund entering into a transfer scheme with another *registered fund* or a *subfund* of an *umbrella fund* and the reasons why a transfer scheme is not possible;
  - (g) whether *unitholders* have been informed of the intention to seek winding-up and, if not, when they will be informed;
  - (h) details of any proposed rebate of charges to be made to *unitholders* who recently purchased *units*;
  - (i) the preferred date for the start of the winding-up.
- (3) The notice must be accompanied by a written statement given by the *independent entity* that includes the following:
- (a) that the *independent entity*, having taken reasonable care in considering the matter, believes that a transfer scheme is not practicable;
  - (b) an explanation of the other steps that have been considered that would result in the fund not needing to be wound up;
  - (c) confirmation that the *operator* has *exercised its functions* in accordance with *COLL*;
  - (d) whether the fund's investment and borrowing powers have been exceeded.
- (4) The *Regulatory Authority* may, in writing, require the *operator* or *independent entity* to provide any further information or *documents* that the authority reasonably needs in relation to the fund.

### **8.2.6 Winding-up by operator or independent entity**

- (1) This rule applies if any of the following circumstances (the *prescribed circumstances*) exist in relation to a *registered fund*:
- (a) on a request by the *operator* or *independent entity* for the cancellation of the fund's registration, the *Regulatory Authority*



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- agrees in principle that the authority will cancel the fund's registration on the completion of the winding-up of the fund;
- (b) the *operator* believes, on reasonable grounds, that the fund is not commercially viable or the fund's purpose cannot be accomplished;
  - (c) if the *constitutional document* states that the duration of the fund is limited—the period of the fund's duration ends;
  - (d) under rule 8.2.4 (Winding-up at direction of unitholders), the *unitholders* of the fund direct the *operator* or *independent entity* to wind up the fund;
  - (e) if the fund is subject to an approved transfer scheme under which it is to be left with no property—the scheme commences.
- (2) If any of the prescribed circumstances apply in relation to the *registered fund*—
- (a) the *operator* and *independent entity* must cease—
    - (i) *dealing* in the fund's *units*; and
    - (ii) investing or borrowing for the fund; and
  - (b) the *operator* or *independent entity* (or both) must take the steps necessary wind up the fund in accordance with any *regulations* applying to the winding-up, *COLL*, and any other *rulebook* applying to the winding-up.
- (3) If any of the prescribed circumstances mentioned in subrule (1) (a) to (d) apply in relation to the fund—
- (a) the *operator* or *independent entity* must realise the *fund property* as soon as practicable; and
  - (b) after meeting or making provision for all the fund's liabilities and the costs of the winding-up, the *operator* or *independent entity* must distribute the proceeds of the realisation to the

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*unitholders* proportionately to their respective interests in the fund as at the date the relevant prescribed circumstances happened; and

- (c) any unclaimed net proceeds or other cash (including unclaimed distribution payments) held by the *operator* or *independent entity* after the end of 12 *months* from the date they became payable must be paid into the *Court*, after meeting or making provision for the costs of paying them into the *Court* under this paragraph.
- (4) If the *operator* or *independent entity* and 1 or more *unitholders* agree, the requirement to realise the *fund property* does not apply to the part of the *fund property* proportionate to their entitlement.
- (5) The *operator* and *independent entity* may distribute the part of the *fund property* mentioned in subrule (4) to the *unitholders* mentioned in that subrule, after making the adjustments or provision that appears appropriate to ensure that the *unitholders* bear a proportionate share of the liabilities of the fund and the costs of the winding-up.
- (6) If the prescribed circumstances mentioned in subrule (1) (e) apply in relation to the fund, the *operator* or *independent entity* must wind up the fund in accordance with the approved transfer scheme.
- (7) The *operator* or *independent entity* must, as soon as practicable after starting the winding-up—
  - (a) if rule 8.2.4 (Winding-up at direction of unitholders) does not apply—tell the *unitholders* about the winding-up; and
  - (b) publish a notice of the winding-up in an English and an Arabic language national newspaper and, if the fund has a website, on the fund’s website.
- (8) If the winding-up is conducted by the *operator*, the *independent entity* must approve the terms of the winding-up.

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- (9) On the completion of the winding-up of the *registered fund*, the *operator* or *independent entity* must—
    - (a) tell the *Regulatory Authority* about the completion of the winding-up; and
    - (b) ask the authority to cancel the fund’s registration.
  - (10) This rule is subject to any order of the *Court*.

### **8.2.7 Accounting and reports during winding-up**

- (1) While a *registered fund* is being wound up, whether under rule 8.2.6 (Winding-up by operator or independent entity) or otherwise—
  - (a) the *annual accounting periods* and *half-yearly accounting periods* of the fund continue to run; and
  - (b) the provisions of *COLL* about annual and interim allocation of income continue to apply to the fund; and
  - (c) reports to *unitholders* and the *Regulatory Authority* continue to be required in relation to the fund.
- (2) However, if the *operator*, after consulting the fund’s auditor and the *Regulatory Authority*, decides on reasonable grounds that timely preparation of a report under *COLL* is not required in the interest of *unitholders* or the *Regulatory Authority*, the *operator* may dispense with immediate preparation of the report.
- (3) A period to which subrule (2) applies must be covered in the next relevant report required under *COLL*.
- (4) At the completion of the winding-up, the accounting period then running is regarded as the final *annual accounting period*.
- (5) Within 2 *months* after the end of the final *annual accounting period*, the final report of the *operator* must be sent to the *Regulatory Authority* and each *person* who was a *unitholder* immediately before the end of the final *annual accounting period*.
- (6) This rule is subject to any order of the *Court*.

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## Part 8.3 Transfer schemes

### 8.3.1 Purpose—pt 8.3

The purpose of this part is to make rules under the *FSR*, article 103 modifying *FSR*, part 16 (Control of Business Transfers) in relation to *registered funds*.

### 8.3.2 Transfer schemes

- (1) *FSR*, part 16 is modified in accordance with the following provisions of this rule.
- (2) If, for the purpose of a *relevant scheme*, it is proposed that the property of a *registered fund* should become the property of another *registered fund* or the property of a *subfund* of an *umbrella fund*, the proposal must not be implemented without the approval of a *special resolution* of the *unitholders* of the first fund, unless subrule (3) applies.
- (3) If, for the purpose of a *relevant scheme*, it is proposed that *fund property* attributable to a *subfund* (the **first subfund**) of an *umbrella fund* (the **first umbrella fund**) should become the property of another *registered fund* or another *subfund* of an *umbrella fund* (whether or not of the first *umbrella fund*), the proposal must not be implemented without the approval of—
  - (a) a *special resolution* of the *unitholders* in the first *subfund*; and
  - (b) a *special resolution* of the *unitholders* of *units* in the first *umbrella fund*, unless implementation of the scheme is not likely to result in any material prejudice to the interests of the *unitholders* in any other *subfund* of the first *umbrella fund*.
- (4) If it is proposed that a *registered fund* or a *subfund* of an *umbrella fund* should receive property (other than its first property) under a *relevant scheme*, or an arrangement equivalent to a *scheme of arrangement*, that is entered into by another *registered fund* or *subfund* or by a *body corporate*, the proposal must not be

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implemented without the approval of a *special resolution* of the *unitholders* of the fund or of the *class* or *classes* of *units* related to the *subfund* (as appropriate).

- (5) However, if the *operator* and either the *independent entity* or auditor of the fund agree that the receipt of the property by the fund or *subfund* as mentioned in subrule (4)—
- (a) is not likely to result in any material prejudice to the interests of the *unitholders* of the fund; and
  - (b) is consistent with the objectives of the fund or *subfund*; and
  - (c) could be effected without breaching chapter 6 (Investment and borrowing);

the property may be transferred to the fund or *subfund*, and *units* may be *issued* in exchange for the property, as part of the relevant scheme without the approval of a *special resolution*.

*Note* Subrule (5) applies in relation to a *private placement fund* with the modification mentioned in sch 4 (see r 1.2.2 (2)).

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## Chapter 9      Financial promotions

### 9.1.1      Financial promotions only to qualified investors

- (1) An *authorised firm* must not make or approve a *financial promotion* in relation to a *collective investment fund* that is addressed to, or disseminated in such a way that it is likely to be received by, a *person* who is not a *qualified investor*.

*Note* Rule 10.1.1 has provisions about financial promotions in relation *foreign funds*.

- (2) For this rule, a ***qualified investor*** includes a *person* who is a *retail customer* if the *authorised firm* believes, on reasonable grounds, that the firm could classify the *person* under *COND* as a *business customer*.

### 9.1.2      Ch 9 additional to COND

This chapter is additional to, and does not limit, *COND*.

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## Chapter 10 Foreign funds

### Part 10.1 Promotion and sale of units in foreign funds

#### 10.1.1 Restrictions on foreign funds generally

- (1) An *authorised firm* must not make or approve a *financial promotion* in relation to a *foreign fund* unless the fund has a written constitution, and prospectus, (however described).
- (2) An *authorised firm* must not conduct relevant investment activities in or from the *QFC* in relation to a *foreign fund* unless the fund has a written constitution, and prospectus, (however described).
- (3) Subrule (2) does not apply in relation to an *own account transaction*.
- (4) In this rule:  
*relevant investment activities* means any or all the following:
  - (a) *arranging deals in relevant investments*;
  - (b) *dealing in relevant investments as principal*;
  - (c) *dealing in relevant investments as agent*;
  - (d) *advising on relevant investments*.

#### 10.1.2 Prospectus and disclaimer must be provided for foreign funds etc

- (1) An *authorised firm* must not sell, or arrange for the sale of, a *unit* in a *foreign fund* to a *customer* unless it has given the *customer*, not later than a reasonable time before the *customer* becomes contractually bound in relation to the sale of the *unit*—
  - (a) a prospectus for the fund; and
  - (b) a complying disclaimer for the fund.

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- (2) If an *authorised firm* in the exercise of its discretion buys a *unit* in a *foreign fund* for a *customer*, the firm must—
- (a) tell the *customer* that the *customer* may request a prospectus for the fund; and
  - (b) give the *customer* a prospectus for the fund on request.
- (3) If an *authorised firm* gives a prospectus for a *foreign fund* to a *customer* under subrule (2), the firm must also give the *customer* a complying disclaimer for the fund.
- (4) Subrule (2) (a) does not apply in relation to the purchase by an *authorised firm* of a *unit* in a *foreign fund* for a *customer* if—
- (a) the firm has told the *customer*, in its terms of business, or in periodic statements, given to the *customer* under *COND*, that the *customer* may request a prospectus for any *foreign fund* in which the firm buys *units* for the *customer* under a discretionary management agreement; and
  - (b) given the *customer* a complying disclaimer for the fund or covering all *foreign funds* or a class of *foreign funds* in which the fund is included.
- (5) For this rule, a **complying disclaimer** for a *foreign fund* is a written notice that contains statements to the effect of the following:
- (a) the fund is a *collective investment fund* that is not registered in the *QFC* or regulated by the *Regulatory Authority*;
  - (b) any prospectus for the fund, and any related documents, have not been reviewed or approved by the *Regulatory Authority*;
  - (c) investors in the fund may not have the same access to information about the fund that they would have to information about a *collective investment fund* registered in the *QFC*;



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- (d) recourse against the fund, and those involved with it, may be limited or difficult and may have to be pursued in a *jurisdiction* outside the *QFC*.

*Note* This definition also applies in r 10.1.3 and r 10.1.6.

- (6) In this rule:

*prospectus* means a prospectus (however described).

### **10.1.3 Complying disclaimer must be given with other documents under COND for foreign funds**

- (1) This rule applies if an *authorised fund* is required under *COND* to give a *document* to a *customer* in relation to a *foreign fund*.
- (2) The *authorised firm* must, at the same time as it gives the *document* to the *customer*, give the *customer* a complying disclaimer.
- (3) In this rule:

*complying disclaimer* has the meaning given by rule 10.1.2 (5).

### **10.1.4 Authorised firms must pass on documents etc from foreign funds**

- (1) This rule applies if—
- (a) an *authorised firm* either—
- (i) sells, or arranges for the sale of, a *unit* in a *foreign fund* to a *customer*; or
- (ii) buys a *unit* in a *foreign fund* for a *customer*; and
- (b) the firm later receives a *document* or information about the fund from its *fund manager*.
- (2) The *authorised firm* must give the *document* or information to the *customer*.

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### 10.1.5 Quarterly returns for foreign fund promotions etc

- (1) This rule applies to an *authorised firm* in relation to a quarter if, during the quarter, the firm—
  - (a) makes or approves a *financial promotion* in relation to a *foreign fund*; or
  - (b) conducts relevant investment activities in or from the *QFC* in relation to a *foreign fund*.
- (2) The *authorised firm* must give the *Regulatory Authority* a return under this rule for the quarter within 1 *month* after the end of the quarter.
- (3) The return must include the following information in relation to each *foreign fund* in relation to which the firm made or approved a *financial promotion*, or conducted relevant investment activities in or from the *QFC*, during the quarter:
  - (a) the fund's name;
  - (b) the *jurisdiction* in which the fund was established;
  - (c) whether the fund is regulated by an *overseas regulator* and, if so, the regulator's name and the nature of the regulation;
  - (d) whether the following rules were complied with in relation to the fund during the quarter:
    - rule 10.1.2 (Prospectus and disclaimer must be provided for foreign funds etc)
    - rule 10.1.3 (Complying disclaimer must be given with other documents under COND for foreign funds)
    - rule 10.1.4 (Authorised firms must pass on documents etc from foreign funds).
- (4) In this rule:

*relevant business activities* has the meaning given by rule 10.1.1 (4).

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*quarter*, in relation to an *authorised firm*, means a quarter applying in relation to the firm for the purposes of *PIIB* 1.5 (Submission of Prudential Returns).

### **10.1.6 Foreign funds—recordkeeping by authorised firms**

- (1) An *authorised firm* must—
  - (a) keep a copy of each prospectus (however described) for a *foreign fund* that it gives to *customers* for at least 6 years after the day it is last given to a *customer*; and
  - (b) keep a copy of each complying disclaimer for a *foreign fund* that it gives to *customers* for at least 6 years after the day it is last given to a *customer*; and
  - (c) keep a record of the version of each prospectus (however described) for a *foreign fund* that it gives to each *customer*, and the day it is given to the *customer*, for at least 6 years after the day it is given to the *customer*; and
  - (d) keep a record of the version of each complying disclaimer for a *foreign fund* that it gives to each *customer*, and the day it is given to the *customer*, for at least 6 years after the day it is given to the *customer*.
- (2) In this rule:

*complying disclaimer* has the meaning given by rule 10.1.2 (5).

### **10.1.7 Pt 10.1 additional to COND**

This part is additional to, and does not limit, *COND*.

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## **Part 10.2**                      **Providing fund administration for foreign funds**

### **10.2.1**      **Application of AML Regulations etc—foreign funds**

The *Anti Money Laundering Regulations 2005* and *AMLR* apply in relation to an *authorised firm* that is *providing fund administration* for a *foreign fund* as if—

- (a) the provisions of those regulations and that rulebook formed part of this rulebook; and
- (b) a reference in those provisions, as they form part of this rulebook, to a *Customer* included a reference to a *unitholder* of the fund; and
- (c) all other necessary changes were made.

### **10.2.2**      **Client money and assets—foreign funds**

- (1) An *authorised firm* that is *providing fund administration* for a *foreign fund* must not hold or control money or assets belonging to third parties in relation *providing fund administration* for the fund.
- (2) However, subrule (1) does not apply to the holding of a cheque to the order of the *foreign fund's* bank account if the cheque is securely held for a maximum of 3 *business days* before being deposited into the bank account or returned to the drawer of the cheque.

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## Chapter 11 Other provisions

### Part 11.1 General

#### 11.1.1 Completion of forms

- (1) Substantial compliance with a form approved or prescribed by the *Regulatory Authority* for *COLL* is sufficient.
- (2) However, if a form requires—
  - (a) the form to be signed; or
  - (b) the form to be prepared in a particular way (for example, on paper of a particular size or quality or in a particular electronic form); or
  - (c) the form to be completed in a particular way; or
  - (d) particular information to be included in the form, or a particular *document* to be attached to or given to the *Regulatory Authority* with the form; or
  - (e) the form, information in the form, or a *document* attached to or given with the form, to be verified in a particular way;

the form is properly completed only if the requirement is complied with.

#### 11.1.2 Restitution orders for contravention of relevant requirements

- (1) A private person may apply to the *Court* for a restitution order if the person suffers loss or damage as a result of a contravention of a *relevant requirement* in relation to a *collective investment fund*.

*Note* This rule is made under *FSR*, art 65.

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(2) In this rule:

*private person* means—

- (a) an individual, except when acting in the course of carrying on any *regulated activity*; or
- (b) any other *person*, except when acting in the course of carrying on business of any kind.

### **11.1.3 Service of notices and other documents on unitholders**

- (1) If a provision of *COLL* authorises or requires any notice or other *document* to be served on a *unitholder* of a *registered fund* (whether the word ‘serve’, ‘give’, ‘notify’, ‘send’ or ‘tell’ or some other word is used), the notice or other *document* may be served—
  - (a) by sending it by prepaid post to the *unitholder’s* postal address shown in the register; or
  - (b) by leaving at the *unitholder’s* business or residential address shown in the register; or
  - (c) by sending it to the *unitholder* using an electronic medium in accordance with rule 11.1.4 (Notices and other documents to be in legible form etc).
- (2) Any notice or other *document* served by post under this rule is taken to have been served when it would have been received in the ordinary course of post.
- (3) For subrule (2), it is presumed (unless evidence sufficient to raise doubt about the presumption is presented) that a postal article sent by prepaid post is received on the 5<sup>th</sup> *business day* after the day it is posted.
- (4) Any *document* left at an address, or served otherwise than by post, under this rule is taken to have been served on that *day*.

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#### 11.1.4 Notices and other documents to be in legible form etc

- (1) If a provision of *COLL* authorises or requires any notice or other *document* to be served on, or information to be given to any *person*, (whether the word ‘serve’, ‘give’, ‘notify’, ‘send’ or ‘tell’ or some other word is used), the *document* or information must be served or given in a legible form.

*Note* GENE 4.2 deals with notifications to the *Regulatory Authority*.

- (2) For subrule (1), any form is a ***legible form*** if the form—
  - (a) is consistent with the knowledge that the *person* serving the *document*, or giving the information, has about how the recipient of the *document* or information wishes or expects to receive it; and
  - (b) can be provided in a durable medium by the *person* serving the *document* or giving the information; and
  - (c) enables the recipient to know or record the time of receipt; and
  - (d) is reasonable in the context.
- (3) In *COLL*, any requirement that a *document* be signed may be satisfied by an electronic signature or electronic evidence of assent.
- (4) To remove any doubt, reference in this rule to a *person* includes a reference to the *Regulatory Authority*.

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## Part 11.2 Fees

### 11.2.1 Application fees—registered funds

- (1) An applicant for registration of a *collective investment fund* established in the *QFC* must pay the *Regulatory Authority* an application fee of the relevant amount.
- (2) The fee must be paid when the application is filed with the *Regulatory Authority*.
- (3) The *Regulatory Authority* may also, by written notice given to the applicant, require the applicant to pay a supplementary fee to the authority not later than the time stated in the notice if it expects to incur substantial costs in dealing with the application.
- (4) If subrule (2), or a notice under subrule (3), is not complied with, the application is taken not to have been made until the fee is paid.
- (5) The fee is non-refundable, whether or not the application is successful.
- (6) In this rule:  
*relevant amount*, for a *collective investment fund*, means—
  - (a) if the fund is not an *umbrella fund* or is an *umbrella fund* with only 1 *subfund*—US\$ 2 000; or
  - (b) if the fund is an *umbrella fund* with 2 or more *subfunds*—whichever is the lesser of the following:
    - (i) US\$ 1 000 x number of *subfunds*;
    - (ii) US\$ 10 000.

### 11.2.2 Annual fees—registered funds

- (1) The *operator* of a *registered fund* must pay the *Regulatory Authority* an annual fee for each *year* that the fund is registered.



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- (2) The annual fee for the first *year* of registration is the amount calculated as follows:

relevant amount x whole months in year after registration day

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- (3) The annual fee for the first *year* of registration must be paid within 21 days after the day the fund is registered.
- (4) The annual fee for a subsequent *year* of registration is the relevant amount.
- (5) The annual fee for a subsequent *year* of registration must be paid on or before 1 January in the *year*.
- (6) If an annual fee is not paid in accordance with this rule, the amount of the fee is increased by 1% for each *month*, or part of a *month*, that it remains unpaid after the date it became payable.
- (7) Subrule (6) does not limit any action that the *Regulatory Authority* may take if an annual fee is not paid in accordance with this rule.
- (8) In this rule:
- relevant amount*, for a *registered fund*, means—
- (a) if the fund is not an *umbrella fund* or is an *umbrella fund* with only 1 *subfund*—US\$ 2 000; or
  - (b) if the fund is an *umbrella fund* with 2 or more *subfunds*—whichever is the lesser of the following:
    - (i) US\$ 1 000 x number of *subfunds*;
    - (ii) US\$ 10 000.

### **11.2.3 Waiver etc of fees**

The *Regulatory Authority* may, if it considers it equitable to do so, reduce, waive or refund all or part of a fee payable under this part.

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## Schedule 1      Arrangements not constituting collective investment funds

(see r 1.1.1 (2))

### S1.1      Individual investment management arrangements

An arrangement does not constitute a *collective investment fund* if—

- (a) the property to which the arrangement relates (other than cash awaiting investment) consists of *investments* of 1 or more of the following kinds:
  - (i) *shares*;
  - (ii) *debt instruments*;
  - (iii) *warrants*;
  - (iv) *options*;
  - (v) *units in a collective investment fund*;
  - (vi) *long term insurance contracts*; and
- (b) each participant is entitled to a part of the property and to withdraw the part at any time; and
- (c) each of the following provisions applies to the arrangement:
  - (i) the contributions of the participants are not pooled;
  - (ii) the profits or income out of which payments are to be made are not pooled;
  - (iii) the parts of the property to which the different participants are entitled are bought and sold separately only when a person becomes or ceases to be a participant.

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**S1.2 Pure deposit-based arrangements**

An arrangement does not constitute a *collective investment fund* if the whole amount of each participant's contribution is a deposit accepted by an *authorised firm* authorised under its *authorisation* to carry on *deposit taking*.

**S1.3 Arrangements not operated by way of business**

An arrangement does not constitute a *collective investment fund* if it is operated otherwise than by way of business.

**S1.4 Debt issues**

(1) An arrangement does not constitute a *collective investment fund* if it is an arrangement under which the rights or interests of participants are represented by *investments* of 1, and only 1, of the following kinds:

- (a) *debt instruments* if they are—
  - (i) issued by—
    - (A) a single *body corporate* that is not a *CIC*; or
    - (B) a single issuer that is not a *body corporate*; and
  - (ii) for instruments mentioned in subparagraph (i) (B)—  
issued or guaranteed by—
    - (A) the government of any country or territory; or
    - (B) a public or local authority of any country or territory; and
  - (iii) not convertible or exchangeable for *investments* of any other kind;
- (b) *debt instruments* if—
  - (i) they are instruments to which paragraph (a) (other than subparagraph (iii)) applies; and
  - (ii) they are convertible or exchangeable for *shares*; and

- 
- (iii) the *shares* are issued by—
- (A) the same person who issued the *debt instruments*;  
or
  - (B) a single other issuer;
- (c) *warrants* if—
- (i) they are issued otherwise than by a *CIC*; and
  - (ii) they give rights to investments that—
    - (A) are issued by the same issuer; and
    - (B) are *debt instruments* mentioned in paragraph (a) or (b) or *shares*.
- (2) An arrangement must not be taken not to fall within subrule (1) only because 1 or more of the participants is a person (the ***counterparty***)—
- (a) whose ordinary business—
    - (i) involves the person in carrying on 1 or more relevant activities; or
    - (ii) would, apart from any exclusions under *FSR*, schedule 3 (Regulated Activities and Permitted Activities), part 2 (Specified Activities), involve the person in carrying on 1 or more relevant activities; and
  - (b) whose rights or interests in the arrangement are or include rights or interests under a swap arrangement.
- (3) In this rule:
- relevant activities*** means regulated activities of any of the following kinds:
- (a) *dealing in investments*;
  - (b) *arranging deals in investments*;

- 
- (c) *providing custody services;*
  - (d) *arranging the provision of custody services;*
  - (e) *managing investments;*
  - (f) *advising on investments;*
  - (g) *providing credit facilities;*
  - (h) *arranging credit facilities;*
  - (i) *operating a collective investment fund.*

**swap arrangement** means an arrangement—

- (a) the purpose of which is to facilitate the making of payments to participants, whether or not of a particular amount, in a particular currency or at a particular time or rate of interest; and
- (b) under which the counterparty—
  - (i) is entitled to receive amounts, whether representing principal or interest, payable in relation to any property subject to the arrangement or amounts worked out by reference to those amounts; and
  - (ii) makes payments, whether or not of the same amount or in the same currency as amounts mentioned in subparagraph (i), that are worked out in accordance with an agreed formula by reference to those amounts.

## **S1.5 Common accounts**

An arrangement does not constitute a *collective investment fund* if—

- (a) it is an arrangement under which the rights or interests of participants are rights to or interests in money held in a common account; and

- 
- (b) that money is held in the account on the understanding that an amount representing the contribution of each participant is to be applied—
    - (i) in making payments to the participant; or
    - (ii) in satisfaction of amounts owed by the participant; or
    - (iii) in the acquisition of property for the participant or the provision of services to the participant.

**S1.6 Arrangements entered into for commercial purposes related to existing businesses**

- (1) An arrangement does not constitute a *collective investment fund* if each of the participants—
  - (a) carries on a business activity other than an excluded activity; and
  - (b) enters into the arrangement for commercial purposes related to the business.
- (2) However, subrule (1) does not apply if the participant will carry on the business only by virtue of the participant being a participant in the arrangement.
- (3) In this rule:

***excluded activity*** means *regulated activities* of any of the following kinds:

  - (a) *dealing in investments*;
  - (b) *arranging deals in investments*;
  - (c) *providing custody services*;
  - (d) *arranging the provision of custody services*;
  - (e) *managing investments*;
  - (f) *advising on investments*;

- 
- (g) *providing credit facilities;*
  - (h) *arranging credit facilities;*
  - (i) *operating a collective investment fund.*

**S1.7 Group arrangements**

An arrangement does not constitute a *collective investment fund* if each of the participants is a *body corporate* in the same *group* as the manager or operator (however described) under the arrangement.

**S1.8 Franchise arrangements**

- (1) A franchise arrangement does not constitute a *collective investment fund*.
- (2) In this rule:

*franchise arrangement* means an arrangement under which a person earns profits or income by exploiting a right given by the arrangement to use—

- (a) a trade mark or design or other intellectual property; or
- (b) the goodwill attached to it.

**S1.9 Timeshare arrangements**

An arrangement does not constitute a *collective investment fund* if the rights or interests of the participants are timeshare rights.

**S1.10 Other arrangements relating to use or enjoyment of property**

An arrangement does not constitute a *collective investment fund* if—

- (a) 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 free of charge to others; and
- (b) the property to which the arrangement relates—

- 
- (i) does not consist of the currency of any country or territory; and
  - (ii) does not consist of or include—
    - (A) a *specified product*; or
    - (B) a product that would be a *specified product* apart from any exclusion in *FSR*, schedule 3 (Regulated Activities and Permitted Activities), part 3 (Specified Products).

**S1.11 Arrangements involving issue of certificates representing investments**

An arrangement does not constitute a *collective investment fund* if the rights or interests of the participants are *securities receipts* in relation to *securities* of a single issuer.

**S1.12 Clearing services**

An arrangement does not constitute a *collective investment fund* if its purpose is the provision of clearing services and the services are provided by an *authorised firm*.

**S1.13 Contracts of insurance**

A *contract of insurance* is not an arrangement that constitutes a *collective investment fund*.

**S1.14 Bodies corporate and partnerships**

- (1) A *body corporate* (other than a *CIC*, *CIP* or another permitted fund entity) is not an arrangement that constitutes a *collective investment fund*.
- (2) However, the *Regulatory Authority* may, by written notice given to a *body corporate*, declare that subrule (1) does not apply in relation to the *body corporate*.
- (3) A partnership (other than a *CIP* or another permitted fund entity) is not an arrangement that constitutes a *collective investment fund*.



- 
- (4) However, the *Regulatory Authority* may, by written notice given to a partnership, declare that subrule (3) does not apply in relation to the partnership.
  - (5) The *Regulatory Authority* may make a declaration under subrule (2) or (4) if it considers that making the declaration is desirable to protect—
    - (a) the interests of participants or potential participants in the *body corporate* or partnership; or
    - (b) the *financial system*.
  - (6) If the *Regulatory Authority* gives a *body corporate* or partnership a notice under subrule (2) or (4), the notice must—
    - (a) give reasons for the decision to make the declaration; and
    - (b) tell the *body corporate* or partnership that it may appeal to the *Regulatory Tribunal* against the decision.
  - (7) The *body corporate* or partnership may appeal to the *Regulatory Tribunal* against the decision to make the declaration.
  - (8) In this rule:  
*another permitted fund entity* has the meaning given by rule 1.1.3 (5) (Legal forms for registered funds).

**S1.15 Profit sharing investment accounts (PSIAs)**

A *profit sharing investment account (PSIA)* is not an arrangement that constitutes a *collective investment fund*.

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## **Schedule 2 Content of constitutional document**

(see r 3.1.2)

### **Part S2.1 Constitution requirements for all funds**

#### **S2.1 Name of the fund**

A statement of the name of the fund.

#### **S2.2 Fund is QFC fund etc**

A statement that—

- (a) the fund is a *collective investment fund* established in the *QFC*; and
- (b) the *constitutional document* is governed by the law applying in the *QFC* in relation to *collective investment funds*.

#### **S2.3 Legal form of fund etc**

A statement of the legal form of the fund.

#### **S2.4 Islamic funds**

For an *Islamic fund*—

- (a) a statement that the fund is an *Islamic fund* and consequently that the fund's entire business operations are conducted in accordance with Shari'a; and
- (b) a statement providing details of its *Shari'a Supervisory Board*.

#### **S2.5 Fund objectives**

Each of the following statements:

- (a) a statement of the objectives of the fund and, in particular—

- 
- (i) the types of *investments* in which it (and, if applicable, each *subfund*) may invest; and
  - (ii) the investment management strategies of the fund, including its approach to borrowing and gearing; and
- (b) unless the fund is a *single property fund*, that the object of the fund is to invest in *investments* of those types with the aim of spreading investment risk and giving *unitholders* the benefits of the results of the management of those *investments*; and
- (c) if the fund is a *single property fund*—that the fund is a *single property fund*.

## **S2.6 Duration of limited funds**

If the duration of the fund is limited, a statement to that effect, of the duration of the fund and, if appropriate, of any conditions for extending the duration of the fund.

## **S2.7 Unitholder's liability to pay**

- (1) A provision that—
- (a) a *unitholder* is not liable to make any further payment for a *unit* after paying the *price* for the *unit*; and
  - (b) no further liability can be imposed on the *unitholder* in relation to the *unit*.
- (2) A provision that the *unitholders* are not liable for—
- (a) the debts or other liabilities of the fund; or
  - (b) acts or omissions of the *operator* or *independent entity*.

*Note* Subrule (2) (b) applies in relation to a *private placement* fund with the modification mentioned in sch 4 (see r 1.2.2 (2)).

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**S2.8 Fees, charges and other expenses of fund**

Each of the following statements:

- (a) that fees, charges and other expenses in relation to the fund may be taken out of *fund property*;
- (b) a statement of how the amounts of fees, charges and other expenses are to be calculated.

**S2.9 Classes of units**

A statement of—

- (a) the *classes of units* that may be *issued* for the fund; and
- (b) for an *umbrella fund*—the *classes of units* that may be *issued* for each *subfund* of the fund; and
- (c) the rights attaching to *units* of each *class*, including any provision for the expression of the rights in 2 or more denominations.

**S2.10 Limitations on unit issue and redemption**

A statement providing details of—

- (a) the provisions relating to any restrictions on the right to *redeem units* in any *class*; and
- (b) when the *issue* of *units* of any particular *class* may be limited.

**S2.11 Income distribution**

(1) A statement providing details of—

- (a) the distribution policy of the fund; and
- (b) the *person* responsible for calculating, transferring, allocating and distributing income for any *class of unit in issue* during the accounting period; and
- (c) any provision for payment of income and when income is to be distributed.

- 
- (2) If relevant, a provision for *income equalisation*.

**S2.12 Investment and borrowing restrictions**

- (1) A statement providing details of all *investment* restrictions applying to the fund or, if there are no restrictions, a statement to that effect.
- (2) A statement providing details of borrowing restrictions applying to the fund, including the fund's permitted percentage under rule 6.1.9 (Borrowing).

*Note* Subrule (2) applies in relation to a *private placement fund* with the modification mentioned in sch 4 (see r 1.2.2 (2)).

**S2.13 Management of borrowing risks**

A statement providing details of how any risks posed by borrowings of the fund are to be managed.

**S2.14 Valuation and pricing**

A statement setting out the basis for, and frequency of, valuation and pricing of the fund.

**S2.15 Base currency**

A statement of the *base currency* of the fund.

**S2.16 Functions of operator and independent entity**

A statement providing details of the *functions* of the *operator* and *independent entity* under *COLL* in relation to the fund.

*Note* This rule applies in relation to a *private placement fund* with the modification mentioned in sch 4 (see r 1.2.2 (2)).

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**S2.17 Responsibility statement**

A provision stating that nothing in the *constitutional document* has the effect of exempting the *operator* or *independent entity* from, or indemnifying the *operator* or *independent entity* against, any liability of the *operator* or *independent entity* to a *participant* under the law applying in the *QFC*.

*Note* This rule applies in relation to a *private placement fund* with the modifications mentioned in sch 4 (see r 1.2.2 (2)).

**S2.18 Meetings**

A statement providing details of the following:

- (a) the procedures for calling meetings of *unitholders*;
- (b) resolutions and voting at meetings of *unitholders*;
- (c) the voting rights of *unitholders*;
- (d) the matters that require the approval of *unitholders*;
- (e) the matters that require the approval of an *ordinary resolution*;
- (f) the matters that require the approval of a *special resolution*.

**S2.19 Other statements and provisions for CIC**

- (1) For a *CIC*, the following statements:
  - (a) a statement that the fund is an open-ended company with variable share capital;
  - (b) a statement providing particulars of the fund's capital structure, including the maximum and minimum sizes of the fund's capital;
  - (c) a statement of the proportion of a larger denomination share represented by a smaller denomination share for any relevant *class of units*.
- (2) For a *CIC*, a provision authorising the allocation of redeemable shares without limit at net asset value.

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**S2.20 CIP partnership agreement binding etc**

For a *CIP*, a statement that the *partnership agreement*—

- (a) is binding on each *unitholder* as if the *unitholder* had been a party to it; and
- (b) authorises and requires the *operator* and the *independent entity* to do everything required or permitted of them by its terms.

*Note* Par (b) applies in relation to a *private placement fund* with the modification mentioned in sch 4 (see r 1.2.2 (2)).

**S2.21 CIT trust deed binding etc**

For a *CIT*, a statement that the *trust instrument*—

- (a) is binding on each *unitholder* as if the *unitholder* had been a party to it; and
- (b) authorises and requires the *operator* and the *independent entity* to do everything required or permitted of them by its terms.

*Note* Par (b) applies in relation to a *private placement fund* with the modification mentioned in sch 4 (see r 1.2.2 (2)).

**S2.22 CIT declaration of trust**

For a *CIT*, a statement that, subject to the *trust instrument* and *COLL*—

- (a) the *fund property* (other than amounts in any *distribution account*) is held by the *independent entity* on trust for the *unitholders* according to the number of *units* held by each *unitholder* or, if relevant, according to the number of individual shares in the *fund property* represented by the *units* held by each *unitholder*; and

- 
- (b) the amounts in any *distribution account* are held by the *independent entity* on trust to distribute or apply in accordance with *COLL*.

*Note* This rule applies in relation to a *private placement fund* with the modifications mentioned in sch 4 (see r 1.2.2 (2)).

**S2.23 Assets other than cash for issue or cancellation**

If relevant, a statement authorising payment for the *issue* or *cancellation of units* of the fund to be made by the transfer of assets other than cash.

**S2.24 Suspension and winding-up**

A statement providing details of—

- (a) the grounds on which the *operator* may initiate a suspension of the fund; and
- (b) the methodology for working out the rights of *unitholders* to participate in the *fund property* on winding-up.

**S2.25 Amendment of constitutional document**

A statement providing details of how the *constitutional document* may be amended.

**S2.26 Redemption or cancellation of units held in breach of QFC law**

A statement that, if the holding of *units* by a *unitholder* is (or is reasonably considered by the *operator* to be) in contravention of *COLL*, any other law applying in the *QFC* or the *constitutional document*, the *units* must be *redeemed* or *cancelled*.

**S2.27 Documents evidencing title to units**

A statement providing details of the *documents evidencing title to units*.



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**S2.28 Other relevant matters**

A statement providing details of the matters—

- (a) necessary to enable the fund, *operator* or *independent entity* to obtain any privilege or power provided in *COLL* that is not otherwise provided in the *constitutional document*; and
- (b) otherwise required by *COLL* to be provided in the *constitutional document*.

*Note* Par (a) applies in relation to a *private placement fund* with the modification mentioned in sch 4 (see r 1.2.2 (2)).

**Part S2.2 Additional constitution requirements for qualified investor funds**

**S2.29 Qualified investor fund statement**

A statement that the fund is a qualified investor fund.

**S2.30 Only qualified investors can be unitholders in qualified investor funds**

A statement that *units* in the fund can only be recorded in the *unitholder register* in the name of a *person* who is a *qualified investor*.

**S2.31 Bearer certificates not available for qualified investor funds**

A statement that *bearer certificates* cannot be *issued* for the fund.

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**Part S2.3**                    **Additional constitution  
requirements for private  
placement funds**

**S2.32**    **Private placement fund statement**

A statement that the fund is a private placement fund.

**S2.33**    **Maximum number of unitholders**

A statement that *units* in the fund can only be recorded in the *unitholder register* in the name of 100 *persons* (or a stated lesser number of *persons*).

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## **Schedule 3      Mandatory content of prospectus for registered qualified investor funds**

(see r 5.2.3)

### **Part S3.1      Prospectus content required for all qualified investor funds**

#### **S3.1      Document status**

A statement that the document is the *prospectus* of the *registered qualified investor fund* as at a particular date.

#### **S3.2      Description of fund etc**

The following information and statements:

- (a) the name of the fund;
- (b) that the fund is registered as a qualified investor fund under *COLL*;
- (c) the registration number given to it by the *Regulatory Authority*;
- (d) the legal form of the fund;
- (e) if the fund is an *Islamic fund*—a statement that the fund is an *Islamic fund*;
- (f) that the *unitholders* are not liable for—
  - (i) the debts and other liabilities of the fund; or
  - (ii) acts or omissions of the *operator* or *independent entity*;
- (g) if the fund has not started to operate—when the fund is expected to start to operate;
- (h) whether it is a *listed fund* or intended to become a *listed fund*;

- 
- (i) if the duration of the fund is limited—a statement to that effect, of the duration of the fund and, if appropriate, of any conditions for extending the duration of the fund;
  - (j) the *base currency* of the fund;
  - (k) if the fund is a *CIC*—its capital structure, including the maximum and minimum sizes of the fund’s capital;
  - (l) if applicable, any minimum initial investment;
  - (m) that any notice or other *document* required or authorised to be served on the *operator* or *independent entity* of the fund may be served on the *operator* or *independent entity* at its registered address in the *QFC* or, if the *independent entity* is not an *authorised firm*, at its address for service;
  - (n) the circumstances in which the fund may be wound up and a summary of the procedure for, and the rights of the *unitholders* under, a winding-up;
  - (o) the governing law for fund.

*Note* This rule applies in relation to a *private placement fund* with the modifications mentioned in sch 4 (see r 1.2.2 (2)).

### **S3.3 Islamic funds**

If the fund is an *Islamic fund*, the following information:

- (a) that all operations of the fund will be conducted in accordance with Shari’a;
- (b) the names of the members of the *Shari’a Supervisory Board* and their qualifications and education;
- (c) the manner and frequency of Shari’a reviews;
- (d) the disclosure required by *AAOIFI FAS 14*.

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### **S3.4 Investment objectives and policy etc**

- (1) Sufficient information to enable a *unitholder* to ascertain the following:
  - (a) the fund's investment objectives;
  - (b) the fund's investment policy for achieving the investment objectives, including—
    - (i) the general nature of the portfolio and any intended specialisation; and
    - (ii) any policy for the spreading of risk in the *fund property*; and
    - (iii) the policy in relation to the exercise of borrowing powers;
  - (c) a description of any restrictions in the assets in which *investments* may be made;
  - (d) the extent (if any) to which that investment policy does not envisage remaining fully invested at all times;
  - (e) the fund's policy for managing any risks posed by borrowings of the fund.

*Note* Rule 5.2.3 (1) (General information requirements for prospectus) requires the prospectus to contain information in relation to—

- (a) the merits and risks of participating in the fund; and
  - (b) the extent and characteristics of the risks accepted by participating in the fund.
- (2) Details of borrowing restrictions applying to the fund, including the fund's permitted percentage under rule 6.1.9 (Borrowing).

*Note* Subrule (2) applies in relation to a *private placement fund* with the modification mentioned in sch 4 (see r 1.2.2 (2)).

- 
- (3) For investments in immovables, the following:
- (a) the countries or territories where immovables in which the fund may invest are located;
  - (b) the *operator's* policy in relation to insurance of immovables forming part of the *fund property*;
  - (c) the *operator's* policy in relation to granting options over immovables in the *fund property* and the purchase of options on immovables.
- (4) If intended, that the *fund property* may consist of *units* in a *collective investment fund* (the ***second fund***) that is managed by or operated by the *operator* or an *associate* of the *operator*, and a statement about—
- (a) the basis of the maximum amount of the charges in relation to transactions in the second fund; and
  - (b) the extent to which the charges will be reimbursed to the fund.
- (5) If intended, that *repo agreements* or *stock lending* transactions may be entered into for the fund, the procedures will operate and the collateral (within the meaning given by rule 6.1.8 (5)) that will be required.

### **S3.5 Distributions and accounting dates**

Relevant details of accounting and distribution dates, and a description of the procedures—

- (a) for determining and applying income (including how any distributable income is paid); and
- (b) relating to unclaimed distributions.

### **S3.6 Characteristics of units in the fund**

Information about the following:

- 
- (a) the name of *classes* of *units* in *issue* or available for *issue* and the rights attached to them so far as they differ from the rights attached to other *classes*;
  - (b) how *unitholders* may exercise their voting rights and what these are;
  - (c) the circumstances where a mandatory *redemption*, *cancellation* or conversion of *units* from one *class* to another may be required;
  - (d) if applicable, the circumstances where conversion from one *class* of *units* to another is not permitted;
  - (e) if applicable, the terms on which a *unit* of one *class* may be converted to a *unit* of another *class*.

### **S3.7 Operator**

The following information about the *operator*:

- (a) its name;
- (b) the nature of its legal status;
- (c) the date and place of its incorporation;
- (d) the address of its registered office in the *QFC*;
- (e) if it is a *subsidiary*—the name of its ultimate *holding company* and the *jurisdiction* where that *holding company* is incorporated;
- (f) if the duration of its legal status is limited—when its legal status will or may cease;
- (g) if it has share capital—the amount of its issued share capital and how much is paid up;
- (h) a summary of the *functions* of the *operator* under *COLL* in relation to the fund;

- 
- (i) a summary of the material provisions of the contracts to which the *operator* is a party in relation to the fund that may be relevant to *unitholders*, including provisions (if any) relating to *remuneration*, *remuneration* sharing, termination, compensation on termination, and indemnity;
  - (j) a summary of any *outsourcings* entered into by it under *COLL*, and any *material outsourcings* entered into by under *CTRL 5*, in relation to the fund.

### **S3.8 Independent entity**

- (1) The following information about the *independent entity*:
  - (a) its name;
  - (b) the nature of its legal status;
  - (c) the date and place of its incorporation;
  - (d) whether it is an *authorised firm*;
  - (e) if it is an *authorised firm*—the address of its registered office in the *QFC*;
  - (f) if it is not an *authorised firm*—the following:
    - (i) its contact details and address for service;
    - (ii) the regulatory regimes and legal systems (including insolvency laws) to which it is subject;
    - (iii) the regulatory authorisations (however described) held by it;
    - (iv) its arrangements for safekeeping the *fund property* and its use of agents and service providers;
    - (v) the obligations applying to it, and the recourse available against it by the *operator*, the *Regulatory Authority* and *unitholders*, under those regulatory regimes and legal



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systems in relation to anything done or not done by it in relation to the fund;

- (vi) whether it has submitted to the jurisdiction of the *Regulatory Authority*, the *Court* or both;
  - (g) if it is a *subsidiary*—the name of its ultimate *holding company* and the *jurisdiction* where that *holding company* is incorporated;
  - (h) if the duration of its legal status is limited—when its legal status will or may cease;
  - (i) if it has share capital—the amount of its issued share capital and how much is paid up;
  - (j) a summary of the *functions* of the *independent entity* under *COLL* in relation to the fund;
  - (k) a summary of the material provisions of the contracts to which the *independent entity* is a party in relation to the fund that may be relevant to *unitholders*, including provisions (if any) relating to *remuneration*, *remuneration* sharing, termination, compensation on termination, and indemnity;
  - (l) a description of its main business activity;
  - (m) a summary of any *outsourcings* entered into by it under *COLL*, and any *material outsourcings* entered into by it under *CTRL 5*, in relation to the fund.
- (2) If the *independent entity* is not an *authorised firm*, a statement that the *fund property* may be held in a *jurisdiction* outside the *QFC* and that the market practices, insolvency law and legal system applying in that *jurisdiction* may differ from those applying in the *QFC*.

*Note* This rule does not apply in relation to a *private placement fund* (see r 1.2.2 (1)).

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**S3.9 Investment adviser**

If an *investment adviser* is retained in relation to the business of the fund—

- (a) its name; and
- (b) whether it is an *authorised firm*.

**S3.10 Auditor**

The name and address of the auditor of the fund.

**S3.11 Register of unitholders**

Details of the address in the *QFC* where the *unitholder register*, or a copy of the *unitholder register*, is available for inspection by *unitholders* and when it can be inspected.

**S3.12 Payments out of fund property**

- (1) The payments that may be made out of the *fund property* to any *person*, whether by way of *remuneration* for services or reimbursement of expenses, and, for each category of *remuneration* or expenses, the following information:
  - (a) the current rates or amounts of the *remuneration*;
  - (b) how the *remuneration* will be calculated and accrue and when it will be paid;
  - (c) if notice has been given to *unitholders* of the *operator's* intention to—
    - (i) introduce a new category of *remuneration* for its services; or
    - (ii) increase the basis of any current charge; or
    - (iii) change the basis of the treatment of a payment from the *capital property*;

- 
- particulars of that introduction, increase or change and when it will take place;
- (d) the types of any other charges and expenses that may be taken out of the *fund property*;
  - (e) if all or part of the *remuneration* or expenses is to be treated as a charge to capital—
    - (i) that fact; and
    - (ii) the basis of the charge that may be treated as a capital charge.
- (2) The management expense ratio / total expense ratio, with worked examples.

### **S3.13 Dealing**

Details of the following:

- (a) the *dealing days*, and times in a *dealing day*, when the *operator* will receive requests for the *sale* and *redemption* of *units*;
- (b) the procedures for effecting the following:
  - (i) the *issue* and *cancellation* of *units*;
  - (ii) the *sale* and *redemption* of *units*;
  - (iii) the settlement of transactions;
- (c) the period of any *initial offer* and how it ends;
- (d) the steps required to be taken by a *unitholder* in *redeeming units* before the *unitholder* can receive the proceeds, including any relevant notice periods and the circumstances and periods in which payment may be deferred;
- (e) the circumstances in which the *redemption* of *units* may be suspended;

- 
- (f) the *days*, and times in the *day*, when recalculation of the *price* will start;
  - (g) details of the minimum number or value of each type of *units* in the fund that—
    - (i) any single *person* may hold; and
    - (ii) may be subject of any single transaction of *sale* or *redemption*;
  - (h) the circumstances in which the *operator* may arrange for, and the procedure for, a *redemption* of *units* otherwise than in cash;
  - (i) the circumstances in which the *issue* of *units* in any *class* may be limited and the procedures relating to this, including the conditions to be satisfied for the *issue* of *units* in the *class*;
  - (j) the circumstances in which direct *issue* or *cancellation* of *units* may happen and the relevant procedures for direct *issues* and *cancellations*.

### **S3.14 Valuation of fund property**

Details about the following:

- (a) how frequently, and at what times of the *day*, the *fund property* will be regularly valued to decide the *price* at which *units* in the *fund* may be purchased from or *redeemed* by the *operator*, and a description of any circumstances in which the *fund property* may be specially valued;
- (b) in relation to each purpose for which the *fund property* must be valued, the basis on which it will be valued;
- (c) how the *price* of *units* of each *class* will be decided, including whether a forward or *historic price* basis is to be applied.

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**S3.15 Sale and redemption charges**

If the *operator* makes any charges on *sale* and *redemption* of *units*, details of the charging structure and how notice will be provided to *unitholders* of any increase.

**S3.16 General information**

Details of the following:

- (a) when annual and half-yearly reports will be published;
- (b) the fund's accounting standard;
- (c) the address in the *QFC* where copies of the *constitutional document*, any amending instruments and the most recent annual and half-yearly reports may be inspected and copies may be obtained.

**S3.17 Mandatory statement for all funds**

The following statement prominently displayed on the first page (not including any cover page) of the prospectus:

'This prospectus relates to a collective investment fund established in the Qatar Financial Centre and registered by the Qatar Financial Centre Regulatory Authority (the ***Regulatory Authority***).

The Regulatory Authority is not responsible for reviewing or verifying this prospectus or any related documents. The Regulatory Authority has not approved this prospectus or any related documents nor has the Regulatory Authority taken any steps to verify the statements or information in the prospectus or any related documents. The Regulatory Authority takes no responsibility for the accuracy of statements or information in this prospectus or any related documents.

The units to which this prospectus relates may be illiquid or subject to restrictions on their resale (or both). Prospective purchasers of the units offered should conduct their own due diligence and

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consider seeking independent legal and financial advice before deciding to invest in the fund

This prospectus is intended for distribution only to a limited type of investor (a 'qualified investor' as defined in the Regulatory Authority's *Collective Investment Funds Rulebook (COLL)*) and must not be given to, or relied on, by anyone else.'

*Note* This rule applies in relation to a *private placement fund* with the modification mentioned in sch 4 (see r 1.2.2 (2)).

### **S3.18 Additional information for feeder funds**

For a *feeder fund*, the following information:

- (a) a prominent risk warning to alert *participants* to the fact that they may be subject to higher fees arising from the layered investment structure;
- (b) details of the fees arising at the level of the *feeder fund* itself and the *collective investment fund* to which its *investments* are *dedicated*.

### **S3.19 Additional information for fund of funds**

For a *fund of funds fund*, the following information:

- (a) a prominent risk warning to alert *participants* to the fact that they will be subject to higher fees arising from the layered investment structure;
- (b) details of the fees arising at the level of the *fund of funds* itself and, to the extent known, the *collective investment funds* (and *subfunds* of *umbrella funds*) to which its *investments* are *dedicated*.

### **S3.20 Additional statements and information for property funds**

For a *property fund*, the following statements and information:

- (a) the nature of the commitment that *participants* will enter into;

- 
- (b) a prominent risk warning that refers to the particular circumstances in property markets that can cause difficulties in meeting *redemptions*;
  - (c) details of the fund's *standing independent valuer*;
  - (d) details of transactions or agreements entered into, or proposed to be entered into, with *affected persons* for the fund or the *operator*;
  - (e) full particulars of the nature and extent of the interest (if any) of *affected persons* in the property owned, or proposed to be acquired, by the fund;
  - (f) details of significant *participants* and the number of *units* held, or proposed to be held, by each of them;
  - (g) details of the main taxes levied on the fund's income and capital, including tax (if any) deducted on distributions to *unitholders*;
  - (h) a statement to explain the standards according to which property valuations are conducted for the fund;
  - (i) the percentage of the fund's net assets that may consist of *property-related assets* that are not traded in or dealt on markets provided for in the *constitutional document*;
  - (j) unless the *constitutional document* and the *prospectus* state that the fund is a *single property fund*, the maximum percentage of the fund's net assets that may be invested in any single property and, if applicable, the conditions under which the fund may depart from this restriction;
  - (k) the maximum percentage of the fund's net asset value that may be invested in properties that are vacant, in the process of development or requiring development;
  - (l) the maximum percentage of the fund's net asset value that may be invested in properties that are subject to a security interest

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held otherwise than by the *independent entity* or its nominee or delegate.

*Note* This rule applies in relation to a *private placement fund* with the modifications mentioned in sch 4 (see r 1.2.2 (2)).

### **S3.21 Additional information for private equity funds**

For a *private equity fund*, the following information:

- (a) a description of the arrangements in place for safekeeping money raised from *participants* but not yet invested in the proposed undertaking or venture;
- (b) a description of the exit arrangement for *participants*.

### **S3.22 Additional statement for hedge funds**

For a *hedge fund*, the following statement prominently displayed in the prospectus:

‘This collective investment fund is a hedge fund.

When considering investing in a hedge fund, you should consider the fact that some hedge fund products use leverage and other speculative investment practices that may increase the risk of investment loss, can be illiquid, may involve complex tax structures, often charge high fees and, in many cases, the underlying investments or investment strategies are not transparent and are known only to the hedge fund operator.

Returns from hedge funds can be volatile and you may lose all or part of your investment. The hedge fund operator may have total trading authority and this could mean a lack of diversification and higher risk. The hedge fund may be subject to substantial expenses that must be offset by trading profits and other income. A part of those fees is paid to the hedge fund operator.’



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### **S3.23 Information on umbrella funds**

For an *umbrella fund*, the following information:

- (a) that a *unitholder* may exchange *units* in a *subfund* for *units* in any other *subfund*;
- (b) that an exchange of *units* in a *subfund* for *units* in another *subfund* is treated as a *redemption* and *sale*;
- (c) the policy for allocating between *subfunds* any assets of, or costs, charges and expenses payable out of, *fund property* that are not attributable to any particular *subfund*;
- (d) what charges (if any) may be made on exchanging *units* in a *subfund* for *units* in another *subfund*;
- (e) for each *subfund*—the currency in which the *fund property* allocated to it will be valued, and the *price* of *units* calculated and payments made, if this currency is not the *base currency* of the *umbrella fund*;
- (f) for an *umbrella fund* constituted by a *CIC*— that the *subfunds* are not ‘ring-fenced’ and, if the *umbrella fund* cannot meet liabilities attributable to any particular *subfund* out of the assets attributable to that *subfund*, the remaining liabilities may have to be met out of the assets attributable to other *subfunds*.

### **S3.24 Application of prospectus contents to umbrella fund**

For an *umbrella fund*, information and statements required must be provided—

- (a) for each *subfund* if the information or statements for any *subfund* differ from those for any other; and
- (b) for the *umbrella fund* as a whole, but only if the information or statements are relevant to the *umbrella fund* as a whole.

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**Part S3.2                      Additional prospectus content  
required for private placement  
funds**

**S3.25            Maximum number of unitholders**

A statement that *units* in the fund can only be recorded in the *unitholder register* in the name of 100 *persons* (or a stated lesser number of *persons*).

**S3.26            Private placement fund exemptions statement**

A statement detailing the requirements of *COLL* that do not apply in relation to the fund as a *private placement fund*.

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## Schedule 4 Modifications for private placement funds

(see r 1.2.2 (2))

### **S4.1 Rule 3.1.3 (4) (Relationship between constitutional document and COLL)**

*omit*

*or independent entity*

### **S4.2 Rule 4.1.1 (b) (Requirements for operator)**

*substitute*

- (b) has an authorisation covering each of the following:
- (i) *operating a collective investment fund;*
  - (ii) *dealing in investments;*
  - (iii) *managing investments;*
  - (iv) *providing custody services; and*

### **S4.3 Rule 4.1.1 (d) and (f)**

*omit*

### **S4.4 Rule 4.1.4 (d) (Particular duties of operator)**

*substitute*

- (d) unless otherwise required or permitted by the *constitutional document*, treat *unitholders* who hold *units* in the same *class* equally and *unitholders* who hold *units* in different *classes* fairly; and

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**S4.5 Rule 4.1.7 (4) (a) and (b) (Records of operator)**

*omit*

*, independent entity*

**S4.6 Rule 4.1.8 (Operator must give information etc to independent entity and auditor)**

*substitute*

**4.1.8 Operator must give information to auditor**

The *operator* of a *private placement fund* must, on request, immediately give the auditor of the fund the information and explanations in relation to the fund that the auditor reasonably requires.

**S4.7 Rule 4.2.5 heading (Property safekeeping functions of independent entity)**

*omit*

**independent entity**

*substitute*

**operator of private placement fund**

**S4.8 Rule 4.2.5 (1)**

*omit*

*independent entity*

*substitute*

*operator of a private placement fund*

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**S4.9 Rule 4.2.5 (2)**

*omit 1<sup>st</sup> mention of  
independent entity  
substitute  
operator*

**S4.10 Rule 4.2.5 (2) (b) (ii)**

*omit  
the independent entity's own property,*

**S4.11 Rule 4.2.5 (2) (d)**

*omit*

**S4.12 Rule 4.2.5 (3) and (4)**

*substitute*

- (3) If the *operator* of a *private placement fund* is of the opinion that a deal in property in relation to the fund breaches *COLL* or the *constitutional document*, the *operator* must, subject to the *constitutional document*—
- (a) cancel the transaction or make an acquisition or disposal to restore the previous situation; and
  - (b) meet any resulting loss or expense.

**S4.13 Part 4.3 heading (Other provisions relating to operator and independent entity)**

*omit*

**and independent entity**

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**S4.14 Rule 4.3.1 heading (Duties of officers etc of operator and independent entity)**

*omit*

**and independent entity**

**S4.15 Rule 4.3.1 (1)**

*omit*

*or independent entity*

**S4.16 Rule 4.3.2 (1) (Provisions of ch 4 do not limit other functions)**

*omit*

*, the operator or independent entity*

*substitute*

*or the operator*

**S4.17 Rule 4.3.2 (2)**

*omit*

*, independent entity*

**S4.18 Rule 5.6.8 (2), (3) and (4) (Appointment and removal of auditor etc)**

*omit*

*with the independent entity's approval*

**S4.19 Rule 5.6.8 (5) (b)**

*omit*

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**S4.20 Rule 7.1.3 (2) and (3) (Prices of units)**

*substitute*

- (2) The *operator* must, on request, at any time provide to any *unitholder*—
  - (a) the *price* of any type of unit based on the valuation under rule 7.1.2 (2); or
  - (b) an estimated price for any type of *unit* in the fund.

**S4.21 Rule 7.1.5 (3) (Issue and cancellation of units generally)**

*substitute*

- (3) The *operator* must arrange for the *issue* and *cancellation* of units as required by the *latest filed prospectus*.

**S4.22 Rule 7.1.5 (5)**

*substitute*

- (5) The *operator* may *issue* or *cancel units* if the *operator* would otherwise be obliged to *sell* or *redeem* the *units* in the way provided in the *latest filed prospectus*.

**S4.23 Rule 7.2.1 (3) (Requirements for unitholder register)**

*omit*

and the *independent entity*

**S4.24 Rule 7.2.1 (4) (b)**

*omit*

, the *independent entity*

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**S4.25 Rule 7.2.1 (4) (e)**

*omit*

after consultation with the *independent entity*

**S4.26 Part 7.3 heading (Appointment and replacement of operator and independent entity)**

*omit*

**and independent entity**

**S4.27 Rule 7.3.1 heading (Initial appointment of operator and independent entity)**

*omit*

**and independent entity**

**S4.28 Rule 7.3.1 (b)**

*omit*

**S4.29 Rule 7.3.2 (Replacement of operator)**

*substitute*

**7.3.2 Replacement of operator of private placement fund**

- (1) The *operator* of a *private placement fund* is removed if a *special resolution* of the *unitholders* is passed that—
  - (a) removes the *operator*; and
  - (b) appoints another *person* as the *operator* of the fund.
- (2) Without limiting subrule (1), the *unitholders* must, under that subrule, remove the *operator* (and appoint another *person* as the *operator* of the fund) if the *operator* is no longer eligible to be the *operator* of the fund under rule 4.1.1 (Requirements for operator) because of action taken by the *Regulatory Authority* under the *FSR*,



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whether under article 31 (Own initiative action by Regulatory Authority) or otherwise.

- (3) The *person* appointed as *operator* under subrule (1) must be eligible to be the *operator* of the fund under rule 4.1.1.
- (4) If a replacement *operator* is appointed under subrule (1), the replacement *operator* must immediately tell the *Regulatory Authority* about the *special resolution*.
- (5) On the removal of the former *operator* under subrule (1), the former *operator* is released from all further obligations under *COLL* and the *constitutional document*.
- (6) Subrule (5) does not affect the rights of a *person* in relation to an act or omission of the former *operator* before its removal.
- (7) If the name of the fund contains a reference to the name of the former *operator*, the former *operator* is entitled to require the replacement *operator* to propose a change to the name of the fund.

**S4.30 Rule 7.3.3 (1) (c) (Retirement of operator)**

*omit*

**S4.31 Rule 7.3.3 (3)**

*omit*

the *independent entity* or any other *person*

*substitute*

any *person*

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**S4.32 Rule 7.3.4 (1) (b) (Consequences of removal or retirement of operator)**

*omit*

the *independent entity*

*substitute*

the replacement *operator*

**S4.33 New rule 7.3.4 (3) and (4)**

*insert*

- (3) If the *operator* of *private placement* fund is removed or retires, the *operator* must, without any delay, transfer or deliver the assets of the fund held by it to the replacement *operator* unless the *Court* otherwise orders
- (4) Until the assets are transferred or delivered, the operator is accountable to the *unitholders* for the assets.

**S4.34 Rule 7.3.5 (Retirement of independent entity)**

*omit*

**S4.35 Rule 7.3.6 (Removal of independent entity by unitholders)**

*omit*

**S4.36 Rule 7.3.7 (Removal of independent entity that ceases to be eligible for appointment)**

*omit*

**S4.37 Rule 7.3.8 (Consequences of retirement or removal of independent entity)**

*omit*

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**S4.38 New rule 7.4.1 (3) (Outsourcing by operator)**

*insert*

- (3) Also, the *operator* of a *private placement fund* must not *outsource* to a *person* the *function* of holding *documents evidencing title* to *fund property* unless the *person* is prohibited under the *outsourcing* agreement from releasing them into the possession of a third party without the *operator's* agreement.

**S4.39 Rule 7.4.2 (Outsourcing by independent entity)**

*omit*

**S4.40 Rule 7.4.3 (1) and (2) (Notification of outsourcing etc)**

*omit*

*or independent entity*

**S4.41 Rule 7.4.4 heading (Provisions applying to outsourcing by operator and independent entity)**

*omit*

**and independent entity**

**S4.42 Rule 7.4.4 (1)**

*omit*

*or independent entity*

**S 4.43 Rule 7.4.4 (3) (d)**

*omit*

*and independent entity*

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**S4.44 Rule 7.4.4 (3) (f)**

*omit*

*or independent entity*

**S4.45 Rule 7.4.4 (3) (r) (ii)**

*omit*

**S4.46 Rule 7.4.5 (1) (Management of outsourcing)**

*omit*

*and independent entity*

**S4.47 Rule 7.4.5 (2) and (3)**

*omit*

*or independent entity*

**S4.48 Rule 7.4.5 (5)**

*omit*

**S4.49 Rule 7.4.7 (1) and (2) (Outsourcing of functions etc under CTRL)**

*omit*

*or independent entity*

**S4.50 Rule 7.4.7 (3)**

*omit*

**S4.51 Rule 7.4.7 (4)**

*omit*

*or independent entity*

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**S4.52 Rule 7.4.7 (5) (e)**

*omit*

or *independent entity*, as appropriate

**S4.53 Rule 7.4.7 (6)**

*omit*

or *independent entity*

**S4.54 Rule 7.4.8 (1) and (2) (Systems and controls for outsourcings)**

*omit*

or *independent entity*

**S4.55 Rule 7.6.1 (8) (Accounting periods)**

*omit*

the *independent entity* and

**S4.56 Rule 7.7.1 (8) (a) (Name of fund etc)**

*substitute*

(a) the guarantee is given by a person other than the *operator* or an *associated person* for the *operator*;

**S4.57 Rule 8.2.3 (Winding-up required by constitutional document)**

*omit*

or *independent entity*

---

**S4.58 Rule 8.2.4 (Winding-up at direction of unitholders)**

*omit*

*or independent entity*

**S4.59 Rule 8.2.5 (3) (Notification to Regulatory Authority that fund not commercially viable etc)**

*omit*

**S4.60 Rule 8.2.5 (4)**

*omit*

*or independent entity*

**S4.61 Rule 8.2.6 heading (Winding-up by operator or independent entity)**

*omit*

**or independent entity**

**S4.62 Rule 8.2.6 (1) (a) and (d)**

*omit*

*or independent entity*

**S4.63 Rule 8.2.6 (2) (a)**

*omit*

*and independent entity*

**S4.64 Rule 8.2.6 (2) (b)**

*omit*

*or independent entity (or both)*

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**S4.65 Rule 8.2.6 (2) (b), (3) (a), (b) and (c) and (4)**

*omit*

*or independent entity*

**S4.66 Rule 8.2.6 (5)**

*omit*

*and independent entity*

**S4.67 Rule 8.2.6 (6) and (7)**

*omit*

*or independent entity*

**S4.68 Rule 8.2.6 (8)**

*omit*

**S4.69 Rule 8.2.6 (9)**

*omit*

*or independent entity*

**S4.70 Rule 8.3.2 (5) (Transfer schemes)**

*omit*

*either the independent entity*

**S4.71 Rule S2.7 (2) (b) (Unitholder's liability to pay)**

*omit*

*or independent entity*

---

**S4.72 Rule S2.12 (2) (Investment and borrowing restrictions)**

*substitute*

- (2) A statement providing details of any borrowing restrictions applying to the fund.

**S4.73 Rule S2.16 (Functions of operator and independent entity)**

*substitute*

**S2.16 Functions of operator**

A statement providing details of the *functions* of the operator under *COLL* in relation to the *private placement fund*.

**S4.74 Rule S2.17 (Responsibility statement)**

*omit*

*or independent entity*

**S4.75 Rule S2.20 (b) (CIP partnership agreement binding etc)**

*omit*

and the *independent entity*

**S4.76 Rule S2.21 (b) (CIP trust deed binding etc)**

*omit*

the *independent entity*

*substitute*

the *operator*



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**S4.77 Rule S2.22 (a) and (b) (CIT declaration of trust)**

*omit*

the *independent entity*

*substitute*

the *operator*

**S4.78 Rule S2.28 (a) (Other relevant matters)**

*omit*

, *operator* or *independent entity*

*substitute*

or *operator*

**S4.79 New rule S 3.2 (ba) (Description of fund etc)**

*after paragraph(b), insert*

(ba) that the fund is a private placement fund;

**S4.80 Rule S3.2 (f) (ii)**

*omit*

or *independent entity*

**S4.81 Rule S3.2 (m)**

*substitute*

- (m) that any notice or other *document* required or authorised to be served on the *operator* of the fund may be served on the *operator* at its registered address in the *QFC*;

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**S4.82 Rule S3.4 (2) (Investment objectives and policy etc)**

*substitute*

- (2) Details of any borrowing restrictions applying to the fund.

**S4.83 Rule S3.17 (Mandatory statements for all funds)**

*after*

established in the Qatar Financial Centre

*insert*

as a private placement fund

**S4.84 Rule S3.20 (c) (Additional statements and information for property funds)**

*omit*

**S4.85 Rule S3.20 (l)**

*omit*

the *independent entity*

*substitute*

the *operator*