



**Gelephu** Mindfulness City

# **FUND RULEBOOK(FUNDS) 2026**

**(Version 1.0)**

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## **PART 1: INTRODUCTION**

### **1. APPLICATION AND CLIENT CLASSIFICATION**

#### **1.1 Application**

1.1.1 These Rules apply to every Person who carries on, or intends to carry on, in or from GMC the Regulated Activities of:

- (a) Managing a Collective Investment Fund;
- (b) Acting as the Administrator of a Collective Investment Fund;
- (c) Providing Custody; or
- (d) Acting as Trustee of an Investment Trust.

1.1.2 These Rules apply to every Person who is, or intends to be:

- (a) a Fund Manager;
- (b) a member of the Governing Body;
- (c) an Eligible Custodian;
- (d) a Trustee; and
- (e) an oversight provider.

1.1.3 These Rules also apply to a Licensed Firm that:

- (a) carries on a Regulated Activity; or
- (b) undertakes a Transaction in or from GMC; in relation to a Domestic Fund or Foreign Fund.

#### **Guidance**

1. These Rules regulate Fund Managers.
2. These Rules also apply to marketing and selling of Units of Foreign Funds in or from GMC and to the carrying on of a Regulated Activity in relation to a Foreign Fund where any such activity is undertaken by a Licensed Firm. In that regard, the COBS Rules also apply to the carrying on of Regulated Activities by a Licensed Firm.
3. If a Domestic Fund or Foreign Fund intends to list its Units on a Recognised Body, it will need to comply with the relevant Rules in the MKT Rulebook and the MIR Rulebook in respect of Domestic Funds.

4. For the purposes of these Rules, an oversight provider is any person that would conduct oversight of a Public Fund, as permitted in accordance with FUNDS Rules 13.3.2.

## 1.2 **Client Classification**

1.2.1 For the purposes of these Rules:

- (a) the criteria to be classified as a Professional Client are specified in COBS Rule 2.4.1, and
- (b) the criteria to be classified as a Retail Client are specified in COBS Rule 2.3.

## **PART 2: DEFINITIONAL PROVISIONS**

### **Guidance**

In these Rules, a reference to a "Fund" is a reference to a Collective Investment Fund as defined in Section 106 of FSA. The definition under Section 106 is very wide. However, Rule 2.1 below sets out certain excluded arrangements which do not fall within the definition of a Fund.

## **2. ARRANGEMENTS NOT CONSTITUTING A FUND**

### **2.1 Exclusions**

2.1.1 The Regulator prescribes that an arrangement which otherwise amounts to a Fund does not constitute a Fund if it falls within one or more of the exclusions specified in this Chapter.

### **Deposits**

2.1.2 An arrangement does not constitute a Fund if the whole amount of each participant's contribution is a Deposit which is accepted by a Licensed Firm licensed under its Financial Services Permission to carry on the Regulated Activity of Accepting Deposits.

### **Common accounts**

2.1.3 An arrangement does not constitute a Fund if:

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

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

- 2.1.4 An arrangement does not constitute a Fund if each of the participants in the arrangement:
- (a) carries on a business which does not involve the carrying on of any of the Regulated Activities specified under Schedule 1 of FSA or an activity which would be such as activity were it not for any applicable exclusions; and
  - (b) enter into the arrangement for commercial purposes related to that business where that participant carries on that business by virtue of being a participant in the arrangement.

### **Group arrangements**

- 2.1.5 An arrangement does not constitute a Fund if each of the participants is a Body Corporate in the same Group as the Person undertaking the fund management function in relation to the arrangement.

### **Franchise arrangements**

- 2.1.6 An arrangement does not constitute a Fund if the arrangement is a franchise arrangement.

### **Clearing services**

- 2.1.7 An arrangement does not constitute a Fund if the purpose of the arrangement is the provision of clearing services and the services are operated by a Recognised Body.

### **Certificates or Options**

- 2.1.8 An arrangement does not constitute a Fund if the rights or interests of the participants in the arrangement are Investments of the kind specified under Sections 92 or 94 of Schedule 1 of FSA.

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

- 2.1.9 An arrangement does not constitute a Fund:
- (a) if the rights or interests of each of the participants in the arrangement are time share rights; or
  - (b) if:
    - (i) the predominant purpose of the arrangement is to enable the participants to share in the use or enjoyment of property or to make its use or enjoyment available gratuitously to others; and
    - (ii) the property to which the arrangement relates does not consist of or

include the currency of any country or territory or Investments, as defined in Part 3 of Schedule 1 of FSA or, which would be such Investments if not for any applicable exclusion.

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

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

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

- 2.1.11 (a) An arrangement does not constitute a Fund if the rights or interests of the participants in the arrangement are represented by a Debenture or Warrant:
- (i) where the issuer of the Debenture or Warrant is a single issuer, and if that issuer is:
    - (A) a Body Corporate, it is neither an open-ended investment company nor a closed-ended company the intent or purpose of which is investment management as specified in Rule 2.1.10; or
    - (B) not a Body Corporate, the rights and interests of the Debenture or Warrant holder are guaranteed by the government of any country or territory; and
  - (ii) which, if it is a convertible Security, the underlying Securities to which the Debenture or Warrant holder is entitled are Shares or Debentures issued, or to be issued, by the same issuer as the issuer of the Debenture or Warrant or single other issuer.
- (b) An arrangement that does not constitute a Fund by virtue of Rule 2.1.11(a) does not become a Fund merely because one of the participants in the arrangement is a person:
- (i) whose ordinary business involves him engaging in an activity that is a Regulated Activity as defined in Schedule 1 of FSA or that would fall within an applicable exclusion from a Regulated Activity; and
  - (ii) whose rights or interests in the arrangement are, or include, rights or interests in a swap arrangement under which he facilitates the making of payments to participants whether in a particular amount or currency or at a particular time or rate of interest or all or any combination of those things in settlement of the rights and interests of the other participants in the arrangement.

### **Insurance**

- 2.1.12 An arrangement does not constitute a Fund if it is a Contract of Insurance.
- 2.1.13 “Not in use”

### **Discretionary Portfolio Accounts**

- 2.1.14 An arrangement does not constitute a Fund if it is a portfolio or account managed under a Discretionary Portfolio Management Agreement.

### **Close Relative accounts**

- 2.1.15 An arrangement does not constitute a Fund if every participant in the arrangement is a Close Relative. For the purposes of this Rule, the defined term "Close Relative" includes grandchildren.
- 2.1.16 “Not in use”

### **Employee reward schemes**

- 2.1.17 An arrangement does not constitute a Fund if the arrangement is for the purposes of enabling or facilitating the operation of an employee compensation or reward scheme where the arrangement:
- (a) makes Securities available only to:
    - (i) an Employee or former Employee of the Issuer or of another member of the same Group as the Issuer; or
    - (ii) a Close Relative of any such Employee; and
  - (b) is operated by the Issuer or by a member of the same Group as the Issuer or by a trustee who, in pursuance of the arrangements, holds the Securities issued by the Issuer for the benefit of any eligible Persons referred to in Rule 2.1.17(a)(i) or (ii).

### **Carried interest vehicles**

- 2.1.18 An arrangement does not constitute a Fund if it is a carried interest vehicle which is established solely for the purposes of enabling officers, directors or employees of a Fund Manager, or related persons, to participate in carried interest or similar profit generated by one or more Funds.

### **Private Financing Platforms**

- 2.1.19 An arrangement does not constitute a Fund if it is an arrangement made for the purpose of facilitating investment through a Private Financing Platform.

### **3. FUND CRITERIA**

#### **3.1 Domestic and Foreign Funds**

- 3.1.1 (1) A Fund is either a Domestic Fund or a Foreign Fund.
- (2) A Fund is a Domestic Fund if it is established or domiciled in GMC.
- (3) A Fund that does not meet the Domestic Fund criteria is a Foreign Fund.

#### **3.2 Types of Domestic Funds**

- 3.2.1 (1) A Domestic Fund shall be one of the following types of Fund:
- (a) a Public Fund;
  - (b) an Exempt Fund; or
  - (c) a Qualified Investor Fund.
- (2) The types of Fund set out above are listed in terms of the level of regulation (from most intensively regulated to least intensively regulated).
- (3) The Regulator may treat any type of Domestic Fund as a specialist class of a Domestic Fund pursuant to Rule 4 hereof.

#### **3.3 Domestic Fund criteria**

- 3.3.1 (1) A Domestic Fund shall be constituted as a Public Fund if:
- (a) some or all of its Units are or will be offered to investors by way of a public offer; or
  - (b) its Unitholders include Retail Clients.
- 3.3.2 (1) A Domestic Fund may be constituted either as an Exempt Fund or as a Qualified Investor Fund but only if that Fund satisfies all of the conditions in Rule 3.3.3 or Rule 3.3.4 below, as applicable.
- 3.3.3 (1) A Domestic Fund is an Exempt Fund, if:
- (a) its Units are offered to persons only by way of a private placement;
  - (b) all its Unitholders are persons who meet the criteria to be classified as Professional Clients; and
  - (c) the initial subscription to be paid by a person to become a Unitholder is at least US\$50,000,

and it does not satisfy the conditions in Rule 3.3.4 below to be a Qualified Investor Fund.

- 3.3.4 (1) A Domestic Fund is a Qualified Investor Fund, if:
- (a) its Units are offered to persons only by way of a private placement;
  - (b) all its Unitholders are persons who meet the criteria to be classified as Professional Clients; and
  - (c) the initial subscription to be paid by a person to become a Unitholder is at least US\$500,000.
- 3.3.5 (1) A Domestic Fund does not cease to be an Exempt Fund or a Qualified Investor Fund under Rule 3.3.3 or Rule 3.3.4 above merely because one or more Units in that Fund is registered in the name of a person who does not meet the criteria to be a Unitholder of that particular type of Fund as a result of:
- (a) inheritance from a registered Unitholder of the Fund; or
  - (b) any legal action brought for or against a registered Unitholder.

3.4 **The different types of Domestic Funds**

This table illustrates the different Rules applicable to the three categories of Domestic Fund.

The Fund Rules Chapters	Public Fund	Exempt Fund	QIF
Chapter 1: Application and Client Classification	✓	✓	✓
Chapter 2: Arrangements Not Constituting a Fund	✓	✓	✓
Chapter 3: Fund Criteria	✓	✓	✓
Chapter 4: Specialist Classes of Funds	✓ Rules 20.4.3 and 20.4.4 do not apply	✓ Rules 20.4.5 and 20.4.6 do not apply	✓ Rules 20.4.5 and 20.4.6 do not apply
Chapter 5: Excluded Offers	✓	✓	✓
Chapter 6: Domestic Funds	✓ Rule 6.2 does not apply	✓ Rule 6.1 does not apply	✓ Rule 6.1 does not apply
Chapter 7: Foreign Funds and Foreign Fund Managers	✓	✓	✓
Chapter 8: Regulator Notification	✓	✓	✓

Chapter 9: Marketing of Domestic Funds and Prospectus Disclosure	✓ Rules 9.5.2 and 9.5.4 do not apply	✓ Rules 9.5.1 does not apply	✓ Only Rules 9.1.1, 9.2, 9.3, 9.4.1, 9.4.2, 9.5.2, 9.5.4, 9.6.1, 9.7 C 9.8 Apply
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The Fund Rules Chapters	Public Fund	Exempt Fund	QIF
Chapter 11: Constitution	✓	✓	□ Only Rules 11.1.1, 11.1.2(1)(a), 11.1.2(1)(c), 11.1.2(1)(d), 11.1.2(1)(e), 11.1.3(1)(b), 11.1.3(2) and 11.1.5 apply
Chapter 12: Management and Operation of a Fund	✓	✓	✓ Only Rules 12.1, 12.2, 12.3.1, 12.3.2(1), 12.3.2(2)(a), 12.3.3, 12.3.4, 12.3.5, 12.3.6, 12.3.7(b), 12.3.8, 12.3.9, 12.3.10, 12.3.12(1), 12.4.1(b) and 12.10.1 and the Guidance to Rule 12.12.2 Apply
Chapter 13: Requirements Specific to Public Funds and Real Estate Investment Trusts	✓	Rule 13.5 will apply to a REIT operating as an Exempt Fund	Rule 13.5 will apply to a REIT operating as a QIF
Chapter 13A: Requirements Specific to Private Credit Funds		✓	✓

Chapter 14: Requirements Specific to Exempt Funds		✓	
Chapter 15: Requirements Specific to Qualified Investor Funds			✓
Chapter 16: Accounting, Audit and Periodic Reporting of a Fund	✓	✓ A comparative table as set out in Rule 16.4.8 for the annual report is not required.	✓ Rules on interim reports do not apply unless there has been a material change during

The Fund Rules Chapters	Public Fund	Exempt Fund	QIF
		Rules 16.3.8 and 16.4.5(a) and (b) need not be complied with if a waiver is obtained pursuant to Rule 16.3.9	the interim accounting period. A comparative table for the annual report is not required Rules 16.3.8 and 16.4.5(a) and (b) need not be complied with if a waiver is obtained pursuant to Rule 16.3.9
Chapter 17: Fund Administrators	✓	✓	✓ Rule 17.1.4 does not apply
Chapter 18: Transfer Schemes Relating to Domestic Funds	✓	✓	✓
Chapter 19: Winding Up of Domestic Funds	✓	✓	✓
APP 1: Delegation and Outsourcing	✓	✓	
APP 2: Meeting Procedures	✓		
APP 3: Approvals and Notifications	✓		
APP 4: Guidance on Asset Valuation and Pricing	✓	✓	
APP 5: Constitution of a Domestic Fund	✓	✓	
APP 6: Guidance of Fitness and Propriety for Oversight Functions	✓		
APP 7: Public Fund Prospectus Disclosure	✓		
APP 8: Recognised Jurisdiction List	✓	✓	✓

#### 4. SPECIALIST CLASSES OF FUNDS

##### 4.1 Specialist Funds

- 4.1.1 (1) A Domestic Fund that falls within one or more of the criteria specified in Rules 4.1.2 to 4.1.7 is hereby prescribed to be a Domestic Fund of that specialist class or classes.

(2) A Foreign Fund that falls within one or more of the criteria specified in Rules 4.1.2 to 4.1.7 is hereby prescribed to be a Foreign Fund of that specialist class or classes for the purposes of:

- (a) managing that Fund in GMC;
- (b) marketing of the Units of that Fund in or from GMC; or
- (c) determining whether a Domestic Fund investing in such a Fund continues to meet any criteria or other requirements applicable to that Domestic Fund.

### **Feeder Fund**

4.1.2 A Fund is a Feeder Fund if it is dedicated to investing all, or substantially all, of its assets in the Units or Debentures of a single other Fund (Master Fund).

#### **Guidance**

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

### **Master Fund**

4.1.3 A Fund is a Master Fund if it, in whole or in part, issues its Units or Debentures to one or more other Funds which are dedicated to investing in that Master Fund.

#### **Guidance**

A Domestic Master Fund may have one or more Foreign Funds as its Feeder Funds.

### **Umbrella Fund**

4.1.4 (1) A Fund is an Umbrella Fund if the contributions of the Unitholders in the Fund and the profits or income out of which payments are to be made to them are pooled separately in a number of Sub-Funds constituting separate parts of the Fund Property.

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

### **Real Estate Investment Trust (REIT)**

4.1.5 A Fund is a Real Estate Investment Trust (REIT) only if it meets the criteria in Rule 13.5.

### **Venture Capital Fund**

4.1.6 (1) A Fund is a Venture Capital Fund if it:

- (a) invests only in the Securities of companies which are at an early stage of development and that are not listed or admitted to trading on an exchange, either;
  - (i) directly; or

- (ii) indirectly as a Feeder Fund holding units of a Master Fund, in accordance with (2);
  - (b) is closed ended;
  - (c) limits total subscriptions to an amount not to exceed \$100 million or a higher amount approved by the Regulator; and
  - (d) is either:
    - (i) a Domestic Fund that is either an Exempt Fund or Qualified Investor Fund; or
    - (ii) a Foreign Fund that is not available to Retail Clients.
- (2) A Venture Capital Fund may consist of a Master Fund and Feeder Fund(s) structure in which:
- (a) each Feeder Fund meet the requirements in (1)(a)(ii), (b) and (d); and
  - (b) the Master Fund meets the requirement of (1)(a)(i), (b), (c) and (d).

### **Private Credit Fund**

4.1.7 A Fund is a Private Credit Fund if:

- (a) it is a Domestic Fund that is either an Exempt Fund or a Qualified Investor Fund;
- (b) it is managed by an Approved Fund Manager;
- (c) it is closed-ended; and
- (d) its operations are limited to:
  - (i) investment in Credit Facilities, whether by origination, purchase or participation;
  - (ii) activities related to (i), including investment in the equity of a legal entity to which the Private Credit Fund lends or the Group to which it belongs; and
  - (iii) the holding of Financial Instruments for the purposes of cash management or hedging.

### **Guidance**

1. A Venture Capital Fund may not be a Private Credit Fund.
2. A Private Credit Fund may hold assets other than those described in Rule 4.1.7(d) when held in conjunction with a Credit Facility the Private Credit Fund has

invested in, such as assets over which the Private Credit Fund has enforced collateral security it holds.

3. A Fund which holds Specified Investments for the purposes of investment, cash management or hedging which does not enter into Credit Facilities for the purpose of extending Credit is not a Private Credit Fund.

### **GMC Green Fund**

- 4.1.8 A Fund is a GMC Green Fund only if it complies with the GMC Green Fund Rules, as set out in Part 8 of these Rules.

### **GMC Climate Transition Fund**

- 4.1.9 A Fund is a GMC Climate Transition Fund only if it complies with the GMC Climate Transition Rules, as set out in Part 8 of these Rules.

### **Guidance**

1. A Fund may only be referred to as a GMC Green Fund or a GMC Climate Transition Fund if it meets the criteria referred to in Rule 4.1.8 or Rule 4.1.9 and if the Fund Manager has made the required notifications to, or been granted the relevant approval by, the Regulator. Chapter 20 of this Rulebook contains detailed Rules concerning GMC Green Funds and GMC Climate Transition Funds.
2. A Fund that follows an environmentally-conscious investment strategy is not required to become a GMC Green Fund or a GMC Climate Transition Fund. However, only those Funds which meet all of the relevant criteria may use the terms “GMC Green Fund” or “GMC Climate Transition Fund” respectively and any related designation marks in related documentation and promotional materials.

## **5. EXCLUDED OFFERS**

### **5.1 Excluded transactions and offers**

- 5.1.1 The activities specified in Rules 5.1.2, 5.1.3 and 5.1.4 are hereby prescribed as not constituting an Offer, of a Unit, for the purposes of FSA and these Rules.

- 5.1.2 A Person does not make an Offer of a Unit by offering to sell or transfer a Unit that is owned by that Person if the offer to sell or transfer:

- (a) is capable of acceptance only by the Person to whom that offer is made; and
- (b) is not made by way of a financial promotion as defined in Schedule 2 of FSA.

### **Guidance**

While a Person who makes personal offers of the kind referred to in Rule 5.1.2 does not attract the Prospectus disclosure obligations in these Rules, if that Person

frequently sells Units held by him, he would be likely to be 'Dealing in Investments as Principal'. As a result, such a Person would need to be licensed. Similarly, a Person who obtains Units for the purposes of secondary sales would be likely to be regarded as making those sales "by way of business" and would thus trigger the need to be licensed.

- 5.1.3 (1) A Person does not make an Offer of a Unit if that Person is a Licensed Firm and it undertakes a Transaction in relation to a Unit of a Fund if the Transaction is:
- (a) an Execution-Only Transaction undertaken for or on behalf of a Client;
  - (b) a trade executed for or on behalf of a Client in accordance with a Discretionary Portfolio Management Agreement entered into with that Client; or
  - (c) effected with the Fund Manager of a Fund for the purposes of redeeming a Unit of that Fund for or on behalf of a Client.
- 5.1.4 A Person does not make an Offer of a Unit if that Person is a Licensed Firm and the Offer is made only to, or directed only at, a Market Counterparty.

### **PART 3: AUTHORISATION**

#### **6. DOMESTIC FUNDS**

##### **6.1 Registration of Public Funds The application for registration**

- 6.1.1 (1) An application pursuant to Section 107 of FSA for the registration of a Public Fund must be made to the Regulator by the legal Person which is to be the Fund Manager of a Domestic Fund. If the Fund is an Investment Trust, then the Trustee and Fund Manager must jointly apply.
- (2) The Fund Manager and, if applicable, the Trustee must complete and submit the appropriate form or forms (which shall be in such form as the Regulator may prescribe).
- (3) In addition to the requirements of Section 107 of FSA, the application must be accompanied by:
- (a) copies of the Fund's Constitution and Prospectus; and
  - (b) certification by the Fund Manager and (where applicable) the Trustee to the effect that:
    - (1) the Constitution of the Fund complies with the requirements prescribed under these Rules and FSA;
    - (2) the Prospectus complies with the requirements prescribed under these Rules and FSA; and

- (3) if the Fund is managed by a Foreign Fund Manager, the requirements in Rule 7.1 are met.
- 6.1.2 If, at any time between the filing of an application for registration and the grant of a registration, the Fund Manager or, if appointed, the Trustee becomes aware of any material change, error, or omission reasonably likely to be relevant to the application under consideration, it shall inform the Regulator in writing of such change without delay.
- 6.1.3 In assessing an application for registration, the Regulator may:
  - (a) make any enquiries which it considers appropriate, including enquiries independent of the Fund Manager and Trustee; or
  - (b) require the Fund Manager or Trustee to provide further information.

#### **Requirements for registration**

- 6.1.4 Subject to the provisions of these Rules, a Fund will only be registered by the Regulator if it satisfies the following conditions:
  - (a) the incorporation or other legal formalities relating to the formation of the Fund are completed;
  - (b) the Fund has appointed to it a Fund Manager which is:
    - (i) licensed by the Regulator under its Financial Services License to carry on the Regulated Activity of Managing a Collective Investment Fund; or
    - (ii) a Foreign Fund Manager;
  - (c) the Fund, if it is an Investment Trust, has a Trustee which meets the requirements in these Rules and FSA;
  - (d) the Fund, if it is a Domestic Fund, is constituted as an Investment Company, Investment Partnership or Investment Trust;
  - (e) the Fund Manager has made satisfactory arrangements in relation to the oversight function of the Fund and the delegation of the Regulated Activity of Providing Custody as required under FSA and these Rules;
  - (f) the Fund Manager has appointed an Auditor to the Fund who complies with the requirements in Rule 16.3; and
  - (g) the name of the Fund is not undesirable or misleading and its purpose is reasonably capable of being successfully carried into effect.

### **Rejection of an application**

#### **Guidance**

Under Section 109 of FSA, the Regulator may refuse to grant an application for the registration of a Fund if it is not satisfied that the requirements referred to in Section 107 of FSA have been met.

### **Granting registration**

#### **Guidance**

1. Under Section 110 of FSA, once the Regulator grants registration of a Fund, it will without undue delay inform the relevant applicant in writing of:
  - a. such decision; and
  - b. the date on which the registration shall be deemed to take effect.
2. The Regulator maintains a list of Public Funds which have been registered on its Public Register.

### **Withdrawal of registration**

#### **Guidance**

Under Section 111 of FSA, the Regulator may withdraw the registration of a Fund in specified circumstances.

## **6.2 Notification Requirement applicable to Exempt Funds and Qualified Investor Funds**

- 6.2.1 A Fund Manager of an Exempt Fund, when notifying the Regulator pursuant to Section 112 of FSA, must also include:
- (a) a general description of the Fund including the nature of its investments and the intended size of the Fund in monetary terms;
  - (b) if it is a Fund which has appointed a prime broker pursuant to Rule 12.3.9:
    - (i) the details relating to the identity of the prime broker and its Regulator; and
    - (ii) a legal certification that all the requirements in Rule 12.3.9 relating to the use of prime brokers have been fully complied with by the Fund Manager;
  - (c) if it is a Foreign Fund Manager, the name of the jurisdiction in which that Foreign Fund Manager is domiciled, and the details of the Appointed Fund Administrator or Trustee to that Fund for the purposes of Rule 7.1.2,

and such other information as the Regulator may from time to time request.

- 6.2.2 A Fund Manager of a Qualified Investor Fund, when notifying the Regulator pursuant to Section 112 of FSA, must also include a general description of the Fund including the nature of its investments and the intended size of the Fund in monetary terms, and such other information as the Regulator may from time to time request.

**6.3 Domestic Funds formed as PCCs or ICCs**

**Regulator Consent**

- 6.3.1 A Protected Cell Company and an Incorporated Cell Company cannot be established in GMC without the consent of the Regulator.

- 6.3.2 An application to the Regulator in connection with the proposed establishment of a Protected Cell Company and an Incorporated Cell Company must be made in such form, and be accompanied by such documentation, as the Regulator may from time to time prescribe.

- 6.3.3 A Domestic Fund, other than a Qualified Investor Fund, that is a Protected Cell Company or an Incorporated Cell Company may not create a new Cell unless approval has been granted by the Regulator.

- 6.3.4 An Authorised Fund Manager of a Qualified Investor Fund must give notice to the Regulator of its intention to create a new Cell of a Domestic Fund which is a Protected Cell Company or an Incorporated Cell Company by submitting a notification to the Regulator, which shall be in such form as the Regulator may prescribe, as soon as reasonably practicable before creation of the Cell.

- 6.3.5 An application to the Regulator for the approval for the creation of a new Cell must be made on the appropriate form (which shall be in such form as the Regulator may prescribe), and shall be accompanied by such documents and information and verified in such manner, as the Regulator may require.

- 6.3.6 (1) The Regulator may:

- (a) grant approval;
- (b) grant approval with conditions or restrictions;
- (c) or for the creation of a new Cell.

The procedures in Part 21 of FSA apply to a decision of the Regulator under (1)(b) and (c).

- (2) If the Regulator decides to exercise its power under (1)(b) and (c), the Domestic Fund may refer the matter to the Appeals Panel for review.

## **Guidance**

For the purposes of Rule 6.3.4, "as soon as reasonably practicable before creation of the Cell" requires, at a minimum, at least seven calendar days' notice to be given before the creation of such Cell by the Licensed Fund Manager.

## **7. FOREIGN FUNDS AND FOREIGN FUND MANAGERS**

### **7.1 License Requirements for Foreign Fund Managers of Domestic Funds**

#### **Subjecting to the GMC jurisdiction / Equivalence**

7.1.1 A Foreign Fund Manager to whom this Chapter applies must:

- (a) be subject to regulation by, or registration with, a Financial Services Regulator in a Recognised Jurisdiction or a jurisdiction otherwise acceptable to the Regulator with respect to its activity of managing Funds; and
- (b) either:
  - (1) subject itself to the GMC laws and regulations and the jurisdiction of the GMC Courts so far as they apply to its activities relating to the Domestic Fund; or
  - (2) be subject to the laws and regulations of a Zone 1 jurisdiction or Recognised Jurisdiction as they apply to managing Funds; or
  - (3) be subject to laws and regulations that are otherwise, in the opinion of the Regulator, reasonably equivalent to those of GMC as they apply to management of Domestic Funds,

and, in each case, sign the appropriate declaration for that purposes as may be required by the Regulator.

#### **Appointment of Fund Administrator/Trustee/Custodian**

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

- (a) ensure that there is appointed to the Fund a Fund Administrator or a Trustee licensed by the Regulator or such other administrator as is otherwise acceptable to the Regulator (hereafter referred to as the "Appointed Fund Administrator" or "Appointed Trustee") before commencing the management of that Fund;
- (b) ensure that there is appointed to the Fund an Eligible Custodian before commencing the management of that Fund; and
- (c) either itself procure, or require the Appointed Fund Administrator or Appointed Trustee to (and for this purpose grant to that Person such powers

as are necessary to) facilitate:

- (i) if it is an open-ended Fund, the issue, resale and redemption of the Units of the Fund and the publication of the price at which such issue, resale or redemption will occur in accordance with these Rules and the Constitution;
  - (ii) in sending to Unitholders of the Fund all the reports required under these Rules and the Constitution;
  - (iii) access to the Constitution and most recent Prospectus of the Fund to Unitholders and prospective Unitholders; and
  - (iv) access to the books and records relating to the Fund as required by the Regulator and any person providing the oversight functions of the Fund.
- (2) If the Fund is structured as an Investment Trust, the Foreign Fund Manager may appoint the Trustee as its Appointed Trustee for the purposes of (1).

### **Guidance**

In addition to the requirements in this Chapter which apply to the Appointed Fund Administrator or Appointed Trustee, Persons who are appointed to Funds as Fund Administrators or Trustees have other obligations (see for example Rule 17.1).

## **7.2 License Requirements for Authorised Fund Managers of Foreign Funds**

### **Regulator Notification**

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

The notification shall be in such form as the Regulator may prescribe and should be submitted together with the most recent versions of:

- (a) the constitution of the Foreign Fund;
- (b) the offering document (or equivalent) relating to the Foreign Fund; and
- (c) such other required information as the Regulator may from time to time prescribe.

The Authorised Fund Manager shall, as part of its notification, evidence that the requirements of Rule 7.2.3 and Rule 10.1.6 have been met or will, by the time that the Authorised Fund Manager commences management of the Foreign Fund, be met.

### **Guidance**

For the purposes of Rule 7.2.1, "as soon as reasonably practicable before launch" requires, at a minimum, at least seven calendar days' notice to be given before the commencement of management functions by the Approved Fund Manager.

### **Systems Requirements for Approved Fund Managers of Foreign Funds**

- 7.2.2 An Approved Fund Manager of a Foreign Fund must have systems and controls which are adequate to ensure compliance with the requirements that apply to the Foreign Fund in the jurisdiction in which it is established or domiciled.
- 7.2.3 An Approved Fund Manager to whom this Chapter applies must:
- (a) ensure that there is appointed to the Fund an administrator or trustee before commencing the management of that Fund;
  - (b) ensure that there is appointed to the Fund an Eligible Custodian before commencing the management of that Fund unless it is both impractical and disproportionate to do so; and
  - (c) procure access to the books and records relating to the Fund as required by the Regulator and any person providing the oversight functions of the Fund.
- 7.2.4 The AML Rules apply to an Approved Fund Manager of a Foreign Fund to the extent that it carries on the Regulated Activity of Acting as the Manager of a Collective Investment Fund in relation to such Foreign Fund as if each reference in AML to a "customer" is a reference to a "Unitholder" or "prospective Unitholder" as appropriate to the context.

## **PART 4: MARKETING OF DOMESTIC AND FOREIGN FUNDS**

### **Guidance**

1. Section 18 of FSA contains the restrictions on the financial promotion of Units in a Fund by any person other than a Licensed Firm, and Schedule 2 of FSA specifies the limited circumstances in which such a person may market Units in a way that does not breach the general prohibition. In addition, these Rules prescribe that a Licensed Firm may not market a Unit in GMC unless:
  - a. a Prospectus that complies with any relevant requirements in FSA and these Rules is made available to the person to whom the Offer is made;
  - b. a notification is provided to the Regulator in compliance with these Rules;
  - c. the Person marketing the Unit is a Licensed Firm whose Financial Services License authorises it to do so; and
  - d. the Offer of a Unit is made in accordance with the applicable

requirements in FSA or these Rules.

2. Rules 5.1.3 and 5.1.4 exclude from being treated as Offers any Transactions undertaken by an Licensed Firm where such Transactions are Execution- only Transactions, or Transactions for the purposes of managing a discretionary portfolio for a Client, or for the purposes of redeeming a Unit of a Fund for a Client. Similarly, an offer made by a Licensed Firm to a Market Counterparty is also excluded from being an Offer that is restricted by these Rules. As a result, such excluded Transactions and offers are not subject to the requirements in these Rules relating to the marketing of Units.
3. This Part of the Rulebook sets out the detailed requirements that apply to the Offer of Units of Domestic and Foreign Funds, including Prospectus disclosure by Licensed Firms. The Rules in this Chapter supplement provisions of COBS, which also governs the carrying on of Regulated Activities by a Licensed Firm, except where otherwise provided.
4. Part 6 of MKT governs the listing of the Units of a Fund and continuous disclosure obligations that apply to in relation to Listed Funds.

## **8. REGULATOR NOTIFICATION**

### **8.1 Regulator Notification**

- (1) A Licensed Firm must, within 30 days of commencing marketing any Fund in or from GMC, notify the Regulator of certain details relating to the Fund, being:
  - (a) the name of the Fund;
  - (b) the structure and type of vehicle of the Fund; and
  - (c) the investment policy and strategy of the Fund.
- (2) The Regulator may require such notification to contain, and be accompanied by, such other information as the Regulator may reasonably require.
- (3) Rule 8.1 does not require a Fund Manager to make any notification to the Regulator in respect of a Fund where a registration or notification has already been made in respect of that Fund under Section 107 or Section 112 of FSA.

## **9. MARKETING OF DOMESTIC FUNDS AND PROSPECTUS DISCLOSURE**

### **9.1 Prospectus disclosure for Domestic Funds Guidance**

1. While a Licensed Firm is required by virtue of these Rules when making an Offer of a Unit of a Domestic Fund to another Person to make available to that other Person a Prospectus, the obligation to produce a Prospectus is

imposed under Rule 9.2 on the Fund Manager of a Domestic Fund.

2. This Chapter sets out the detailed requirements that apply to the Fund Manager who is obliged to produce a Prospectus, and the obligations and liabilities relating to Prospectuses, as well as the obligation relating to making available a Prospectus which applies to the activity of making an Offer of Units.
3. Some requirements relating to Prospectus disclosure are common to all Domestic Funds. However, in other areas, particularly relating to the content of disclosure required in a Prospectus, and the manner of distribution, different requirements apply depending on whether the Fund is a Public Fund, Exempt Fund or Qualified Investor Fund.
4. The requirements relating to Domestic Funds do not apply to a Foreign Fund managed by an Authorised Fund Manager, unless otherwise provided in FSA or these Rules. As a result, the general Prospectus requirements set out in these Rules do not apply to Foreign Funds, except that:
  - a. any offering document prepared in connection with the Foreign Fund is regarded as a Prospectus for the purposes of the requirements relating to the Offer of Units of such a Fund in or from GMC; and
  - b. the Regulator has the power to prescribe any additional disclosure to be included in such a document.

Those requirements are specified in Rules 10.1.1 to 10.1.7.

### **Application**

- 9.1.1
- (1) This Chapter applies, subject to (4), to a Fund Manager of a Domestic Fund, and each Director or partner of the Fund Manager and, if it has a Governing Body, each member of that body.
  - (2) This Chapter also applies (to the extent stated herein) to a Licensed Firm, and each of its Directors or partners, where such a Firm is not the Fund Manager and undertakes the marketing of Units of a Domestic Fund.
  - (3) This Chapter also applies to other specified Persons to the extent so specified.
  - (4) Only this Rule and the following requirements in this Chapter apply to, or in relation to, a Qualified Investor Fund:
    - (a) Rule 9.2;
    - (b) Rule 9.3;
    - (c) Rules 9.4.1 and 9.4.2;
    - (d) Rule 9.5.2;
    - (e) Rule 9.6.1;

(f) Rule 9.7; and

(g) Rule 9.8.

### **Guidance**

A Foreign Fund Manager must also comply with the requirements in this Chapter, because it is managing a Domestic Fund.

#### 9.2 **Prospectus requirement**

9.2.1 The Fund Manager of a Domestic Fund shall:

(a) produce a Prospectus in accordance with the requirements in this Rule; and

(b) if the Fund is a Public Fund, file a copy of the Prospectus with the Regulator.

#### 9.3 **Prospectus content**

9.3.1 (1) The presentation of the information in a Prospectus shall be clear, fair and not misleading.

(2) A Prospectus shall contain all the information which a person and his professional advisors would reasonably require and expect to find in a Prospectus to be able to make an informed decision to become a Unitholder of the Fund.

(3) If at any time after the issue of a Prospectus there is a material change affecting any matter contained in the Prospectus or a significant new matter arises, the Fund Manager shall, in accordance with the requirements prescribed in these Rules, either before or promptly following the effective date of such material change or new matter, issue a Supplementary or a Replacement Prospectus.

### **Publicity**

9.3.2 (1) A person undertaking a financial promotion in respect of a Prospectus shall ensure that:

(a) the information contained in the Prospectus complies with this Rule and FSA;

(b) the Fund Manager, in the case of a Public Fund, has filed a copy of the Prospectus with the Regulator in accordance with Rule 9.2.1(b); and

(c) the financial promotion states a Prospectus has been published and gives an address where a copy may be collected in GMC.

(2) Nothing in (1) prevents a person from issuing a financial promotion before the issue of a Prospectus provided it clearly states that a Prospectus will be issued and how a copy of such Prospectus may be obtained.

**9.4 General requirements relating to Prospectuses**

- 9.4.1 (1) The Prospectus must not contain any provision which is unfairly prejudicial to the interests of Unitholders generally or to the Unitholders of any class of Units.
- (2) For the purposes of the information that must be included in a Prospectus pursuant to Rule 9.3 above:
- (a) such information must be material information; and
  - (b) information is material if it is either:
    - (i) within the knowledge of the Directors or partners of the Fund Manager or
    - (ii) information which such Directors or partners ought reasonably have obtained by making reasonable enquiries.
- (3) The Prospectus must be available in the English language.
- (4) The expiry date of a Prospectus must be no later than 12 months after the date of the Prospectus.

**Guidance**

In conducting inquiries relating to the obligations under (2), a Fund Manager of a Public Fund must give particular regard to the information which would be required and expected by a Retail Client in order to make an informed decision about the merits of investing and the extent and characteristics of risk.

**Supplementary and Replacement Prospectuses**

**Guidance**

- 1. Rule 9.3.1(3) requires a Fund Manager to issue, if, at any time after the issue of a Prospectus there is a material change affecting any matter contained in the Prospectus or a significant new matter arises, a Supplementary or a Replacement Prospectus in the manner prescribed in these Rules.
  - 2. Any reference in FSA and these Rules to a Prospectus includes an offering document of an Exempt Fund or of a Qualified Investor Fund and any Supplementary or Replacement Prospectus, unless otherwise provided. Accordingly, all requirements that apply to a Prospectus apply equally to each of those documents except where stated otherwise.
- 9.4.2 (1) Where a Fund Manager, for the purpose of Rule 9.3.1(3), issues a Supplementary Prospectus, the Fund Manager must:
- (a) clearly identify in the Supplementary Prospectus the Prospectus that it supplements, the revisions to that Prospectus, the date of any material change or new matter giving rise to any revision, and the date of the document

which must be the date of filing with the Regulator;

- (b) if it is a Public Fund, file a copy with the Regulator;
- (c) provide a copy to each Person who applied for, but has not yet been issued with, Units under the previous Prospectus after the earliest date of any material change or new matter giving rise to the revision; and
- (d) ensure the Supplementary Prospectus is made available in the same media and through the same channels as, and together with, the previous Prospectus.

(2) Where a Fund Manager, for the purpose of Rule 9.3.1(3), issues a Replacement Prospectus, the Fund Manager must:

- (a) clearly state that it is a Replacement Prospectus, and identify the Prospectus that it replaces, the date and nature of any material change or new matter giving rise to the replacement, the expiry date, and the date of the document which must be the date of filing with the Regulator;
- (b) if it is a Public Fund, file a copy with the Regulator; and
- (c) provide a copy to each Person who applied for, but has not yet been issued with, Units under the previous Prospectus after the earliest date of any material change or new matter giving rise to the replacement.

(3) The expiry date of a Supplementary Prospectus or Replacement Prospectus under (1) and (2) must be the same as that of the Prospectus it supplements or replaces.

9.4.3 When a Supplementary Prospectus or Replacement Prospectus of a Public Fund has been filed with the Regulator and made available in accordance with Rule 9.4.2, the Fund Manager must:

- (a) inform any Person who applied for, but has not yet been issued with, Units on the basis of the previous Prospectus after the earliest date of a material change or new matter giving rise to the issue of the Supplementary Prospectus or Replacement Prospectus of their right to confirm or retract any application made on the basis of that Prospectus and to obtain a refund of monies paid, and the manner in which to do so; and
- (b) allow any such Person a period of at least seven days from the date of receipt of the Supplementary Prospectus or Replacement Prospectus in which to so confirm or retract his application.

## 9.5 **Prospectus content Public Fund Prospectus**

9.5.1 Without limiting the generality of the Prospectus disclosure required under Rules 9.2, 9.3 and 9.4, the Fund Manager must, in the case of a Public Fund, include in the

Prospectus of the Fund:

- (a) the information in APP 7;
- (b) if it is a specialist class of a Public Fund, any information as is relevant to that specialist class of Fund; and
- (c) the mandatory statement required under Rule 9.5.3.

### **Guidance**

The disclosure requirements relating to a Prospectus that apply to a Public Fund are somewhat more extensive than the Prospectus disclosure requirements that apply to other types of Funds, in particular, Exempt Funds and Qualified Investor Funds.

### **Offering document of an Exempt Fund or a Qualified Investor Fund**

9.5.2 Without limiting the generality of the Prospectus disclosure required under Rules 9.2, 9.3 and 9.4, the Fund Manager must, in the case of an Exempt Fund or a Qualified Investor Fund, include in the Prospectus of the Fund:

- (a) all the information which Professional Clients to whom it intends to Offer Units of the Fund would reasonably require and expect to find in such a Prospectus;
- (b) if it is a specialist class of an Exempt Fund or a Qualified Investor Fund, any information as is relevant to that specialist class of Fund; and
- (c) in case of an Exempt Fund, the mandatory statements required under Rules 9.5.3 and 9.5.4.

### **Mandatory statement**

9.5.3 (1) A Fund Manager of a Public Fund or an Exempt Fund must include in the Fund's Prospectus, the following statement displayed prominently on its front page:

"This Prospectus relates to a Gelephu Mindfulness City Fund in accordance with the Financial Services and Markets Regulations and the Fund Rules of the Regulator.

The Regulator has no responsibility for reviewing or verifying any Prospectus or other documents in connection with this Domestic Fund. Accordingly, the Regulator has not approved this Prospectus or any other associated documents nor taken any steps to verify the information set out in this Prospectus, and has no responsibility for it.

The Units to which this Prospectus relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the Units offered should conduct their own due diligence on the Units.

If you do not understand the contents of this document you should consult an

authorised financial adviser."

- (2) In the case of a Public Fund which is a Listed Fund, the Fund Manager must include, instead of the statement referred to in (1), the statement required under MKT Rule 3.3.1(1)(b)(iii).

9.5.4 A Fund Manager of an Exempt Fund must prominently disclose to prospective Unitholders in the Prospectus and any other financial promotions relating to the Fund, the following Mandatory Fund Disclosure Statement:

"When considering investment in a Fund you should consider the fact that some 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 are not transparent and are known only to the Fund Manager.

Returns from Funds can be volatile and you may lose all or part of your investment. With respect to single manager products the manager has total trading authority and this could mean a lack of diversification and higher risk. The Fund may be subject to substantial expenses that are generally offset by trading profits and other income. A portion of those fees is paid to the Fund Manager."

9.6 **Additional Prospectus disclosure requirements Prospectus of a Feeder Fund**

9.6.1 A Fund Manager of a Feeder Fund must ensure that the Fund's Prospectus discloses:

- (a) the objectives of the Master Fund;
- (b) if applicable, a prominent risk warning to alert prospective Unitholders to the fact that they will be subject to higher fees arising from the layered investment structure;
- (c) the fees arising at the level of:
  - (i) the Feeder Fund itself;
  - (ii) if applicable, the Master Fund of the Feeder Fund; and
  - (iii) if applicable, any underlying Funds into which the Master Fund invests, to the extent known, and

that it has made available to prospective Unitholders in the Feeder Fund copies of the Prospectus and the last audited annual reports and accounts of the Master Fund.

9.7 **Obligation relating to making a Prospectus available**

- 9.7.1 (1) A Fund Manager of a Domestic Fund must make the Fund's most recent Prospectus available free of charge to any Unitholder and to any Person who is eligible to invest

in the Fund when making an Offer to issue or sell a Unit of the Fund to such a Person, and, in any case, must not enter into a Transaction relating to the issue or sale of a Unit of the Fund with a Person unless that Transaction results from an Excluded Offer as defined in Rule 5.1, or is otherwise permitted by, these Rules.

- (2) A Fund Manager of a Domestic Fund which is an Exempt Fund or a Qualified Investor Fund must not, and must not cause any other Person to, make an Offer of Units of such a Fund in a manner that would result in a breach of the requirements in Rules 3.3.3 or 3.3.4 as is applicable to that Fund.

### Guidance

1. Rule 5.1 contains the definitions of Excluded Offers, such as Execution-only Transactions and Transactions with Market Counterparties.
  2. A Fund Manager should note the requirements in Schedule 2 of FSA. A Prospectus drawn up pursuant to Rule 9 should be made available to prospective Unitholders for as long as the Offer is open and once the Offer is closed, the Fund Manager's obligation to make the Prospectus available would cease.
  3. Rules 3.3.3 and 3.3.4 set out the conditions that must be satisfied for Exempt Funds and Qualified Investor Funds. In particular, these Rules require that Units in an Exempt Fund or a Qualified Investor Fund may only be Offered for issue or sale by means of a Private Placement with Professional Clients.
- 9.7.2 (1) Where an Licensed Firm Offers a Unit of a Domestic Fund to a Person it must make available to that Person a copy of the most recent Prospectus at the time of the Offer or before effecting the Transaction in relation to the Units, unless that Transaction results from an Excluded Offer as defined in Rule 5.1 of these Rules.
- (2) An Licensed Firm must not make an Offer of Units of an Exempt Fund or a Qualified Investor Fund in a manner that would result in a breach of the requirements in Rules 3.3.3 or 3.3.4 as is applicable to that Fund.
- 9.7.3 A Fund Manager and an Licensed Firm making an Offer of a Unit of a Fund meet the requirement in Rule 9.7.1 or Rule 9.7.2 as is relevant by:
- (a) maintaining at its place of business in GMC copies of the relevant Prospectus for inspection by Clients and by the Regulator during normal business hours; or
  - (b) being able to advise readily of a location in GMC where copies of the Prospectus are available.

### Guidance

Copies of the Prospectus may be stored electronically so long as Clients and the Regulator have ready and immediate access.

9.8 **Responsibility for Prospectus Prescribed persons**

9.8.1 (1) The following Persons are prescribed as being responsible for a Prospectus:

- (a) the Fund Manager;
- (b) where the Fund is a Body Corporate, each Person who is a Director of that Body Corporate at the time when the Prospectus is filed;
- (c) where the Fund is an Investment Undertaking, each Person who is approved to be named, and is named, in the Prospectus as a Director, General Partner or member of the Governing Body or as having agreed to become such a Person of that Fund either immediately or at a future time;
- (d) each Person who accepts, and is stated in the Prospectus as accepting, responsibility for, or for any part of, the Prospectus;
- (e) each Person who is deemed to accept responsibility for any part of a Prospectus under these Rules; and
- (f) each Person not falling within any of the foregoing paragraphs who has approved the contents of, or of any part of, the Prospectus.

(2) A Person who has accepted responsibility for, or approved, only part of the contents of any Prospectus, is responsible only for that part and only if it is included in, or substantially in, the form and context to which he has agreed.

9.8.2 Nothing in (1) makes a Person responsible for any part of a Prospectus by reason only of giving advice as to its contents in a professional capacity to a Person specified in (1)(a) to (f).

**Exceptions from liability**

9.8.3 (1) A Person specified in 9.8.1(1) shall not have liability for any loss arising from any misleading or deceptive statement or omission in the Prospectus if any of the circumstances specified in (2) to (4) apply.

(2) A Person shall not incur liability if that Person can show that:

- (a) the statement was true and not misleading, or that the matter of the omission of which caused the loss was properly omitted;
- (b) he made all enquiries that were reasonable in the circumstances and believed that there was no misleading or deceptive statement or omission in the Prospectus; or
- (c) before the Units were acquired by any Person in reliance on the Prospectus, he had taken all such steps as were reasonable for him to have taken to secure that a correction was promptly made and brought to the attention of the Persons likely to acquire the Units in question.

- (3) A Person shall not have liability for any loss resulting from a statement made by a public official or contained in an official public document which is included in the Prospectus if the statement is accurately and fairly reproduced.
- (4) A Person shall not incur any liability if the Person incurring the loss acquired the Units in question with knowledge:
  - (a) that the statement was false or misleading;
  - (b) of the omitted matter or of the change; or
  - (c) of the new matter of inaccuracy.

## **10. MARKETING OF FOREIGN FUNDS AND PROSPECTUS DISCLOSURE**

### **10.1 Access to Foreign Funds and availability of Prospectus Guidance**

1. A licensed Fund Manager or other Licensed Firm may offer Units of a Foreign Fund in or from GMC in accordance with this Rule 10.
2. The Regulator has the power to prescribe any additional criteria, requirements or conditions that apply to the Offer of Units of a Foreign Fund, including disclosure that must be included in a Prospectus and the legal form and structure of the Fund such as being open-ended or closed ended or listed or not.

#### **Clients to whom Offers of Units of Foreign Funds can be made**

- 10.1.1 A licensed Fund Manager or other Licensed Firm must not, in or from GMC, offer a Unit of a Foreign Fund to a Retail Client unless the Units of the Foreign Fund can be offered, under the home jurisdiction regulation applying to that Fund, to retail investors.

#### **Prospectus disclosure relating to Foreign Funds**

- 10.1.2 Where an Approved Fund Manager or other Licensed Firm Offers a Unit of a Foreign Fund to a Person in GMC, it must make available to that Person at the time of the Offer a copy of a current Prospectus relating to the Fund which complies with the additional requirements in Rule 10.1.3 and Rule 10.1.4.

#### **Guidance**

A Prospectus includes, in the case of a Foreign Fund the Units of which are marketed in or from GMC, any prospectus or other disclosure document prepared in accordance with the laws applicable to that Foreign Fund.

- 10.1.3 (1) The Prospectus of a Foreign Fund made available by an Approved Fund Manager or other Licensed Firm must be available in the English language.
- (2) The Prospectus must contain in a prominent position, or have attached to it, a statement that clearly:

- (a) describes the foreign jurisdiction and the legislation in that jurisdiction that applies to the Fund;
- (b) states the name of the relevant Financial Services Regulator in that jurisdiction;
- (c) describes the regulatory status accorded to the Fund by that Regulator;
- (d) includes the following warning:

"The Gelephu Financial Services Office of GMC accepts no responsibility for reviewing or verifying any Prospectus or other documents in connection with this Fund.

The Units to which this Prospectus relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers should conduct their own due diligence on the Units.

If you do not understand the contents of this document you should consult an approved financial adviser."; and

- (e) if the Offer is not directed to Retail Clients, includes a prominent statement to that effect to be incorporated within the warning in (d).

10.1.4 An Approved Fund Manager or other Licensed Firm must ensure that the Prospectus contains adequate disclosure to investors, including:

- (a) the investment policy and strategy, as well as risks associated with the strategy;
- (b) management, performance, distribution and redemption fees payable or borne by investors;
- (c) terms on which an investor may terminate its investment or exit the Fund including, where applicable, gating, side-pocketing, lock-up or suspensions of redemptions, including any penalties that may apply under such circumstances;
- (d) the valuation policy and performance measurement standards;
- (e) where there are investments in hard-to-value or illiquid assets, the methodology and procedures for their valuation;
- (f) the use of leverage, to the extent permitted by the investment mandate, including a description of the types of leverage that may be employed and the circumstances in which leverage may be used; and
- (g) any counterparties appointed in respect of the Fund.

10.1.5 An Approved Fund Manager or other Licensed Firm which makes an Offer of a Unit

of a Foreign Fund must maintain at its place of business or other designated location in GMC copies of the relevant Prospectus for inspection by Clients and by the Regulator during normal business hours.

### **Guidance**

1. In relation to Rule 10.1.5, copies of the Prospectus may be stored electronically so long as Clients and the Regulator have ready and immediate access.
2. These disclosures should be provided at the inception of the fund or (as the case may be) before the relevant investor makes an investment in the Fund. A Fund Manager should also ensure that such disclosures are provided to its investors not only on a periodic basis, but as and when material changes occur.
3. Should such a requirement conflict with any requirements that apply to a Foreign Fund in the jurisdiction in which the Fund is domiciled, the Approved Fund Manager may apply to the Regulator for appropriate waivers or modifications of the Regulator requirements.

### **Recommendation-Based Offers of Units of Foreign Funds**

- 10.1.6 A Licensed Firm may not recommend a Unit of a Foreign Fund to a particular Retail Client unless it has made an assessment of the suitability of the investment for that Retail Client in accordance with COBS Rule 3.4.2 and has a reasonable basis for recommending the investment in the Fund as suitable for the particular Retail Client.

### **Record keeping**

- 10.1.7 Without limiting any requirements under COBS, an Approved Fund Manager or Licensed Firm must keep records that are sufficient to demonstrate due compliance with the requirements in the Rules in this Chapter. Such records must be maintained for a maximum of six years.

## **PART 5: CORE RULES RELATING TO ESTABLISHMENT AND MANAGEMENT OF DOMESTIC FUNDS**

### **11. CONSTITUTION**

#### **11.1 Application**

- 11.1.1 (1) This Chapter applies to a Fund Manager and, where appointed, a Trustee of a Domestic Fund.
- (2) Only this Rule and Rules 11.1.2(1)(a), 11.1.2(1)(c), 11.1.2(1)(d), 11.1.2(1)(e), 11.1.3(1)(b), 11.1.3(2) and 11.1.5 apply to a Fund Manager and, where appointed, a Trustee, of a Qualified Investor Fund.

### **General requirements**

- 11.1.2 (1) Every Domestic Fund shall have:
- (a) a written Constitution which complies with these Rules;
  - (b) a purpose that is reasonably capable of being successfully carried into effect;
  - (c) an auditor appointed in respect of the Fund;
  - (d) if it is an Investment Trust, a Trustee appointed to the Fund in accordance with the requirements in FSA and these Rules;
  - (e) if it is not an Investment Trust, an eligible person with whom the legal title to the Fund Property is registered unless otherwise provided in these Rules; and
  - (f) in the case of an open-ended Fund, single pricing for the purposes of redemption and re-issue or sale of Units in the Fund where the price of a Unit is calculated by reference to the net asset value of the property of the Fund to which the Units relate and in accordance with these Rules.
- (2) Any provision in the Constitution of a Domestic Fund is void in so far as it would have the effect of exempting the Fund, the Fund Manager and, if appointed, the Trustee from liability for any failure to discharge their obligations under these Rules, FSA, or any rules made for the purposes of these laws.

### **Guidance**

For the purposes of Rule 11.1.2(1)(f), a Fund should be regarded as being open-ended in circumstances where a reasonable investor would, if he were to invest in the Fund:

- (a) expect that he would, within a reasonable period of time, be able to realise such investment; and
- (b) be satisfied that his investment would be realised on a basis calculated wholly or mainly by reference to the value of the property of the Fund.

### **Instrument constituting the Fund**

- 11.1.3 (1) The Fund Manager and, in the case of an Investment Trust, both the Fund Manager and the Trustee of a Fund, must ensure that the written Constitution which every Fund is required to have pursuant to Rule 11.1.2:
- (a) contains the statements and disclosures prescribed in the table in APP 5 as are applicable to the Fund; and
  - (b) does not contain any provision that is prejudicial to the interests of the Unitholders generally or to the Unitholders of any class of Units.
- (2) The Fund Manager and, in the case of an Investment Trust, both the Fund Manager and

the Trustee, are responsible for maintaining the Constitution and for making necessary alterations to it in accordance with the applicable legislation.

- 11.1.4
- (1) A Fund Manager may issue and, in the case of an Investment Trust may instruct the Trustee to issue, such classes of Units as are set out in the Constitution, provided the rights of any class are not unfairly prejudicial to the interests of the Unitholders of any other class of Units in that Fund.
  - (2) Units whose issue may be limited can be issued by a Fund Manager if permitted by the Constitution and if in accordance with the conditions set out in the Prospectus, provided that such issue will not materially prejudice any existing Unitholders in the Fund.
  - (3) In the case of an Investment Trust, the Trustee must take reasonable measures to ensure, before carrying out the Fund Manager's instructions, that those instructions comply with the requirements in (1) and (2).

### **Name of the Fund**

- 11.1.5
- The Fund Manager and, if appointed, the Trustee of a Fund must ensure that the name of the Fund or any Sub-Fund or class of Units in the Fund or Sub-Fund, is not undesirable, misleading or in conflict with the name of another Fund or another Sub-Fund or class of Units in the Fund or Sub-Fund.

### **Guidance**

1. Pursuant to Section 117 of FSA, the Regulator has the power to make a direction if a name of a Fund, Sub-Fund or class of Units in a Fund is undesirable, misleading or conflicts with a name used by another Fund, Sub-Fund or class of Units of a Fund.
  2. In determining whether to make a direction under these powers, the matters that the Regulator may take into account include whether the name of the Fund, Sub-Fund or class of Units as the case may be:
    - a. implies that the Fund, Sub-Fund or class of Units has merits which are not, or might not be, justified;
    - b. is inconsistent with the Fund's investment objectives or policy;
    - c. might mislead Unitholders or prospective Unitholders into thinking that a Person other than the Fund Manager is responsible for the Fund, Sub-Fund or class of Units of the Fund;
    - d. is substantially similar to the name of another Fund in GMC or elsewhere; or
    - e. is in the opinion of the Regulator likely to offend the public.
- 11.1.6
- Before using as part of or in connection with the name of a Fund, Sub-Fund or class of Units in a Fund the words "guaranteed", "protected" or any other words with a similar meaning implying a degree of security in relation to the capital or income, the Fund Manager must demonstrate to the satisfaction of the Regulator that:

- (a) the guarantor has the authority and resources to honour the terms of the guarantee; and
- (b) all the terms of the guarantee and the credentials of the guarantor are clearly set out in detail in the Prospectus and that any exclusions such as force majeure are highlighted.

### **Guidance**

A Fund Manager is not required to satisfy the Regulator regarding use of the word "protected" in relation to the name of either a Protected Cell Company or a Cell of a Protected Cell Company.

In considering whether to permit a Fund Manager to use the words "guaranteed" or "protected" as part of or in connection with the name of a Fund, Sub-Fund or class of Units in a Fund, the Regulator will also take into account whether the degree of security implied by the name fairly reflects the nature of the arrangements for providing that security.

## **12. MANAGEMENT AND OPERATION OF A FUND**

### **12.1 General management duties Application**

- 12.1.1 (1) This Chapter applies to a Fund Manager and, if appointed, the Trustee of a Fund, except as provided in (3) or where otherwise provided in this Chapter.
- (2) This Chapter also applies, where expressly provided, to a Fund Administrator or Eligible Custodian of a Domestic Fund.
- (3) Only this Rule and Rules 12.2, 12.3.1, 12.3.2, 12.3.3, 12.3.4, 12.3.5, 12.3.6, 12.3.7(b), 12.3.8, 12.3.9, 12.3.10, 12.3.12(1), 12.4.1(b), 12.10.1 and the Guidance to Rule 12.12.2 in this Chapter apply to, or in relation to, a Qualified Investor Fund.

### **Guidance**

- 1. Rule 12.2.1 requires the Fund Manager to manage the Fund in accordance with the Fund's Constitution and its most recent Prospectus and to perform the functions conferred on it by the Constitution, these Rules and FSA. In doing so, the Fund Manager is required under this Rule to comply with any conditions or restrictions on its Financial Services License as well as any limitations or requirements imposed by or under these Rules and FSA.
- 2. Fund Managers must establish and maintain systems and controls including but not limited to financial and risk controls to ensure sound management of the Fund in accordance with the Fund's Constitution and its most recent Prospectus, taking due account of the risks to which the Fund may be exposed, due to the nature, scale and complexity of the Fund's investments and operations.
- 3. The requirements in this Chapter apply to Foreign Fund Managers in the same manner

as they apply to Approved Fund Managers of Domestic Funds, unless otherwise provided. Foreign Fund Managers and Foreign Funds attract additional requirements, which are set out in Chapter 7.

4. This Chapter sets out more detailed obligations of the Fund Manager and, where appointed, the Trustee of a Fund with regard to:
  - a. Fund Manager and Trustee general duties and functions;
  - b. Duties relating to Fund Property;
  - c. Conflicts of interests;
  - d. Valuation of Fund;
  - e. Determination of single price;
  - f. Issue and redemption of Units;
  - g. Unitholder register;
  - h. Meetings of Governing Body and Unitholders;
  - i. Approvals and notifications;
  - j. Maintenance of records;
  - k. Capital;
  - l. Delegations and outsourcing; and
  - m. Charges and expenses.

12.2 **Fund Manager and Trustee general duties and functions**

12.2.1 (1) A Fund Manager shall:

- (a) manage the Fund including the Fund Property in accordance with the Fund's Constitution and its most recent Prospectus;
- (b) perform the functions conferred on it by the Fund's Constitution and by or under these Rules;
- (c) comply with any conditions or restrictions imposed by the Regulator including those on its Financial Services Permission or in respect of the Fund; and
- (d) comply with any requirements or limitations imposed under these Rules including any limits relating to financial interests it or any of its associates may hold or restrictions on its Financial Services Permission as well as any limitations in a Fund, for which it acts as the appointed Fund Manager.

12.2.2 (1) In exercising its powers and carrying out its duties, a Fund Manager shall:

- (a) act honestly;
- (b) exercise the degree of care and diligence that a reasonable person would

- exercise if he were in the Fund Manager's position;
- (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;
  - (d) treat the Unitholders who hold interests of the same class equally and Unitholders who hold interests of different classes fairly;
  - (e) not improperly make use of information acquired through being the Fund Manager in order to:
    - (i) gain an advantage for itself or another person; or
    - (ii) cause detriment to the Unitholders in the Fund;
  - (f) ensure that Fund Property is:
    - (i) clearly identified as Fund Property; and
    - (ii) held separately from the property of the Fund Manager and the property of any other Fund it manages;
  - (g) report to the Regulator any breach of these Rules or relevant provisions of any other law administered by the Regulator, or of any Rules made under those laws, that:
    - (i) relates to the Fund; and
    - (ii) has had, or is likely to have, a materially adverse effect on the interests of Unitholders;

as soon as practicable after it becomes aware of the breach;
  - (h) in the case of a Foreign Fund Manager, report to the Regulator any breach of any other laws or requirements that apply to that Fund Manager in its home jurisdiction, that:
    - (i) relates to the Fund; and
    - (ii) has had, or is likely to have, a materially adverse effect on the interests of Unitholders;

as soon as practicable after it becomes aware of the breach;
  - (i) comply with any other duty or obligation as may be prescribed by or under these Rules or any other legislation administered by the Regulator; and
  - (j) carry out or comply with any other duty, not inconsistent with any enactment or rule of law in GMC, that is conferred on the Fund Manager by the Fund's Constitution.

- (2) Every officer, employee or agent of the Fund Manager shall:
- (a) not make improper use of information acquired through being such an officer, employee or agent of the Fund Manager in order to:
    - (i) gain an advantage for himself or another person; or
    - (ii) cause detriment to Unitholders in the Fund;
  - (b) not make improper use of his position as such an officer, employee or agent to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the Unitholders in the Fund;
  - (c) comply with any other duty or obligation as may be prescribed by or under these Rules or any other legislation administered by the Regulator; and
  - (d) carry out or comply with any other duty, not inconsistent with any enactment or rule of law in GMC, that is conferred on him by the Fund's Constitution.
- (3) A Fund Manager shall take reasonable steps to ensure that its officers, employees and agents comply with their obligations referred to above.

12.2.3 Subject to compliance with any duties conferred on the Trustee by the Trust Deed which are not inconsistent with these Rules and FSA, Rules 12.2.2(1)(a), (b), (c) and (e) and 12.2.2(2)(a) through (c) shall apply equally to Trustees as to Fund Managers.

12.2.4 Where the Fund Manager is required to obtain the prior consent or approval of the Trustee before it is able to carry out any of its functions outlined herein or under FSA, the Trustee shall provide such consent or approval to the Fund Manager without any unnecessary delay. If the Trustee decides to withhold such consent or approval, it shall also notify the Fund Manager of that decision and the reasons without any unnecessary delay.

### 12.3 **Duties in relation to Fund Property**

#### **Fund Manager**

12.3.1 (1) A Fund Manager must make decisions as to the constituents of the Fund Property that are in accordance with the Constitution of the Fund and investment objectives and policy stated in the Prospectus.

(2) A Fund Manager must take all steps and execute, or procure the execution of, all documents to ensure that transactions relating to the Fund Property are properly entered into for the account of the relevant Fund or Sub-Fund.

(3) A Fund Manager of an Investment Trust must ensure that instructions it gives to the Trustee in relation to the Fund Property are in accordance with the Trust Deed and the Prospectus.

- 12.3.2 (1) In the case of any Fund other than an Investment Trust, the Fund Manager is responsible to the Unitholders for ensuring the safekeeping of the Fund Property in accordance with these Rules.
- (2) Without removing the generality of the obligation under (1), and subject to Section 12.3.3 below a Fund Manager must, unless it is both impracticable and disproportionate to do so, in the case of a Fund structured other than as an Investment Trust:
- (a) delegate the Regulated Activity of Providing Custody in relation to the Fund Property to a Service Provider who is an Eligible Custodian; and
  - (b) comply with the delegation procedures set out in Rule 12.12 in relation to such a delegation.

### **Guidance**

1. Rule 12.3.3 below sets out the circumstances in which a Fund Manager of a Domestic Fund would not be required to appoint an Eligible Custodian.
2. Rule 12.12 governs the power of a Fund Manager to delegate certain of its Regulated Activities, and to outsource its functions.
3. Rule 12.3.2(1) is not intended to confer strict liability for the safekeeping of Fund Property on a Fund Manager.
4. In addition to Chapter 12, Rule 15.3 sets out the requirements applicable to a Fund Manager of a Qualified Investor Fund in relation to custody of Fund Property.

### **Alternative arrangements for safekeeping**

- 12.3.3 (1) A Fund Manager of a Domestic Fund is not required to appoint an Eligible Custodian for the Fund pursuant to Rule 12.3.2 where it meets the requirements in either (2) and (3), or (4).
- (2) The Fund Manager or, in the case of an Investment Trust, the Trustee, for the purpose of meeting the legal or regulatory requirements in relation to the ownership of Real Property applicable in the jurisdiction in which the Real Property is situated, may implement alternative arrangements for safekeeping where the arrangements:
- (a) in the case of an Investment Trust, enable the Trustee to continue to control the Fund Property; and
  - (b) in all cases do not enable the Fund Manager to have unfettered control of the Fund Property.
- (3) If the Fund Manager or, in the case of an Investment Trust, the Trustee, implements arrangements in accordance with (2), it must satisfy the Regulator that the arrangements have the effect specified in (2) and are legally effective in GMC and in the jurisdiction where the Real Property is situated.

- (4) Where, due to the nature of the Fund and the type of assets which it holds, it is neither practical nor proportionate to appoint an Eligible Custodian pursuant to the above, a Fund Manager may choose not to appoint an Eligible Custodian, provided that title to such assets is either registered in the name of the Fund or is registered in the name of a nominee company (provided that in this latter case (i) such nominee company declares that it holds title to such assets on trust for the Fund; and (ii) the Fund Manager, vis-à-vis the Fund, takes full responsibility for the acts and omission of such nominee company).

### **Guidance**

In relation to Rule 12.3.3(4), examples of where it is likely to be neither practical nor proportionate for a Fund Manager to appoint an Eligible Custodian include where the Fund solely holds Real Property, or its strategy is solely that of a private equity, infrastructure or similar fund where the assets are highly illiquid.

### **Trustee**

- 12.3.4 A Person proposing to act as a Trustee does not breach the prohibition in Section 113(1) of FSA merely by entering into a Trust Deed for the creation of an Investment Trust prior to obtaining a Financial Services License with the appropriate authorisation referred to in Section 114 of FSA. However, that Person must not carry out functions under the Trust Deed prior to obtaining that Financial Services License.
- 12.3.5 In the case of an Investment Trust:
- (a) the Trustee of the Fund must hold the Fund Property on trust for the Unitholders and accordingly is responsible to the Unitholders for the safekeeping of the Fund Property;
  - (b) The Trustee shall ensure that property of the Investment Trust is:
    - (1) clearly identified as the property of that Investment Trust; and
    - (2) held separately from any other property held by or entrusted to the Trustee.
  - (c) the legal title of the Fund Property must be registered with the Trustee except in the case of a Property Fund investing in Real Property where the Trustee has made adequate alternative arrangements that are in accordance with Rule 12.3.3; and
  - (d) the Trustee must not act on instructions of the Fund Manager in relation to the Fund Property if such instructions are not in accordance with the Trust Deed and the Prospectus.

### **Guidance**

Rule 12.12 governs the power of a Trustee to delegate certain of its Regulated Activities, and to outsource its functions.

### **Removal and retirement of the Trustee**

- 12.3.6
- (1) A Trustee may not retire, or be removed, except as provided in this Rule.
  - (2) A Fund Manager of a Fund may, at the request of the Trustee or otherwise, and if it is of the view that the Trustee is unable to discharge its functions a Fund Manager shall, with the prior written approval of the Regulator, replace the existing Trustee.
  - (3) The Regulator may grant approval for the replacement of a Trustee only where it has received:
    - (a) a written notice from the Fund Manager of its intention to remove the Trustee and either:
      - (i) a certification that the removal of the Trustee will not adversely affect the interests of the Unitholders and the Fund Manager's ability to comply with its obligations under the Trust Deed, Prospectus, these Rules and FSA; or
      - (ii) a Special Resolution of Unitholders approving the Fund Manager's proposal to remove the Trustee and its replacement with another Trustee; and
    - (b) the written consent of the person who agrees to be the replacement Trustee, and that person meets the requirements for a Trustee in Section 114(2) of FSA to be able to act as the replacement Trustee.
  - (4) The Unitholders of the Investment Trust may replace the Trustee by Special Resolution.
  - (5) The Regulator or the Fund Manager may apply to the Court for an order for the removal of the Trustee and any other appropriate orders including, but not limited to, the appointment of a replacement Trustee where the Trustee is, or is believed to be, in breach of its obligations under the Trust Deed, its Financial Services Permission, these Rules, FSA or any other enactment or rule of law in GMC.
  - (6) The Regulator may make Rules prescribing other circumstances in which a Trustee may be replaced.
  - (7) Subject to the terms of the Trust Deed, these Rules, FSA and the rules made for the purposes of FSA, a Trustee appointed as a replacement Trustee shall have the same powers, discretions and duties as the previous Trustee.
  - (8) Where a Trustee is removed or retires pursuant to the above, it shall, without any delay, transfer the assets of the Investment Trust held by it as directed by the Fund Manager or, as required by any Court order. Until the assets of the Investment Trust are so transferred, the Trustee remains accountable to the Unitholders for the safety of those assets.

### **Eligible Custodian and Fund Administrator**

- 12.3.7 (1) A Fund Manager to whom this Chapter applies must:
- (a) ensure that there is appointed to the Fund a Fund Administrator, or, if the Fund is an Investment Trust, Trustee licensed by the Regulator or such other administrator as is otherwise acceptable to the Regulator (hereafter referred to as the “Appointed Fund Administrator” or “Appointed Trustee”); and
  - (b) subject to Rules 12.3.2 and 12.3.3 ensure that there is appointed to the Fund an Eligible Custodian,
- before commencing the management of that Fund.

### **Guidance**

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

- 12.3.8 For the purposes of these Rules, an Eligible Custodian is a Person who is a separate legal entity from the Fund Manager and who also meets one of the following criteria:
- (a) a Licensed Firm whose Financial Services License authorises it to Provide Custody Services;
  - (b) a Licensed Firm that is a Bank;
  - (c) a Recognised Body;
  - (d) a legal entity that is licensed and supervised by a Financial Services Regulator in a Recognised Jurisdiction for providing custody services in respect of a Fund and is subject to a minimum capital requirement of \$4 million or its equivalent in any other currency at the relevant time and has had surplus revenue over expenditure for the last two financial years;
  - (e) a legal entity where it, or its holding company, is:
    - (i) in respect of its financial strength, rated or graded as at least "investment grade" by Moody's, Fitch or Standard C Poor's or such other international rating agency as may be recognised by the Regulator; and
    - (ii) licensed and supervised by a Financial Services Regulator in another jurisdiction which is a Zone 1 country; or
  - (f) a legal entity that is licensed or recognised by a Financial Services Regulator to operate as an exchange or a clearing house in a Recognised Jurisdiction;

- (g) a legal entity that is and remains:
  - (i) controlled and wholly owned by one or more of the national governments of the six member states of the Gulf Cooperation Council;
  - (ii) licensed and supervised by a Financial Services Regulator or Central Bank of at least one of the said national governments; and
  - (iii) rate or graded as at least “investment grade” by Moody’s, Fitch, Standard & Poor’s such other international rating agency as may be recognized by the Regulator; or
  - (iv) any other legal entity otherwise acceptable to the Regulator.

### **Use of prime brokers**

12.3.9 A Fund Manager of a Fund may only grant to a prime broker authority to combine the assets of the Fund with any other assets held by or available to the prime broker as collateral for any financing activities to be undertaken by the prime broker where, and so long as, all the following conditions are met:

- (a) the Fund is an Exempt Fund or Qualified Investor Fund;
- (b) the Prospectus of the Fund contains, in addition to the disclosure required under Rule 9.5, the following mandatory disclosure and warnings:
  - (i) the identity and profile of the prime broker, including where it is located and how it is regulated;
  - (ii) the services which the prime broker provides to the Fund and the nature and extent to which the prime broker has the power and authority to combine the assets of the Fund with any other assets held by or available to the prime broker as collateral for any financing activities undertaken by the prime broker; and
  - (iii) a prominent warning in the Prospectus to alert prospective Unitholders to the fact that:
    - (A) the Fund's appointed prime broker has the power and authority to use as collateral the assets of the Fund in conjunction with any other assets held by or available to the prime broker; and
    - (B) where the prime broker uses Fund assets as collateral pursuant to the above power, the Unitholders may lose all the assets of the Fund in the event of the insolvency of the prime broker; and
- (c) the Person appointed as the prime broker qualifies as an Eligible Custodian.

### **Guidance**

1. If the prime broker holds the legal title to the Fund assets, the prime broker must, in any event, qualify as an Eligible Custodian. However, even if a prime broker does not hold the legal title to the Fund assets, Rule 12.3.9 requires it to meet the Eligible Custodian requirements in certain circumstances. This is where it has the power to use Fund assets as collateral for its financing activities (e.g. by having a charge over the Fund assets) in conjunction with any other assets held by or available to it.
2. In relation to the matters referred to in Rules 12.3.8 and 12.3.9 and in relation to management of Fund investments, the Regulators expects Fund Managers of Funds to have proper regard to international developments relating to such Funds.

### **Risk management**

12.3.10 A Fund Manager of a Domestic Fund must ensure that the risks inherent in the operation of a Fund are adequately addressed, with due regard to the nature of the strategies and investment process employed by the Fund Manager and the role of Fund Administrators and Eligible Custodians and where appointed, prime brokers.

- (1) The Fund Manager of a Domestic Fund must, to the extent proportionate given the nature of the Domestic Fund and the nature and scale of the Fund Manager, ensure functional and hierarchical separation and independence between:
  - (a) the risk management functions (Fund valuation and asset pricing); and
  - (b) the portfolio management functions (the investment management process).
- (2) Where the Fund Manager is unable to demonstrate adequate separation and independence in accordance with (1), the Regulator may require the Fund Manager to appoint an independent, suitably competent and experienced Fund Administrator to perform the functions specified in (1)(a).

### **Guidance**

1. To provide segregation of the net asset value determination process of the Fund from the investment management process, generally personnel involved in the former should not be involved in the latter. An effective method of achieving such segregation is to delegate the calculation, determination and production of the net asset value to a suitably competent and experienced third party Fund Administrator.
2. Additional risk management requirements applicable to the Fund Manager of a Private Credit Fund are included in Chapter 13A.

### **Conflicts of interest**

12.3.11 (1) The Fund Manager and, if it is a Fund structured as an Investment Trust, the

Trustee, must take reasonable steps to ensure that in any dealing in relation to the Fund Property do not give rise to a conflict of interest.

- (2) Where a conflict of interest arises, whether in dealings with Affected Persons or otherwise, the Fund Manager and, if appointed, the Trustee, must disclose to the Unitholders the nature of the conflict and how the conflict will be managed.
- (3) In the situation where a Fund Manager has placed a Person on the board of an Undertaking in which it is investing, it must take reasonable steps to ensure that it manages conflicts and follows good corporate governance.

### **Side-letter arrangements**

12.3.12 (1) A Fund Manager must disclose in its Prospectus:

- (a) a description of how the Fund Manager ensures a fair treatment of investors; and
- (b) a statement as to the Fund Manager's ability (if any) to enter into side-letter arrangements with investors.

(2) A Fund Manager of a Public Fund:

- (a) must, in addition to the disclosures set out in 12.3.12(1) above, also disclose in the Prospectus a description of any material benefits or concessions provided to any investors with whom they have entered into side-letter arrangements, as well as a description of the type of investors to whom such benefits are provided; and
- (b) must not, in connection with any side-letter arrangements entered into, grant more favourable liquidity terms to any investor than are enjoyed by all other investors.

### **Affected Person transactions**

12.3.13 (1) A Fund Manager must not enter into a Transaction in respect of the Fund Property with an Affected Person unless it is in accordance with the requirements in this Rule.

- (2) A Fund Manager must ensure that any Transaction in respect of the Fund Property undertaken with an Affected Person is on terms at least as favourable to the Fund as any comparable arrangement on normal commercial terms negotiated at arm's length with an independent third party.
- (3) The Fund Manager of a Public Fund must, before entering into a Transaction with an Affected Person:
  - (a) obtain written confirmation from any Person responsible for providing the oversight arrangements for that Public Fund that the terms of such Transaction satisfy Rule 12.3.13(2); and

- (b) issue to the Unitholders a circular containing the details of the Transaction.
- (4) The Fund Manager of an Exempt Fund must, before entering into a Transaction with an Affected Person, either:
- (a) obtain written confirmation from a Person who meets the suitability criteria for persons providing oversight functions to Public Funds set out in Rule 13.3.3 that the terms of such Transaction are being conducted on at least an arm's length basis; or
  - (b) obtain Unitholders' prior approval by Special Resolution in respect of the proposed Transaction if the total consideration or value of the Transaction is 5% or more of the most recent net asset value of the Fund as disclosed in the latest published audited accounts of the Fund.
- (5) The Fund Manager must:
- (a) In the case of an Exempt Fund, if prior Unitholder approval is required pursuant to (4)(b), issue a notice to Unitholder providing details of the results of the Unitholders' voting at the general meeting as soon as practicable after the meeting;
  - (b) include a brief summary of the Affected Person Transactions in the Fund's next published interim or annual report; and
  - (c) include, in the annual report of the Fund, the total value of any Affected Person Transactions, their nature and the identities of the Affected Persons with whom such Transactions were made. Where there is no such Transaction conducted during the financial year covered by the annual report, an appropriate negative statement to that effect must be made in the annual report.

### **Best execution and fair allocation**

- 12.3.14 Without limiting the generality of the obligations of the Fund Manager including those in Rules 12.3.11 and 12.3.13, the Fund Manager's systems and controls must include policies and procedures which are designed to ensure that:
- (a) when executing or procuring execution of trades for or on behalf of the Fund, the transactions are executed:
    - (i) as soon as reasonably practicable after a decision to effect a transaction has been made; and
    - (ii) on the best terms available at the time of dealing;
  - (b) where the Fund Manager undertakes investment transactions for or on behalf of a Fund which it operates and one or more other Funds or Clients, there is timely and fair allocation of trades to each Fund and Client;

- (c) trading of the investment portfolio forming part of the Fund Property is not excessive in light of the Fund's investment objective as stated in its Constitution and the most recently issued Prospectus; and
- (d) any underwriting arrangements it undertakes are carried out in the best interest of the Fund.

### **Guidance**

1. For the purposes of (a), a Fund Manager's procedures should take into account matters such as the market in which the trade is to be executed, the kind and size of the transaction concerned and type of services provided by the executing broker that has been selected. A Fund Manager's procedures should be adequate to demonstrate that when the transaction was executed, it was done at the best price available. For this purpose, a Fund Manager may require a print out of a computer screen containing information about the price available at the time of the execution to be maintained.
2. For the purposes of (b), a Fund Manager should have a policy in place which demonstrate how it achieves timely and fair allocation of trades. For example, where a Fund Manager places an order on behalf of a number of Funds it operates, its policy should state the basis of allocation of trades to each Fund and, where any deviation from that policy occurs, record the reasons for such deviations.
3. For the purposes of (c), a Fund Manager's policies and procedures should encompass requirements such as maintenance of sufficient records to demonstrate that any brokerage, commissions or other benefits directly or indirectly derived from any transactions it has undertaken on behalf of the Fund are not unusual, when considered in light of industry practice. However, where there are other requirements relating to disclosure of benefits, a Fund Manager should comply with those requirements separately, as maintenance of records for the purposes of this Rule may not be sufficient to discharge those obligations.
4. For the purposes of (d), where a Fund Manager seeks to underwrite or participate in an initial public offering, its policies should ensure that it does not do so in a manner that is in any way detrimental to the Fund. The Fund Manager will also need to ensure that the best execution obligations under (a) are met.

## 12.4 **Valuation of Fund Property**

### 12.4.1 (1) A Fund Manager must:

- (a) have comprehensive and well documented valuation policies and procedures in place to ensure the production of timely and accurate valuation of Fund Property;
- (b) ensure that the Fund Property is valued at regular intervals as appropriate to the

nature of the Fund, market practice and investor expectations, and in accordance with the valuation procedures set out in the Fund's Constitution and/or Prospectus, except where such valuation is suspended in any circumstances that are set out in the Fund's Constitution and/or Prospectus;

- (c) prepare, or cause to be prepared, a valuation in accordance with (3) for each relevant type of Unit at each relevant valuation point; and
  - (d) as soon as practicable after each valuation point, both publish and make available to the Unitholders and prospective Unitholders of the Fund, the price of the Units of the Fund.
- (2) The value of the Fund Property is the net value of the Fund Property after deducting any expenses and outstanding borrowings, including any capital outstanding on a mortgage of any Real Property.
  - (3) The value of the Fund Property must, except as otherwise provided in this Chapter, be determined in accordance with the provisions of the Constitution and the Prospectus, as appropriate.
  - (4) For the purposes of (2), any charges that were paid, or would be payable, on acquiring or disposing of the asset must be excluded from the value of that asset.
  - (5) A Fund Manager must not make a dilution levy or dilution adjustment unless stated as permitted in the Fund's Prospectus. Such a measure must be applied in a fair manner to reduce dilution and solely for that purpose.

### **Guidance**

- 1. A dilution levy or adjustment means a charge of such amount or such rate as is determined by a Fund Manager of a Fund to be made for the purpose of reducing the effect of dilution, i.e., the amount of dealing costs incurred, or expected to be incurred, by a Fund Manager, to the extent that these costs may reasonably be expected to result, or to have resulted, from the acquisition or disposal of Investments by the Fund Manager as a consequence (whether or not immediate) of the increase or decrease in the cash resources of the Fund resulting from the issue or cancellation of Units over a period.
- 2. Dealing costs referred to in Guidance 1 include both the costs of dealing in an Investment, professional fees incurred, or expected to be incurred, in relation to the acquisition or disposal of Real Property and, where there is a spread between the buying and selling prices of the Investment, the indirect cost resulting from the differences between those prices.

12.4.2 (1) A Fund Manager 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 omit to do, anything that is or is reasonably likely to confer on itself a

benefit or advantage at the expense of a Unitholder or prospective Unitholder.

- (2) Where a Fund Manager has not complied with (1) or there is any other valuation error, it must correct the error as soon as possible and must reimburse the Fund any costs it may have incurred in correcting the position, subject to any reasonable minimum level for such reimbursement as set out in the Prospectus.
- (3) If the Fund is structured as an Investment Trust:
  - (a) the Fund Manager must notify the Trustee of the matters specified in (2);
  - (b) the Trustee must also:
    - (i) take reasonable steps to ensure that the Fund Manager complies with the matters specified in (1) and (2); and
    - (ii) provide any other notification required under these Rules.

### **Guidance**

APP 4 contains guidance on asset valuation and pricing.

#### **12.5 Determination of single price**

- 12.5.1 (1) A Fund Manager must take all reasonable steps and exercise due diligence to ensure that the Units in the Fund are correctly priced in accordance with the applicable accounting procedures to ascertain an accurate single price for a Unit.
- (2) The price of a Unit must be calculated on the basis of the valuation in Rule 12.4.1 in a manner that is fair and reasonable as between Unitholders.
- 12.5.2 (1) A Fund Manager must take immediate action to rectify any breach of Rule 12.4.1 where such breach relates to the incorrect pricing of Units.
- (2) In (1), unless the incorrect pricing in respect of an issue is of minimal significance, the Fund Manager must inform the Regulator, and if appointed, the Trustee or Eligible Custodian or other Persons providing oversight functions in relation to the Fund, of such a rectification.

#### **12.6 Suspension of dealings in Units**

- 12.6.1 (1) The Fund Manager may, in the case of an open-ended Domestic Fund, temporarily suspend the issue, cancellation, sale and redemption of Units ("dealings in Units") in the Fund where:
  - (a) due to exceptional circumstances it is in the interest of the Unitholders in the Fund to do so; and

- (b) if there is an appointed Trustee:
  - (i) it has obtained the prior agreement of the Trustee for the suspension of dealings in Units; or
  - (ii) in the event that no agreement can be reached with the Trustee, the Regulator has issued a decision to suspend dealings in Units.
- (2) The Fund Manager shall continue the suspension of dealings in Units only for so long as it reasonably believes that the suspension is in the interests of the Unitholders of the Fund.
- (3) Upon suspension of dealings in Units, the Fund Manager shall, in writing, notify the Regulator immediately, and the Unitholders as soon as practicable, of the suspension and its reasons for doing so.
- (4) This Rule applies to an open-ended Cell of a Protected Cell Company or Incorporated Cell Company as if that Cell were an open-ended Fund.
- (5) The Regulator may, by Rules, prescribe any additional requirements or matters relating to the suspension of dealings in Units in an open-ended Domestic Fund.

## 12.7 Unitholder register

- 12.7.1 (1) A Fund Manager or, where applicable, Trustee must maintain a register on Unitholders.
- (2) The register must contain:
  - (a) the name and address of each Unitholder;
  - (b) the number of Units including fractions of a Unit of each class held by each Unitholder; and
  - (c) the date on which the Unitholder was registered in the register for the Units standing in his name.
- (3) A Fund Manager must take all reasonable steps and exercise all due diligence to ensure that the register is kept complete and up to date.
- (4) A Fund Manager or, if applicable, the Appointed Fund Administrator, must, subject to (5), make the Unitholder register in electronic or hard copy form available for inspection by Unitholders during normal business hours at the Fund Manager's or Appointed Fund Administrator's place of business in GMC or otherwise in a designated location in GMC.
- (5) Where a Fund is structured as an Investment Trust, the Trustee must make the register in electronic or hard copy form available for inspection by Unitholders

during normal business hours at the Trustee's place of business in GMC or otherwise in a designated location in GMC. The Trustee shall make the register available to the Fund Manager during office hours and allow the Fund Manager to make copies of the register for its purposes.

12.8 **Meetings of Unitholders**

12.8.1 In the case of a Public Fund, the Fund Manager must hold at least two meetings of the Governing Body of every Public Fund which has such a body every 12-month period from the date of registration of that Fund with the Regulator.

12.8.2 (1) The Fund Manager and if appointed the Trustee of a Public Fund:

- (a) may convene a general meeting of Unitholders at any time; and
- (b) must convene a general meeting of Unitholders of the Fund immediately upon a request being made by Unitholders in accordance with (2).

(2) The Unitholders of the Fund may request the Fund Manager, or if appointed the Trustee, to convene a general meeting of Unitholders at any time. Such a request must:

- (a) state the purpose of the meeting;
- (b) be dated;
- (c) be signed by a number of registered Unitholders representing at least one-tenth in value of all of the Units then in issue; and
- (d) be deposited at the place of business of the Fund Manager, or if applicable, the Trustee or Appointed Fund Administrator of the Fund.

(3) If the Fund is an Investment Trust, the primary responsibility to convene meetings in accordance with these Rules rests with the Fund Manager, failing which, with the Trustee.

(4) A meeting of Unitholders of a Fund duly convened and held in accordance with these Rules and the Constitution of the Fund is competent by Special Resolution to require, authorise or approve any act, matter or document in respect of which any such resolution is required. Such a resolution has no other powers or effect.

(5) Where no Special Resolution is specifically required or permitted by these Rules, any resolution of Unitholders required under these Rules or FSA is passed by a simple majority of the votes validly cast for and against the resolution at a general meeting of Unitholders.

**Guidance**

References in these Rules to the "value" of a Unit in issue means the net asset value

of each such Unit in issue.

- 12.8.3 The Fund Manager of any Fund other than a Public Fund must hold meetings of Unitholders in accordance with the requirements included in the Fund's Constitution and its most recent Prospectus.

#### **Unitholder meetings procedures**

- 12.8.4 (1) A Fund Manager must set out, if it is the manager of a Public Fund, in its procedures manual the procedures for holding Unitholder meetings and the conduct of such meetings including but not limited to, the following matters:

- (a) voting rights;
- (b) right to demand a poll;
- (c) proxies;
- (d) minutes; and
- (e) variation of class rights and class meetings.

- (2) The meeting procedures under (1) in relation to Public Funds must comply with the provisions in APP 2. Any provisions in such procedures that are inconsistent with the procedures in APP 2 are void.

- (3) In the case of a Public Fund, the Fund Manager must distribute the meetings procedures manual to all Unitholders.

- (4) If the Fund is structured as an Investment Trust, the Fund Manager must obtain the prior approval of the Trustee in respect of its meetings procedures.

#### **12.9 Approvals and notifications**

- 12.9.1 A Fund Manager of a Public Fund must comply with the provisions in APP 3 in regard to:

- (a) Regulator notification of any proposed material alteration to the Fund's Constitution or Prospectus;
- (b) fundamental changes requiring prior approval of the Unitholders;
- (c) significant changes requiring pre-event notification to the Unitholders; and
- (d) notifiable changes, that is, a change other than one in (a) or (b) which requires post notification to the Unitholders.

**12.10 Maintenance of records**

- 12.10.1 (1) A Fund Manager must make and retain accounting and other records that are necessary:
- (a) to enable it to comply with Rules; and
  - (b) to demonstrate at any time that such compliance has been achieved.
- (2) A Fund Manager must make and retain for a period of six years a record of the Units held, acquired or disposed of, by it, including the classes of such Units, and the balance of any acquisitions and disposals.
- (3) A Fund Manager must make the record available for inspection by the Regulator in GMC and, if applicable, the Trustee or appointed Eligible Custodian, free of charge at all times during ordinary office hours and must supply a copy of the record or any part of it.
- (4) Where a Fund Manager makes a dilution levy or dilution adjustment in accordance with Rule 12.4.1(5), it must make and retain for a period of six years from the date such action is taken a record of:
- (a) how it calculates and estimates dilution; and
  - (b) its policy and method for determining the amount of any dilution levy or dilution adjustment.

**12.11 Capital**

- 12.11.1 (1) In the case of a Public Fund, if at any time after the size of the Fund's capital has reached the minimum size provided in its Constitution and/or Prospectus the size of that capital falls below that minimum size, the Fund Manager must immediately notify the Regulator of that fact.
- (2) The notification under (1) must also:
- (a) state the Fund Manager's grounds for believing that the Fund is still commercially viable and the purpose of the Fund can still be accomplished; and
  - (b) be accompanied by the relevant Unitholders' resolution supporting the Fund Manager's views in (1); or
  - (c) state what steps the Fund Manager has taken or will take to wind up the Fund.

**12.12 Delegation and outsourcing**

### **Guidance**

1. This Chapter sets out the general requirements that apply to a Fund Manager, or where appointed the Trustee, of a Domestic Fund where it delegates or outsources any Regulated Activity or function to another Person. Such a Person is defined as a "Service Provider" for the purposes of these Rules.
2. A Fund Manager or, where appointed, the Trustee of a Fund respectively may, subject to any restriction in the Constitution of the Domestic Fund and any provisions of these Rules, delegate any of its Regulated Activities or outsource any of its functions to a Service Provider, which may be located in or outside GMC.
3. Fund Managers of Domestic Funds structured other than as an Investment Trust are required under Rule 12.3.2(2) to delegate the Regulated Activity of Providing Custody to an Eligible Custodian. This obligation does not apply where there are adequate alternative arrangements. This Chapter sets out the circumstances in which the obligation under Rule 12.3.2(2) does not apply.
4. A Fund Manager or Trustee 'outsources' a function relating to the operation of the Fund where the function, whether or not relating to a Regulated Activity, is contracted to be performed by a Service Provider. Where the extent of any such function or functions is such that they effectively constitute the carrying on of a Regulated Activity, the Regulator will consider this to comprise a 'delegation' of the Regulated Activity.
5. These Rules permit the use of a Service Provider do not relieve the Fund Manager or the Trustee from their obligations, including any restrictions on delegation or outsourcing arising from the Fund's Constitution or Prospectus.
6. GEN Rules 3.3.31 and 3.3.32 also govern outsourcing of functions and activities by a Licensed Firm. Those Rules are not disapplied by this Chapter.

### **Fund Manager**

- 12.12.1 In accordance with the Delegation Agreement, the Fund Manager:
- (a) must (save as otherwise permitted by these Rules) register the legal title of the Fund Property with the Eligible Custodian; and
  - (b) may give instructions to the Eligible Custodian to deal with the Fund Property.

### **Guidance**

See Rule 12.3.8 for the definition of an Eligible Custodian.

- 12.12.2 (1) Subject to the requirements in Rule 12.12.5, a Fund Manager may delegate one or both of the Regulated Activities of Acting as the Administrator of a Collective Investment Fund and Managing Assets to a Service Provider.
- (2) For the purposes of (1), and in relation to Acting as the Administrator of a Collective

Investment Fund for a Public Fund, the Service Provider must be:

- (a) a Person approved by the Regulator to carry on the Regulated Activity of Acting as the Administrator of a Collective Investment Fund; or
- (b) a Person who is lawfully entitled in a Zone 1 jurisdiction or Recognised Jurisdiction to carry on in that jurisdiction the activities of:
  - (i) asset pricing and Fund valuation;
  - (ii) issuing and redemption of Units; and
  - (iii) record keeping and maintaining the Unitholders register.

(3) For the purposes of (1), and in relation to Managing Assets, the Service Provider must be:

- (a) a Person approved by the Regulator to carry on the Regulated Activity of Managing Assets; or
- (b) a Person who is approved by, or registered with, a Financial Services Regulator in a Zone 1 jurisdiction or Recognised Jurisdiction to carry on an equivalent activity in that jurisdiction.

### **Guidance**

As Rule 12.12.2(2) only applies in relation to a Public Fund, a Fund Manager of an Exempt Fund or Qualified Investor Fund may make other appropriate arrangements in respect of the carrying out of the Regulated Activity of Acting as the Administrator of a Collective Investment Fund.

### **Trustee**

- 12.12.3 (1) Subject to Rules 12.12.5 to 12.12.8, a Trustee may, with the prior written consent of the Fund Manager, delegate one or both of the Regulated Activities of Acting as the Administrator of a Collective Investment Fund and Providing Custody to a Service Provider.
- (2) For the purposes of (1), and in relation to Acting as the Administrator of a Collective Investment Fund for a Public Fund, the Service Provider must be:
- (a) a Person approved by the Regulator to carry on the Regulated Activity of Acting as the Administrator of a Collective Investment Fund;
  - (b) a Person who is lawfully entitled in a Zone 1 jurisdiction or Recognised Jurisdiction to carry on in that jurisdiction the activities of:
    - (i) asset pricing and Fund valuation;
    - (ii) issuing and redemption of Units; and

(iii) record keeping and maintaining the Unitholders register.

(3) For the purposes of (1), and in relation to the Regulated Activity of Providing Custody, the Service Provider must be an Eligible Custodian.

### **Trustee's power to outsource**

12.12.4 (1) When outsourcing any of its functions, the Trustee must ensure that the Service Provider is independent of the Fund Manager as provided in (2).

- (2) A Service Provider is not independent of the Fund Manager for the purposes of (1) if it:
- (a) is, or has been in the previous 2 years, an employee of the Fund Manager or a body corporate in the same group (a "related body corporate");
  - (b) is, or has been in the previous 2 years, an executive officer of a related body corporate;
  - (c) is, and has been in the previous 2 years, involved in material business dealings, or in a professional capacity (excluding acting as Trustee of another Investment Trust which the Fund Manager or a related body corporate manages), with the Fund Manager or a related body corporate;
  - (d) is a member of a partnership or a trustee of a trust that is, or has been in the previous 2 years, substantially involved in business dealings, or in a professional capacity (excluding acting as Trustee of another Investment Trust which the Fund Manager or a related body corporate manages), with the Fund Manager or in a related body corporate;
  - (e) has a material interest in the Fund Manager or a related body corporate; or
  - (f) is a relative or de facto spouse of a person who has a material interest in the Fund Manager or a related body corporate of a kind described in (a) to (e) of this Rule.
- (3) Where the Trustee engages a Service Provider, the Trustee remains liable to the Unitholders for any acts or omissions of the Service Provider even if such Service Provider was acting fraudulently or outside the scope of its authority or engagement.

### **Delegation and outsourcing process and requirements**

- 12.12.5 (1) When delegating, a Fund Manager or Trustee must:
- (a) carry out due diligence on a proposed Service Provider to ensure eligibility prior to effecting a delegation of a Regulated Activity; and
  - (b) comply with the requirements in Chapter 3 of GEN and APP 1 and ensure that any delegation is made in a written Delegation Agreement as prescribed in APP.
- (2) Delegation to a Service Provider does not relieve the Fund Manager or Trustee from

accountability for the proper conduct of a delegated activity.

- (3) The Regulator may, as a condition on a Fund Manager's or Trustee's Financial Services Permission, require the delegation of one or more specified Regulated Activities to a Service Provider.
- (4) When delegating a "critical management" function, such as portfolio and/or risk management or other functions which are critical for the performance or management of the Fund, the Fund Manager must notify the Regulator, using such form as the Regulator may prescribe, at least seven calendar days prior to such delegation taking effect.

### **Guidance**

The Regulator may impose a condition under Rule 12.12.5(3) when, for example, it considers that a Fund Manager is unable to conduct the activity under its own Financial Services License.

- 12.12.6 (1) When a Fund Manager or Trustee outsources any function to a Service Provider, it must:
- (a) comply with any relevant requirements in Chapter 3 of GEN;
  - (b) enter into an Outsourcing Agreement which complies with the requirements in APP 1; and
  - (c) before entering into such agreement, carry out due diligence on the proposed Service Provider to conclude on reasonable grounds that the Person is suitable to perform the relevant functions.
- (2) Outsourcing to a Service Provider does not relieve the Fund Manager or Trustee from accountability for the proper conduct of the outsourced activity.

### **Systems and controls**

- 12.12.7 If a Fund Manager or Trustee delegates any activity or outsources any function under this Chapter, it must take reasonable steps to ensure that it implements and maintains systems and controls to monitor the Service Provider.

### **Guidance**

This Rule supplements the requirements under GEN Section 3.3.

### **Review**

- 12.12.8 (1) A Fund Manager or the Trustee of a Public Fund, which has delegated any Regulated Activities or outsourced any functions, must conduct a review of the carrying out of the relevant activities or functions by the Service Provider and present the findings of the review to either:

- (a) the Fund's Governing Body every 6 months at the Fund's board meeting; or
- (b) in the case of a Fund structured as an Investment Trust, to the Trustee.

(2) Notwithstanding the requirement in (1), if a Fund Manager or the Trustee discovers non-compliance in regard to a term of the Delegation Agreement or Outsourcing Agreement, the Fund Manager or the Trustee, as the case may be, must take immediate action to remedy the matter and also notify the Regulator and, as applicable, its Governing Body or the Trustee forthwith.

(3) For the purposes of (2), the Fund Manager or the Trustee must notify the Regulator only where the non-compliance is material.

## 12.13 **Fees, charges and other levies**

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

12.13.1 (1) A Fund Manager must not make any charge or levy in connection with the issue or sale of Units except in accordance with the Constitution and Prospectus.

(2) A preliminary or redemption charge must not be made by the Fund Manager unless:

- (a) it is permitted by the Constitution; and
- (b) it is expressed either as a fixed amount or calculated as a percentage of the price of a Unit.

(3) The preliminary charge must not exceed the amount or rate stated in the current Prospectus in respect of any class of Units.

12.13.2 (1) No payment may be made, or benefit given, to the Fund Manager out of the Fund Property, whether by way of remuneration for its services, reimbursement of expenses or otherwise, unless it is permitted by the Constitution and the Prospectus specifies how it will be calculated, accrued, when it will be paid and the maximum and current rates or amount of such remuneration.

(2) The Fund Manager must give not less than 90 days written notice of any increase proposed within the parameters of the Constitution and Prospectus.

12.13.3 A Fund Manager must not introduce a new category of remuneration for its services or make any increase in the current rate or amount of its remuneration payable out of the Fund Property unless it has given not less than 90 days written notice of that introduction or increase and of the date of its commencement to the Unitholders and the Unitholders approve such new category by Special Resolution.

### **Reimbursement of remuneration and expenses**

12.13.4 (1) A Fund Manager must take reasonable steps to ensure that no payment is made to a Trustee, an Eligible Custodian or Persons providing oversight function out of the

Fund Property, whether by way of reimbursement of expenses or otherwise, except:

- (a) remuneration in respect of services provided and in respect of which the following have been stated in the Prospectus:
  - (i) the actual amount or rate of the remuneration together with the current maximum or how these are determined;
  - (ii) the periods in respect of which the remuneration is to be paid;
  - (iii) how the remuneration is to accrue; and
  - (iv) when the remuneration is to be paid; and
- (b) reimbursement of expenses properly incurred by the Trustee, Eligible Custodian or Persons providing oversight functions for performing such functions conferred on the Trustee, Eligible Custodian or other Persons by these Rules.

(2) Payment under (1)(a) must not be made unless permitted by the Constitution.

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

- 12.13.5 No promotional payment, performance fee or benefit may be made out of or given at the expense of the Fund Property to the Fund Manager unless it is permitted by the Constitution and specified in the Prospectus.
- 12.13.6 Costs of the registration, exemption and incorporation of a Fund and of its initial Offer or issue of Units, including Units in respect of a Sub-Fund, may be amortised over a period not exceeding five years.

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

- 12.13.7 (1) The Fund Manager and the Trustee or the Persons providing the oversight function may agree that all or any part of any permitted payments, charges and expenses of the Fund may be treated as a capital expense or income expense and allocated to the capital account or income account respectively.
- (2) The Fund Manager must ensure that any agreement in (1) is permitted by the Constitution and specified in the Prospectus in sufficient detail for a Unitholder or a prospective Unitholder to make an informed decision in relation to the allocation of such charges and expenses to be paid from the capital property or the income property as the case may be.

#### **12.14 Compliance with AML Rules**

- 12.14.1 The AML Rules apply to an approved Fund Manager of a Collective Investment Fund as if each reference in AML to a "customer" is a reference to a "Unitholder" or

"prospective Unitholder" as appropriate to the context.

### **13. REQUIREMENTS SPECIFIC TO PUBLIC FUNDS AND REAL ESTATE INVESTMENT TRUSTS**

#### **13.1 Application**

13.1.1 (1) Chapter 13 applies in its entirety to a Fund Manager and Trustee of a Domestic Fund which is a Public Fund, and also to Persons providing the oversight function for such a Fund, unless Rule 13.1.1(2) applies. Rules 13.5.1 to 13.5.5 apply to all Domestic Funds of all types which are Real Estate Investment Trusts.

(2) A Fund Manager and Trustee of a Public Fund are not subject to the oversight requirement in (1) if the Fund's investments are limited to those that require passive management and the Fund's systems and controls contain adequate measures to address any risks arising in that context.

#### **Guidance**

A Fund is passively managed if it invests in products such as index tracking products or if it is invested in such a way that exactly mirrors the constituent and weight allocations of an index without discretion on the part of the investment manager.

13.1.2 A reference in this Chapter to:

- (a) a "Fund Manager" or "Trustee" includes a reference to a Person proposing to be the Fund Manager or Trustee of a Domestic Fund;
- (b) a "Fund" includes a reference to a Fund registered or seeking to be registered as a Public Fund; and
- (c) a reference to a "Person providing the oversight function" includes a reference to an individual or a body corporate appointed or to be appointed as a Person providing oversight function for a Fund.

#### **13.2 Issue and redemption of Public Fund Units**

13.2.1 (1) A Fund Manager of an open-ended Public Fund must, within any conditions in its Constitution and Prospectus:

- (a) at all times during the dealing day, be willing to issue or sell Units in the Fund to any eligible Client; and
- (b) do so in a manner that is fair and reasonable as between all Unitholders and prospective Unitholders for whom the Fund Manager does not have reasonable grounds to refuse such issue or sale.

(2) A Fund Manager of an open-ended Public Fund must, within any conditions in its Constitution and Prospectus:

- (a) at all times during the dealing day, be willing to effect a redemption of the Units on the request of any Unitholder; and
  - (b) do so in a manner fair and reasonable as between redeeming Unitholders and continuing Unitholders.
- (3) On agreeing to a redemption of Units within (2), the Fund Manager must pay the full proceeds of the redemption to the Unitholder within any reasonable period specified in the Constitution or the Prospectus, unless it has reasonable grounds for withholding payment.

### **Guidance**

1. Where not specified in the Prospectus, the maximum period between dealing days for a Public Fund will depend on the reasonable expectations of the target investor group and the particular investment objectives and policy of the Fund.
2. Capital reductions or share buy-backs that occur in a closed-ended Fund are not treated as redemptions and resales of Units of Funds based on NAV in the same manner as occurs in the case of an open-ended Fund as provided in these Rules.
3. The circumstances in which a Fund Manager may withhold redemption proceeds under (3) include where there are any dues from the redeeming Unitholder, such as under any margin lending arrangements.
4. Although no redemption provisions are prescribed for Exempt Funds, it does not mean that an Exempt Fund cannot be structured as an open-ended Fund. If structured as an open-ended Exempt Fund, the applicable redemption procedures (such as the manner and frequency of redemptions) would generally be set out in the Fund's offer document (i.e. the Prospectus). The Fund Manager would need to comply with such redemption procedures.

## **13.3 Oversight arrangements for Public Funds**

### **Guidance**

This Rule sets out the general requirements relating to the oversight arrangements which a Public Fund must have, including the powers and duties of the Persons appointed to a Public Fund to provide the oversight function.

This Rule shall, where the Trust Deed confers on the Trustee the oversight function of the Investment Trust, apply to a Trustee who shall (rather than the Fund Manager) comply with the requirements expressed in this Rule to apply to the Fund Manager. To the extent that the oversight function is carried out by a Person other than the Trustee, the Trustee shall provide to those persons any assistance that is reasonably required by them to enable them to carry out the oversight function.

### **Requirements relating to oversight arrangements**

- 13.3.1 (1) A Fund Manager of a Domestic Fund which is, or is to be, a Public Fund shall:
- (a) establish and maintain one of the permitted oversight arrangements prescribed in these Rules; and
  - (b) ensure that a person appointed to carry out the oversight function for the Fund meets:
    - (i) the independence criteria set out below; and
    - (ii) any additional suitability criteria prescribed in Rules made for the purpose of this Rule.
- (2) The Regulator may at any time object to a particular oversight arrangement or an individual appointed to carry out the oversight function for a Fund and require the Fund Manager to appoint a replacement if it appears to the Regulator that the requirements in (1) are not being met.

### **Permitted oversight arrangements**

- 13.3.2 The following oversight arrangements are hereby prescribed by the Regulator for the purposes of Rule 13.3.1(a) above:
- (a) an Oversight Committee comprising at least three individuals each of whom meets the suitability criteria prescribed in Rule 13.3.3; or
  - (b) the Eligible Custodian or Trustee of the Fund, where the individuals undertaking the primary responsibility for the oversight function meet the suitability criteria prescribed in Rule 13.3.3.

### **Guidance**

1. Rule 13.3.1 requires the Fund Manager of a Domestic Fund which is a Public Fund to establish and maintain one of the permitted oversight arrangements prescribed by the Regulator. Accordingly, such a Fund Manager must appoint one of the oversight arrangements specified in Rule 13.3.2 to every Public Fund which it manages.
2. The membership of the Oversight Committee may comprise individuals including but not limited to non-executive members of the board of directors of the Fund, or the non-executive members of the General Partner of an Investment Partnership, or external experts, provided such individuals can meet the suitability criteria prescribed in Rule 13.3.3. The criteria include a test of independence.

### **Suitability criteria for persons providing oversight function**

- 13.3.3 (1) For the purposes of Rule 13.3.2, a Person undertaking the oversight function meets the relevant criteria if that Person:

- (a) is suitably qualified;
  - (b) is fit and proper; and
  - (c) meets the independence criteria in Rule 13.3.7 below.
- (2) A Fund Manager must, in the case of each individual to be appointed as a member of an Oversight Committee referred to in Rule 13.3.2(a), undertake appropriate due diligence to ascertain whether the individual meets the suitability criteria in (1).
- (3) A Fund Manager must, where an Eligible Custodian or Trustee is to be appointed as the oversight provider of the Fund, undertake appropriate due diligence to ascertain whether the individual meets the suitability criteria in (1) in respect of those individuals within the organisation of the Eligible Custodian or Trustee who will be undertaking the primary responsibility for performing the oversight function for the Fund.
- (4) A Fund Manager must ensure that there is a written agreement:
- (a) by which an individual is appointed to an Oversight Committee or the Trustee or Eligible Custodian is appointed to the oversight function of the Fund, as is relevant; and
  - (b) which contains express provisions that the appointee agrees to discharge the oversight function in accordance with the requirements in these Rules.
- (5) If requested by the Regulator, a Fund Manager must provide to the Regulator any information relating to the appointment or intended appointment of a Person to provide the oversight function for the Fund.

### **Guidance**

1. The Guidance under APP 6 sets out matters which a Fund Manager should take into account when assessing the fitness and propriety of an individual who is to be appointed to carry out the Fund's oversight function.
2. In the case of a Trustee or Eligible Custodian appointed to provide the oversight function, a Fund Manager should, before making such an appointment, identify the most senior individuals within the organisation who will carry the primary responsibility for the oversight function. The suitability assessment should then be applied to each such individual.
3. Trustees are required to be independent of the Fund Manager (see Section 114 of FSA), which is incorporated in the independence requirement for oversight providers under Rule 13.3.7(f)). However, if the primary responsibility for providing oversight function within a Trustee rests on individuals other than its board members, the Fund Manager should assess whether such individuals possess the required degree of independence from the Fund Manager in assessing their fitness and propriety to carry out the oversight function effectively. A Fund Manager should, when making that assessment, focus

particularly on whether the Persons providing the oversight function have access to sufficient resources to perform their duties objectively and independently of the Fund Manager.

4. In assessing the competence of a prospective appointee, a Fund Manager should:
  - a. obtain details of the knowledge and skills of the individual in relation to the knowledge and skills required for the role;
  - b. take reasonable steps to verify the relevance, accuracy and authenticity of any information acquired;
  - c. determine whether the individual holds any relevant qualifications with respect to the functions to be performed; and
  - d. determine the individual's relevant experience.

- 13.3.4 (1) The systems and controls which a Fund Manager is required to have in place must include adequate measures to monitor whether the Persons appointed to provide the oversight function for the Fund meet the suitability criteria specified in Rule 13.3.3 on a continuing basis.
- (2) If a Person appointed to provide the oversight function for the Fund is either unable to fulfil his duties or no longer meets the suitability criteria in Rule 13.3.3, the Fund Manager must, within 21 days of the event causing such inability, dismiss and replace that Person, subject to the requirement in (4).
- (3) If a Person appointed to provide the oversight function for the Fund resigns from or otherwise vacates that position, the Fund Manager must, within 60 days of the event causing the vacancy, appoint a replacement, subject to the requirement in (4).
- (4) An appointment made under (2) or (3) must meet the relevant requirements relating to the oversight arrangement of the Fund as specified in Rule 13.3.2 as is relevant to that particular Fund.
- (5) The Fund Manager must notify the Regulator and, in the case of an Investment Trust where the Trustee is not the appointed oversight provider for the Fund, the Trustee, of the matters referred to in this Rule, giving reasons for the relevant cessation and replacement of the oversight provider.

#### **General oversight duties**

- 13.3.5 The Fund Manager shall ensure that each person undertaking the oversight function for the Fund is appointed with the necessary powers and resources to discharge its duties and functions and is required to:
  - (a) monitor whether the Fund Manager:
    - (i) is managing the Fund in accordance with the Constitution and the most recent Prospectus of the Fund, including in particular, any

investment and borrowing limitations, requirements relating to the valuation of Fund Property and any other requirements or restrictions imposed on the Fund under FSA or these Rules; and

- (ii) if it is a Foreign Fund Manager, is complying with the specific requirements that apply to such a Person by virtue of being a Foreign Fund Manager;
- (b) assess whether the Fund Manager's systems and controls, particularly those relating to risk management and compliance, operate as intended and remain adequate;
- (c) report to the Fund Manager on its findings, including any actual or potential breaches or inadequacies in relation to the matters specified in (a) and (b), as soon as such breaches or inadequacies are identified or suspected; and
- (d) report to the Regulator if:
  - (i) the Fund Manager has failed, or is reasonably likely to fail, to take appropriate action to rectify or remedy a matter reported to it within 30 days of that matter being so reported; and
  - (ii) that Person believes on reasonable grounds that the matter has had, or is likely to have, a materially adverse impact on the interests of the Unitholders of the Fund.

### **Guidance**

Foreign Fund Managers are subject to specific requirements, for example in Rule 7.1.

### **Duties of a person providing oversight functions**

- 13.3.6 (1) Each Person appointed to provide the oversight function to a Fund shall:
- (a) act honestly;
  - (b) exercise the degree of care and diligence that a reasonable person would exercise if he were in that person's position;
  - (c) act in the best interests of the Unitholders in the Fund and, if there is a conflict between the Unitholders' interests and his own interests, give priority to the Unitholders' interests;
  - (d) not make improper use of his position, or information acquired in that position, in order to:
    - (i) gain an improper advantage for himself or another person; or
    - (ii) cause detriment to Unitholders in the Fund;
  - (e) disclose to the Fund's auditor any information relevant for the auditor to

discharge its obligations;

- (f) comply with any other duty or obligation as the Regulator may prescribe under these Rules or any other legislation administered by the Regulator, and
  - (g) carry out or comply with any other duty, not inconsistent with any enactment or rule of law in GMC, that is conferred on him by the Fund's Constitution.
- (2) A person providing the oversight function for a Fund is to take all reasonable steps to assist the Regulator in exercising its powers under Part 17 of FSA.
- (3) Without limiting the application of any provision of these Rules and any Rules made for the purposes hereof, a person providing oversight function does not contravene any duty to which that person is subject where that person gives to the Regulator:
- (a) a notification as required under this Chapter; or
  - (b) any other information or opinion in relation to any such matter;

if the person is acting in good faith and reasonably believes that the notification, information or opinion is relevant to any functions of the Regulator.

### **Independence**

- 13.3.7 (1) A person providing the oversight function meets the independence criteria specified in in this Rule if, subject to Rule 13.3.7(3), he:
- (a) is not, and has not been in the previous 2 years, an employee or an executive director or officer of the Fund Manager or a body corporate in the same group (a "related body corporate");
  - (b) is not, and has not been in the previous 2 years, involved in material business dealings, or in a professional capacity, with the Fund Manager or a related body corporate;
  - (c) is not a member of a partnership or a trustee of a trust that is, or has been in the previous 2 years, substantially involved in business dealings, or in a professional capacity, with the Fund Manager or a related body corporate;
  - (d) does not have a material interest in the Fund Manager or a related body corporate;
  - (e) is not a relative or de facto spouse of a person who has a material interest in the Fund Manager or a related body corporate of a kind described in (1)(a) to (d); and
  - (f) if he is a person acting for the Trustee of the Fund where the latter is appointed for providing the oversight function, meets the independence criteria set out in Section 114 of FSA.
- (2) A person does not cease to be independent for the purposes of this Rule merely by

virtue of being appointed as a person providing the oversight function for a Fund.

(3) The Regulator may, by Rules, prescribe when a legal entity appointed as the person providing the oversight function to a Fund may or may not meet the independence criteria for the purposes of this Rule.

### **Proceedings of the oversight provider**

13.3.8 The Persons providing the oversight function for a Fund must conduct and regulate their proceedings in such a manner so as to be able to discharge the duties and responsibilities relating to the oversight function efficiently and effectively in accordance with the requirements of FSA and these Rules.

#### **Guidance**

1. The Persons providing the oversight function should hold such number of meetings during every annual accounting period as are considered appropriate for the nature and scale of the activities of the Fund.
2. The Persons providing the oversight function should keep minutes of their meetings and records of their reports and recommendations for a minimum of six years.

### **Principles and disclosure of interests**

13.3.9 Each individual appointed to carry out the oversight function for a Fund, in carrying out his oversight functions, must abide by the four principles set out in Rules 13.3.10 to 13.3.13. These principles apply:

- (a) in the case of an Oversight Committee referred to in Rule 13.3.2(a), to each member of that Committee; and
- (b) where a Trustee or Eligible Custodian is appointed for providing the oversight function for a Fund, to each individual responsible for carrying out the oversight function for the Fund.

#### **Guidance**

1. The principles do not apply to an individual in respect of any other functions he may carry out, although his conduct in those functions may be relevant to his fitness and propriety.
2. Breaching a principle makes an individual liable to disciplinary action and may indicate that he is no longer fit and proper to perform an oversight function and the Regulator may consider exercising its power under Rule 13.3 hereof to object to the appointment and require the Fund Manager to appoint a replacement.
3. The onus will be on the Regulator to show that he is culpable, taking into account the standard of conduct required under the principle in question. In

determining whether or not the particular conduct of an individual complies with the principles, the Regulator will take into account whether that conduct is consistent with the requirements and standards relevant to an individual's role and the information available to him.

### **Principle 1 - Integrity**

- 13.3.10 An individual must observe high standards of integrity and fair dealing in carrying out every oversight function and disclose to the Oversight Committee or the senior persons responsible within the Trustee or Eligible Custodian for the discharge of the oversight function any direct or indirect financial interest that he has or is likely to have in a matter that is being considered, or about to be considered by that committee or those persons if his interest could conflict with the proper performance of his duties in relation to the consideration of the matter.

### **Principle 2 – Due skill, care and diligence**

- 13.3.11 An individual must act with due skill, care and diligence in carrying out every oversight function.

### **Principle 3 – Market conduct**

- 13.3.12 An individual must observe proper standards of conduct in financial markets in carrying out every oversight function.

### **Principle 4 – Relations with the Regulator**

- 13.3.13 An individual must deal with the Regulator in an open and co-operative manner and must disclose appropriately any information of which the Regulator would reasonable be expected to be notified.

### **Systems and controls relating to oversight**

- 13.3.14 (1) Without limiting the generality of the obligation under Rule 13.3 and any requirements relating to systems and controls set out in these Rules, the systems and controls established and maintained by the Fund Manager must be adequate to ensure that the Persons providing the oversight function:
- (a) have adequate resources and access to accurate, timely and comprehensive information relating to the management of the Fund to be able to effectively monitor and assess the matters specified in Rule 13.3.5(a) and (b); and
  - (b) can report any actual or suspected compliance breaches or inadequacies that are identified by such Persons to the Fund Manager as required under Rule 13.3.5(c) and, for this purpose, have recourse to the Fund Manager's Governing Body or any other relevant committee established by that Governing Body where relevant.

- (2) The Fund Manager must also ensure that its systems and controls make provision to enable:
  - (a) the Compliance Officer to have unrestricted access to the Persons providing the oversight function and, to their reports and recommendations;
  - (b) the Fund Manager to promptly act upon and remedy, to the satisfaction of the Persons providing the oversight function, any matter identified and reported to it by such Persons; and
  - (c) the Persons providing the oversight function to report to the Regulator of any compliance breaches or inadequacies that are reported to the Fund Manager which are not remedied within the period specified in Rule 13.3.5(d).
- (3) The monitoring and reporting processes and procedures in (1) and (2) must be approved by the Persons providing the oversight function before implementation.

### **Guidance**

The nature and extent of the systems and controls will depend upon a variety of factors including the nature, size and complexity of the Fund's operations. While all Fund Managers and appointees, irrespective of size, legal structure or organisation need to comply with this Chapter, the Regulator will take into account these factors and the differences that exist between Funds when assessing the adequacy of a Fund Manager's systems and controls. Nevertheless, neither these factors nor the differences relieve a Fund Manager or appointees from compliance with their regulatory obligations.

- 13.3.15
- (1) The Persons appointed to perform the oversight function must report to the Fund Manager as to whether the Fund Manager's systems and controls relating to the oversight function are operating as intended and remain adequate at least quarterly at a board meeting of the Fund Manager.
  - (2) Where an Eligible Custodian or Trustee has been appointed as the Person providing the oversight function, the Fund Manager must provide to that Person, and to the Fund's Governing Body, a copy of the Fund's most recent internal audit report and any compliance report as soon as such report is available to the Fund Manager.
  - (3) A Fund Manager and Trustee of a Public Fund are not subject to the oversight requirement in (1) if the Fund's investments are limited to those that require passive management and the Fund's systems and controls contain adequate measures to address any risks arising in that context.

### **Oversight report**

- 13.3.16
- (1) The Person providing the oversight function of a Public Fund must make a report

to Unitholders of the Fund which must be included in the Fund's annual report referred to in Rule 16.4.2.

- (2) The oversight report must contain:
- (a) a description, which may be in summary form, of the duties of the Person carrying out the oversight functions and in respect of the safekeeping of the Fund Property; and
  - (b) a statement whether, in any material respect:
    - (i) the issue, sale, redemption and cancellation, and calculation of the price of the Units and the application of the Fund's income, have not been carried out in accordance with these Rules and, the Constitution; and
    - (ii) the investment and borrowing powers and restrictions applicable to the Fund including those specified in Rule 13.4, if those have been exceeded.

### **Co-operation with oversight providers**

13.3.17 A Fund Manager must take reasonable steps to ensure that it and its Employees and those of the Fund:

- (a) provide such assistance as the Persons providing the oversight function reasonably require to discharge their duties;
- (b) give the Persons providing the oversight function right of access at all reasonable times to relevant records and information relating to the Fund;
- (c) do not interfere with the ability of the Persons providing the oversight function to discharge their duties;
- (d) do not provide false or misleading information to the Persons providing the oversight function; and
- (e) report to the Persons providing the oversight function any matter which may significantly affect the financial position of the Fund or which is a material breach of the Fund's Constitution, or of FSA, or of these Rules.

### **Record keeping**

13.3.18 (1) A Fund Manager must keep records of:

- (a) the due diligence process it has undertaken to assess whether the Persons appointed for the oversight function meet the suitability criteria in Rule 13.3.3; and
- (b) the matters identified and reported to it by the Persons providing the oversight

function under Rule 13.3.16 and any remedial measures adopted by it to address such matters.

13.4 **Investment and borrowing requirements for Public Funds Application**

13.4.1 This Chapter applies to the Fund Manager of a Domestic Fund which is a Public Fund, an Eligible Custodian and, where appropriate, a Trustee, and, to Persons appointed to perform the oversight function for such a Fund, to the extent specified in Rule 13.3.5.

**Spread of risk and protection of Fund Property**

13.4.2 A Fund Manager must take reasonable steps to ensure that the Fund Property of a Public Fund provides a spread of risk that is consistent with the investment objectives and policy of the Fund as stated in its Constitution and/or most recently published Prospectus, and in particular, any investment objectives as regards return to the Unitholders whether through capital appreciation or income or both.

- 13.4.3 (1) A Fund Manager must avoid the Fund Property being used or invested contrary to any provision in this Chapter.
- (2) On becoming aware of any breach of a Rule in this Chapter, a Fund Manager must take action, at its own expense, to rectify that breach.
- (3) A Fund Manager must take the action in (2) immediately, except in circumstances where it decides doing so would not be in the best interests of Unitholders, in which case the action must be taken as soon as such circumstances cease to apply.
- (4) A Fund Manager must not postpone taking action in accordance with (2) unless the Persons providing oversight functions have given their consent.

**Investment in other Funds**

13.4.4 A Fund may invest in Units of another Fund, except where otherwise provided for in these Rules. Before investing in another Fund, the Fund Manager must take reasonable care to determine that it:

- (a) is the subject of an independent annual audit conducted in accordance with IFRS;
- (b) has mechanisms in place to enable Unitholders to redeem their Units within a reasonable time if it is an open-ended Fund;
- (c) is prohibited from having more than 20% of its gross asset value in the Units of other Funds; and
- (d) has a proper and disclosed basis for asset valuation and the pricing of Units in that Fund.

### **Transactions in derivatives**

- 13.4.5 (1) The total exposure of a Public Fund to Derivatives may not exceed the net asset value of the Fund Property.
- (2) The Fund Manager's systems and controls must include adequate risk management processes which enable it to monitor and measure as frequently as appropriate the risk of a Fund's Derivative positions and their contribution to the overall risk profile of the Fund.

### **Stock lending and borrowing**

- 13.4.6 (1) Subject to the Fund's Constitution and its most recent Prospectus, the Fund Manager, or the Eligible Custodian or Trustee at the request of the Fund Manager, may enter into:
- (a) stock lending arrangements in respect of any Securities forming the Fund Property; and
  - (b) stock borrowing arrangements.
- (2) The Fund Manager 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.
- 13.4.7 (1) Subject to the Fund's Constitution and its most recent Prospectus, the Fund Manager, or the Eligible Custodian or Trustee on the instructions of the Fund Manager, may borrow money for the use of the Fund on terms that the borrowing is to be repayable out of the Fund Property.
- (2) The Fund Manager must ensure, except in the case of a Property Fund, that the Fund's borrowing does not on any day exceed 20% of the gross asset value of the Fund Property and must take reasonable care to ensure that arrangements are in place that will enable borrowings to be repaid to ensure such compliance. The Fund Manager of a Public Property Fund may borrow either directly or through its Special Purpose Vehicle for financing investment, or operating purposes but aggregate borrowings must not at any time exceed 65% of the total gross asset value of the Fund.
- (3) In the event that the borrowing limit under (2) is exceeded, the Fund Manager must inform the Trustee (if appointed), the Unitholders and the Regulator of the magnitude of the breach, the cause of the breach, and the proposed method of rectification. The Fund Manager must use its best endeavours to reduce, as soon as reasonably possible, the excess borrowings, whether by liquidating assets to repay borrowings or otherwise, to the extent practicable without having a material adverse effect on the Fund or investors as a whole.
- (4) All borrowings by the Fund must be conducted at arm's length, unless otherwise approved by the Oversight Committee or by Unitholders (by way of Special Resolution).
- (5) Borrowings by any Special Purpose Vehicles held by the Fund must be aggregated for

the purpose of calculating borrowings of the Fund for the purposes of this Rule.

- (6) In this Rule, "borrowing" also includes any arrangement including a combination of Derivatives to achieve a temporary injection of money into the Fund Property in the expectation that the sum will be repaid.

### **Investment in Real Property**

13.4.8 A Fund Manager must ensure that a suitable Valuer is appointed for a Fund at all times in order to ensure the proper valuation of any Real Property that forms part of Fund Property.

13.4.9 (1) The Fund Manager must ensure that the Valuer appointed under Rule 13.4.8 procures the proper valuation of all the property held within the Fund Property, on the basis of a full valuation with physical inspection including, where the property is or includes a building, an internal inspection at least once a year.

(2) For the purposes of (1), any inspection in relation to adjacent properties of a similar nature and value may be limited to that of only one such representative property.

(3) The Fund Manager must, subject to (4), ensure that the Valuer values the property, on the basis of a review of the last full valuation, at least every 6 months.

(4) If any event occurs which may on reasonable grounds have a material effect on the valuation of the relevant property the Fund Manager must consult with the Valuer with a view to arranging a fresh valuation before any Units in the Fund are issued or redeemed after the date of the event.

(5) The Fund Manager must require that any valuation by the Valuer is on the basis of a 'market value' as defined in the Constitution and Prospectus.

### **Guidance**

1. A Fund Manager should consult with the oversight provider before appointing a Valuer.

2. The Regulator would expect the Fund Manager to define 'market value' based on an authoritative text such as the current edition of the Royal Institute of Chartered Surveyors' Appraisal and Valuation Standards ("Red Book") or similar practitioners text used by surveyors for the valuation to be a proper valuation under Rule 13.4.9(5).

## **13.5 Real Estate Investment Trusts (REITs)**

13.5.1 (1) A Fund Manager, or any other Licensed Firm making an Offer of a Unit of a Domestic Fund or otherwise marketing a Domestic Fund, must not include the term "Real Estate Investment Trust" or "REIT" or refer to a Fund or otherwise hold out a Fund as being a Real Estate Investment Trust or a REIT, unless it is a Property Fund which complies with (2).

- (2) A REIT is a Property Fund which:
    - (a) is primarily aimed at investments in income-generating Real Property; and
    - (b) distributes to the Unitholders at least 80% of its audited annual net income.
  - (3) If at any time during the operation of the Fund the requirements in Rule 13.5.1(2) are not met, the Fund Manager, and, if appointed the Trustee, must immediately notify the Regulator of the failure to meet the requirements in these Rules and what measures have been or will be taken to remedy the breach.
- 13.5.2 (1) A Fund Manager of a REIT must ensure that it distributes to the Unitholders as dividends each year an amount not less than 80% of its audited annual net income.
- (2) In the case of a REIT which is a Public Fund, the persons providing oversight functions in respect of the Fund must determine if any:
    - (a) revaluation surplus credited to income, or
    - (b) gains on disposal of Real Property,shall form part of net income for distribution to Unitholders.
  - (3) In the case of a REIT which is an Exempt Fund or a Qualified Investor Fund, the Fund Manager must make the determination in (2).
  - (4) A REIT which is a Public Fund. Must be either listed on an exchange or open-ended.
- 13.5.3 Where a REIT other than a Qualified Investor Fund holds any Real Property via one or more Special Purpose Vehicles, the Fund Manager must ensure that each Special Purpose Vehicle distributes to the Fund all of its net income as permitted by the laws and regulations of the jurisdiction where the Special Purpose Vehicle is established.
- 13.5.4 (1) A Fund Manager of a REIT must ensure, subject to (2), that any investment made in respect of property under development whether on its own or in a joint venture is undertaken only where the REIT intends to hold the developed property upon completion.
- (2) The total purchase price and development cost of the property under development in (1) must not exceed 30% of the net asset value of the Fund Property of the REIT.
  - (3) For the purposes of this Rule 13.5.4, the Regulator would not consider property development activities to include refurbishment, retrofitting and renovation.
- 13.5.5 (1) A REIT other than a Qualified Investor Fund may borrow either directly or through its Special Purpose Vehicles an amount not exceeding 65% of the total gross asset value of the Fund.
- (2) Upon becoming aware that the borrowing limit set out in 13.5.5(1) has been exceeded, the Fund Manager shall:

- (a) immediately inform Unitholders and the Regulator of the details of the breach and the proposed remedial action;
- (b) use its best endeavours to reduce the excess borrowings;
- (c) not permit the Fund to engage in additional borrowing; and
- (d) inform Unitholders and the Regulator on a regular basis as to the progress of the remedial action.

**Guidance**

Remedial action may not require the disposal of Fund assets to pay off part of the borrowings where such disposal would be prejudicial to the interest of Unitholders.

**13.6 Payments of liabilities on transfer of assets**

13.6.1 Where the property of a Body Corporate or of another Fund is transferred to a Fund or to the Trustee to hold on trust for the Unitholders in consideration of the issue of Units in the Fund to Unitholders in that Body Corporate or in that other Fund, Rule 13.6.2 applies.

13.6.2 The Fund Manager or in the case of an Investment Trust, the Trustee, as the successor in title to the property transferred, may pay out of the Fund Property any liability arising after the transfer which, had it arisen before the transfer, could properly have been paid out of the property transferred, but only if:

- (a) there is nothing in the Constitution of the Fund expressly forbidding the payment; and either
- (b) the Fund Manager or the Trustee, as the case may be, is of the opinion that proper provision was made for meeting such liabilities as were known or could reasonably have been anticipated at the time of the transfer; or
- (c) Unitholders representing a majority of the issued and outstanding Units of the Fund have passed a resolution approving such payment from Fund Property at a meeting of Unitholders called by the Fund Manager for such purpose.

**13A. REQUIREMENTS SPECIFIC TO PRIVATE CREDIT FUNDS**

**13A.1 Application**

13A.1.1 Chapter 13A applies in its entirety to the Fund Manager and, if appointed, the Trustee of a Private Credit Fund, unless otherwise expressly provided for in this Chapter.

**Guidance**

1. This Chapter must be read in conjunction with the Fund Rules more widely as they contain additional Rules that are applicable to Funds and Fund Managers more generally.

2. Fund Managers of Private Credit Funds are subject to specific systems and controls requirements that are included in this chapter. Additionally, Private Credit Funds are subject to diversification requirements that all other Exempt Funds and Qualified Investor Funds are not subject to.

### 13A.2 **Systems and controls requirements for Fund Managers of Private Credit Funds**

13A.2.1 The Fund Manager of a Private Credit Fund must maintain systems and controls that include suitable, documented policies and procedures designed to ensure:

- (a) a Fund risk appetite statement is developed and incorporated into its investment process;
- (b) that provision of Credit to a Borrower is only made based upon a sound assessment and pricing methodology;
- (c) the ongoing monitoring of granted Credit, including policies for renewals and refinancing;
- (d) that adequate risk management is undertaken, including in relation to credit risk and concentration risk;
- (e) the application of stress testing methodologies as set out in Section 13A.7 below;
- (f) the management of collateral;
- (g) that bad debt and impairments are identified and managed; and
- (h) the timely, appropriate and accurate valuation of Fund Property.

#### **Eligible investments and diversification requirements**

13A.3.1 The Fund Manager of a Private Credit Fund must not allow for Credit to be provided to, or for the benefit of:

- (a) Natural Person(s);
- (b) an Affected Person;
- (c) a Collective Investment Fund;
- (d) a Person intending to utilise such financing for the purpose of speculative investment; or
- (e) a Bank or Lender.

13A.3.2 A Fund Manager must ensure that the investment strategy of a Private Credit Fund is designed to achieve a portfolio that meets the Fund's specified diversification and concentration requirements within a suitable, stated timeframe.

13A.3.3 The investment strategy of a Private Credit Fund must limit the maximum exposure to a single borrower (or group of connected borrowers) to 25% of the Committed Capital of the Fund.

13A.4 **Borrowing and leverage**

13A.4.1 The Fund Manager must ensure that borrowing by a Private Credit Fund must not exceed 100% of the Committed Capital of the Fund.

13A.5 **Disclosure**

13A.5.1 The Prospectus issued or distributed in respect of a Private Credit Fund must include a prominent risk warning which draws attention to the unique risks which arise from investing in Credit and how the value of an investment in a Private Credit Fund is not guaranteed and is subject to the possibility of investment losses and illiquidity. In addition, the Prospectus must include:

- (a) information on the risk and reward profile to enable investors to identify the specific risks associated with a loan origination strategy;
- (b) information on the extent to which the Private Credit Fund intends to be concentrated as regards individual entities, geographical locations and sectors and the risks arising from those proposed concentrations;
- (c) details of the credit assessment and monitoring process used by the Private Credit Fund; and
- (d) information on whether the Fund Manager will provide Unitholders or potential Unitholders with access to records and staff for the purposes of a due diligence process as well we the terms and conditions under which such access may be granted.

13A.6 **Reporting**

13A.6.1 In addition to the information required pursuant to these Rules, the periodic reports issued by a Private Credit Fund must include the following additional information:

- (a) a breakdown of the originated loans between senior secured debt, junior debt and mezzanine debt;
- (b) a summary of all committed but undrawn Credit Facilities;
- (c) a breakdown of the originated loans between loans made with an amortising repayment schedule and loans made with bullet repayments;
- (d) a breakdown of the loan to value ratio for each originated loan;
- (e) information in respect of non-performing exposures and exposures subject to forbearance activities;

- (f) a summary of the results of the most recent stress testing undertaken in accordance with Rules 13A.7.1 or 13A.7.2; and
- (g) a description of any material changes to the credit assessment or monitoring process of the Private Credit Fund.

### **Guidance**

The information described in Rule 13A.6.1 should accompany the information to be included in the periodic reports required for Funds generally as set out in Rule 16.4.

## **13A.7 Stress Testing**

13A.7.1 The Fund Manager of a Private Credit Fund must have a comprehensive stress testing and scenario analysis programme that:

- (a) identifies possible events or future changes in economic conditions that could have unfavourable effects on the Private Credit Fund's credit exposures and assess the Private Credit Fund's ability to withstand such changes;
- (b) requires the outcomes of applying stresses to be compared against internal risk limits established by the Fund Manager in respect of the Private Credit Fund;
- (c) considers the evolution of both specific transactions and aggregate exposures, reflecting all forms of counterparty credit risk at the level of specific counterparties, across an appropriate time horizon that represents meaningful stress testing;
- (d) provides at least semi-annual exposure stress testing of principal market risk factors such as interest rates, FX and credit spreads for all counterparties of the Private Credit Fund in order to identify and enable the Fund Manager to reduce significant concentrations, relative to the internal risk limits and specific risks when necessary;
- (e) requires scenario analysis exercises to be undertaken at least annually and incorporates material risks including yield curve exposure and basis risks; and
- (f) must be undertaken by qualified personnel not involved in the investment management process of the Private Credit Fund.

13A.7.2 The Regulator may direct the Fund Manager of a Private Credit Fund to conduct more frequent stress testing and scenario analysis.

13A.7.3 The results of stress testing and scenario analysis performed in accordance with Rules 13A.7.1 and 13A.7.2 must be reported without undue delay, to the Governing Body of the Fund Manager.

## Guidance

1. The periodic stress testing and scenario analysis required by Rule 13A.7.1 should be viewed as a minimum standard. The Fund Manager of a Private Credit Fund should consider the fund's complexity, liquidity and risk profile when considering the frequency of stress testing and scenario analysis or, should a material risk be identified, whether ad hoc stress testing and scenario analysis should be undertaken.
2. Scenario analysis may reflect historical or hypothetical scenarios and should, at a minimum, address scenarios where:
  - a. severe economic or market events have occurred;
  - b. broad market liquidity has decreased significantly;
  - c. a large financial intermediary is liquidating positions and
  - d. the Private Credit Fund is required to liquidate assets during a period of extreme market stress.

## 14. REQUIREMENTS SPECIFIC TO EXEMPT FUNDS

### 14.1 Meeting the conditions to be classified as an Exempt Fund Guidance

1. If an Exempt Fund can no longer meet the relevant conditions set out in Rule 3.3.3 to be classified as an Exempt Fund, the Fund Manager of that Fund is required, under Section 112 of FSA, to apply for the winding up of that Fund. Alternatively, the Fund Manager may have that Fund moved to the classification of a Public Fund, which requires the satisfaction of the requirements and formalities specific to that type of Fund. An Exempt Fund may also, if it wishes to, convert to a Qualified Investor Fund provided it meets the conditions applicable to a Qualified Investor Fund in Rule 3.3.4.
2. In addition to the requirements specific to Exempt Funds, such a Fund must also meet, except where otherwise provided, the other requirements that are common to all Domestic Funds, which are set out in Rules 11 and 12 of these Rules.
3. Units of Exempt Funds can only be Offered by way of Private Placement and to Professional Clients, but must meet the additional criterion of a minimum subscription test of US\$50,000. The definition of Professional Client is set out in Rule 1.2.1.
4. Generally, a firm will not be able to undertake mass marketing activities relating to Units of Exempt Funds because such marketing would not meet the Private Placement requirement, and would be likely to amount to a public offer, which can only be made in respect of a Unit of a Public Fund.

14.1.1 (1) A Fund may be classified as an Exempt Fund only if it fulfils the criteria in Rule 3.3.3 at the inception of the Fund and on an on-going basis.

(2) A Fund Manager must ensure that a Fund which is or is intended to be established

and operated as an Exempt Fund meets the criteria in Rule 3.3.3 both at the inception of the Fund and on an on-going basis.

- (3) For the purposes of (2), where a Fund Manager makes arrangements with other Licensed Firms or Persons in other jurisdictions to Offer to issue or sell the Units of an Exempt Fund, then it must take reasonable steps to ensure that those Licensed Firms or other Persons do not Offer to issue or sell the Units in a manner that would result in a breach of the criteria in Rule 3.3.3.
- (4) As soon as a Fund Manager becomes aware that an Exempt Fund it manages no longer meets or is likely to not meet the criteria in Rule 3.3.3, it must immediately:
  - (a) commence proceedings relating to the winding up of the Fund, or alternatively, take necessary steps to have the Fund registered as a Public Fund; and
  - (b) notify the Regulator of that fact and the measures it has taken and proposes to take under (a).
- (5) A Fund Manager of an Exempt Fund which is subject to the valuation requirement in Rule 12.4.1(b) of these Rules must appoint either: (i) a Fund Administrator or, (ii) a Person regulated by a Financial Services Regulator, as the Person undertaking the valuation of that Fund, in each case with the assistance of independent third party valuation experts, where required.

## **15. REQUIREMENTS SPECIFIC TO QUALIFIED INVESTOR FUNDS**

### **15.1 Meeting the conditions to be classified as a Qualified Investor Fund**

#### **Guidance**

1. Rule 3.3.2 provides that a Domestic Fund may be constituted as a Qualified Investor Fund only if it satisfies all of the conditions in Rule 3.3.4. Rule 3.3.4 provides that a Qualified Investor Fund must:
  - (a) have its Units offered to persons only by way of Private Placement;
    - (a) have only Unitholders each of whom meets the criteria to be classified as a Professional Client; and
    - (b) have an initial subscription to be paid by a person to become a Unitholder in the Fund of at least US\$500,000.
2. The definition of "Professional Client" is set out in Rule 1.2.1.
3. Generally, a firm will not be able to undertake mass marketing activities relating to Units of Qualified Investor Funds because such marketing would not meet the Private Placement requirement, and would be likely to amount to a public offer, which can only be made in respect of a Unit of a Public Fund.

- 15.1.2 (1) A Fund may be classified as a Qualified Investor Fund only if it fulfils the conditions in Rule 3.3.4 at the inception of the Fund and on an on-going basis.

- (2) A Fund Manager must ensure that a Fund which is or is intended to be established and operated as a Qualified Investor Fund meets the conditions in Rule 3.3.4 both at the inception of the Fund and on an on-going basis.
- (3) For the purposes of (2), where a Fund Manager makes arrangements with other Licensed Firms or Persons in other jurisdictions to Offer to issue or sell the Units of a Qualified Investor Fund, then it must take reasonable steps to ensure that those Licensed Firms or other Persons do not Offer to issue or sell the Units in a manner that would result in a breach of the conditions in Rule 3.3.4.
- (4) As soon as a Fund Manager becomes aware that a Qualified Investor Fund it manages no longer meets or is likely not to meet the conditions in Rule 3.3.4, it must immediately:
  - (a) commence proceedings relating to the winding up of the Fund, or alternatively, take necessary steps to have the Fund reconstituted as an Exempt Fund or registered as a Public Fund; and
  - (b) notify the Regulator of that fact and the measures it has taken and proposes to take under (a).

## 15.2 **Responsibilities of a Fund Manager of a Qualified Investor Fund**

### **Guidance**

1. While a Fund Manager of a Qualified Investor Fund is exempt from many of the detailed requirements applicable to Public Funds and Exempt Funds, it will continue to be subject to most of the main obligations of Fund Managers. Therefore, such a Fund Manager should be mindful that when managing a Qualified Investor Fund, it is subject to some of the overarching obligations applicable to Fund Managers, particularly:
  - (a) Rule 12.2 (Fund Manager and Trustee general duties and functions);
  - (b) GEN Section 2.2 (The Principles for Licensed Firms); and
  - (c) GEN Chapter 3 (Management, Systems and Controls).
2. For example, a Fund Manager of a Qualified Investor Fund needs to observe high standards of integrity and fair dealing, and apply due skill, care and diligence, in managing the Fund. Similarly, it must have adequate systems and controls to ensure that the affairs of the Fund are effectively managed, taking into account the nature, scale and complexity of the Fund's operations and the investment objectives and needs of its investors.

## 15.3 **Custody of Fund Property**

- 15.3.1 (1) The Fund Manager of a Qualified Investor Fund that is not an Investment Trust must ensure that the legal title to Fund Property is registered with an Eligible Custodian.

(2) The requirement in (1) does not apply in relation to Fund Property where it is impracticable and disproportionate to comply with that Rule given the nature of the Fund and its assets, provided that the Fund Manager has in place effective arrangements which ensure that the Fund Property is not available to creditors in the event of the insolvency of the Fund Manager.

### **Guidance**

Regardless of who holds title to Fund Property, the Fund Manager must always ensure that, in accordance with Rule 12.2.2(1)(f), Fund Property is clearly identified as such and held separately from property of the Fund Manager and any other Funds.

## **16. ACCOUNTING, AUDIT AND PERIODIC REPORTING OF A FUND**

### **16.1 Application**

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

(2) In this Chapter, references to a "Fund" mean a "Domestic Fund".

### **16.2 Preparation of Fund financial statements**

#### **Financial statements and financial reporting standards**

16.2.1 (1) A Fund Manager of a Fund must prepare financial statements for each financial year of the Fund.

(2) A Fund Manager must, in respect of a Fund, prepare and maintain all financial statements in accordance with the International Financial Reporting Standards (IFRS).

#### **Accounting Records**

16.2.2 A Fund Manager must keep Accounting Records that are sufficient to show and explain transactions and are as such, to:

(a) be capable of disclosing the financial position of the Fund on an ongoing basis; and

(b) record the financial position of the Fund as at its financial year end.

16.2.3 Accounting Records must be maintained by a Fund Manager such as to enable the Governing Body and, if appointed, the Trustee or any Persons providing the oversight function of the Fund to ensure that any financial statements prepared by the Fund Manager in relation to the Fund comply with the legislation applicable in GMC.

16.2.4 The Accounting Records must be:

(a) retained by the Fund Manager or Fund for at least six years from the date to

which they relate;

- (b) at all reasonable times, open to inspection by the Regulator or the auditor of the Fund; and
- (c) capable of reproduction, within a reasonable period not exceeding 3 business days, in hard copy and available in English.

### 16.3 **Auditors of a Fund Guidance**

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

#### **Appointment and termination of auditors**

##### 16.3.1 A Fund Manager must:

- (a) notify the Regulator of the appointment of an auditor to the Fund by completing and submitting the appropriate form (which shall be in such form as the Regulator may prescribe); and
- (b) prior to the appointment of the auditor, take reasonable steps to ensure that the auditor has the required skills, resources and experience to audit the type of Fund for which the auditor has been appointed.

16.3.2 A Fund Manager must notify the Regulator immediately if the appointment of the auditor is or is about to be terminated, or on the resignation of the Fund's auditor, by completing and submitting the appropriate form (which shall be in such form as the Regulator may prescribe).

16.3.3 A Fund Manager must appoint an auditor to fill any vacancy in the office of auditor and ensure that the replacement auditor can take up office at the time the vacancy arises or as soon as reasonably practicable.

16.3.4 (1) A Fund Manager must take reasonable steps to ensure that the auditor and the relevant audit staff of the auditor are independent of, and not subject to, any conflict of interest with respect to the Fund Manager, the Trustee or the Fund.

- (2) A Fund Manager or Trustee must notify the Regulator if it becomes aware, or has reason to believe, that the auditor or the relevant audit staff of the auditor are no longer independent of the Fund Manager, the Trustee or the Fund, or have a conflict of interest which may affect their judgement in respect of the Fund.

### **Guidance**

1. A Fund Manager should consider whether there is any financial or personal relationship between it or any of its relevant Employees and the auditor or any of the relevant Employees of the auditor that may affect the judgement of the auditor when conducting an audit of the Fund or complying with all its legal obligations, including FSA, GEN, AML and other relevant Rulebooks made by the Regulator.

### **Co-operation with auditors**

- 16.3.5 A Fund Manager must take reasonable steps to ensure that it and its Employees:
- (a) provide any information to its auditor that its auditor reasonably requires, or is entitled to receive as auditor;
  - (b) give the auditor right of access at all reasonable times to relevant records and information within its possession;
  - (c) allow the auditor to make copies of any records or information referred to in (b);
  - (d) do not interfere with the auditor's ability to discharge its duties;
  - (e) report to the auditor any matter which may significantly affect the financial position of the Fund; and
  - (f) provide such other assistance as the auditor may reasonably request it to provide.
- 16.3.6 A Trustee must take reasonable steps to ensure that it and its Employees act in compliance with Rule 16.3.5(a).
- 16.3.7 A Fund Manager must, in writing, require any Person to whom the Fund Manager has delegated or outsourced any functions to co-operate with the Fund's auditor in accordance with the provisions specified in Rule 16.3.5.

### **Function of the Auditor**

- 16.3.8 A Fund Manager must, in writing, require its auditor to:
- (a) conduct an audit of the Fund's financial statements in accordance with the requirements of the relevant standards published by the International Auditing and Assurance Standards Board (IAASB); and
  - (b) produce a Fund Auditor's Report on the audited financial statements in accordance with GEN Rule 6.6.8.
- 16.3.9 The requirements in Rules 16.3.8 and 16.4.5(a) for financial statements to be audited and

for a Fund Auditor's Report to be produced may be waived by the Regulator, on a case-by-case basis in relation to Exempt Funds and Qualified Investor Funds where the Fund Manager has obtained a Special Resolution of Unitholders in support of such a waiver.

### **Guidance**

Circumstances in which it may be appropriate for Fund Managers to seek the waiver described in Rule 16.3.9 include:

- (a) where the Fund is being wound up; or
- (b) where the Fund holds only a small number of illiquid assets.

## **16.4 Periodic Reports**

### **Annual and interim reports**

16.4.1 (1) In order to provide the Unitholders with relevant and up-to-date information about the performance and management of a Fund, a Fund Manager must, subject to (2), produce one interim report and one annual report in respect of each Fund it operates in accordance with these Rules.

(2) The Fund Manager of a Qualified Investor Fund is not required to comply with the requirements in (1) relating to the production of an interim report for that Fund unless there has been a material change relating to the Fund during the relevant period.

(3) For the purposes of (2), the relevant period in relation to a Qualified Investor Fund is the 6-month period referred to in Rule 16.4.2.

16.4.2 (1) A Fund Manager must produce the required annual report and interim report as follows:

- (a) an annual report within six months after the end of each annual accounting period; and
- (b) an interim report within three months after the end of each interim accounting period.

(2) For the purposes of (1), the first annual accounting period of a Fund begins:

- (a) in the case of a Public Fund, on the date of registration by the Regulator; or
- (b) in the case of an Exempt Fund or a Qualified Investor Fund, on the date of notification to the Regulator; and

ends on the date stipulated as the annual accounting period end date in the prospectus. Thereafter, annual accounting periods cover the period between each subsequent financial year end.

- (3) Notwithstanding the requirement in (2), should a Fund's first accounting period end within less than 6 months, the Fund Manager may notify the Regulator that it has chosen to extend the first accounting period to end on the subsequent accounting period end date, provided that the extended first accounting period is no longer than 18 months in duration.
- (4) For the purposes of (1), an interim accounting period is the period covering:
  - (a) from the date that the first accounting period begins to the date 6 months prior to the end of the first accounting period; and
  - (b) 6 months after each annual accounting period end date.
- (5) If a Fund intends to change its annual or interim accounting period, the Fund Manager must:
  - (a) obtain written confirmation from its auditor that the change of its annual accounting period would not result in any significant distortion of the financial position of the Fund; and
  - (b) obtain the Regulator's prior consent before implementing the change.
- (6) For a Fund which is an Umbrella Fund, the Fund Manager must prepare reports for each Sub-Fund, but need not prepare reports for the Umbrella Fund as a whole, and the remainder of this Chapter 16 should be read accordingly.
- (7) The reports must:
  - (a) be available free of charge to Unitholders;
  - (b) be available in English,
  - (c) be sent to the Regulator; and
  - (d) if the Fund is a Public Fund, be available for inspection free of charge during ordinary office hours at a place specified.

16.4.3 The Fund Manager must take reasonable steps to ensure that the interim and annual reports for a Fund or the Sub-Funds of an Umbrella Fund are clear, complete and true and contain information for the relevant period and:

- (a) the name of the Fund or Sub-Fund, its stated investment objectives, the policy of achieving those objectives and a brief assessment of its risk profile;
- (b) a review of the Fund's or Sub-Fund's investment activities and investment performance during the period;
- (c) sufficient information to enable Unitholders to form a view on where the portfolio is invested at the end of the period and the extent to which that has

changed over the period; and

- (d) any other significant information which would reasonably enable Unitholders to make an informed judgment on the activities of the Fund or Sub-Fund during the period and the results of those activities at the end of the reporting period.

#### **Contents of the interim report**

16.4.4 The Fund Manager must produce an interim report which contains:

- (a) particulars of any material issues raised by the Eligible Custodian and, if applicable, the Trustee, the investment committee or any Person providing oversight in relation to the Fund; and
- (b) matters required to be included in the Fund Manager's report under Rule 16.4.7.

#### **Contents of the annual report**

16.4.5 An annual report of a Fund must contain:

- (a) the full audited financial statements for the annual accounting period;
- (b) the report produced by the auditor in accordance with Rule 16.3.8(b);
- (c) the report of the Fund Manager in accordance with Rule 16.4.7;
- (d) if the Fund is a Public Fund, the comparative table in accordance with Rule 16.4.8; and
- (e) if the Fund is a Public Fund, the oversight report in accordance with Rule 13.3.16.

16.4.6 The Fund Manager must ensure that the financial statements give a true and fair view of the net income and the net gains and the losses on the Fund Property of the Fund, or, the Sub-Fund, for the annual accounting period in question and the financial position of the Fund or Sub-Fund as at the end of that period.

#### **Fund Manager's report**

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

- (a) a restatement of the investment objectives of the Fund;
- (b) a restatement of the policy for achieving those objectives;
- (c) a review of the investment activities, including in relation to (a) and (b), during the period to which the report relates;

- (d) particulars of any fundamental change requiring prior approval by Unitholder meeting made since the date of the last report;
- (e) particulars of any significant change requiring pre-event notification since the date of the last report;
- (f) for a Fund which invests a substantial proportion of its assets in other Funds, a statement as to the maximum proportion of management fees charged to the Fund itself and to other Funds in which that Fund invests.

### **Comparative table Guidance**

In presenting past performance information, the Regulator recommends that Fund Managers follow the Global Investment Performance Standards (GIPS) issued by Institute of Chartered Financial Analysts of the USA.

16.4.8 The comparative table for the annual report for a Public Fund must set out:

- (a) the performance record over the last five calendar years, or if the Fund has not been in existence during the whole of that period, over the whole period in which it has been in existence, showing:
  - (i) the highest and the lowest price of a Unit of each class in issue during each of those years; and
  - (ii) the net income distributed or, for accumulation Units, allocated for a Unit of each class in issue during each of those years, taking account of any sub-division or consolidation of Units that occurred during that period;
- (b) as at the end of each of the last three annual accounting periods or all of the Fund's annual accounting periods, if less than three:
  - (i) the total net asset value of the Fund Property at the end of each of those years;
  - (ii) the net asset value per Unit of each class; and
  - (iii) for a report of the directors of an Investment Company, the number of Units of each class in issue; or
  - (iv) for a report of the Fund Manager of any other Fund, the number of Units of each class in existence or treated as in existence; and
- (c) if, in the period covered by the table:
  - (i) the Fund Manager has been the subject of any event such as a transfer scheme having a material effect on the size of the Fund, but excluding any issue or cancellation of Units for cash; or

(ii) there have been changes in the investment objectives of the Fund;

an indication, related in the body of the table to the relevant year in the table, of the date of the event or change in the investment objectives and a brief description of its nature.

16.5 **Table illustrating content of the annual report Guidance**

Type of Report	Rule Ref	Public Funds	Exempt Funds	QIF
Annual and interim reports	16.4.2	✓	✓	Annual Report only. An interim report is required only if there has been a material change during the interim accounting period
Fund Manager's Report	16.4.7	✓	✓	✓
Fund Auditor's Report	16.3.8(b), 16.3.9	✓	Rule 16.3.8(b) need not be complied with if a waiver is obtained pursuant to Rule 16.3.9	Rule 16.3.8(b) need not be complied with if a waiver is obtained pursuant to Rule 16.3.9
Oversight Report	13.3.16	✓	Not applicable	Not applicable
Comparative Table	16.4.8	✓	Not applicable	Not applicable

This table illustrates the different content requirements for reports of a Domestic Fund.

**17. FUND ADMINISTRATORS**

**17.1 General Application**

17.1.1 (1) Subject to (2), this Chapter applies to a Licensed Firm which is appointed as a Fund Administrator to either a Domestic or a Foreign Fund.

(2) This Chapter does not apply to a Fund Manager or Trustee to the extent that it carries on the Regulated Activity of Acting as the Administrator of a Collective Investment Fund within the Regulated Activities of Managing a Collective Investment Fund or Acting as the Trustee of an Investment Trust.

### **Compliance with the AML Rules**

17.1.2 The AML Rules apply to a Fund Administrator to the extent that it carries on the Regulated Activity of Acting as the Administrator of a Collective Investment Fund for a Domestic Fund or Foreign Fund, if managed by a Foreign Fund Manager, as if each reference in AML to a "customer" is a reference to a "Unitholder" or "prospective Unitholder" as appropriate to the context.

### **Client Money and Assets**

17.1.3 A Fund Administrator, in Acting as the Administrator of a Collective Investment Fund for a Domestic Fund or Foreign Fund, must not hold or control monies or assets belonging to third parties in connection with such administration except in the following circumstances:

- (a) holding cheques to the order of a Fund's bank account, provided such cheques are securely held for a maximum of three business days prior to being deposited into the relevant Fund's bank account or returned to the drawer of the cheque; or
- (b) where a mandate over a Fund's or other third party's bank account is granted to a Fund Administrator and the mandate has been agreed in writing with the bank concerned, and transfers out of the relevant bank account may be made only in circumstances where the mandate restricts instructions to make such payments to being made solely in accordance with the payment of invoiced fees and expenses, made in accordance with the relevant Fund's Constitution and Prospectus and are not remitted to the account of the Fund Administrator except by express instructions of the Fund Manager.

### **Delegation and service level agreements**

17.1.4 (1) A Fund Administrator of:

- (a) a Domestic Fund; and
- (b) a Foreign Fund managed by an Approved Fund Manager,

for which it is carrying out the Regulated Activity of Acting as the Administrator of a Collective Investment Fund must have a Delegation Agreement that meets the requirements in APP 1 with the Fund Manager or Trustee of the Fund.

(2) Paragraph (1) does not apply to a Fund Administrator of a Qualified Investor Fund.

## Guidance

Rule 12.12 governs the delegation of activities by a Fund Manager or, where appointed, the Trustee.

- 17.1.5
- (1) A Fund Administrator of a Foreign Fund which it is carrying out the Regulated Activity of Acting as the Administrator of a Collective Investment Fund must have a service level agreement with the Foreign Fund Manager of that Foreign Fund setting out the functions and service standards that will be applied to the provision of such administration.
  - (2) The agreement in (1) must ensure that the Fund Administrator cannot in turn delegate the activities and functions delegated to it by the Foreign Fund Manager of the Foreign Fund unless the sub-delegate has been approved by that Foreign Fund Manager.
  - (3) The agreement in (1) must also require the Fund Administrator to retain any relevant work or records relating to the delegated activities and functions where the contract is terminated either by the Foreign Fund Manager or the Fund Administrator.
  - (4) The Regulator would expect any agreement required under this Rule 17.1.5 to include as a minimum the following provisions:
    - (a) unambiguous descriptions and definitions of the activities and functions to be provided by the Fund Administrator and the duties to be performed by both parties;
    - (b) an agreed standard in respect of resources and services supported as necessary by performance measures in accordance with the applicable legislation;
    - (c) the requirement for regular detailed reporting to a specified frequency from the Fund Administrator in respect of its duties and activities;
    - (d) provisions relating to the reporting of relevant events such as technological changes or error reporting and, in particular, any event which undermines the ability of the Fund Administrator to fulfil its duties;
    - (e) the requirement for an annual review (at a minimum) of the performance of the functions by the Fund Administrator; and
    - (f) provisions relating to records and adequate access by the Foreign Fund Manager, the Fund's auditor or any other Persons providing control or risk management functions for the Fund, as required by the Foreign Fund Manager or applicable laws to that Fund.

## Record keeping

- 17.1.6 A Fund Administrator must maintain records which are sufficient to show and explain

transactions in relation to each of the specific activities and functions which are being provided to each Fund, in respect of Unitholders or potential Unitholders of the Fund as appropriate.

- 17.1.7 The records required under Rule 17.1.6 must be:
- (a) capable of demonstrating to the Governing Body of the relevant Fund that any account prepared comply with the applicable requirements in these Rules or any other applicable legislation;
  - (b) retained by the Fund Administrator for at least 6 years from the date to which they relate;
  - (c) at all reasonable times, open to inspection by the Regulator, Fund Manager, the Fund's Auditor and any Person providing oversight functions for the relevant Fund; and
  - (d) if requested by the Regulator, capable of reproduction within a reasonable period not exceeding 3 days, in hard copy and in English.

## **PART 6: TRANSFER SCHEMES**

### **18. TRANSFER SCHEMES RELATING TO DOMESTIC FUNDS**

#### **Guidance**

- 1. Pursuant to Part 7 of FSA, a Fund may be transferred in whole or in part to another body in accordance with that Part.
  - 2. The Regulator may make Rules for the purposes of that Part pursuant to the powers conferred thereunder.
- 18.1.1 This Chapter applies to a Fund Manager and, where appointed, the Trustee of a Domestic Fund and, if the Fund is an Umbrella Fund using the form of a Protected Cell Company or Incorporated Cell Company, to each Cell as though that Cell were a separate Fund.
- 18.1.2 Pursuant to Section 91 of FSA, the Regulator prescribes the modification to Part 7 of those Regulations necessary for the purposes of transferring a Fund's property or liability to another Fund.
- 18.1.3 (1) Where, for the purpose of a transfer scheme, it is proposed that the property of a Fund should become the property of another Fund or the property of a Sub-Fund of an Umbrella Fund (other than one structured as Protected Cell Company or an Incorporated Cell Company), the proposal must not be implemented without the sanction of a Special Resolution of the Unitholders in the Fund, unless (3) applies.
- (2) Where, for the purposes of a transfer scheme, it is proposed that Fund Property attributable to a Sub-Fund of an Umbrella Fund should become the property of

another Fund, the proposal must not be implemented without the sanction:

- (a) a Special Resolution of the Unitholders in the Sub-Fund of that Umbrella Fund; and
- (b) unless implementation of the transfer scheme is not likely to result in any material prejudice to the interests of the Unitholders in any other Sub-Fund of that Umbrella Fund, a Special Resolution of the Unitholders of other Sub-Funds of that Umbrella Fund.

If it is proposed that a Fund, or a Sub-Fund of an Umbrella Fund, (other than an Umbrella Fund structured as a Protected Cell Company or an Incorporated Cell Company) should receive property, other than its first property pursuant to a transfer scheme, or an arrangement equivalent to a scheme of arrangement entered into with some other Fund or Sub-Fund, or a Body Corporate, the proposal must not be implemented without the sanction of a Special Resolution of the Unitholders or the class or classes thereof in the relevant Fund or Sub-Fund, unless (4) applies.

(4) In (3), if the Fund Manager and, if appointed, the Trustee agree that the receipt of the property concerned for the account of the Fund:

- (a) is not likely to result in any material prejudice to the interest of the Unitholders of the Fund;
- (b) is consistent with the objectives of the Fund or Sub-Fund of an Umbrella Fund; and
- (c) could be effected without any breach of the requirements relating to the borrowing and investment restrictions relating to the Fund or Sub-Fund in Rule 13.4;

then the transfer may be effective and the issue of Units in exchange for assets as part of a transfer scheme may be undertaken.

### **Guidance**

Part 36 of the Companies Regulations specifies the conditions applicable to any transfer of a Cell of a Protected Cell Company or an Incorporated Cell Company.

## **PART 7: WINDING UP**

### **19. WINDING UP OF DOMESTIC FUNDS**

#### **Guidance**

This Chapter prescribes the additional circumstances in which a Domestic Fund may be wound up.

#### **19.1 Application**

- 19.1.1 This Chapter applies to a Fund Manager and, where appointed, the Trustee, of a Domestic Fund and, if the Domestic Fund is an Umbrella Fund using the form of a Protected Cell Company or Incorporated Cell Company, to each Cell as though that Cell were a separate Fund.
- 19.1.2 Aside from as provided under the Insolvency Regulations or as otherwise provided in any enactment, subordinate legislation or rules made by the Regulator, a Domestic Fund may also be wound up upon the happening of any of the following events:
- (a) the expiration of any period specified in the Constitution of the Fund as the period at the end of which the Fund will terminate;
  - (b) upon the effective date of a duly approved transfer scheme; or
  - (c) as otherwise provided for in the Constitution of the Fund.

In addition to the circumstances set out in Rule 19.1.2, a Public Fund may also be wound up upon the passing of a Special Resolution of Unitholders.

## **PART 8: GMC GREEN FUNDS AND GMC CLIMATE TRANSITION FUNDS**

### **20. REQUIREMENTS SPECIFIC TO GMC GREEN FUNDS AND GMC CLIMATE TRANSITION FUNDS**

#### **20.1 Application**

- 20.1.1 This Chapter applies to a Fund Manager and, if appointed, a Trustee of a Domestic Fund that is or is intended to be a GMC Green Fund or a GMC Climate Transition Fund.
- 20.1.2 Only this Rule and Rules 20.1.1, 20.2.1 to 20.2.9, 20.3.1 to 20.3.11, 20.4.1 to 20.4.4, 20.4.7, 20.4.8 and 20.4.9 are applicable to Funds that are Exempt Funds or Qualified Investor Funds.

#### **Guidance**

1. A Domestic Fund may only be referred to as a GMC Green Fund or GMC Climate Transition Fund if it complies with the GMC Green Fund Rules or the GMC Climate Transition Fund Rules, as applicable, and the Fund Manager has obtained the relevant approval from the Regulator for a GMC Green Fund Designation or GMC Climate Transition Fund Designation, as applicable.
2. A Fund that has green or climate transition objectives is not required to become a GMC Green Fund or a GMC Climate Transition Fund. However, only those Domestic Funds which have obtained the relevant designation may use such terminology and any related designation marks in related documentation and promotional materials.

**20.2 GMC Green Funds**

20.2.1 A GMC Green Fund must be a Domestic Fund that meets:

- (a) the Green Fund Investment Requirement; and
- (b) the Green Fund Attestation Requirement.

**The Green Fund Investment Requirement**

20.2.2 The Fund Manager of a GMC Green Fund must ensure that the investment restrictions of the Fund as stated in its Constitution and/or most recently published Prospectus require:

- (a) Fund Property to comprise predominantly Eligible Green Fund Property; and
- (b) a restriction on investment in Fund Property that is inconsistent with the overall green objectives of the Fund.

“This requirement is referred to as the “Green Fund Investment Requirement”.

**Guidance**

The Green Fund Investment Requirement will not be considered to be breached if Fund Property includes cash or other liquid assets held temporarily pending investment or reinvestment, or for the purposes of managing redemptions or distributions.

20.2.3 An asset is Eligible Green Fund Property if it is:

- (a) considered environmentally sustainable or equivalent under an Acceptable Green Taxonomy, provided that only one Acceptable Green Taxonomy is used by a GMC Green Fund; or
- (b) included in or otherwise tracks an EU Paris Aligned Benchmark.

20.2.4 The Fund Manager of a GMC Green Fund must keep records of the due diligence process it has undertaken to assess whether Fund Property meets the Green Fund Investment Requirement at the time of acquisition and on an ongoing basis.

**Guidance**

1. The Green Fund Investment Requirement may be met by assets comprising Eligible Green Fund Property under Rule 20.2.3(a) or under Rule 20.2.3(b), or a combination of both.
2. The Regulator considers an Acceptable Green Taxonomy to be one which uses credible and independent accreditation standards published by a governmental body or a reputable industry association and made publicly available to allow determination of which economic activities are environmentally sustainable.

Examples of green taxonomies that are considered Acceptable Green Taxonomies include:

- a. the EU Green Taxonomy;
  - b. the ASEAN Taxonomy for Sustainable Finance; and
  - c. the Common Principles for Climate Mitigation Finance Tracking.
3. When considering whether assets meet the criteria under Rule 20.2.3, a Fund Manager should consider not only the investment in the immediate asset but also any underlying assets. For example, where investing in Units, the Fund Manager should consider whether the underlying assets of the Fund would meet the Green Fund Investment Requirement.
  4. Eligible Green Fund Property may track or be included in one or more EU Paris Aligned Benchmarks. For example, a Fund may track or include securities from multiple EU Paris Aligned Benchmarks.

### **The Green Fund Attestation Requirement**

- 20.1.1 Subject to Rule 20.2.9, the Fund Manager of a GMC Green Fund must appoint a third party to attest to its compliance with the Green Fund Investment Requirement on an ongoing basis and at least annually. This requirement only applies to that portion of the Eligible Green Fund Property that is invested in assets aligned with an Acceptable Green Taxonomy in accordance with Rule 20.2.3(a). This is referred to as the “Green Fund Attestation Requirement”.
- 20.1.2 A Fund Manager must, prior to the appointment of a third party to provide an attestation under Rule 20.2.5, take reasonable steps to ensure that the third party:
- (a) has the required skills, resources and experience to provide the attestation;
  - (b) is independent of, and not subject to any conflict of interest with, the Fund Manager, and the investment advisor and the Trustee of the Fund where appointed; and
  - (c) has been provided with all documents, records and information necessary to give the attestation pursuant to Rule 20.2.7.

### **Guidance**

The Fund Manager of a GMC Green Fund which is a Qualified Investor Fund may itself provide the required attestation statement pursuant to Rule 20.2.9(a).

- 20.1.3 A Fund Manager must ensure that an attestation obtained for the purposes of the Green Fund Attestation Requirement is addressed to and may be relied upon by the Fund. The attestation must specify that:

- (a) during the period reviewed, the investment restrictions of the Fund have been adhered to and have met the Green Fund Investment Requirement; and
- (b) as at the date of the attestation, the Fund meets the Green Fund Investment Requirement.

**Guidance**

An attestation obtained for the purposes of the Green Fund Attestation Requirement should include the following statement:

“We attest that, as regards the [insert name of Fund] of [insert name of Fund Manager] (the Fund);

- (i) during the period reviewed, the investment restrictions of the Fund, as stated in its Constitution and/or most recently published Prospectus, have been adhered to and have met the Green Fund Investment Requirement; and
- (ii) as at the date of the attestation, the Fund meets the Green Fund Investment Requirement.

20.2.5 The Fund Manager of a GMC Green Fund must include a copy of the attestation statement described in Rule 20.2.7 in the GMC Green Fund’s annual report as per Rule 16.4.1.

**Alternative Attestation Requirement**

20.2.6 The Fund Manager of a GMC Green Fund is not required to appoint a third party to attest to its compliance with the Green Fund Investment Requirement if:

- (a) the Fund is a Qualified Investor Fund and the Fund Manager elects to provide the attestation itself; or
- (b) all Eligible Green Fund Assets held as Fund Property are included in or otherwise track an EU Paris Aligned Benchmark pursuant to Rule 20.2.3(b), in which event an attestation is not required.

**Guidance**

1. Under Rule 20.2.9(b), the Green Fund Attestation Requirement does not apply to Eligible Green Fund Property that is included in or tracks an EU Paris Aligned Benchmark in accordance with Rule 20.2.3(b).
2. A GMC Green Fund investing in Eligible Green Fund Assets under both Rule 20.2.3(a) and 20.2.3(b) is required to obtain attestation in relation to the assets meeting Rule 20.2.3(a) only.

20.3 **GMC Climate Transition Funds**

20.3.1 A GMC Climate Transition Fund must be a Domestic Fund that meets:

- (a) the Climate Transition Fund Investment Requirement; and
- (b) the Climate Transition Fund Attestation Requirement.

**The Climate Transition Fund Investment Requirement**

20.3.2 The Fund Manager of a GMC Climate Transition Fund must ensure that the investment restrictions of the Fund as stated in its Constitution and/or most recently published Prospectus require:

- (a) Fund Property to comprise predominantly Eligible Climate Transition Fund Property; and
- (b) a restriction on investment in Fund Property that is inconsistent with the overall climate transition objectives of the Fund.

This requirement is referred to as the “Climate Transition Fund Investment Requirement”.

**Guidance**

The Climate Transition Fund Investment Requirement will not be considered to be breached if Fund Property includes cash or other liquid assets held temporarily pending investment or reinvestment, or for the purposes of managing redemptions or distributions.

20.3.3 An asset is Eligible Climate Transition Fund Property if it is:

- (a) aligned with an Acceptable Climate Transition Taxonomy or equivalent, provided that only one Acceptable Climate Transition Taxonomy is used by a GMC Climate Transition Fund;
- (b) a Security issued in accordance with the:
  - (i) ICMA Green Bond Principles;
  - (ii) ICMA Sustainability-Linked Bond Principles;
  - (iii) EU Green Bond Standard; or
  - (iv) Climate Bonds Initiative.

and compliance with which is subject to third party assurance, independent verification or equivalent assessment:

- (c) a Security included in or that otherwise tracks an EU Climate Transition Benchmark;

- (d) a Share or Debenture issued or otherwise provided by an entity that in the reasonable opinion of the Fund Manager:
  - (i) has published a credible net zero emissions targets and strategies; and
  - (ii) is on course to meet the net zero emissions targets; or
- (e) an investment intended to facilitate the transition of real estate or infrastructure assets to become more environmentally sustainable, in the reasonable opinion of the Fund Manager.

### Guidance

1. The Climate Transition Fund Investment Requirement may be met by Eligible Climate Transition Property meeting any one of the criteria in Rules 20.3.3(a) to (e).
2. When considering whether an asset meets the criteria in Rules 20.3.3(a) to (e), a Fund Manager should consider not only the investment in the immediate asset but also any underlying assets. For example, where investing in Units, the Fund Manager should consider whether the underlying assets of the Fund would meet the Climate Transition Fund Investment Requirement.
3. Eligible Climate Transition Fund Property may track or be included in one or more EU Climate Transition Benchmarks. For example, a Fund may track or include securities from multiple EU Climate Transition Benchmarks
4. Where a Fund Manager invests in real estate or infrastructure to facilitate their transition to become more sustainable pursuant to Rule 20.3.3(e), it should select third party metrics to help measure the progress of those assets in achieving that sustainability objective. For example, a GMC Climate Transition Fund investing in real estate may measure the transition of its assets to becoming more sustainable using the Leadership in Energy and Environmental Design (LEED) rating system. Progress against those metrics should be disclosed to investors periodically, including in the annual report.
5. An asset should be subject to ongoing assessment to ensure it meets the criteria in Rule 20.3.3. For example, a green bond that fails to retain the positive opinion of a third party following its post-issuance review should be reassessed by the Fund Manager in terms of whether it can still be considered Eligible Climate Transition Fund Property. A Fund Manager should document its considerations regarding ongoing assessment of the appropriateness of classifying assets as Eligible Climate Transition Fund Property.

20.3.4 The Fund Manager of a GMC Climate Transition Fund must keep records of the due diligence process it has undertaken to assess whether an investment meets the Climate Transition Fund Investment Requirement at the time of acquisition and on an ongoing basis.

### **The Climate Transition Fund Attestation Requirement**

- 20.3.5 Subject to Rule 20.3.9, where an A GMC Climate Transition Fund invests in assets aligned with an Acceptable Climate Transition Taxonomy as Eligible Climate Transition Fund Property pursuant to Rule 20.3.3(a), the Fund Manager must appoint a third party to attest to its compliance with the Climate Transition Fund Investment Requirement on an ongoing basis and at least annually in relation to that part of the Eligible Climate Transition Fund Property. This is referred to as the “Climate Transition Fund Attestation Requirement”.

#### **Guidance**

Under Rule 20.3.9, the Climate Transition Fund Attestation Requirement does not apply in relation to the Eligible Climate Transition Fund Property of the kind set out at Rules 20.3.3(b) to (e).

- 20.3.6 A Fund Manager must, prior to the appointment of a third party to provide an attestation under Rule 20.3.5, take reasonable steps to ensure that the third party:
- (a) has the required skills, resources and experience to provide the attestation;
  - (b) is independent of, and not subject to any conflict of interest with, the Fund Manager, the investment advisor and the Trustee of the Fund (where appointed); and
  - (c) has been provided with all documents, records and information necessary to give the attestation pursuant to Rule 20.3.7.

#### **Guidance**

The Fund Manager of a GMC Climate Transition Fund which is a Qualified Investor Fund may itself provide the attestation required by Rule 20.3.5, pursuant to Rule 20.3.9.

- 20.3.7 A Fund Manager must ensure that an attestation obtained for the purposes of the Climate Transition Fund Attestation Requirement is addressed to and may be relied upon by the Fund. The attestation must specify that:
- (a) during the period reviewed, the investment restrictions of the Fund have been adhered to and have met the Climate Transition Fund Investment Requirement; and
  - (b) as at the date of the attestation, the Fund meets Climate Transition Fund Investment Requirement.

### **Guidance**

An attestation obtained for the purposes of the Climate Transition Fund Attestation Requirement should include the following statement:

“We attest that, as regards the [insert name of Fund] of [insert name of Fund Manager] (the Fund):

- (i) during the period reviewed, the investment restrictions of the Fund, as stated in its Constitution and/or most recently published Prospectus, have been adhered to and have met the Climate Transition Fund Investment Requirement; and
- (ii) as at the date of the attestation, the Fund meets the Climate Transition Fund Investment Requirement.”

20.3.8 The Fund Manager of a GMC Climate Transition Fund must include a copy of the attestation statement described in Rule 20.3.7 in the GMC Climate Transition Fund’s annual report as per Rule 16.4.1.

### **Ability of the Fund Manager to Provide Attestation Statement**

20.3.9 The Fund Manager of a GMC Climate Transition Fund that is a Qualified Investor Fund may elect to either appoint a third party to attest to its compliance with the Climate Transition Fund Investment Requirement or provide the attestation itself.

20.3.10 The Fund Manager of a GMC Climate Transition Fund must:

- (a) disclose in the Fund’s Prospectus how it assesses, measures and monitors how Fund Property will meet the criteria in Rules 20.3.3(a) to (e) and the climate transition investment objective of the Fund;
- (b) ensure it assesses, measures and monitors how Fund Property meets the criteria in Rules 20.3.3(a) to (e) and the climate transition investment objectives of the Fund; and

disclose in its annual report the Fund Property’s progress over the applicable period in helping to achieve the climate transition objectives of the Fund.

### **Guidance**

1. A Fund Manager should include in its due diligence relevant to Rule 20.3.3(d) whether the relevant entity’s net zero emissions target has been validated under the Science-Based Targets initiative (SBTi). Failure to obtain validation under the SBTi or equivalent framework should be considered as reducing the likelihood that the entity has a credible net zero target.

2. A Fund holding Shares and Debentures in accordance with Rule 20.3.3(d) should identify such Shares and Debentures in the Fund's annual report.
3. The Fund Manager of a GMC Climate Transition Fund which has invested in real estate or infrastructure assets should include in the Fund's annual report:
  - a. the third-party sustainability metrics against which the progress of those real estate or infrastructure assets in becoming more environmentally sustainable has been measured;
  - b. the timeframe for improvement relied upon by the Fund when making the investment in such real estate and infrastructure assets; and
  - c. actual progress of the real estate or infrastructure assets against the relevant sustainability metrics identified in the annual report.

### **Systems and Controls**

- 20.3.11 The internal audit or compliance function of the Fund Manager of a Public Fund which is a GMC Climate Transition Fund must, at least annually, review the Fund's systems and controls to ensure ongoing compliance with the Climate Transition Fund Investment Requirement.
- 20.4 **GMC Green Fund Designation or GMC Climate Transition Fund Designation**
- 20.4.1 A Fund Manager must not promote a Fund as a GMC Green Fund or GMC Climate Transition Fund unless it has been granted a GMC Green Fund Designation or GMC Climate Transition Fund Designation, as applicable, for that Fund from the Regulator.
- 20.4.2 The notification or application required for the grant of the relevant designation must be made in such form as the Regulator may prescribe.
- 20.4.3 A Qualified Investor Fund or Exempt Fund intending to market a GMC Green Fund or a GMC Climate Transition Fund must:
- (a) Provide written notice using the prescribed form to the Regulator prior to commencing the marketing of such Fund; and
  - (b) provide a certification by the Fund Manager that the Fund intends to comply with the GMC Green Fund Rules or GMC Climate Transition Fund Rules.
- 20.4.4 Upon receipt of written notification in accordance with Rule 20.4.3, the Regulator will grant the Fund a GMC Green Fund Designation or GMC Climate Transition Fund Designation and publish the name and details of the Fund on a list of GMC Green Funds or GMC Climate Transition Funds maintained by the Regulator on its website.
- 20.4.5 A Public Fund intending to operate as a GMC Green Fund or a GMC Climate Transition Fund must apply for the grant of a GMC Green Fund Designation or GMC

Climate Transition Fund Designation by providing the Regulator with:

- (a) information on the investment restrictions, objectives and policy of the Fund relevant to the requirements of the GMC Green Fund Rules or GMC Climate Transition Funds Rules;
- (b) a statement by the Fund Manager to the effect that:
  - (i) the investment objectives of the Fund as stated in its Constitution and/or the Prospectus meet with the Green Fund Investment Requirement or Climate Transition Fund Investment Requirement prescribed under these Rules; and
  - (ii) the Fund will comply with the operational requirements of the GMC Green Fund Rules or GMC Climate Transition Fund Rules,

in addition to all other information to be provided in accordance with these Rules.

- 20.4.6 Upon granting a Fund a GMC Green Fund Designation or GMC Climate Transition Fund Designation as applicable where applied for under Rule 20.4.5, the Regulator will publish the name and details of the Fund on the list of GMC Green Funds and GMC Climate Transition Funds maintained by the Regulator on its website.

### **Guidance**

1. Once the Regulator has made a decision in relation to an application, it will without undue delay inform the Fund Manager in writing of its decision.
2. The Regulator may refuse to designate a Fund as a GMC Green Fund or a GMC Climate Transition Fund if it is not satisfied that the requirements of a GMC Green Fund Rules or GMC Climate Transition Fund Rules have been met or will be met on an ongoing basis.

### **Notification**

The Fund Manager or, if appointed, the Trustee, of a GMC Green Fund or a GMC Climate Transition Fund must advise the Regulator immediately in writing if it becomes aware or has reasonable grounds to believe that a material breach of the GMC Green Fund Rules or the GMC Climate Transition Funds Rules by a GMC Green Fund or a GMC Climate Transition Fund has or may have occurred or may be about to occur.

### **Cancellation of GMC Green Fund Designation or GMC Climate Transition Fund Designation**

- 20.4.7 The Regulator may cancel a GMC Green Fund Designation or a GMC Climate Transition Fund Designation by delivery of written notification to the Fund Manager:
- (a) on its own initiative if the Regulator has reasonable grounds to believe that:

- (i) the Fund is not in compliance with or is unlikely to be in compliance with the GMC Green Fund Rules or the GMC Climate Transition Fund Rules;
  - (ii) the Fund Manager or the Fund has contravened FSA or the Rules; or
  - (iii) it is desirable to do so in order to further one or more of the Regulator's objectives; or
- (b) on receiving an application from a Fund Manager where the application for cancellation has been made with the prior notification of Unitholders.

20.4.8 Where the Regulator has cancelled or proposes to cancel a GMC Green Fund Designation or a GMC Climate Transition Fund Designation under Rule 20.4.8, it may, by written notice, direct the Fund Manager or, if appointed, the Trustee, to take such steps as the Regulator considers necessary or desirable to protect the interests of Unitholders in the Fund.

### **Guidance**

The effect of a cancellation of a GMC Green Fund Designation or a GMC Climate Transition Fund Designation under this Rule is that:

- a. the Fund is no longer a GMC Green Fund or a GMC Climate Transition Fund for the purposes of these Rules. Neither the Fund Manager nor any other Person is permitted to make a representation that the Fund meets the requirements of a GMC Green Fund or GMC Climate Transition Fund nor make an Offer of a Unit in the Fund or otherwise market the Fund using the relevant designation; and
- b. the Regulator will remove the Fund from the list of GMC Green Funds and GMC Climate Transition Funds maintained on the Regulator's website.

## **APP 1 DELEGATION AND OUTSOURCING**

### **A1.1 Application**

- A1.1.1 (1) This Appendix (APP 1) applies to a Fund Manager and, if appointed, the Trustee in relation to every:
- (a) Delegation Agreement; and
  - (b) Outsourcing Agreement.
- made or entered into pursuant to these Rules.
- (2) This Appendix does not apply to a Qualified Investor Fund.

## **A1.2 Mandatory provisions**

- A1.2.1 (1) A Fund Manager or Trustee must ensure that any agreement specified in Rule A1.1.1(1):
- (a) sets out the functions or activities and service standards that will be applied to the carrying out of such functions or activities;
  - (b) provides that the Service Provider cannot in turn delegate any activities delegated to it, or outsource any functions outsourced to it, without prior approval of the Fund Manager or Trustee as applicable;
  - (c) requires the Service Provider to:
    - (i) maintain records to show and explain transactions in relation to each activity or function performed in relation to the Fund;
    - (ii) maintain such records in a manner to enable the Fund Manager or Trustee to prepare accounts in compliance with these Rules and any other applicable legislation;
    - (iii) retain the records for at least six years from the date to which they relate;
    - (iv) keep the records, at all reasonable times, open to inspection by the Regulator, the Fund's Auditor and any Person providing the oversight function for the Fund; and
    - (v) ensure that the records are, if requested by the Regulator, capable of reproduction within a reasonable period not exceeding 3 days, in hard copy and in English.
- (2) A Fund Manager or Trustee must ensure that a Delegation Agreement contains an undertaking by the Service Provider to:
- (a) comply with any Regulator Rules applicable to the activity; and
  - (b) disclose to the Regulator and to the Fund Manager or Trustee, as the case may be, any material information that it would disclose to its Financial Services Regulator, if relevant, in relation to the conduct of the activity.
- (3) A Fund Manager or Trustee must maintain records of all agreements, and any instructions given to a Service Provider under the terms of an agreement, for at least six years.

### **Guidance**

1. Other Rules may also impact on the contents of a Delegation Agreement or

Outsourcing Agreement. For instance, consideration should be given to GEN Rules 3.3.31 and 3.3.32 and accompanying Guidance.

2. Without limiting the application of any Rules, the Regulator expects that any agreement relating to a material delegation would include as a minimum:
  - a. unambiguous descriptions and definitions of the activities or functions to be provided by the Service Provider and the duties of both parties;
  - b. an agreed standard between the parties or resources and services supported as necessary by performance measures in accordance with the applicable Rules;
  - c. the requirement for regular detailed reporting to a specified frequency from the Service Provider in respect of its duties and activities;
  - d. provisions relating to the reporting of relevant events such as technological changes or error reporting and, in particular, any event which undermines the ability of the Service Provider to fulfil its duties; and
  - e. the requirement for an annual review (at a minimum) of the performance of the Service Provider.

### **A1.3 Provisions relating to Eligible Custodians**

- A1.3.1 (1) A Fund Manager or Trustee must ensure that a Delegation Agreement in relation to Providing Custody will:
- (a) require that the title of any account of the Eligible Custodian to hold Fund Property sufficiently distinguishes that account from any account containing Investments belonging to the Eligible Custodian, and is in the form requested by the Fund Manager or Trustee;
  - (b) require that the Fund's Investments will only be credited and withdrawn in accordance with the instructions of the Fund Manager or Trustee;
  - (c) require, subject to (2), that the Eligible Custodian will hold the Fund's Investments separately from assets belonging to the Eligible Custodian;
  - (d) set out the arrangements for recording and registering the Funds, claiming and receiving dividends and other entitlements and interest and the giving and receiving of instructions;
  - (e) require the Eligible Custodian to deliver a statement to the Fund Manager or Trustee (including the frequency of such statement), which details the Fund's Investments deposited to the account;
  - (f) require, subject to (2), that all the Investments standing to the credit of the account are held by the Eligible Custodian as the agent of the Fund

Manager or the Trustee and the Eligible Custodian is not entitled to combine the account with any other account or to exercise any charge, mortgage, lien, right of set-off or counterclaim against Investments in that account in respect of any sum owed to the Eligible Custodian on any other account of the Fund Manager, Trustee or any other Person; and

(g) detail the extent of liability of the Eligible Custodian in the event of default.

(2) Neither the Fund Manager nor the Trustee is required to meet the requirements in (1)(c) and (f), where either the Eligible Custodian or any other Person acting as the prime broker of the Fund does so in compliance with the requirements in Rule 12.3.9.

#### **A1.4 Provisions relating to Acting as the Administrator of a Collective Investment Fund**

A1.4.1 A Fund Manager or Trustee must ensure that a Delegation Agreement in relation to Acting as the Administrator of a Collective Investment Fund requires that the Service Provider must not hold or control monies or assets belonging to third parties in connection with such administration except in the following circumstances:

- (a) holding cheques to the order of a Fund's bank account, provided such cheques are securely held for a maximum of three business days prior to being deposited into the relevant Fund's bank account or returned to the drawer of the cheque; or
- (b) where the Service Provider has control over bank accounts kept for the purposes of the Fund, the accounts must be conducted strictly in accordance with the Fund Manager's instructions and any agreed mandate with the bank.

### **APP 2 MEETING PROCEDURES**

#### **A2.1 Nomination of a chair**

A2.1.1 (1) A Fund Manager of a Public Fund or, in the case of a Public Fund which is structured as an Investment Trust, the Trustee, must nominate in writing a Person to be the chairman of a meeting of Unitholders and such a Person must be a Unitholder other than the Fund Manager.

(2) If no such chairman is nominated or it at any meeting the Person nominated is not present within 15 minutes after the time appointed for holding the meeting, the Unitholders present must choose another chairman.

(3) In the case of an equality of votes cast whether on a show of hands or on a poll in respect of a resolution put to a meeting of the Unitholders, any chairman appointed in accordance with the Constitution or under these Rules is entitled to a casting vote in addition to any other vote the chairman may have.

#### **Notice of meetings**

- A2.1.2 (1) Unitholders of a Public Fund must be given at least 14 days written notice or any longer period of notice specified for the purpose in the Constitution or these Rules, inclusive of the date on which the notice is first served and the day of the meeting.
- (2) The notice must specify the place, day and hour of the meeting and the terms of the resolutions to be proposed.
- (3) In the case of an Investment Trust, unless the Trustee has convened the meeting, a copy of the notice must be sent to the Trustee no later than the time at which it is sent to the Unitholders.
- (4) The accidental omission to give notice to, or the non-receipt of notice by, any of the Unitholders does not invalidate the proceedings at any meeting.
- (5) Notice of any adjourned meeting of Unitholders must be given to Unitholders and, if relevant, to the Trustee.

### **Quorum**

- A2.1.3 (1) In the case of a Public Fund, the quorum at a meeting of Unitholders is the Unitholders present in person or by proxy or, in the case of a body corporate, by a duly authorised representative, of one-tenth in value or any proportion more than one-tenth in value specified for this purpose in the Constitution of all the Units in issue.
- (2) Business must not be transacted at any meeting unless the requisite quorum is present at the commencement of business.
- (3) If within half an hour from the time appointed for the meeting, a quorum is not present, the meeting:
- (a) if convened on the requisition or request of Unitholders, must be dissolved; and
- (b) if any other case, must stand adjourned to:
- (i) a day and time which is seven or more days after the day and time of the meeting; and
- (ii) a place to be appointed by the chairman has been appointed in accordance with the Constitution or otherwise by the Fund Manager or Trustee as the case may be.
- (4) If, at an adjourned meeting under (3)(b), a quorum is not present within 15 minutes from the time appointed for the meeting, one person entitled to be counted in a quorum present at the meeting is a quorum.
- (5) Notice of any adjourned meeting of Unitholders must be given to

Unitholders. That notice must state that one or more Unitholders present at the adjourned meeting whatever their number of Units held by that Unitholder or Unitholders will form quorum.

- A2.1.4 (1) No Fund Manager, or other member of the Governing Body of the Fund is entitled to be counted in the quorum of, and no Fund Manager or other member of the Governing Body of the Fund or its associate of a such a Person is entitled to vote at, any meeting of the Fund.
- (2) The prohibition in (1) does not apply to the exercise of voting rights attaching to any Units which the Fund Manager or other member of the Governing Body of the Fund or its associate holds on behalf of, or jointly with, another Person who is not subject to the prohibition in (1) and from whom the Fund Manager or other member of the Governing Body of the Fund or its associate, as the case may be, has received voting instructions.
- (3) Therefore, for the purpose of Rule, Units held, or treated as held, by any Fund Manager or other member of the Governing Body of the Fund, must not, except as mentioned in (2), be regarded as being in issue.

### **APP 3 APPROVALS AND NOTIFICATIONS**

#### **A3.1 Regulator Notification**

- A3.1.1 (1) The Fund Manager of a Public Fund must give prompt notice to the Regulator of any material alteration to the Fund's Constitution or Prospectus.

#### **A3.2 Alterations to a Fund**

- A3.2.1 (1) The Fund Manager of a Public Fund must, by way of a Special Resolution, obtain prior approval from the Unitholders for any proposed change to the Public Fund which is a fundamental change.
- (2) In addition to the specific fundamental changes in relation to a Fund prescribed under Rules 12.3.13 (affected person transactions) 12.13.3 (no new category or increase of remuneration) and 18.1.3 (transfer schemes relating to domestic schemes), a "fundamental change" under (1) is a change or event which:
- (a) changes the purpose or nature of the Fund;
  - (b) may materially prejudice Unitholders;
  - (c) alters the risk profile of the Fund; or
- introduces any new type of payment out of Fund Property.
- (3) Notwithstanding (2) above, any change may be fundamental depending on its degree of materiality and effect on the Fund and its Unitholders.

Consequently, the Fund Manager must determine whether in each case a particular change is fundamental in nature and, if the Fund is an Investment Trust, obtain the Trustee's agreement to the outcome of the determination.

### Guidance

For the purpose of this Chapter, a fundamental change to a Fund is likely to include:

- a. any proposal for a scheme of arrangement;
- b. a change in the investment policy to achieve capital growth from investment in one country rather than another;
- c. a change in the investment objective or policy to achieve capital growth through investment in fixed interest rather than in equity investments;
- d. a change in the investment policy to allow the Fund to invest in derivatives as an investment strategy which increases its volatility;
- e. a change to the characteristics of a Fund to distribute income annually rather than monthly;
- f. the introduction of limited redemption arrangements; or
- g. a change of the custodian, trustee or other oversight arrangement.

- A3.2.2 (1) The Fund Manager of a Public Fund must give prior written notice to Unitholders in respect of any proposed change to the operation of a Fund where the change constitutes a significant change.
- (2) A "significant change" in (a) is a change or event which is not a fundamental change under Rule A3.2.2 but:
- (a) affects a Unitholder's ability to exercise his rights in relation to his investment;
  - (b) would reasonably be expected to cause the Unitholder to reconsider his participation in the Fund;
  - (c) results in any increased payments out of the Fund Property to the Fund Manager, the Trustee or any other director or an associate of either; or
  - (d) materially increases other types of payment out of Fund Property.
- (3) Changes may be significant depending in each case on their degree of materiality and effect on the Fund and its Unitholders. Consequently, the Fund Manager will need to determine whether in each case a particular change is significant in nature or not and if the Fund is an Investment Trust obtain the Trustee's agreement of the outcome of the determination.
- (4) The notice period required for a pre-event notification to the Unitholder should be of a reasonable length, which is expected to be at least 30 days.

### Guidance

For the purpose of this Chapter, a significant change is likely to include:

1. A change in the method of price publication;
2. A change in any operational policy such as dilution policy or allocation of payments policy; or
3. An increase in the preliminary charge where Units are purchased through a group savings plan.

- A3.2.3 (1) A Fund Manager must inform Unitholders in an appropriate manner and timescale of any notifiable changes that are reasonably likely to affect, or to have affected, the operation of the Fund.
- (2) A notifiable change in (1) is a change or event, other than a fundamental change or a significant change specified in this Appendix, which a Unitholder must be made aware of unless the Fund Manager concludes that the change is insignificant.

### Guidance

1. The circumstances causing a notifiable change may or may not be within the control of the Fund Manager.
2. For the purpose of this Chapter, a notifiable change might include:
  - a. a change of a named investment manager where the Fund has been marketed on the basis of that investment manager's involvement;
  - b. a significant political event which impacts on the Fund or its operation;
  - c. a change to the time of the valuation point;
  - d. the introduction of limited issue arrangements; or
  - e. a change in the name of the Fund.
3. The appropriate manner and timescale of notification in this Chapter would depend on the nature of the change or event. Consequently, the Fund Manager will need to assess each change or event individually.
4. An appropriate manner of notification could include:
  - a. sending an immediate notification to the Unitholder;
  - b. publishing the information on a website; or
  - c. the information being included in the next periodical report of the Fund.

## APP 4 GUIDANCE ON ASSET VALUATION AND PRICING

### Guidance

#### General

1. This guidance relates to the calculation of a single price and net asset value in accordance with these Rules. Under these Rules, the Fund Manager should take all reasonable steps, and exercise due diligence, to ensure that the Fund Property is valued in accordance with FSA, these Rules and the Fund's Constitution.
2. This guidance sets out the expected minimum standards of control in relation to the valuation of the Fund Property to which the Fund Manager, the Trustee and the Persons providing the oversight function should have regard in determining whether they have met their obligations under the applicable Rules and the Fund's Constitution.
3. The Fund Manager should take action forthwith to rectify any breach in respect of valuation. Where the breach relates to the incorrect pricing of Units, rectification should extend to the reimbursement or payment of money by the Fund Manager to Unitholders, former Unitholders or to the Investment Undertaking.
4. The Trustee or the Persons providing the oversight function may direct that rectification need not extend to reimbursement where it appears that the incorrect pricing is of minimal significance. This would only be appropriate where the Fund Manager has adequate controls in place.
5. The price of a Unit of any class should be calculated by valuing the Fund Property attributable to Units of that class and dividing that value by the number of Units of the class in issue. All the Fund Property should be valued at each valuation point and any part of the Fund Property which is not an Investment should be valued at fair value. The Regulator expects a Fund Manager to agree on its methodology for valuing the Fund Property with the Trustee or Eligible Custodian, or other Persons providing the oversight function and that the methodology in place is applied consistently.
6. In respect of Securities quoted on an Exchange:
  - a. the Fund's Constitution should set out the valuation policy that will be adopted by the Fund Manager where a single price for buying and selling a Security is quoted; and also where separate buying and selling prices are quoted on an Exchange. Either the official mid-market price or the last trade price should provide an appropriate basis of valuation for the Fund. The Fund Manager should, however, document the choice of methodology and ensure that the procedures are applied consistently and fairly; and
  - b. where there has been no recent trade in the Security concerned, or no reliable price exists, an Investment should be valued at a price which,

reflects a fair and reasonable price for that investment. For example, a Fund Manager may obtain a valuation from three experienced brokers and average the value. In such cases, the Fund Manager is required to document the reasons for his decision and should be prepared to justify any assumptions made.

7. Where instances of incorrect pricing occur, the de minimis provisions set out in this guidance should apply only where the Fund Manager and Trustee or the Person providing oversight functions are able to meet the standards set out in this guidance. Evidence of persistent or repetitive errors, or errors consistently in the Fund Manager's favour, are likely to make it more difficult for the Fund Manager to demonstrate that he is able to meet the standards in this guidance.

### **Pricing controls by the Fund Manager**

8. Unit prices and currency rates used in Fund valuations should be up to date and from a reputable source. The mere use of a source for prices and rates does not amount to delegation under these Rules. Although it should not be necessary to carry out significant substantive checking, the reliability of the source of prices and rates should be kept under regular review, and the use of doubtful prices or rates should be followed up.
9. The mere use of a source for prices and rates does not amount to delegation under these Rules. However, the use of a third party to carry out the pricing function, whether it is an Associate of the Fund Manager, or the Trustee or any Associate of the directors of the company or Persons providing the oversight function, or any independent third party, amounts to outsourcing. In this case the Fund Manager still retains its operating responsibilities and duties and, remains liable for the acts and omissions of that third party in performing the pricing functions as if they were the acts or omissions of the Fund Manager. The Fund Manager should ensure that the third-party contracts to provide the service on a basis which takes account of the Fund Manager's responsibilities which require the Fund to be priced in accordance with the applicable Rules and the Fund's Constitution.
10. Where the pricing function is outsourced, the Fund Manager is required, in accordance with these Rules, to satisfy himself that the pricing agent remains competent to carry out the function, and that he has taken reasonable care to ensure that the pricing agent has carried out his duties in a competent manner.
11. The Fund Manager should seek assurance that the pricing agent's system is robust and will produce accurate results. The Fund Manager should review the outputs from the system at least annually, and on any significant system change. In addition, if the pricing agent is also responsible for calculation of dealing prices of Units, the Fund Manager should ensure that this system is reviewed to his satisfaction at least annually.
12. Unless the valuation and record keeping systems are integrated, the valuation output should be agreed with the Fund Manager's records of a Fund at each valuation point. In addition, the Fund Manager's records, including debtors

and creditors, should be agreed with an Eligible Custodian's records of stocks and both capital and income cash at least monthly, with reconciling items followed up promptly, with debtors reviewed for recoverability.

13. Systems should be in place whereby all transactions are confirmed in writing or by electronic means to the Fund Manager or to a pricing agent as quickly as possible. It is desirable that all deals to which the Fund is committed, which have been notified, at most, one hour before a valuation, are included in that valuation, at estimated prices if necessary. Unless, however, there is likely to be significant movement in a price of a Unit, it is more important that an accurate cut-off procedure is in place to ensure that omissions or duplications do not take place, than it is to ensure that estimates are included in a valuation.
14. Where prices are obtained otherwise than from the main pricing source (e.g. unquoted, suspended, or illiquid stocks), the Fund Manager should maintain a record of the source and basis for the value placed on the investment. These should be regularly reviewed.
15. A system should be in place to ensure that investment and borrowing powers which are contained in the Rules, where applicable and in the Fund's Constitution and Prospectus are not breached, and that if breaches occur they are identified and rectified.
16. A system should be in place to ensure that dividends are accounted for as soon as stocks are quoted ex-dividend, unless, as with some foreign stocks, it is prudent to account for them only on receipt. Fixed interest dividends and interest should be accrued at each point unless the level of materiality makes a longer interval appropriate. Similar considerations apply to the expenses of the Fund.
17. The Fund Manager should ensure periodically that any charge which is levied on a Unitholder for dilution has been calculated in accordance with the methodology which has been disclosed in the Constitution or Prospectus.
18. The Fund Manager should set a percentage or absolute limit for certain key elements of the valuation, such that any movement outside these limits is investigated. The process for the investigation and a report of its outcome should be in writing and evidenced by an appropriate signature. These key elements could, where relevant, include the movement of the overall price of the Fund against relevant markets, the movement of the prices and values of individual stocks, changes in currency rates, and accrual figures for income, expenses, and tax. In addition, prices which appear not to have changed after a fixed period of time should be investigated, since this may be the result of a price movement having been missed.
19. Cash should be reconciled to the bank account regularly, with outstanding items promptly followed up, and a full reconciliation sent to the trustee or depositary monthly.
20. Controls should be in place to ensure that the correct number of Units in issue is recorded at each valuation point. This should be reconciled with the Unitholder register at least monthly.

21. A copy of the valuation should be sent to the Fund Manager or the Fund's investment manager, if applicable, at least weekly. He should specifically check that the correct securities are recorded.

### **Pricing and valuation checks by oversight arrangement**

22. The Persons providing oversight functions have a duty under the Rules to ensure that the Fund Manager's pricing methodology and operation is properly controlled. Its main emphasis should be to ensure that the Fund Manager keeps its controls and systems for pricing under review and to obtain evidence from the Fund Manager's systems that Unit prices are calculated correctly. This would also apply where the Fund Manager has outsourced some or all of its pricing functions to a Service Provider. The following paragraphs set out the minimum checks which the Regulator expects any Person providing the oversight function to carry out in order to be satisfied with the Fund Manager's pricing methodology and operation, and to ensure that the likelihood of incorrect prices will be minimised.
23. The Persons providing the oversight function should carry out a thorough review of the Fund Manager's overall system for pricing. This should include an analysis of the controls in place to determine the extent to which reliance can be placed on them. This review should be carried out at the start of the appointment of a Person who will provide oversight functions, and also when major changes are made by the Fund Manager to its system. On an ongoing basis, the systems should be kept under review to ensure that a series of minor changes do not, over a period of time, have a significant effect on the integrity of the systems.
24. The Persons providing oversight functions should conduct a review at least annually to confirm that the Fund Manager's systems and controls are satisfactory. This will need to be more frequent where the oversight arrangement knows or suspects that the Fund Manager's systems and controls are weak and unsatisfactory. The Persons providing oversight functions should ensure that any issues which are identified are properly followed up and resolved. Additionally, the Persons providing oversight functions should carry out a review of the valuation of the property of each Fund for which it is responsible, at least annually, which verifies, on a sample basis if necessary, the assets, liabilities, accruals, Units in issue, and any other relevant matters, for example, an accumulation factor or a currency conversion factor.
25. Where the Fund Manager's systems are manual, or have been installed or amended recently and are therefore unproven, the level of checking will need to be increased accordingly. This will also be necessary where a number of instances of incorrect pricing have previously been identified.

### **Incorrect pricing**

26. The Fund Manager should record each instance where the Unit price is incorrect and, as soon as the error is discovered, report the fact to the Persons

providing oversight functions together with details of the action taken, or to be taken, to avoid repetition.

27. The Fund Manager and the Persons providing the oversight function should, if they become aware, report material instances of incorrect pricing to the Regulator as provided in the Rules. Materiality should be determined by taking into account a number of factors, including whether the Fund Manager has followed the pricing controls set out in this guidance.
28. The significance of any breakdown in management controls or other checking procedures should also be taken into account. The significance of any failure of systems should be considered. This may include situations where inadequate back-up arrangements exist. The duration of an error should also be taken into account; the longer an error persists, the more likely that it will have a material effect on a price.
29. The level of compensation paid to Unitholders, and the Fund Manager's ability (or otherwise) to meet claims for compensation in full, may also be relevant.
30. The Fund Manager should also report to the Regulator forthwith any instance of incorrect pricing where the error is greater than 0.5% of the price of a Unit, but where the Fund Manager and the Persons providing the oversight function believe that compensation is inappropriate and should not be paid by the Fund Manager.
31. The Trustee or the Persons providing oversight functions, in their reports, should summarise the number of instances of incorrect pricing during a particular period. This should include the number of errors which were greater than 0.5% of the price of a Unit and the number of errors which were less than 0.5% of the price of a Unit where the Trustee or the Persons providing the oversight function did not consider the Fund Manager's controls to be adequate.

#### **Action to be taken as regards compensation for incorrect pricing**

32. Where the price of any Unit of a Fund is found to be incorrect by less than 0.5% compensation to Unitholders will not normally be required, unless the oversight arrangement decides otherwise.
33. Where the dealing price of any Unit of a Fund is found to be incorrect by 0.5% or more of the price of a Unit of a Fund, compensation to Unitholders will normally be required. If, exceptionally, the Trustee or the Persons providing the oversight function consider that compensation is inappropriate, he will need to report the matter to the Regulator, together with his recommendation and justification.

#### **Property Fund Valuation function.**

##### *Valuation function*

33. The Fund Manager of a Property Fund must, subject to the approval of the

Trustee, appoint a Person who is able to provide professional valuation services in accordance with the Rules set out herein.

34. The Fund Manager must ensure that the Person appointed under paragraph 33. values each Real Property prior to its acquisition and disposal.
35. The Fund Manager must commission the Person referred to in paragraph 33. to produce a valuation report of the Property Fund each year in accordance with paragraph 40 below. The net asset value of the Fund following this valuation must be reported in the annual report of the Fund.
36. For these purposes, a Fund Manager must appoint a Person:
  - a. who carries on the business of valuing Real Property;
  - b. who is not Related to the Fund Manager; and
  - c. whom the Fund Manager, and if appointed the Trustee, have reasonable grounds to believe would be capable of providing objective valuation of Real Property. A Fund Manager, and where appointed the Trustee, in this opinion, should be satisfied that the Person to be engaged for providing valuation of Real Property meets if not all, at least most of the following criteria:
    - (i) the Person is a, or has key personnel who are, fellow or associate members of a recognised professional body of surveyors or property valuers and who are qualified to perform property valuations;
    - (ii) the Person has or has access within the organisation to the relevant expertise, that is, knowledge of and experience in the valuation of property of the relevant kind in the relevant area where the property is situated;
    - (iii) the Person has robust internal controls and checks and balances to ensure the integrity of valuation reports and that these reports are properly and professionally prepared in accordance with international best practice;
    - (iv) the Person has adequate professional insurance to cover its usual risks;
    - (v) the Person does not have ownership or other commercial links with any other Persons carrying on Regulated Activities in relation to the Fund (such as investment advisers or investment managers appointed to the Fund), which would impair that Person's ability to provide independent and objective valuation services to the Fund; and

(vi) the Person or any of his associates has not been instrumental in relation to the finding of the Real Property for the Fund.

37. A Fund Manager must ensure that any valuation by the Person appointed to provide valuation services to the Fund is carried out on the basis of a 'market value' as defined in the Constitution and the most recent Prospectus of the Fund. This valuation report must confirm that if the Real Property was acquired for the Property Fund it could be disposed of at that valuation within a reasonable period.
38. The Fund Manager must ensure that the property is acquired within a reasonable time from the date of the valuation report.
39. The Regulator would expect the Fund Manager to define 'market value' to be based on an authoritative text such as the current edition of the Royal Institute of Chartered Surveyors' Appraisal and Valuation Standards ("Red Book"); or similar practitioners text used by surveyors; or International Valuation Standards issued from time to time by the International Valuation Standards Committee.

#### *Valuation Report*

40. A Fund Manager must ensure that any valuation report prepared by the Person appointed:
  - a. includes all material details in relation to the basis of valuation and the assumptions used;
  - b. describes and explains the valuation methodologies adopted;
  - c. outlines the overall structure and condition of the relevant market including an analysis of the supply and demand situation, the market trend and investment activities;
  - d. includes a brief description of the property, its location, the nature of the interest the Fund holds in the property, its existing use, any encumbrances concerning or affecting the property, the lease expiry profile if any, the capital value in existing state at the date the valuation was performed, the net monthly income from the property, and any other matters which may affect the property or its value;
  - e. confirms the professional status of the valuer and that the valuation report is prepared on a fair and unbiased basis; and
  - f. explains the rationale for choosing the particular valuation method if more than one method is available.
41. A Fund Manager must ensure that whenever a valuation report is prepared for

the Fund, the date of the valuation report must be:

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

*Retirement of valuer*

42. A Fund Manager must ensure that where a Person appointed pursuant to paragraph 36 has conducted valuations of the Real Property for the Fund for five consecutive years, that Person is retired.
43. A Person retired under paragraph 42. must not be re-appointed by the Fund Manager to perform Fund valuation unless a period of two years has elapsed from the date of the retirement of that Person.
44. The Fund Manager, and if appointed the Trustee on instructions of the Fund Manager, may at any time remove the Person appointed to provide the valuation services by notice in writing in any of the following events:
  - a. the Person enters into liquidation, becomes bankrupt or has a receiver appointed over its assets; or
  - b. the Fund Manager, in consultation with the Trustee, determines on reasonable grounds that it is necessary to remove that Person in the interests of the Fund and the Unitholders; or
  - c. an ordinary resolution is passed by the Unitholders to dismiss that Person.
45. Upon the retirement or dismissal of the Person appointed to provide the valuation services to the Fund, the Fund Manager must appoint another Person to provide valuation services to the Fund where the Fund Manager and where appointed the Trustee are satisfied that the Person meets the requirements specified in paragraph 36.

**APP 5 CONSTITUTION OF A DOMESTIC FUND**

**A5.1 Contents of Constitution**

A5.1.1 (1) The Constitution of a Domestic Fund must contain all the information prescribed

in the following table except where it is an Exempt Fund, in which case, it must contain the information specified in A, C, F, G, H, K and M.

- (2) The requirements in the following table do not apply in respect of the Constitution of a Qualified Investor Fund.

<b>A</b>	<b>General Information</b>
	<p>The following information:</p> <ol style="list-style-type: none"> <li>(1) The name of the Fund.</li> <li>(2) The Fund Manager's and, if the Fund is structured as an Investment Trust, the Trustee's name and the principal place of business in GMC as recorded by the Registrar of Companies.</li> <li>(3) That the Fund is a Domestic Fund, the Constitution of which is governed by the laws of GMC.</li> <li>(4) That the Fund is a Public Fund, or Exempt Fund, as the case may be.</li> <li>(5) The legal form of the Fund and whether it is open- or closed-ended.</li> <li>(6) If the Fund is managed by a Foreign Fund Manager, that fact and the fact that an Appointed Fund Administrator or Eligible Custodian of the Fund has been or (as the case may be) will be appointed by the Foreign Fund Manager, and their respective roles.</li> </ol>
<b>B</b>	<b>General Statements</b>
	<p>The following information:</p> <ol style="list-style-type: none"> <li>(1) The Fund Manager is responsible, pursuant to FSA and these Rules, for all operations concerning the Fund and may from time to time delegate activities or outsource functions, but not the responsibility for conducting those activities and functions, to another Person in accordance with these Rules.</li> <li>(2) That Fund Property is entrusted to an Eligible Custodian, Trustee or (as the case may be) another Person.</li> <li>(3) Whether the duration of the Fund is limited and, if so, for how long.</li> <li>(4) That fees, charges and other expenses of the Fund may be taken out of Fund Property and the basis for determination of the quantum of such fees, charges and other expenses.</li> <li>(5) The maximum and minimum sizes of the Fund's capital, if any.</li> <li>(6) That the Unitholders are not liable for the debts of the Fund, unless the</li> </ol>

	<p>applicable legislation prescribes otherwise and, if so, those circumstances.</p> <p>(7) That a Unitholder is not liable to make any further payment after he has paid the price of his Units and that no further liability can be imposed on him in respect of the Units he holds.</p> <p>(8) That payments to the Fund Manager, Trustee, any Eligible Custodian, or the Person providing the oversight function by way of remuneration are authorised to be paid (in whole or in part) out of the Fund Property.</p>
<b>C</b>	<b>Where the Fund is a Trust</b>
	<p>The following information:</p> <p>(1) The Trust Deed is made under and governed by these Rules and Section 114 of FSA and:</p> <p>(a) is binding on each Unitholder as if he had been a party to it and that he is bound by its provisions; and</p> <p>(b) authorises and requires the Fund Manager and the Trustee to do the things required or permitted of them by its terms and these Rules and FSA.</p> <p>(2) Subject to the provisions of these Rules:</p> <p>(a) the Fund Property (other than sums held to the credit of the distribution account) is held by the Trustee on trust for the Unitholders according to the number of Units held by each Unitholder or, where relevant, according to the number of individual shares in the Fund Property represented by the Units held by each Unitholder; and</p> <p>(b) the sums standing to the credit of any distribution account are held by the Trustee on trust to distribute or apply in accordance with these Rules relating to income.</p>
<b>D</b>	<b>Investment Objectives</b>
	<p>(1) Information covering the investment objectives of the Fund and in particular:</p> <p>(a) whether the aim of the Fund is to spread investment risks; and</p> <p>(b) the types of Investments or assets in which it and (where applicable) each Sub-Fund may invest.</p> <p>(2) Details of any investment, borrowing or stock lending restrictions or, in the event that there are no such restrictions, a statement to that effect.</p>

<b>E</b>	<b>Units in the Fund</b>
	<p>A statement specifying:</p> <p>(a) the classes of Units which the Fund may issue; and</p> <p>(b) the rights attaching to Units of each class (including any provisions for the expression in two or more denominations of such rights).</p>
<b>F</b>	<b>Limitations</b>
	<p>Details as to:</p> <p>(a) the provisions relating to any restrictions on the right to redeem Units in any class; and</p> <p>(b) the circumstances in which the issue of the Units of any particular class may be limited.</p>
<b>G</b>	<b>Income and distribution</b>
	<p>(1) A statement specifying which of the Eligible Custodian, Trustee or (as the case may be) Fund Administrator has been appointed to carry out the calculation, transfer, allocation and distribution of income for any class of Unit issued and outstanding during the accounting period.</p> <p>(2) Information regarding the provision for the payment of income, if any, and the date on which such distribution shall be made.</p>
<b>H</b>	<b>Base currency</b>
	A statement specifying the base currency of the Fund.
<b>I</b>	<b>Meetings</b>
	Details of the procedures for the convening of meetings and the procedures relating to resolutions, voting and the voting rights of Unitholders.
<b>J</b>	<b>Oversight arrangements</b>
	Details of the oversight arrangements.
<b>K</b>	<b>Termination and suspension</b>
	<p>Details as to:</p> <p>(a) the grounds under which the Fund Manager may initiate a suspension of the Fund and any associated procedures; and</p> <p>(b) the methodology for determining the rights of Unitholders to</p>

	participate in the Fund Property on winding up.
<b>L</b>	<b>Modification of the Constitution documents</b>
	Details of the manner in which alterations to the Constitution may be made.
<b>M</b>	<b>Responsibility statement</b>
	A statement that nothing in the Constitution has the effect of exempting the Fund Manager and, if the Fund is structured as an Investment Trust, the Trustee, from any liability to Unitholders imposed under any enactment or rule of law in GMC and the Rules.
<b>N</b>	<b>Other relevant matters</b>
	Details of those matters which enable the Fund, Fund Manager or any Person providing the oversight function of the Fund to obtain any privilege or power conferred by the Rules which is not otherwise provided for in the Constitution.

## **APP 6 GUIDANCE ON FITNESS AND PROPRIETY FOR OVERSIGHT FUNCTIONS**

### **Guidance**

#### **General**

1. The guidance in this Appendix is intended to assist a Fund Manager when making appointments in accordance with Rule 13.3.3 in respect of oversight functions.

#### **Integrity**

2. The Fund Manager may have regard to matters including, but not limited to, the following.
  - a. the propriety of an individual's conduct whether or not such conduct may have resulted in the commission of a criminal offence, the contravention of a law or the institution of legal or disciplinary proceedings of whatever nature;
  - b. a conviction or finding of guilt in respect of any offence, other than a minor road traffic offence, by any court of competent jurisdiction;
  - c. whether the individual has ever been the subject of disciplinary proceedings by a government body or agency or any recognised self-regulatory organisation or other professional body;
  - d. a contravention of any provision of financial services legislation or of rules, regulations, statements of principle or codes of practice made

- under or by a recognised self-regulatory organisation, Recognised Body, regulated exchange or regulated clearing house or Financial Services Regulator;
- e. a refusal or restriction of the right to carry on a trade, business or profession requiring a licence, registration or other authority;
  - f. a dismissal or a request to resign from any office or employment;
  - g. whether the individual has been or is currently the subject of or has been concerned with the management of a Body Corporate which has been or is currently the subject of an investigation into an allegation of misconduct or malpractice;
  - h. an adverse finding in a civil action by any court of competent jurisdiction of fraud, misfeasance or other misconduct, whether in connection with the formation or management of a corporation or otherwise;
  - i. an adverse finding or an agreed settlement in a civil action by any court or tribunal of competent jurisdiction resulting in an award against an individual in excess of \$10,000 or awards that total more than \$10,000;
  - j. an order of disqualification as a director or to act in the management or conduct of the affairs of a corporation by a court of competent jurisdiction or regulator;
  - k. whether the individual has been a director, or concerned in the management of, a Body Corporate which has gone into liquidation or administration whilst that individual was connected with that Body Corporate or within one year of such a connection;
  - l. whether the individual has been a partner or concerned in the management of a partnership where one or more partners have been made bankrupt whilst that individual was connected with that partnership or within a year of such a connection;
  - m. whether the individual has been the subject of a complaint in connection with a financial service, which relates to his integrity, competence or financial soundness;
  - n. whether the individual has been censured, disciplined, publicly criticised by or the subject of a court order at the instigation of any Regulator, or any officially appointed inquiry, or Financial Services Regulator; or
  - o. whether the individual has been candid and truthful in all his dealings with the Fund Manager.

### **Financial soundness**

- 3. In determining the financial soundness of the individual, the Fund Manager may have regard to any factors including, but not limited to, the following:
  - a. whether the individual is able to meet his debts as they fall due; or

- b. whether the individual has been adjudged bankrupt, been the subject of a receiving or administration order, had a bankruptcy petition served on him, had his estate sequestrated, entered into a deed of arrangement (or any contract in relation to a failure to pay due debts) in favour of his creditors or, within the last 10 years, has failed to satisfy a judgement debt under a court order, whether in GMC or elsewhere.

**A7.1 Mandatory contents of a Prospectus of a Public Fund**

A7.1.1 The Prospectus for a Public Fund must contain the information prescribed in the following table.

<b>1</b>	<b>Document Status</b>
	A statement that this document is the Prospectus of the Public Fund valid as at a particular date which shall be the date of the Prospectus.
<b>2</b>	<b>Description of the Fund</b>

	<p>Information detailing:</p> <ul style="list-style-type: none"> <li>(a) the name of the Fund and that the Fund is a Public Fund established in GMC;</li> <li>(b) the effective date of commencement of the Fund's operations and, if the duration of the Fund is not unlimited, when it will or may terminate;</li> <li>(c) the legal structure of the Fund and whether it is a Listed Fund or intends to be Listed;</li> <li>(d) the basis upon which Persons are eligible to participate in the Fund and, where applicable, the minimum initial investment;</li> <li>(e) that the Unitholders are not liable for the debts of the Fund, unless the applicable legislation prescribes otherwise and, if so, a statement specifying those circumstances;</li> <li>(f) the base currency of the Fund and where relevant, the maximum and minimum sizes of the Fund's capital;</li> <li>(g) the circumstances in which the Fund may be wound up under FSA and these Rules and a summary of the procedure for, and the rights of Unitholders under, such a winding up;</li> <li>(h) if the Fund is an Umbrella Fund, whether it is constituted as a Protected Cell Company or an Incorporated Cell Company; and</li> <li>(i) that no Units will be issued on the basis of the Prospectus after the expiry date specified in the Prospectus.</li> </ul>
<b>3</b>	<b>Investment objectives and policy</b>
	<p>(1) Sufficient information to enable a Unitholder or prospective Unitholder to ascertain:</p> <ul style="list-style-type: none"> <li>(a) the investment objectives of the Fund and its investment policy for achieving those investment objectives, including: <ul style="list-style-type: none"> <li>(i) the general nature of the portfolio and any intended specialisation;</li> <li>(ii) the policy for the spreading of risk in the Fund Property including an explanation of any potential risks identified;</li> <li>(iii) the policy in relation to the exercise of borrowing powers; and</li> <li>(iv) the policy in relation to using Derivatives for</li> </ul> </li> </ul>

	<p style="text-align: center;">speculations or hedging purposes;</p> <p>(b) a description of any restrictions in the assets in which investment may be made; and</p> <p>(c) the extent (if any) to which that investment policy does not envisage remaining fully invested at all times.</p> <p>(2) For investment in Real Property:</p> <p>(a) the countries or territories in which the Fund may invest;</p> <p>(b) the types of Real Property, including the policy in relation to encumbrances and lease period; and</p> <p>(c) the policy of the Fund Manager in relation to insurance of Real Property forming part of the Fund Property.</p> <p>(3) If intended, whether the Fund Property may consist of Units in Funds which are managed by or operated by the Fund Manager or by one of its associates and a statement specifying:</p> <p>(a) the basis of the maximum amount of the charges in respect of transactions in the Fund invested in; and</p> <p>(b) the extent to which any such charges will be reimbursed to the Fund.</p> <p>(4) An explanation of the types of strategies to be employed by the Fund Manager and the associated risks.</p>
<b>4</b>	<b>Distribution and accounting period</b>
	<p>Relevant details of the accounting and distribution periods and a description of the procedures:</p> <p>(a) for determining and applying income (including how any distributable income is paid); and</p> <p>(b) relating to unclaimed distributions.</p>
<b>5</b>	<b>The characteristics of Units in the Fund</b>
	<p>Information as to:</p> <p>(a) the names of the classes of Units of the Fund or Sub-Fund in issue or available for issue and the rights attached to them in so far as they vary from the rights attached to other classes of Units in the Fund or the Sub-Fund as applicable;</p>

	<p>(b) how Unitholders may exercise their voting rights and what they are; and</p> <p>(c) the circumstances where a mandatory redemption, cancellation or conversion of a Unit from one class to another may be required.</p>
<b>6</b>	<b>The Fund Manager</b>
	<p>The following particulars of the Fund Manager:</p> <p>(a) its name, whether the Fund Manager is incorporated in GMC or elsewhere and the date of such incorporation, and if the Fund Manager is a Foreign Fund Manager, that fact and the details of the Appointed Fund Administrator or Eligible Custodian under Rule 7.1.2;</p> <p>(b) its address, and if applicable, that of the Appointed Fund Administrator or Trustee, as the case may be, and the registered office in the Abu Dhabi Global Market;</p> <p>(c) if it is a subsidiary, the name of its ultimate Holding Company and the country or territory in which that holding company is incorporated;</p> <p>(d) the amount of its issued share capital and how much of it is paid up; and</p> <p>(e) a summary of the material provisions of the contract between the Fund and its Fund Manager which may be relevant to Unitholders, including provisions relating to termination, compensation on termination and indemnity.</p>
<b>7</b>	<b>Directors and Partners of an Investment Undertaking</b>
	<p>(a) for an Investment Company, the names and positions in the Investment Company of the Directors;</p> <p>(b) for an Investment Partnership, the names of the other General Partners or any other partners who manage the affairs of the Fund on a day to day basis; and</p> <p>(c) the manner, amount and calculation of the remuneration of the Directors or Partners in (1) or (2) as the case may be.</p>
<b>8</b>	<b>Oversight Arrangement</b>
	In relation to a Public Fund, the details of the Persons providing the oversight function for the Fund including their remuneration.
<b>9</b>	<b>Service Providers and Advisers</b>

	<p>If a Fund Manager delegates any activities or outsources any functions to a Service Provider or if an investment adviser is retained in connection with the business of the Fund:</p> <p>(a) its name;</p> <p>(b) which Financial Services Regulator authorises that Person;</p> <p>(c) and details of the arrangements.</p>
<b>10</b>	<b>Conflicts of interest policy</b>
	Details of a conflicts of interest policy that has been adopted for the Fund.
<b>11</b>	<b>The Auditor and Custodian and Trustee</b>
	The name of the Auditor and of the Eligible Custodian of the Fund. If applicable, the name of the Trustee of the Fund.
<b>12</b>	<b>The Register of Unitholders</b>
	Details of the address in the Abu Dhabi Global Market where the register of Unitholders is kept and can be inspected by Unitholders of the Fund.
<b>13</b>	<b>Payments out of the Fund Property</b>
	<p>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. For each category of remuneration or expense, the following should be specified in a manner which is clear, concise and understandable for Retail Clients where the Fund is to be so offered:</p> <p>(a) the current rates or amounts of such remuneration;</p> <p>(b) how the remuneration will be calculated and accrue and when it will be paid;</p> <p>(c) how notice will be given to Unitholders of the Fund Manager's intention to:</p> <p>(i) introduce a new category of remuneration for its services;</p> <p>(ii) increase the basis of any current charge;</p> <p>(iii) change the basis of the treatment of a payment from the capital property; and</p> <p>(iv) particulars of that introduction or increase and when it will take place;</p> <p>(d) the types of any other charges and expenses that may be taken out of</p>

	<p>the Fund Property; and</p> <p>(e) if, in accordance with the relevant provisions of these Rules, all or part of the remuneration or expenses are to be treated as a capital charge:</p> <p>(i) that fact; and</p> <p>(ii) the basis of the charges which may be so treated.</p>
<b>14</b>	<b>Dealing</b>
	<p>Details of:</p> <p>(a) the dealing days and times in the dealing day on which the Fund Manager will receive requests for the sale and redemption of Units;</p> <p>(b) the procedures for effecting:</p> <p>(i) the issue, sale and redemption of Units; and</p> <p>(ii) the settlement of transactions;</p> <p>(c) the steps required to be taken by a Unitholder in redeeming Units before he can receive the proceeds, including any relevant notice periods, and the circumstances and periods in which a deferral of payment may be applied;</p> <p>(d) the circumstances in which the redemption of Units may be suspended;</p> <p>(e) details of the minimum number or value of each type of Unit in the Fund which:</p> <p>(i) any one Person may hold; and</p> <p>(ii) may be the subject of any one transaction of issue, sale or redemption by the Fund Manager;</p> <p>(f) the circumstances in which the Fund Manager may arrange for, and the procedure for, a redemption of Units in specie; and</p> <p>(g) the circumstances in which the further issue of Units in any particular class may be limited and the procedures relating to this.</p>
<b>15</b>	<b>Valuation of the Fund Property</b>
	<p>Details as to:</p> <p>(a) how frequently and at what times of the day the Fund Property will be regularly valued to determine the price at which Units in the Fund may be purchased from or redeemed by the Fund Manager and a</p>

	<p>description of any circumstance where the Fund Property may be specially valued;</p> <p>(b) in relation to each purpose for which the Fund Property must be valued, the basis on which it will be valued;</p> <p>(c) how the single price of Units of each class will be determined, including whether a forward or historic price basis is to be applied;</p> <p>(d) details as to how the prices of Units will be published following each valuation; and</p> <p>(e) if valuation is to be suspended under certain circumstances, details of such circumstances.</p>
<b>16</b>	<b>Sale and Redemption Charges</b>
	If the Fund Manager makes any charges on sale or redemption of Units, details of the charging structure and how notice will be provided to Unitholders of any change in the relevant charge.
<b>17</b>	<b>Financial Reports</b>
	<p>Details as to:</p> <p>(a) when annual and interim reports will be published; and</p> <p>(b) the address in the Abu Dhabi Global Market at which copies of the Constitution, any amending instrument and the most recent annual and interim reports may be inspected and from which copies may be obtained.</p>
<b>18</b>	<b>Information in respect of Umbrella Funds</b>
	<p>In the case of an Umbrella Fund, the following information:</p> <p>(a) that a Unitholder may exchange Units in one Sub-Fund for Units in another Sub-Fund and that such an exchange is treated as a redemption and sale;</p> <p>(b) what charges may be made on exchanging Units in one Sub-Fund for Units in other Sub-Funds;</p> <p>(c) the policy for allocating between Sub-Funds any assets of, or costs, charges and expenses payable out of, the Fund Property which are not attributable to any particular Sub-Fund;</p> <p>(d) in respect of each Sub-Fund, 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;</p>

	<p>(e) in the case of an Umbrella Fund that is not formed as an Incorporated Cell Company, in the event of such an Umbrella Fund being unable to meet liabilities attributable to any particular Sub-Fund out of the assets attributable to that Sub-Fund, the circumstances in which the remaining liabilities may be met out of the assets attributable to other Sub-Funds i.e. circumstances where the Sub-Funds are not "ring fenced"; and</p> <p>(f) in the case of an Umbrella Fund that is formed as an Incorporated Cell Company, in the event of such an Umbrella Fund being unable to meet liabilities attributable to any particular Sub-Fund out of the assets attributable to that Sub-Fund, the remaining liabilities cannot be met out of the assets attributable to other Sub-Funds i.e. that the Sub-Funds are "ring fenced".</p>
<b>19</b>	<b>Waivers of Exemptions</b>
	Details of any waiver or exemptions that the Fund Manager has obtained from the Regulator in respect of the Fund.
<b>20</b>	<b>Other relevant information</b>
	If applicable, names and addresses of the banker, lawyer, registrar and any other Person undertaking any significant activities in relation to the Fund.

## APP 8 RECOGNISED JURISDICTION LIST

Australia

Canada

European Union Member States

Guernsey

Hong Kong

India

Isle of Man

Jersey

Malaysia

**GFSO FUNDS Rulebook 260526**

Singapore

South Africa

Switzerland

United Kingdom

United States of America