

United Arab Emirates

Regulation

HEDGE FUNDS 2009

Hedge fund managers/advisors

Regulation

Authorization requirements and process

Dubai International Financial Centre (DIFC) requirement

At DIFC, collective investment funds or hedge funds are regulated by the Collective Investment Law 2006 and the Investment Trust Law 2006.

Central Bank

The Central Bank has a product wise approval process and thus the investment firm must apply to the Central Bank for approval to operate a hedge fund. Except for the funds exempted as per Union Law No. (10) of 1980, setting up and publicizing investment funds is prohibited, until a license is obtained from the Central Bank. The fund manager must form an administrative committee from among his staff and allotment and shareowners. An investment fund once established is required to publish in the local newspaper quarterly financial statements which disclose its final position.

Typical timescale to receive approval

Dubai International Financial Centre

It typically takes a minimum of 12-15 weeks to receive approval, complete licensing and registration procedures, and then commence activities. This, however, varies on a case-to-case basis.

Central Bank

If the firm is an existing authorized firm in the UAE then it normally takes five to seven days for the product approval (depending on the nature of the

product), however, if it is a new firm then the entire procedure takes a minimum of three to four months. This, however, varies on a case-to-case basis.

Regulatory capital requirements

Dubai International Financial Centre

The base capital requirement for an investment company under category two (KPMG in the United Arab Emirates is assuming that this is the category which it would typically fall under) is USD 2 million if the firm deals with investments as principal, and its activities do not constitute dealing in investments as a matched principal, but if the firm only deals with investments as an agent then the requirement is USD 500,000 (for a company licensed under category three). However, if they are depositaries of mutual funds/open-ended investment companies (OEICs) or provide custody services to other collective investment funds then the base capital requirement would increase to USD 10 million (for both category two and three).

Central Bank

The paid-up capital should not be less than AED 25 million as a minimum and national ownership should not be less than 51 percent of total paid-up capital and in a way that does not contradict with the provisions of Union Law No. (8) of 1984 or any of its subsequent amendments

Significant restrictions on marketing to investors

Dubai International Financial Centre

At DIFC, these funds can only be marketed to individual investors with liquid assets of over USD 1 million and institutional investors with a paid up capital of more than USD 5 million. Recently the DFSA introduced a new classification of clients where authorized firms may classify a person as a professional client only if such a person has net assets of at least USD 500,000 (calculated in accordance with DIFC regulations), is or has been in the previous two years an employee of the authorized firm, or an employee in a professional position in another authorized firm.

Central Bank

Information not available.

Hedge fund structures

Regulation

Authorization requirements

Dubai International Financial Centre

The fund must try and ensure compliance with IOSCO (International Organization of Securities Commissions) principles wherever possible. The Operator must ensure that the risks inherent in the operation of a hedge fund are adequately addressed and must ensure segregation of duties in the process of determining the net asset value, asset pricing and fund valuation with the investment management process. The net asset value of the fund must be produced by parties who are clearly not involved in the investment process of the investment management entity, and the governing body, trustee, or general partner of the fund must ensure independence in practice, which may be achieved by delegating the calculation, determination, and production of the net asset value to a suitably competent and experienced third-party fund administrator. Apart from these, the operator has the duty to:

- register the legal title of the fund property with the eligible custodian.
- ensure that the fund has a written constitution which contains all the statements and disclosures prescribed by DIFC.
- appoint an auditor who is registered with DFSA.
- produce a prospectus and it must be in English.

Central Bank

The investment firm must have stringent know your client (KYC) norms in place, all terms and conditions must be presented in both English and Arabic, and the firm must agree to publish the NAV weekly in the newspaper, unless it is a closed ended fund.

Restrictions on types of investments, concentration levels, and the manner in which hedge funds can invest and/or strategies

Dubai International Financial Centre

An authorized firm dealing in hedge funds at DIFC must regularly monitor and control its exposures, and the DIFC has set specific large exposure limits. Also, an operator of a hedge fund may only grant to a prime broker the 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 where, and so long as, specific conditions are met, such as:

- The fund is a private fund meaning less than 100 investors.
- The prospectus of the fund contains, all the mandatory disclosures required by DIFC, identity and profile of the prime broker including where it is located, and how it is regulated.
- The services which the prime broker provides to the fund and the 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.
- A prominent health warning in the prospectus to alert prospective investors about the nuances, clauses, and agreements with the prime broker.
- The agreement between the prime broker and the operator contains mandatory contractual provisions that: prohibit the prime broker from using as collateral the assets of the fund to an extent exceeding 140 percent of the fund's indebtedness to the prime broker at any given time.
- The operator must have in place adequate valuation procedures to mark positions to market daily.

Central Bank

Information not available.

Rules regarding the publishing of the accounts and prospectuses

Dubai International Financial Centre

There are prospectus requirements that apply to the offer, issue, and sale of units of funds which are set out in the Collective Investment Law 2006. A hedge fund operator must prominently disclose to investors in the prospectus and any other financial promotions relating to the fund, mandatory hedge fund disclosure statements. Also, the fund must have a written constitution which contains:

- general information such as, name, type of fund, limitations, details of the procedure for the convening of meetings, oversight arrangements, modifications of the constitution documents, responsibility statement, and other relevant matters.
- statements, base currency, disclosures, and clearly states the fund's investment objectives and nature of strategy.

- details regarding the units in the funds
- details of income and distributions
- termination and suspension of the fund

At the DIFC, the operator of the fund is required to produce an interim report within two months after the end of each interim accounting period and an annual report within four months after the end of each annual accounting period. These reports must be submitted to the DFSA and be available to the unit holders free of charge. The operator must prepare and maintain all financial accounts and statements in accordance with IFRS or U.S. GAAP. The annual report must also include a report of its eligible custodian.

Central Bank

Information not available.

Time-scale of establishment of a hedge fund

Dubai International Financial Centre

It typically takes a minimum of 12-15 weeks to receive approval, complete licensing and registration procedures, and then commence activities.

Central Bank

Information not available.

Investors

Regulation

Restrictions on which type of investors can invest in a hedge fund and/or the minimum/maximum number of investors in a hedge fund

Dubai International Financial Centre

A key aspect of the DIFC wholesale market place is that participation is restricted to institutional investors with a minimum USD 5 million as paid up capital and individual investors with a minimum USD 1 million in liquid assets. Accordingly retail investors were not permitted to participate in the funds. Recently the DFSA introduced a new classification of clients where authorized firms may classify a person as a Professional Client if such a person has net

assets of at least USD 500,000 (calculated in accordance with DIFC regulations), is or has been in the previous two years an employee of the authorized firm, or an employee in a professional position in another authorized firm. The number of investors in private funds is restricted to a maximum of 100 but there is no prescribed minimum or maximum in case of a public fund.

Central Bank

Information not available.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.