

inBrief



New UAE Funds Regime

By Shahram Safai, Gregory Mayew, Silvia Pretorius, Ronnie Dabbasi and Afraz Hussain | March 2017

The UAE has embarked on an ambitious undertaking by introducing new business friendly mutual funds regulations to stimulate the UAE funds industry and provide the foundation for a more developed regional funds regime in the Gulf Cooperation Council (the “GCC”). The mutual funds industry can facilitate the gathering of monies for investment in various sectors across the UAE and Middle Eastern economies through funds that are established in the UAE, as well as foreign funds that are registered and promoted in the jurisdiction.

The Emirates Securities and Commodities Authority (“SCA”) has recently issued the following new regulations governing the registration, licensing, and promotion of mutual funds in the UAE (the “**Fund Regulations**”):

1. SCA Board Decision No. 9 of 2016 regulating mutual funds;
2. SCA Board Decision No. 10 of 2016 setting out fees related to mutual funds;
3. SCA Administrative Decision No. 49 of 2016 regulating exchange traded funds (“ETFs”);
4. SCA Administrative Decision No. 52 of 2016 regulating cash investment funds;
5. SCA Administrative Decision No. 1 of 2017 regulating real estate investment trusts (“REITs”);
6. SCA Administrative Decision No. 2 of 2017 regulating private ownership funds;
7. SCA Administrative Decision No. 3 of 2017 regulating venture capital funds; and
8. SCA Board Decision No. 3 of 2017 regulating promotion and arranging activities.

The Fund Regulations constitute the new UAE fund regime regarding onshore local funds and foreign funds that are marketed in the UAE (outside of its financial free zones). Such regulations replace SCA Board of Directors Decision No. 37 of 2012 concerning the regulations on mutual funds (the “**2012 Regulations**”).

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In addition to revamping the primary mutual fund law that applies to all UAE funds, the Fund Regulations set out additional obligations and key exemptions for certain funds, including REITs, ETFs, private equity funds, and venture capital funds. This marks a significant change from the 2012 Regulations, which failed to differentiate between varying types of local funds, and should encourage fund managers and other sponsors to establish funds in the UAE.

Mutual Funds

As with the 2012 Regulations, the Fund Regulations apply to all mutual funds and parties that are “related” to mutual funds.

A “mutual fund” is defined as a financial pool engaged in the activity of accumulating investors’ assets for the purpose of investment against the issue of fund units of equal value. SCA interprets this definition broadly.

Corporate Structure

A local mutual fund must be established by an eligible sponsor, which includes companies licensed by SCA “in the area of securities” or to manage funds, local and foreign banks licensed by the UAE Central Bank, and UAE branches of foreign companies licensed by an International Organization of Securities Commissions regulator and having an operating history of at least five years. The sponsor must contribute a minimum share capital of AED 5,000,000 and cannot own more than 30% of the fund units.

While UAE Law No. 2 of 2015 (the “**Companies Law**”) contemplates local funds having corporate personality, it does not prescribe a specific form for funds. As with the previous regime, a UAE fund is established through the contractual relationship between the sponsor and its investors, and each investor will have a balance sheet entry in the accounts of the fund administrator (which must meet comparable eligibility requirements as those of the sponsor).

The Fund Regulations provide that the contractual relationship will benefit from limited liability (i.e. up to the amount invested) and impose certain conditions related to the fund units (e.g. preventing pledging assets of the fund to satisfy third party debts and allocation of units by heirs or creditors). Furthermore, a fund sponsor is only required to obtain SCA approval to establish a local fund; accordingly, there is no need to obtain a separate operating license for the fund with any economic department in accordance with the Companies Law.

Types of Local Funds

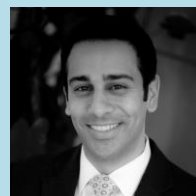
The Fund Regulations provide for (or otherwise contemplate) the following types of funds:

- public and private funds;
- master/feeder funds and umbrella fund/sub-funds;
- open ended and closed ended funds; and
- specialty funds, including Islamic funds, REITs, venture capital funds, private equity funds, ETFs, and cash investment/money market funds.



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The provisions related to these funds are based on the Undertakings for Collective Investment in Transferable Securities (UCITS) model, which creates a harmonized regulatory regime that permits funds to be sold to any investor in the European Union. While the GCC states have not adopted a comparable framework, it appears that the Fund Regulations have been prepared with this possibility in mind. ■

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The new Fund Regulations mark the beginning of a new chapter in the UAE funds regime and should contribute to the growth of the UAE and the broader region by fostering more efficient and transparent investment structures.

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