

Agenda

Marketing of Foreign Funds

- Regional Considerations
- United Arab Emirates (UAE)
- Dubai International Financial Centre (DIFC)
- Abu Dhabi Global Market (ADGM)
- Other GCC Countries

Islamic Feeder Structures

Attracting capital from the Middle East (and globally!)

Abu Dhabi Global Market

• A new alternative fund domicile in the Middle East



Marketing of Foreign Funds – Regional Considerations

Asset managers tend to target investors in member states of the Gulf Cooperation Council (GCC) but we are increasingly seeing other countries targeted

Securities regulations vary in detail and sophistication within the region

Some countries have multiple securities regulations beyond the federal and state distinction (e.g., financial free zones in the UAE)

No GCC or MENA "passporting" options

Handful of licensed placement agents

Special groups of investors: SWFs; experienced family offices and ESG/Islamic investors



Marketing of Foreign Funds in the UAE

Regulatory authority: the Emirates Securities and Commodities Authority (**SCA**)

Applicable regulations (SCA Regulations):

- •Investment funds registered in the UAE
- •Investment Funds registered outside the UAE and promoted in the UAE, i.e.
- •SCA Board Resolution No. 37 of 2013
- •SCA Circular of 2013 Concerning Clarification on Reverse Marketing as stated in SCA Resolution No. 37 of 2012
- •SCA Board of Director's Chairman Decision No. (9 R.M.) of 2016 Concerning the Regulations as to Mutual Funds
- •SCA Chairman Decision No. (3/R.M) of 2017 Concerning the Organization of Promotion and Introduction
- •SCA Chairman Decision No. (37/R.M) of 2019 Concerning the Definition of Qualified Investor

Scope of application of the SCA Regulations:

- Investment funds registered in the UAE
- Investment Funds registered outside the UAE and promoted in the UAE, i.e., offered, marketed, distributed, and advertised in the UAE
- •SCA Regulations do not apply to certain classes of investors "Exempt Investors"

Marketing of Foreign Funds in the UAE

Marketing Restrictions

- The SCA Regulations require that foreign funds may only be promoted in the UAE if they are registered with the SCA and are distributed by a local promoter licensed in the UAE, such as:
 - banks licensed by the UAE Central Bank;
 - investment companies licensed by the UAE Central Bank; or
 - companies licensed by the SCA to act as a local placement agent.
- Where a foreign fund is registered with the SCA and marketed by way of private placement, it must:
 - only be offered to Qualified Investors;
 - only be offered to predetermined investors in the UAE;
 - have minimum subscription requirements of at least AED 500,000 (or, if the foreign fund is based in the DIFC, ADGM, or other free zone in the UAE, of AED 1 million or more); and
 - be subject to the supervision of a regulator similar to the SCA.

Qualified Investor is a natural or legal person that is capable of managing its own investments by itself according to certain conditions, unless it desires to be just a normal investor. Such conditions are described under the SCA Chairman Decision No. (37/R.M) of 2019 Concerning the Definition of Qualified Investor.

Marketing of Foreign Funds in the UAE

Marketing Exemptions – Exempt Investors

The following investors qualify as Exempt Investors for the purpose of the Regulations and so the SCA Regulations do not apply:

- •Federal or local governmental agencies or their wholly owned subsidiaries;
- •International commissions and organizations;
- •UAE-licensed companies whose objectives include carrying out investments; and
- SCA-regulated asset managers.
- •High net worth individuals and family offices are not included in this category of investors that may be targeted directly, unless they invest through investment companies that they operate.

<u>Offshore</u>: The SCA will not extend its jurisdiction to securities-related business activities conducted outside of the UAE provided such activities were performed offshore.

<u>Reverse solicitation</u>: Where the investor directly expresses an interest in investing in a fund as opposed to doing so as a reaction to a marketing effort, is now a formal exemption under the SCA Regulations. It is important that any reverse solicitation is documented and a detailed paper trail is kept in case a marketing effort is subjected to a regulatory review.



Marketing of Foreign Funds in the DIFC

Regulatory Authorities: Dubai Financial Services Authority (the DFSA)

Applicable Regulations (the DFSA):

- the Collective Investment Law No. 2 of 2010 (Amendments)
- the Collective Investment Rules (CIR/VER/28/04-20)

The Collective Investment Rules (CIR) module – (<u>CIR/VER/27/01-20</u>) will be <u>repealed and replaced</u> by the Collective Investment Rules (CIR) Module – (CIR/VER/28/04-20) which will come into force on 1 April 2020.

In summary the amendments to the regulations is focused on Public Funds, and additional requirements for Specialist Funds such as Property Funds.

Marketing of Foreign Funds in the DIFC

Marketing Restrictions

- Marketing of funds in the DIFC can only be undertaken by an entity authorized by the DFSA.
- DIFC-domiciled funds may be freely marketed in and from the DIFC; however, if the fund is not a DIFC fund, certain additional conditions must be met.

Marketing of Foreign Funds in the DIFC

Marketing Exemptions

A DFSA-authorized firm may only offer a non-DIFC fund if at least one of the four following conditions is met:

- 1. The fund is a "**Designated Fund**" in a "**Recognised Jurisdiction.**" Broadly speaking, these Designated Funds are regulated funds such as UCITs in the EEA, or registered Investment Companies in the United States
- 2. The fund has a custodian and an investment manager regulated by the DFSA or by a regulator in a Recognized Jurisdiction or has an investment grade rating from an international ratings agency;
- 3. The firm has a reasonable basis for recommending the fund as suitable for the particular client to whom the offer is made; or
- 4. The fund meets the criteria of a DIFC exempt fund, namely:
 - i. open to 100 or fewer investors (in total, not just investors from or advised out of the DIFC),
 - ii. each of whom meets the DIFC Professional Client test and makes a minimum subscription of US\$ 50,000, and
 - iii. the fund is not offered to investors by way of public offer. This requirement is currently under review by the DFSA and may be removed.

"Professional Clients" for DIFC purposes is a broad category includes (inter alia) supranational organizations, government agencies, public authorities, state investment bodies, authorized firms, other funds including regulated pension funds, certain high net worth individuals and family offices licensed under the Single Family Office Regulations, as well as any other institutional investor whose main activity is to invest in financial instruments.



Marketing of Foreign Funds in the Abu Dhabi Global Market (ADGM)

Regulatory Authorities: ADGM Financial Services Regulatory Authority

Applicable Regulations (the FSMR):

- Financial Services and Markets (Amendments) Regulations 2019
- Fund Rules (VER05/030220)

Marketing of Foreign Funds in the ADGM

Marketing Restrictions

- The offering or marketing of units in a Foreign Fund in or from the ADGM is limited by the Financial Promotion Restriction unless the communication falls within one of the listed exceptions. The "Financial Promotion Restriction" indicates that "a person ('A') must not, in the course of business, communicate an invitation or inducement to engage in Investment Activity."
- The concept of "communication" is interpreted in Schedule 2 FSMR and includes communications which are:
 - a. addressed, whether orally or in legible form, to a particular person(s) (e.g., in a telephone call or letter);
 - b. addressed to persons generally (e.g., in a television broadcast or website);
 - c. real-time (i.e., made in the course of a personal visit, telephone conversation or other interactive dialogue);
 - d. non-real time (i.e., made by letter, email or contained in a Publication);
 - e. solicited real-time which was:
 - i. initiated by the Recipient of the communication; or
 - ii. takes place in response to an express request from the Recipient of the communication;
 - f. unsolicited real-time (which covers any real-time communication not contained within (e)(i) and (ii)).

For the purposes of the Financial Promotion Restriction "communicate" shall include causing a communication to be made.

Marketing of Foreign Funds in the ADGM

Marketing Exemptions

- The Financial Promotion Restriction does not apply where:
 - A is an Authorized Person or an Exempt Person (as defined in Schedule 3 FSMR);
 - A is licensed and supervised by a financial service regulator in the UAE;
 - the content of the communication is approved by an Authorized Person or an Exempt Person; or
 - the communication is an exempt communication (under Schedule 2 FSMR).
- In the case of a communication originating outside the ADGM, the Financial Promotion Restriction applies only if the communication is capable of having an effect in the ADGM.
- Exempt persons include the Regulator, the Registrar; Recognized Bodies; Remote Bodies; Remote Members, with respect to any Regulated Activity; and any other regulatory or governmental body or any other body of a public nature.
- Exempt Communications include:
 - Communications to non-Abu Dhabi Global Market Recipients and Authorized Persons or Recognized Bodies
 - Offshore communications



Marketing of Foreign Funds in Other GCC Countries

Jurisdiction	Authority	Law and Regulation
Bahrain	Central Bank of Bahrain	Volume 7 of the CBB Rulebook
Kuwait	Kuwait Capital Market Authority and the Kuwait Stock Exchange	 Kuwait Capital Markets Law No. 7 of 2010 Decree Law No. 31 of 1990
Oman	Capital Market Authority and Central Bank of Oman	 Capital Markets Law issued by Royal Decree No. 80/1998 Ministerial Decision No. 1/2009 Central Bank Law promulgated by Royal Decree No. 7/1974
Qatar	Qatar Financial Markets Authority	• Law No. 8 of 2012
Saudi Arabia	Saudi Capital Market Authority	 Saudi Capital Markets Law and its implementing regulations Investment Fund Regulations Offers of Securities Regulations Securities Business Regulations Authorized Persons Regulations



What Is an Islamic Fund?

Shari'a-compliant (Islamic) funds are broadly similar to ethical investment funds, those funds that avoid investment in companies that, for example, cause environmental damage, or are involved in unfair trading or labor practices

Prohibited Industries: An Islamic fund cannot invest in or enter into transactions with:

- providers of conventional financial services (including conventional banking, insurance companies, and brokerage houses)
- providers of entertainment services (including hotels, gambling and casinos, cinema, music, and pornography)
- manufacturers and/or distributors of weapons
- manufacturers, packers, distributors or providers of pork and pork-related products, tobacco, and alcohol
- any other industries involving activities not compatible with **Shari'a** as interpreted by the **Shari'a** Supervisory Board

What Is an Islamic Fund

Debt Ratio: The ratio of debt to market capital or total assets (measured on a trailing 12-month basis) should not exceed 33%

Interest Income Ratio: The ratio of nonoperating interest income, plus the income from any incidental impermissible activity to total revenue should not exceed 5%

Productive Asset Restrictions: Accounts receivable (short and long term) should be less than 45% of total assets

Other Restrictions: Generally, no investment may be made in the following conventional instruments:

- preferred shares or convertible capital bonds
- fixed income securities
- conventional "short sale," options trading, and leveraged purchase of equities

Key Differences with Conventional Funds

An Islamic investment fund is very similar, in terms of documentation, to a conventional investment fund

Generally, the same considerations for the choice of jurisdiction would apply, such as tax implications, trust system, and regulatory regime

Some changes involve entering into an agreement with the **Shari'a** advisors, drafting the **Fatwa** (**Shari'a** Compliance Certificate), ensuring that the offering document and the ancillary agreements, particularly, the Investment Management Agreement, highlight the **Shari'a** investment restrictions, and finally, drafting and negotiating appropriate investment documents for underlying investments

Management Structures for Islamic Funds

Broadly speaking, similar "economics" can be implemented

Normally, an Investment Manager in a conventional fund would also be called an Investment Manager in an Islamic fund

However, it can also be referred to as **Wakeel** or Agent. A Wakeel is an Agent in a Wakala or Agency

Alternatively, a **Mudaraba** or "sweat capital" partnership can be entered into, whereby the fee payable to the investment manager would be justified as being paid to a partner. Financial institutions are not likely to adopt this model

Co-Investing with Conventional Funds

New forms of Islamic funds include:

- **Parallel fund** structures supported by a co-investment agreement
- **Feeder fund** structures in which the Islamic fund enters into a convertible loan arrangement with a special purpose vehicle that acts as an LP in the master conventional fund (provided sector prohibitions would still apply)
- **Hybrid funds** that permit the GP to invest conventionally and Islamically. However, the fund itself is not Islamic-some of the underlying investments are qualified to be treated as such

Key Challenges Facing Managers of Islamic Funds

Limited diversification

- Gearing of target investments debt/equity ratios
- Activities of target investments arms, pork products, gambling, pornography

Marketing obstacles

• Perception of lower achievable returns than conventional equivalent

Potential requirement to dispose of assets at a loss

- E.g., target investment alters its gearing ratio resulting in a higher than acceptable level
- Limited (though improving) access to debt instrument

Structuring consequences

 Certain structures may result in the fund benefitting indirectly from economic performance of underlying assets

Key Challenges Facing Managers of Islamic Funds

Increased cost and time delays

• Shari'a board: Fatwa; Shari'a audit and reporting

Market sensitivity and response time

• Requirement to acquire Shari'a board approval on an investment-by-investment basis

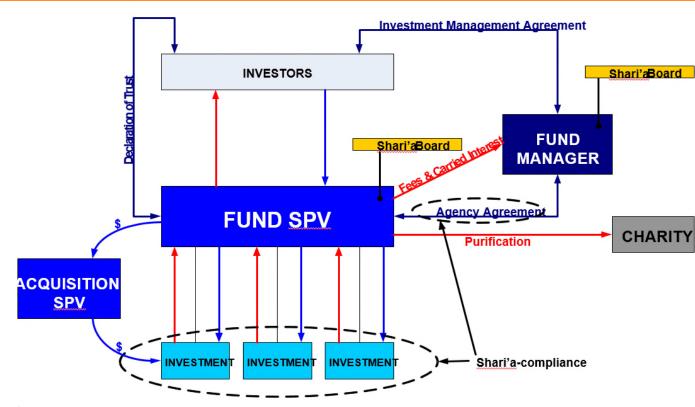
Purification

Fund level or investor option

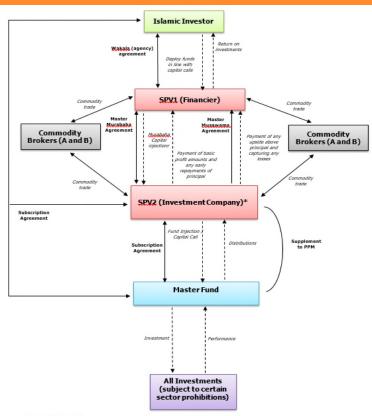
Accounting policy

- Auditing organization for Islamic Financial Institutions
- Shari'a audit

Typical Islamic Fund Structure



Islamic Fund of Private Funds Structure





Introduction to the ADGM Legal Regime

Independent common law legal framework based on English Common Law

Adopted 47 English Statutes and created regulation largely mirroring English companies act

Zero tax-rate business environment and independent jurisdiction

International best practice - Know-your-customer (KYC), anti-money laundering (AML), and data protection and transfer regimes

Financial activities approved and supervised by the ADGM Registration Authority ("ADGM RA") and the Financial Services Regulatory Authority (FSRA)

Independent ADGM Courts and the ADGM Arbitration Center

A Strong Business Ecosystem with More Than 2,000 Entities

Business Activity Type	Number of Entities
Financial	77
Non-Financial	292
Retail	278
Special Purpose Vehicle	1257
Investment Company	20
Reglab	21
Foundation	50
Tech – Start Up	100
Investment Partnership	10
Association	14
Total Registered Entities	2,119* (*unofficial figures)

Available Structures: Corporate and Trust Arrangements

The ADGM Companies Regulations provide for the following types of structures:

- Public Companies
- Private Companies
- Cell Companies
- Trust Constructs
- Foundations

ADGM Investment Funds Landscape

Investment Fund Attributes

- Emphasis on efficient and cost-effective establishment process
- No limit on number of investors
- No minimum AUM requirements
- Flexible, recognizable fund structures

Additional Fund Manager Advantages

- Close to large investor base
- Low minimum capital requirements
- No remuneration restrictions
- Growing service provider community
- Flexible measures for duty delegations

ADGM Investment Funds Landscape

Type of ADGM Funds

- Public Funds (retail): no minimum investment
- Exempted Funds (professional): USD 50,000 minimum
- Qualified Investor Funds (sophisticated): USD 500,000 minimum

Managing and Marketing Foreign Funds in the ADGM

- A foreign fund may be established and managed by a registered ADGM manager
- A registered ADGM manager can be appointed as the investment manager or a sub-advisor of a foreign fund
- A registered ADGM firm may promote a foreign fund in or from the ADGM (subject to the laws of the jurisdiction being marketed into and, for retail funds, the ability to offer to retail investors in its home jurisdiction)

ADGM Vehicles/Structures

- Limited Partnerships
- Open or Closed Ended Investment Companies
- Protected Cell Companies & Incorporated Cell Companies
- Master/Feeder Structures
- Umbrella Funds
- Investment Trusts
- Restricted Scope Companies (RSC)

Substance Requirements

Minimum of one director

Corporate directors permitted as long as at least one director is a natural person

No limitation on nationality

No requirement to complete Criminal Investigation Department ("CID")/Immigration check

Directors subject to fiduciary obligations

Minimum of one authorized signatory who must be a natural person

Sole function is to act in an administrative capacity towards the ADGM

Must be resident of the UAE

Can be the same individual as the director

Must obtain CID/Immigration approval



"We've had some reports of fraud in this department, Milby. Know anything about it?"

Taxation - UAE Double Tax Treaty Network

As a free zone established by Federal Decree, the ADGM may be in a position to provide exemptions from future federal taxations

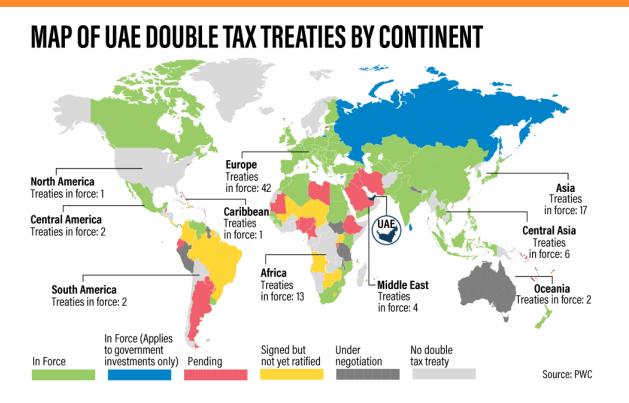
No tax on capital gains, dividends, interest, royalties, local or foreign-generated income

ADGM entities are eligible to benefit from the UAE Double Tax Treaty network

The UAE Double Tax Treaty network is currently wider than jurisdictions like Luxembourg, Singapore, and Hong Kong

- 90 double tax treaties currently in force in the UAE
- 13 double tax treaties in force in Africa and 16 awaiting ratification

Taxation - UAE Double Tax Treaty Network



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Ayman A. Khaleq, managing partner of Morgan Lewis's Dubai office and co-Leader of the firm's Middle East practice, advises global and regional institutional clients and asset managers on cross-border investment management, capital markets, and structured finance transactions. In particular, Ayman advises on the structuring and documentation of private investment funds and alternative investment platforms; global investments by regional institutional investors, including sovereign wealth funds; and privately placed debt capital markets, structured finance transactions as well as restructuring matters with a particular emphasis on Islamic finance matters. He is admitted to practice in New York and is a Registered Foreign Lawyer with the Law Society of England and Wales.

In addition, Ayman provides regulatory and legal advice to global asset managers and foreign direct investors on the marketing of securities and doing business in the broader Middle East and North Africa (MENA) region, and in sectors including healthcare, technology, infrastructure, telecommunications, energy, and education. He also advises on policy reform initiatives in the MENA region and other emerging markets.

Ayman, who is fluent in Arabic and English, is a frequent speaker at international conferences on topics relating to foreign direct investment, investment management, and structured transactions (including Islamic finance). In addition, Ayman taught on transactional Islamic law and international finance law at George Washington University Law School (Washington, DC); Bocconi University (Milan, Italy), and Sorbonne University (Abu Dhabi). He is also a member of Morgan Lewis's International Leadership Team, is serving a three-year term on the firm's Advisory Board, is the co-chair of the International Bar Association's Arab Regional Forum, and is a member of the Young Presidents Organization.

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Mark Gilligan focuses his practice on corporate and commercial law. He advises private and institutional clients on a variety of commercial transactions and arrangements, including corporate structuring, joint ventures, mergers and acquisitions, private equity, and venture capital transactions. Having worked in both local and international law firms over the course of several years in the United Arab Emirates, Mark has the technical ability and practical understanding of the legal landscape in the UAE to provide efficient, effective legal advice. He is admitted to practice in England & Wales.

Mark utilizes his common law background to counsel clients with respect to the legislative framework and structuring options offered by the Abu Dhabi Global Market (ADGM) and Dubai International Financial Center (DIFC). He has represented many institutional and sovereign investment clients with respect to structuring of their international transactional platforms through the ADGM. Mark also advises on the legislative and regulatory considerations and alternatives applicable when operating in the UAE marketplace, including the corporate formation process both in the UAE and its Free Zones.

Throughout his career in the UAE, Mark has developed working relationships with many UAE regulatory agencies, including the ADGM Registration Authority and the Financial Services Regulatory Authority as well as the Dubai Financial Services Authority and Emirates Securities and Commodities Authority (SCA). He regularly assists clients in navigating the regulatory regimes applicable to private equity transactions, fund placement and establishment, and investment management activities in the UAE.

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Bill Nash, the managing partner of the Abu Dhabi office and member of the firm's International Leadership Team, has been resident in Abu Dhabi since 2008 and previously lived in Riyadh, Saudi Arabia. He advises regional and global clients on a variety of corporate and business law matters, focusing on private investment funds, international transactions and joint ventures, and general corporate counseling. He also advises Middle East financial institutions on the application of US anti-money, laundering sanctions, and know-your-customer laws and regulations. He is admitted to practice in the District of Columbia and New York.

Bill represents institutional investors, including sovereign wealth funds, corporate groups, and family offices, in connection with their global investment activities, including establishing and maintaining customized investment platforms, reviewing and negotiating investments in private investment funds, and drafting and negotiating investment management and other commercial agreements. He works with clients throughout the Middle East, including banks, other financial institutions, and private companies on a variety of company formation, compliance, and regulatory matters.

Bill teaches international investment law and acts as a thesis advisor as part of the International Business Law Master's Degree Program at the Paris-Sorbonne University in Abu Dhabi and is a regular speaker on investing in the Middle East and in the United States. He is a founding member of UNHCR's Middle East and North Africa (MENA) Sustainability Board and an active member of the US-UAE Business Council and the American Chamber of Commerce in Abu Dhabi.

Before joining Morgan Lewis, Bill was the coordinator of the MENA practice and the managing partner of the Abu Dhabi office of another global law firm. He previously practiced law in the asset management group of another global law firm, focusing on advising private investment fund sponsors on the structuring and offering of US and offshore investment funds and fund regulatory, trading, and operational matters.

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Jedd H. Wider focuses on global private investment funds and managed accounts, particularly global hedge, private equity, secondary, and venture capital funds. As co-leader of the global hedge funds practice, he represents leading financial institutions, fund managers, and institutional investors in their roles as fund sponsors, placement agents, and investment entities. He assists clients through all stages of product development and capital raising as well as customized arrangements, seed and lead investor arrangements, and joint ventures. He specializes in all aspects of secondary transactions, and complex financial structurings.

Jedd concentrates on all aspects of bespoke fund products and arrangements including funds of one and managed accounts and regularly advises clients on all aspects of regulatory compliance.

Members of the international media often seek out Jedd for his views on the hedge fund and private equity fund industries and capital markets. His analysis can be found in US and international publications, including The Wall Street Journal, The Economist, and Financial Times, as well as on television networks such as Bloomberg and CNN.

Jedd lectures and serves as a panelist on private investment fund topics for trade programs and organizations around the world. He has delivered speeches and presentations to numerous private fund conferences such as the Hedge Fund Institutional Forum, Dow Jones Private Equity Analyst Limited Partners Summit, Endowments & Foundations Roundtable, Association of Life Insurance Counsel, National Association of Public Pension Fund Attorneys (NAPPA), West Legalworks, InfoVest21 Hedge Fund Conference, the Annual Euromoney Summit of European Hedge Funds in London, Capital Roundtable Fund Conferences, the Annual International Conference on Private Investment Funds in London, the Wharton Private Equity and Venture Capital Conference, the On Point Investors and Hedge Fund Risk Summit, and the Lazard Capital Markets Hedge Fund Conference.

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