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Offering of Hong Kong Domiciled Funds in the Abu Dhabi Global Market

I. Overview of asset and wealth management industry in the Abu Dhabi Global Market

Market landscape

1. Abu Dhabi Global Market (“**ADGM**”) is a financial free zone in the emirate of Abu Dhabi [ie, part of the federation of the United Arab Emirates (“**UAE**”)] with its own civil and commercial laws.
2. The regulator of the ADGM, Financial Services Regulatory Authority (“**FSRA**”), is committed to operating a fair, efficient and responsive regulatory environment for its market participants and stakeholders from both the UAE and other international markets. In particular, the FSRA is responsible for admission and supervision of capital market intermediaries such as fund managers and investment advisers. It also regulates the offering of securities, including units of collective investment funds, within the ADGM.
3. The offer of securities, including units of collective investment funds, to investors in the UAE is regulated by the federal regulator, the Securities and Commodities Authority (“**SCA**”).
4. Two broad categories of funds are offered pursuant to the ADGM’s fund regime. They are Domestic Funds (funds established and domiciled in the ADGM) and Foreign Funds (funds that do not meet the Domestic Fund criteria).
5. The investors in the ADGM are mostly professional clients.

Regulatory regime for funds in the ADGM

6. There are three types of Domestic Funds in the ADGM, namely Public Funds¹, Exempt Funds² and Qualified Investor Funds³. Only Public Funds can be marketed to retail clients, while Exempt Funds and Qualified Investor Funds can be marketed to professional clients⁴ only.

¹ A Domestic Fund is a Public Fund if (a) some or all of its units are offered to investors by way of a public offer; or (b) its unitholders include retail clients.

² 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 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.

³ 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 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.

⁴ There are two kinds of professional clients – “deemed” professional clients (eg, a supranational organisation whose members are either countries, central banks or national monetary authorities, a collective investment fund or a regulated pension fund, etc) and “assessed” professional clients (ie, those assessed by FSRA regulated firms to be professional clients eg, possessing the knowledge and experience to understand the type of investment or financial service being offered and having net assets of US\$1 million).

7. As of 18 March 2024, there was 1 Public Fund, 42 Exempt Funds and 68 Qualified Investor Funds according to the FSRA public register⁵. Set out below are some key features of the regulatory regime for Domestic Funds:
- **Public Funds** – An application for the registration of a Public Fund must be made to the FSRA by the fund manager (or the trustee and the fund manager in the case of an investment trust). The fund manager shall produce a prospectus in accordance with the requirements as set out in the Fund Rules⁶ and file a copy of the prospectus with the FSRA for review and approval by the FSRA prior to registration. Public Funds receive a higher level of regulatory scrutiny.
 - **Exempt Funds and Qualified Investor Funds** – The fund manager of an Exempt Fund or a Qualified Investor Fund shall notify the FSRA at least 14 days prior to the initial offer to issue units in the fund and, in the case of a close-ended fund, any subsequent offer to issue units in the fund. The fund manager shall produce a prospectus in accordance with the requirements in the Funds Rules. They receive a lower level of regulatory scrutiny compared to Public Funds.
8. To establish and manage Domestic Funds in the ADGM, the fund manager must be:
- (a) a domestic fund manager authorised by the FSRA under its Financial Services Permission to conduct the regulated activity of managing a collective investment fund; or
 - (b) a foreign fund manager who is subject to regulation by, or registration with, a financial services regulator in a recognised jurisdiction⁷ or a jurisdiction otherwise acceptable to the FSRA and other requirements as set out in the Fund Rules. The foreign fund manager must also (i) subject itself to the ADGM laws and regulations and the jurisdiction of the ADGM Courts relating to its activities in managing the Domestic Fund; and (ii) appoint an FSRA-licensed fund administrator or a trustee before commencing the management of the Domestic Fund. **Hong Kong is a recognised jurisdiction.** It is understood that there is limited appetite for foreign fund managers of Domestic Funds and any entity wishing to utilise this route should seek appropriate legal advice. It should also be noted that a foreign fund manager of a Domestic Fund does not possess a Financial Service Permission granted by the FSRA and may not promote the fund within the ADGM nor will it be able to passport the fund to the wider UAE market. Such fund would still rely upon promotion by licensed persons in such jurisdictions.
9. The regulated activity of managing assets of Domestic Funds can be delegated to a service provider who is:
- (a) a person authorised by the FSRA to carry on the regulated activity of managing assets; and

⁵ FSRA public register <https://www.adgm.com/doing-business/financial-services-regulatory-authority/fsra-public-register/>

⁶ "Fund Rules" is the main reference concerning funds rules and regulations of FSRA.

⁷ Appendix 8 to the Funds Rules set out the recognized jurisdiction list.

- (b) a person who is authorised by, or registered with, a financial services regulator in a Zone 1 jurisdiction or recognised jurisdiction (**both Zone 1 and recognised jurisdictions include Hong Kong**) to carry on an equivalent activity in that jurisdiction.
10. **FSRA's Fund Rules apply additional requirements concerning the establishment and management of a Domestic Fund by a foreign fund manager. Interested Hong Kong fund managers seeking to establish a Domestic Fund in ADGM are encouraged to contact the FSRA directly.**

II. Offering of Foreign Funds in ADGM

What are the requirements for Foreign Funds (such as Hong Kong funds) to be marketed in ADGM?

11. Any firm that holds a licence by the FSRA for advising on investments and arranging investments in respect of units in a collective investment fund may market and sell the units of a Foreign Fund (eg, Hong Kong domiciled funds) in or from the ADGM, provided that:
- (a) it notifies the FSRA within 30 days of the commencement of the marketing activity;
 - (b) it does not sell units of the Foreign Fund to a retail client unless it is permitted to deal with retail clients and the foreign fund can be sold to retail clients in its home jurisdiction; and
 - (c) certain prospectus requirements⁸ for the Foreign Fund are met.
12. Given that the FSRA regulates and supervises the FSRA-licensed firms that market the Foreign Funds in or from the ADGM, the Foreign Funds and their managers do not require registration or approval from the FSRA. However, the FSRA-licensed firms need to provide notification to the FSRA regarding the Foreign Funds.

What are the possible routes for Hong Kong fund managers to offer their Hong Kong domiciled exchange-traded funds (ETFs) in the ADGM?

13. There is no local exchange within the ADGM. Hong Kong domiciled ETFs that make use of the Foreign Fund regime discussed in paragraphs [11-12] above may be marketed by FSRA-licensed firms in the ADGM.

⁸ For example, the prospectus of a Foreign Fund must contain in a prominent position, or have attached to it, information including a statement that clearly describes the foreign jurisdiction and the legislation in that jurisdiction that applies to the Foreign Fund, and the name of the relevant Financial Services Regulator in that jurisdiction.

III. Access to investors in the mainland UAE⁹ market via ADGM

The UAE-wide Passporting Regime for Funds (“UAE Passporting Regime”)

What is it?

14. In 2019, the Securities and Commodities Authority (“**SCA**”) of the UAE, Dubai Financial Services Authority (“**DFSA**”) of the Dubai International Financial Centre (“**DIFC**”), and the FSRA of the ADGM agreed on a “Protocol” regarding co-ordinated supervision of the marketing and selling of units of domestic funds within the UAE. The Protocol sets out a common regulatory framework which is implemented by each of the regulators, including notification and registration procedures, allowing funds passporting between any of the ADGM, DIFC and mainland UAE. The Protocol is codified via the Fund Passporting Rules of the ADGM and of mainland UAE, as well as the Fund Protocol Rules of the DIFC.

How does it work?

15. Under the UAE Passporting Regime, upon completion of a notification and registration procedure in its jurisdiction of establishment or domiciliation (“**home jurisdiction**”), a collective investment fund (as defined by the FSRA or the DFSA) or an investment fund (as defined by the SCA) that is established or domiciled in the UAE (“**domestic fund**”) can be promoted in the other jurisdictions (“**host jurisdictions**”) without the need to obtain additional authorisation.
16. As of 21 February 2024, there were 12 outgoing passported funds and 5 incoming passported funds under the UAE Funds Passporting Regime on the public register of the FSRA. Only 1 outgoing passported fund is a public fund, and the rest of the outgoing passported funds and all incoming passported funds are private funds.

Who does the regime apply to?

17. The Passporting Regime applies to fund managers and domestic funds, agents or other licensed persons that are: (a) established or domiciled in one of the three aforementioned jurisdictions; (b) authorised by the financial authority responsible for regulating the domestic fund, or, in relation to a fund manager, in the jurisdiction where the domestic fund is established or domiciled (“**home regulator**”); and (c) promoting a passported fund in or from a jurisdiction. Fund managers, agents and other licensed persons should ensure that they are appropriately authorised by their home regulator to conduct the applicable activity for the passported fund in the home jurisdiction.

⁹ Refers to the United Arab Emirates excluding the financial free zones of Abu Dhabi Global Market and Dubai International Financial Centre.

What needs to be done to benefit from the regime?

18. Fund managers, agents and other licensed persons should ensure that they are appropriately authorised by their home regulator in the UAE to conduct the applicable activity before seeking to passport to host jurisdictions. In addition, they need to pay the applicable fees to the home regulator: (a) a notification fee and (b) an annual fee.
19. Following notification, the home regulator and host regulator(s) will update their respective registers of passported funds to recognise that the domestic fund qualifies as a “passport fund”.
20. If the passported fund is a private fund, it can only be promoted to “qualified investors” (in the ADGM, DIFC and mainland UAE), pursuant to the applicable definitions in the relevant passporting rules. On the contrary, a passported fund that is a public fund may be offered to any person in the host jurisdiction(s).
21. Under the UAE Passporting Regime, the fund manager must notify the home regulator of material events in accordance with applicable legislation in the home jurisdiction, such as changes to the fund manager, agents, licensed persons or any other material service providers. The home regulators may exercise supervisory and investigatory powers, which include de-registering the passported fund of its own volition, at the request of the fund manager, on commencement of winding up, or at the request of the host jurisdiction regulator.
22. Passported funds marketed to retail clients in the UAE (outside of the ADGM and the DIFC) must employ the services of a custodian licensed by the SCA to provide custodial services in the UAE.

Ongoing compliance

23. The passporting rules in each home jurisdiction supplement the existing collective investment regimes in that home jurisdiction, which continue to apply to the passported fund.
24. Fund managers, agents, and other licensed persons performing any activities in connection with the promotion of a passported fund need to always comply with the legislation applicable to them in the jurisdiction where they are domiciled.

How can Hong Kong domiciled funds avail themselves of the UAE Passporting Regime?

25. Hong Kong domiciled funds (whether public or private funds) can access investors in the wider UAE market by using a master-feeder structure. That is, a Hong Kong fund manager may partner with a local ADGM manager to set up a local feeder fund in the ADGM (managed by the local ADGM manager) to offer the Hong Kong domiciled fund (as the master fund) under a master feeder structure to investors in the wider UAE market via the UAE Passporting Regime outlined above.



IV. Other information sources

26. You may also find further helpful information at:

- www.adgm.com
- [The ADGM Legal Framework](#)
- [FSRA LEGISLATION | Rulebook \(thomsonreuters.com\)](https://www.thomsonreuters.com)
- [Wealth and Asset Management \(adgm.com\)](http://adgm.com)

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