



**Dubai International
Financial Centre**

EMPLOYMENT REGULATIONS

(Qualifying Scheme requirements under Article 66 of the Law)

In force on [01 January 2020]

Consultation Draft

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The Board of Directors of the DIFCA, in the exercise of the powers conferred on them by Article 66(8) of the Employment Law DIFC Law No. 2 of 2019, hereby make these Regulations.

1. INTRODUCTION

1.1 Application and interpretation

1.1.1 These Regulations apply to:

- (a) Employers and Employees;
- (b) any person who is an Operator, Administrator, Investment Adviser of a Qualifying Scheme; and
- (c) any other person to whom the Law applies.

1.1.2 Defined terms are identified throughout these Regulations by the capitalisation of the initial letter of a word or phrase. Where capitalisation of the initial letter is not used, an expression has its natural meaning.

1.1.3 The following defined terms have the meaning given below:

Defined Term	Definition
Administrator	a person appointed to act as an administrator of a Qualifying Scheme.
AML Requirements	any applicable anti-money laundering or counter-terrorist financing requirements imposed on functionaries or service providers to a Qualifying Scheme in accordance with applicable law.
Benefits	means in respect of each Member the assets held in a Member Account for and on behalf of a Member in accordance with the Qualifying Scheme Rules.
DFSA	the Dubai Financial Services Authority.
DIFC Trust	a trust established in the DIFC pursuant to the Trust Law, DIFC Law No. 4 of 2018.
Eligible Custodian	has the meaning set forth in the GLO Module of the DFSA rulebook.
Fund Manager	a manager of any one or more funds comprising the Investment Platform.
Investment Adviser	an investment adviser appointed by an Operator to advise it in respect of a Qualifying Scheme's Investment Platform, inclusive of its composition, performance, governance and fitness for purpose in accordance with the Qualifying Scheme's objectives.
Investment Platform	any one or more funds, each managed by a Fund Manager, into which Member Contributions will be invested into under the Qualifying Scheme.
Law	the Employment Law DIFC Law No. 2 of 2019.

Defined Term	Definition
Member	<ul style="list-style-type: none"> (i) an Employee for whom Member Contributions are made by a Participating Employer to a Qualifying Scheme under the Law; (ii) any individual, who is not defined as an Employee under the Law but is employed by, or in the service of, a Participating Employer, or its holding company, parent or branch, for whom the Employer wishes to make Member Contributions to a Qualifying Scheme; or (iii) any other individual permitted by an Operator to be a member of a Qualifying Scheme.
Member Account	an account maintained for a Member by the Operator in accordance with Regulation 4.2.
Member Contribution	<p>each contribution made by a Participating Employer on behalf of a Member into a Qualifying Scheme consisting of:</p> <ul style="list-style-type: none"> (a) Core Benefits; (b) any Voluntary Contribution; and (c) any other amount agreed to by the Operator.
Operator	a person appointed to operate a Qualifying Scheme.
Qualifying Scheme Rules	the rules, including any constitutive documents, by which a Qualifying Scheme is operated by its Operator.
Participating Employer	an Employer making Member Contributions to a Qualifying Scheme.
Recognised Jurisdiction	the DIFC, and any other jurisdiction determined by the Board of Directors of the DIFCA to be a recognised jurisdiction after consulting with the DFSA pursuant to Regulation 2.1.3.
Recognised Regulator	the DFSA, and any other financial services regulator in a Recognised Jurisdiction, as approved by the Board of Directors of the DIFC after consulting with the DFSA pursuant to Regulation 2.1.2.
Scheme Material	any information in respect of a Qualifying Scheme, excluding the Qualifying Scheme Rules but including, without limitation, guidance notes, leaflets, brochures, manuals, handbooks, and forms (in any format, including electronic format) that may be prepared and amended from time to time by or on behalf of a Participating Employer, the Operator, the Administrator, a Fund Manager or a Third Party Service Provider which is made available to a Member for the purpose of providing the Member with information on the operation or management of a Qualifying Scheme and the investment options available thereunder.
Supervisory Body	the supervisory body of a Qualifying Scheme, as set out in more detail in Regulation 2.2.

Defined Term	Definition
Third Party Service Provider	any functionary or platform involved in providing administrative, operational or technical services or support to a Qualifying Scheme.
Trust Law	the Trust Law DIFC Law No. 4 of 2018
Voluntary Contribution	any contribution a Member decides on a voluntary basis to make to a Qualifying Scheme in the manner provided in Article 66(11) of the Law.

1.1.4 A term that is used in these Regulations which does not appear in the table above and is defined in the Law shall have in these Regulations, the same meaning as it has in the Law.

1.1.5 The Rules of interpretation in the Law apply to these Regulations.

1.2 References to writing

1.2.1 If a provision in these Regulations refers to a communication, notice, agreement or other document ‘in writing’ then, unless the contrary intention appears, it means in legible form and capable of being reproduced on paper, irrespective of the medium used. Expressions related to writing must be interpreted accordingly.

1.2.2 This does not affect any other legal requirements which may apply in relation to the form or manner of executing a document or agreement.

2. QUALIFYING SCHEME REQUIREMENTS

2.1 Qualifying requirements

2.1.1 In order to qualify as a Qualifying Scheme, the scheme or plan must:

- (a) be an Employee Money Purchase Scheme;
- (b) make provision for the payment of contributions by an Employer, at no less than the rate stipulated in Article 66(6) and 66(7) of the Law in respect of Employees entitled to Core Benefits;
- (c) make provision for the payment of Benefits in the event of a Member, or their legal successor in title, being entitled to withdraw Benefits under Regulations 3.1.3 and 3.1.4;
- (d) contain stipulations which require that each of the Operator, Administrator, Investment Adviser and Fund Manager of the Scheme in question be regulated by a Recognised Regulator; and
- (e) be a DIFC Trust, if the Qualifying Scheme is established in the DIFC.

2.1.2 Where the Board of the Directors of the DIFCA decides to provide a Certificate of Compliance in respect of a Qualifying Scheme under Regulation 8, where its Operator, Administrator, Investment Adviser or any Fund Manager is regulated by a Recognised Regulator other than the DFSA, it shall only do so after it has consulted with the DFSA.

2.1.3 A Certificate of Compliance does not authorise a person to provide financial services.

2.2 Supervisory Body

2.2.1 A Qualifying Scheme must have a Supervisory Body that oversees and reviews the governance and non-regulated duties of an Operator in respect of a Qualifying Scheme as indicated in the Qualifying Scheme Rules.

2.2.2 The Supervisory Body shall have appointment and removal powers in respect of the Operator in accordance with the requirements of the Qualifying Scheme Rules.

2.2.3 The Supervisory Body must be constituted in a manner which:

- (a) considers and protects the interests of Members;
- (b) ensures that no single party has the majority of overall votes in its decision making process;
- (c) makes provision for representation by Members, Participating Employers and be chaired by a suitably qualified independent chairman;
- (d) ensures proper governance and non-regulatory oversight in respect of a Qualifying Scheme; and
- (e) applies high standards of integrity and fair dealing, due skill, care and diligence, and high standards of corporate governance in respect of its duties to a Qualifying Scheme.

2.2.4 Under no circumstances shall the Supervisory Body, or any member thereof, perform any service or function that is a financial service or a fiduciary function, whether it is in relation to the Qualifying Scheme, or in respect of any functionary or service provider to the Qualifying Scheme.

2.3 Operator requirements

2.3.1 The Operator of a Qualifying Scheme shall be responsible for the overall management operation of the Qualifying Scheme in accordance with its Qualifying Scheme Rules and any applicable regulations.

2.3.2 Without derogating from the generality of Regulation 2.3.1, the Operator shall be responsible for:

- (a) establishing the Investment Platform and the funds placed on it;
- (b) selecting and appointing the Administrator, the Investment Adviser and the Fund Managers, whose funds shall be placed on the Investment Platform, on behalf of the Qualifying Scheme; and
- (c) overseeing the performance of the Administrator, Investment Adviser, Fund Managers and Third Party Service Providers to the Qualifying Scheme;
- (d) ensuring that all Member Contributions and the assets in a Member Account are properly accounted for;
- (e) ensuring that an Investment Platform that has the range of investment options and risk profiles prescribed by the Qualifying Scheme Rules, inclusive of a Shari'a compliant investment optionality; and
- (f) reporting to any relevant regulator and the Supervisory in respect of the above,

in accordance with the requirements of the Qualifying Scheme Rules and applicable regulations.

2.3.3 The Operator shall be required to meet with the Supervisory Body at least four (4) times per annum, at which meetings it shall produce:

- (a) a report in respect of the management and operation of the Qualifying Scheme, including operational statistics and information relating to the Qualifying Scheme as may be reasonably required by the Supervisory Body from time-to-time;
- (b) the most recent financial statements relating to the Qualifying Scheme;
- (c) the reports provided to it by the Administrator and Investment Adviser in respect of the Qualifying Scheme;
- (d) a review of the Qualifying Scheme's investment objectives, its fitness for purpose, and the investment performance of the Investment Platform;
- (e) details of its fulfilment of the corporate governance requirements set out in the Qualifying Scheme Rules; and
- (f) the details of any communications exchanged and reports filed with relevant regulators.

2.4 Administrator requirements

2.4.1 The Administrator shall be responsible (without derogating from the primary obligations of the Operator in this regard) for, inter alia, the following:

- (a) the technical, operational and administrative functions of a Qualifying Scheme, including:
 - (i) collecting and processing all Member Contributions and distributing them to the relevant funds on the Investment Platform;
 - (ii) ensuring that all Qualifying Scheme assets are held by an Eligible Custodian;
 - (iii) performing reconciliations in respect of Qualifying Scheme assets; and
 - (iv) making payments to Members;

- (b) reporting to Members, the Operator, and any relevant regulator in respect of the Qualifying Scheme, including the details of:
 - (i) Member Contributions;
 - (ii) their Member Account and the Benefits held in it;
 - (iii) the choices to be offered on the Investment Platform;
 - (iv) providing Members with Scheme Material; and
 - (v) the performance of the funds on the Investment Platform;
- (c) providing Member communications and support services, inclusive of a helpline and complaints handling services for Members and Participating Employees; and
- (d) overseeing the operation of the Investment Platform and the functions of Third Party Service Providers.

2.5 Investment Adviser requirements

2.5.1 The Investment Adviser shall be responsible for;

- (a) assisting an Operator in the compilation, establishment and ongoing maintenance of an Investment Platform;
- (b) advising an Operator in respect of the funds that meet the prescribed range of investment options and risk profiles set out in the relevant Qualifying Scheme Rules;
- (c) overseeing the performance of the Fund Managers who manages funds on an Investment Platform;
- (d) measuring the performance of each of the funds on an Investment Platform;
- (e) considering the fitness for purpose of investment options and risk parameters proposed for an Investment Platform by the Qualifying Scheme Rules in line with its objectives; and
- (f) reporting to an Operator in respect of the above.

2.5.2 The Investment Adviser function in respect of a Qualifying Scheme may be an internal or affiliated function of an Administrator, provided that:

- (a) the Investment Adviser function shall be separately regulated; and
- (b) sufficient measures are taken in accordance with applicable regulations to ensure that conflicts of interest are properly disclosed and managed.

2.6 Investment Platform requirements

2.6.1 Each fund on an Investment Platform shall be established and regulated in a Recognised Jurisdiction.

2.6.2 The Investment Platform of a Qualified Scheme may be an internal or affiliated function of the Administrator, provided that:

- (a) the Fund Manager function shall be separately regulated; and
- (b) sufficient measures are taken in accordance with applicable regulations to ensure that conflicts of interest are properly disclosed and managed.

3. MEMBERSHIP**3.1 Membership requirements**

3.1.1 An Employee of a Participating Employer must become a Member of a Qualifying Scheme on the relevant Qualifying Scheme Commencement Date for that Employee.

3.1.2 A Member must cease their membership of a Qualifying Plan when all the Benefits payable under the Qualifying Scheme Rules have been paid.

3.1.3 Subject to Regulation 3.1.4, Benefits shall be paid to a Member from a Qualifying Scheme on the first to occur of:

- (a) the termination of the Member's employment with a Participating Employer; or
- (b) the Member reaching sixty five (65) years of age,

unless the Qualifying Scheme Rules permit the Member to elect, or otherwise require, that payment of Benefits be deferred until a later date.

3.1.4 The provisions of Regulation 3.1.3 shall not apply to any Voluntary Contributions, which shall be capable of withdrawal as Benefits from a Qualifying Scheme in a manner permitted in the Qualifying Scheme Rules.

3.2 Member Accounts

3.2.1 The Qualifying Scheme Rules must ensure that a Member Account is maintained for each Member to enable an Operator to derive and reflect the value of the reference assets held for the time being by the Operator under a Qualifying Scheme for the purpose of providing Benefits for a Member pursuant to the provisions of Regulation 3.1.

3.2.2 A Member Account must be credited with:

- (a) Member Contributions paid to a Qualifying Plan for a Member;
- (b) any other sums paid to a Qualifying Scheme for a Member's benefit;
- (c) positive investment return reflected in the price for the units in relation to the assets representing a Member Account; and
- (d) any positive adjustments considered by an Operator to be necessary in the circumstances in accordance with applicable Qualifying Scheme Rules.

3.2.3 A Member Account must be debited with:

- (a) amounts paid to or for a Member as Benefits;
- (b) negative investment return in relation to the assets representing a Member Account;
- (c) amounts representing charges in relation to a Member's share of fees, expenses or indemnified losses chargeable under the Qualifying Scheme Rules;
- (d) amounts payable to a Member's Participating Employer under the Qualifying Scheme Rules or falling into any Qualifying Plan reserve; and
- (e) any negative adjustments considered by an Operator to be necessary in the circumstances, in accordance with applicable Qualifying Scheme Rules.

3.2.3 Entries reflecting amounts credited or debited in respect of a Member Account shall be made to a Member

Account with effect from the same day as the underlying transaction to which they relate.

- 3.2.4 The Qualifying Scheme Rules must indicate the manner in which the values shown in the Member's Account in relation to units in funds on an Investment Platform are calculated by reference to the price for such units at the time the entry is made in the Member's Account.

4. CONTRIBUTIONS**4.1 Member Contribution requirements**

- 4.1.1 The Qualifying Scheme Rules must make provision of for the payment of Member Contributions into a Qualifying Scheme.
- 4.1.2 Where a Member is an Employee, the amount so contributed by a Participating Employee shall be at least equal to the Core Benefits of the Member.
- 4.1.3 Where a Member is not an Employee, the amount so contributed by a Participating Employee shall be as agreed with the Member.

4.2 Participating Employer duties

- 4.2.1 The Qualifying Scheme Rules must make provision for Participating Employers' obligations in respect of:
 - (a) assisting the Operator and the Administrator in respect of any requests related to AML Requirements;
 - (b) paying Employer Contributions in accordance with Regulation 4.1;
 - (c) deducting Member Contributions from a Member's Remuneration and remitting them to the account designated by the Operator for such purpose;
 - (d) providing information to an Operator regarding its Members including, where relevant, their employment commencement dates and each Member's Basic Monthly Wage;
 - (e) notifying the Operator on a timely basis of any change in a Member's Monthly Wage;
 - (f) notifying an Operator on a timely basis when it becomes aware that a Member's employment has ceased.

4.3 Non-payment of Member Contributions

- 4.3.1 The Qualifying Scheme Rules must make provision for:
 - (a) follow-up procedures with Participating Employers in case of any non-performance of their obligations under Regulation 4.2.1; and
 - (b) notifying the Board of Directors of the DIFCA in respect of such non-performance for the purpose of issuing a fine pursuant to Article 66(13) of the Law.

5. PAYMENT OF BENEFITS**5.1 Payment of Benefits**

- 5.1.1 The Qualifying Scheme Rules must make provision for the payment of Benefits in the event of a Member, or their legal successor in title, being entitled to withdraw Benefits under Regulation 3.1.3 or Regulation 3.1.4.
- 5.1.2 The amount payable under Regulation 5.1.1 shall be payable to or at the direction of a Member, unless the withdrawal entitlement occurs by reason of the Member's death, in which case the Qualifying Scheme Rules must provide to whom such Benefits shall be paid.

6. INVESTMENT REQUIREMENTS**6.1 Investment directions**

6.1.1 The Qualifying Scheme Rules must make provision for the investment of Member Contributions units in funds on the Investment Platform in accordance with investment directions provided, either:

- (a) in accordance with the Member's chosen investment and risk profile, which may be changed over time; or
- (b) where a Member has not provided investment directions, by reference to a default investment profile an Operator has constructed with the assistance of an Investment Adviser.

6.1.2 The Qualifying Scheme Rules must also make provision for circumstances where a Member, or in the opinion of an Operator:

- (a) is incapable of managing their affairs (without any person being validly appointed as attorney to do so on his or her behalf); or
- (b) cannot be traced,

and what the powers and discretions of an Operator will be in respect of varying a Member's investment choices in such circumstances.

6.2 Information to be provided to Members

6.2.1 The Qualifying Scheme Rules shall provide for the following basic information to be made available to each Member at the time that they become a Member (or as soon as reasonably practicable thereafter):

- (a) a summary of the Qualifying Scheme Rules applying to the Member in relation to Employer Contributions and Voluntary Contribution requirements;
- (b) a statement of their options under the Qualifying Plan from time to time;
- (c) the details as to how investment directions and switching directions are to be exercised;
- (d) any options in relation to nominating beneficiaries of Benefits;
- (e) any option to defer the withdrawal of Benefits beyond a Termination Date.
- (f) a statement as to how information will or may be provided to the Member during the period of their membership to the Qualifying Scheme; and
- (g) a statement of how the Member may contact the Operator, the Administrator of the Qualifying Scheme, and the procedure for making complaints about the administration of the Qualifying Scheme.

6.2.2 The Operator shall also be obliged to provide a Member with any updated information in respect of a Qualifying Scheme referred to in Regulation 6.2.1 as soon as reasonably practicable.

6.2.3 The Operator shall supply or make available to the Member, within one (1) month of receipt of a written request by a Member, a copy of each of the constitutive documents, Qualifying Scheme Rules, or both, and any participation agreement or deed in relation to the Member's participation in the Qualifying Scheme at no charge.

6.2.4 As soon as reasonably practicable after each anniversary of a Qualifying Scheme Commencement Date, the

Operator shall supply each Member with a statement showing the amount of their accrued Benefits at that date.

- 6.2.4 Within two (2) months of presenting its annual report and accounts to the Supervisory Body, the Operator shall provide each Member with a summary of the annual report and accounts and with information about how the Member may receive a copy.

7. QUALIFYING SCHEME FEES AND CHARGES

7.1 Investment charges and fee

- 7.1.1 A Qualifying Scheme may not charge any initial charge or front-end fees in respect of the price at which units are purchased in funds on the Investment Platform and all Member Contributions must be reflected in the value of units acquired, subject to:

- (a) applicable bank charges; and
- (b) any bid/offer spread for purchasing such units.

- 7.1.2 Subject to any applicable bank charges, no rear-end, exit fee or penalties for withdrawal of Benefits may be levied by a Qualifying Scheme when units are disinvested for such purpose.

- 7.1.3 Any fund management, or related fund, administration and trustee charges, for each of the funds on the Investment Platform must be levied by the Fund Managers on an Investment Platform out of funds under their management and must be reflected in the unit prices relevant to a Member Account.

7.2 Plan administration and fees

- 7.2.1 The Scheme Material of a Qualifying Scheme provided to a Member must clearly indicate:

- (a) the fees charged by the Operator, the Administrator, the Investment Adviser and (where paid for separately by the Qualifying Scheme) any Third Party Service Provider, as agreed from time to time with the Supervisory Body (in the case of the Operator), or the Operator in terms of all other functionaries and services providers to the Qualifying Scheme;
- (b) the charges, if any, for processing investment or switching directions by a Member;
- (c) the manner in which any of these fees are to be charged to Members' Accounts; and
- (d) the details of any indemnities provided by the Qualifying Scheme.

7.3 Disinvesting units towards fees and charges

- 7.3.1 Where an amount is chargeable to a Member's Account under Regulation 7.2.1, the Operator shall be authorised to disinvest such units in Funds held in a Member Account as are equal in aggregate to the amount being charged, less the amount of any uninvested cash then held for the Member in their absolute discretion.

8. APPLYING FOR A CERTIFICATE OF COMPLIANCE**8.1 Application process**

- 8.1.1 An Employer shall be required to obtain a Certificate of Compliance in respect of each Qualifying Scheme it pays Member Benefits to, and such Certificate of Compliance shall remain valid for as long as the Qualifying Scheme adhere to the requirements set out in these Regulations.
- 8.1.2 Employers must apply for a Certificate of Compliance in the manner and form prescribed by the Board of Directors of the DIFCA:
- (a) prior to 1 January 2020, in accordance with the time period prescribed by the Board of Directors of the DIFCA; and
 - (b) thereafter, within a time period of thirty (30) days prior to 1 January of each subsequent year, unless the circumstances in Regulation 8.1.3 apply.
- 8.1.3 Employers shall be under a duty to inform the Board of Directors of the DIFCA, in the form and manner prescribed, as soon as practicable in the event of a Qualifying Scheme no longer being compliant with these Regulations, as well as to submit (at the same time) an application for a Certificate of Compliance in respect of the replacement Qualifying Scheme that it shall continue to pay Member Benefits to.

8.2 Delegation

- 8.2.1 The Board of Directors of the DIFCA may delegate its powers and duties under these Regulations, provided that it is made in writing and specific in nature.