

Fund schemes in the QFC: options and key highlights

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This article discusses the available schemes and funds that may be established in the Qatar Financial Centre (‘QFC’). It sets out key highlights of the main differences between types of funds and their legal and regulatory requirements. This article also discusses the marketing and promotion of foreign funds in the QFC.

The QFC was established by the Government of Qatar in 2005 as an onshore business and financial centre with the objective of developing the market for financial services in the region by offering a regulatory infrastructure incorporating international best practices and standards based on English Common Law. The QFC allows 100 per cent ownership by foreign companies and all profits can be repatriated outside of Qatar. Alternatively, foreign ownership limits in Qatar formerly required a 51 per cent Qatari partner, though these limits have since been relaxed subject to certain conditions.

In 2019, investment funds in Qatar were valued at US\$19.6 billion in assets under management (‘AUM’), over half of which were managed by QFC-based investment managers.¹ Following the introduction of the exchange-traded funds (‘ETFs’) regime in the QFC, Amwal partnered with Doha Bank to launch Qatar’s first ETF – the QE Index ETF (‘QETF QD’), an equity fund tracking the largest and most liquid companies listed on the Qatar Stock Exchange (‘QSE’) and Masraf Al Rayan (managed by Al Rayan Investment) launched Qatar’s first Islamic ETF called the Al Rayan Qatar ETF (‘QATR’). The QFCRA also introduced amendments to its CIS rulebook to allow retail real estate funds, including real estate investment trusts (‘REITS’). This opens up opportunities for sponsors and investors to participate in the mega infrastructure projects in Qatar by establishing and investing in infrastructure funds offering the government an alternative source of project funding.

In addition, Qatar’s burgeoning shipping and aviation sectors could create opportunities for asset managers to launch domestic funds based on an investment strategy to acquire and lease these assets. Commodity funds are also an option for investing in physical gold, natural gas and oil or alternatively, in commodity indices or commodity futures contracts. Further, initiatives aimed at the private equity sector and the venture capital industry include the formation of funds with investment strategies to raise venture capital and seek angel investments for investing in Fintech and technology start-ups.

The available options for establishing a diversity of schemes and funds in the QFC evidence a dynamic and responsive regulatory environment that is focused on growth both in capital markets and private funds in Qatar.

Collective Investment Schemes

In 2010, the QFC Regulatory Authority, the main regulator of QFC funds ('QFCRA'), issued two separate rules to govern funds in the QFC:

- i. the Collective Investment Schemes Rules 2010 ('COLL'); and
- ii. the Private Placement Scheme Rules 2010 ('PRIV').

The QFC Financial Services Regulations define "collective investment schemes" as any arrangement the purpose of which is to enable persons taking part in the arrangement (participants) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of property or sums paid out of such profits or income. Typical of other jurisdictions in the region, QFC collective investment schemes must generally meet the following conditions:

1. the arrangement is made with respect to property of any description, including money, whether the participants become owners of the property or any part of it or otherwise; and
2. none of the participants have day-to-day control over the management of the property, whether or not they have the right to be consulted or give directions in respect of the property;

in relation to investment:

1. the contributions of the participants and the profits or income out of which payments to be made are pooled; or
2. the property is managed as a whole by or on behalf of the operator of the scheme

COLL provides that a person must not operate a collective investment scheme that is established in the QFC unless it is registered under COLL or PRIV.

Collective investment schemes may be established in the QFC in a number of legal forms which include:

- i. collective investment companies ('CIC');
- ii. collective investment partnerships ('CIP');
- iii. collective investment trusts ('CIT'); and
- iv. other legal forms permitted by the QFCRA.

Collective investment schemes governed under COLL consist of two categories:

- i. retail schemes; and
- ii. qualified investors schemes

As the name of the two different schemes suggests, the dividing line between them is the type of investors that may participate in the schemes. Only "qualified investors" are eligible to buy units in qualified investors schemes. A "qualified investor" is a person who is a business customer or a market counterparty of an authorised firm in relation to dealings in investments that consist of (or include) units in the scheme. Business customers and eligible counterparties are classified as follows:

Business customers include:

1. collective investment schemes;
2. a corporate body, a corporate body that has a holding company, a partnership or unincorporated association, all of which have or have had at any time during the previous two years, called-up share capital or net assets of at least QAR 18 million (approximately US\$5 million) (or its equivalent in any other currency at the relevant time) or an annual net turnover of at least QAR 30 million (approximately US\$8.2 million);
3. a trustee of a trust that has or has had at any time during the previous two years, assets of at least QAR

18 million (US\$5 million) (calculated as the total value of the cash and investments that form part of the trust's assets, without deducting its liabilities);

4. a customer classified as a business customer who:
 - i. has asked to be classified as a business customer;
 - ii. after a determination, the authorised firm is satisfied that the customer has not less than QAR 4 million (approximately US\$1.1 million) in net assets; and
 - iii. the authorised firm is satisfied that the customer has sufficient knowledge, experience and understanding of the relevant financial markets, products and transactions and their associated risks to justify the firm's dealing with such customers without the benefit of the retail protections.

Eligible counterparties are:

1. an authorised firm in the QFC;
2. a regulated financial institution;
3. an eligible clearing house or eligible exchange;
4. a government, government agency, or central bank or other national monetary authority, of any jurisdiction;
5. a state investment body, or a body charged with, or intervening in, the management of the public debt;
6. a supranational organisation, the members of which are jurisdictions, central banks or national monetary authorities.

A retail investor is neither a business customer nor a market counterparty and may not participate or buy units in qualified investors schemes. Qualified investors on the other hand, may participate in qualified investors schemes as well as retail schemes.

COLL imposes heightened protection requirements for retail investors schemes to protect the interests of retail investors who do not possess the same level of knowledge and expertise in relation to the financial markets and the risks of investment as qualified investors.

Set out below is a table outlining the general characteristics and main differences between the two categories of collective investment schemes that are established under COLL

Type of scheme	Eligible investors	Legal form	Level of regulation	Investment and borrowing restrictions
Retail scheme	Retail and qualified investors	CIC and CIP only	Intense level of regulation, based on the European Union Directive for Undertakings for Collective Investment Schemes in Transferable Securities (UCITS)	Concentration limits and borrowing is restricted to 10% only of the scheme's properties
Qualified investors scheme	Qualified investors only	Any legal form	Lighter level of regulation and oversight	No concentration limits and borrowing is allowed up to 100% of the scheme's properties

Particular types of funds

Property funds:

A property fund is a scheme that is dedicated to investments in immovable assets and in securities issued by corporations whose main activities are investing in immovable assets, where the operator of the fund has to appoint an independent valuator, whose role is to perform periodic valuations of the immovable assets.

The QFCRA imposes additional requirements for retail property funds. For example, 75 per cent of the gross asset value of a retail property fund must at all times be invested in at least three immovable assets that generate recurrent rental income. By contrast, qualified investors' property funds have no such investment limits. On borrowing limits, the operator of a retail property fund is obliged at all times to ensure that the fund's total borrowing does not exceed 50 per cent of the fund's gross asset value.

REITs:

Real estate investments trusts ("REITs") are retail property funds established in the QFC and have the following characteristics:

1. the fund must be a closed-ended fund
2. the fund is listed on the Qatar Stock Exchange or another regulated exchange;
3. the fund's constitutional document and prospectus state that:
 - i.
 - ii. the fund will not invest in vacant land;
 - iii. 75 per cent of the fund's assets will be invested in income-producing immovable assets, and the fund will distribute to unit holders at least 80 per cent of its audited annual net income, and
 - iv. the fund must provide a guarantee of the fund's income, covering the first five years of the fund's operation, from income-producing immovable assets.

Islamic funds:

Islamic funds, which are based on Sharia principles, may be established under COLL. Islamic funds must comply with additional requirements including:

1. the constitutional documents of the Islamic fund must include a statement that it is an Islamic fund and consequently that its entire business operations are conducted in accordance with the principles of Sharia and a statement providing the details of the Sharia supervisory board;
2. the operator of an Islamic fund must keep all financial accounts and statements of the fund in accordance with the accounting standards of the Accounting and Auditing Organisation for Islamic Financial Institutions; and
3. the operator of an Islamic fund must ensure that there is at all times a Sharia supervisory board for that there is at all times a Sharia supervisory board for the fund.

Master- feeder and fund in funds structures:

Feeder funds are funds established in the QFC and are dedicated to investments in another single scheme. The prospectus of feeder funds must include the following additional information:

1. a prominent risk warning to alert participants to the fact that they may be subject to higher fees arising from a layered investment structure; and
2. details of the fees arising at the level of the feeder fund itself and the scheme (or sub-scheme) to which its investments are dedicated.

Similar additional information is required to be added to the prospectus of a "fund in funds", which is a scheme that is dedicated to investments in two or more schemes or sub-schemes.

Private placement schemes

Private placement schemes are separately regulated under PRIV. Private placement schemes share the main characteristics and requirements of collective investment schemes. These funds, however, cannot be offered to the public. Instead, the units in these funds are offered exclusively to qualified investors not exceeding (at any time) 100 participants. Examples of private placement funds are hedge funds and private equity funds.

As discussed above, the level of regulatory requirements and QFCRA's oversight over different types of funds differ depending on the nature of the investors (participants). Given that private placement funds are directed to selected qualified investors, the degree of protection and regulatory requirements is more flexible than funds established under COLL. For example, all schemes registered under COLL must appoint an independent entity that is responsible for safeguarding the scheme's property to ensure (for example) that all of the scheme's property is properly accounted for and is clearly identified as the scheme's property, as well as overseeing the operator of the fund to ensure it is managing the scheme in accordance with requirements of COLL, the scheme's constitutional documents and the latest filed prospectus. Alternatively, schemes established under PRIV are not required to appoint an independent entity. Rather, private placement schemes are required to appoint an independent custodian, that is responsible to hold the property of the fund. It is important to note, however, that an independent custodian does not perform any oversight function on the operator of the fund as required under COLL.

Non-QFC schemes

A non-QFC scheme is a scheme that is not established in the QFC. COLL allows firms authorised in the QFC to promote and offer units in non-QFC schemes. However, COLL imposes a number of requirements to be satisfied by such firms in order to be able to promote non-QFC schemes. For example, a QFC authorised firm may not approve or promote a non-QFC scheme unless the scheme has a written constitution and a written prospectus. The authorised firm must provide a prospectus and a complying disclaimer to a customer before the customer becomes contractually bound to the sale of the collective investment scheme units.

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Similar to QFC schemes, non-QFC schemes are also subject to further and additional requirements based on the type of investors eligible to invest in the scheme. Generally, a QFC authorised firm may only promote non-QFC schemes to qualified investors. Offering units in a non-QFC scheme may not be approved by a QFC authorised firm if it is addressed to or likely to be disseminated to a retail investor. The QFCRA may declare certain schemes to be non-QFC retail schemes, which may be promoted to retail investors. In such cases, a non-QFC retail scheme would be declared in a written notice published by the QFCRA on an approved website. However, in the absence of such a declaration, authorised firms may only promote non-QFC schemes to qualified investors.

A QFC authorised firm is also subject to certain disclosure and record keeping requirements in relation to making promotions and conducting investment activities “in or from” the QFC related to units in non-QFC schemes. Such requirements include filing quarterly returns to the QFCRA containing the basic information about the non-QFC scheme, and retaining copies of the prospectus, the complying disclaimer, and any version of such documents for at least six years from the date that such documents were made available to the customers.

Conclusion

The funds regime in the QFC is well established and provides various options of fund types and legal forms to be set up in the QFC. As stated above QFC schemes may be retail investors schemes, qualified investors schemes or private placement schemes. Each type of scheme is subject to different levels of regulatory requirements, depending on the type of investors and their risk profiles. The QFC also addresses the opportunity to market and promote non-QFC schemes in the QFC by QFC authorised firms. Subject to certain requirements, authorised firms in the QFC may promote and offer units in collective investment schemes that are established in foreign jurisdictions (outside of the QFC).

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