

Appendix 7

In this appendix underlining indicates new text and striking through indicates deleted text.



The DFSA Rulebook

Islamic Finance Rules

(IFR)

2 ISLAMIC FINANCE

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2.4 Islamic financial instruments and products

Guidance

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Profit Sharing Investment Accounts (PSIAs)

4. PSIAs do not fall within the GEN definitions of Investments. They are contractual arrangements under which ~~Islamic banks~~ Authorised Firms invest clients' funds, often (though not always) on a pooled basis, and are generally treated by the ~~bank firm~~ as off balance sheet. They are generally structured under Mudaraba, so that the investor in principle bears the full investment risk. Although PSIAs have the characteristics of a Collective Investment Fund, under an express exclusion provided under CIR Rule 2.1.13, they are not treated as such. Instead, Managing a PSIA is a distinct Financial Service as defined in GEN Rules 2.2.2(r) and 2.21.

5. ~~Because As~~ Managing a PSIA is a Financial Service, the DFSA regulatory regime that applies to Persons carrying on Financial Services in or from the DIFC applies to ~~Islamic banks~~ Authorised Firms that manage PSIAs. As PSIAs are not Investments financial products, the issue offer of PSIAs, ~~or any advising or arranging activities conducted in relation to PSIAs, especially by a third party,~~ does not attract prospectus-like disclosure or any advising or dealing related COB requirements (such as a suitability assessment). Instead, ~~it~~ they attracts a tailored regulatory regime that applies to the entity, i.e. an ~~Islamic bank~~, Authorised Firm that manages the PSIAs (see IFR chapter 5 for these Rules). The Financial Service of Advising on Financial Products will apply to a Person giving advice on the merits of investing in a PSIA (as a PSIA is defined as a 'financial product' for the purposes of that activity). However, other activities such as dealing and arranging and COB requirements relating to those activities do not apply to a PSIA (as it is not an Investment as defined in GEN).

Investments

6. Investments comprise two types of products: Securities and Derivatives. These products are defined in GEN App2. Most of the conventional Investments defined in GEN App2 can be offered as Islamic financial products, provided the relevant requirements including Shari'a principles are adhered to and in accordance with any Shari'a Supervisory Board rulings as applicable. While not an exhaustive list, conventional Investments that are commonly used as Islamic financial products include Shares, Sukuks, Units of Islamic Funds and also Structured Products. Increasingly, Derivatives are also being developed in accordance with Shari'a, such as a contract where the rights and liabilities of the parties are determined by reference to an underlying factor such as property of any description, currency rate or index, provided that the underlying factor in itself is Shari'a compliant and the contract does not involve any fundamental uncertainty (Gharar).

7. The DFSA regulatory regime applies to Persons who carry on in or from the DIFC any Financial Services activity in relation to any Islamic financial products that fall within the definition of Investments. However, particular products or instruments such as Profit Sharing Investment Accounts (PSIAs), Takaful and Islamic Funds attract product/instrument specific additional conduct and other requirements, which are included in this module.

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