

**Appendix 2**

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



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# Notice of Amendments

Islamic Finance Rules

**(IFR)**

in relation to Consultation Paper No. 79

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## 3 GENERAL OBLIGATIONS

### 3.1 Application

**3.1.1** This chapter applies to an Authorised Person which carries on Islamic Financial Business in or from the DIFC.

#### Guidance

“Authorised Person” is defined in the GLO module as an Authorised Firm or Authorised Market Institution.

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### 3.3 Systems and controls

**3.3.1** An Authorised Firm conducting Islamic Finance Business must establish and maintain systems and controls which enable it to comply with the applicable Shari’a requirements.

#### Guidance

1. This Chapter should be read in conjunction with Chapter 5 of the GEN Module.
2. Responsibility for ensuring that an Authorised Person complies with Shari’a ultimately rests with its senior management. The systems and controls required by Rule 3.3.1 will assist senior management to ensure that there is such compliance.
3. The Governing Body should, when setting the business objectives and strategies of the firm and on an on-going basis, make use of the expertise of the firm’s Shari’a Supervisory Board as appropriate.
4. Similarly, Persons Undertaking Risk Control Functions of the firm, particularly compliance and internal audit, should have easy access to the Shari’a Supervisory Board in relation to matters involving Shari’a compliance.
5. The members of the SSB should also have adequate access to the Governing Body, senior management and the Persons Undertaking Key Control Functions as appropriate to ensure that their roles can be effectively discharged.

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### 3.8 Additional conduct requirements

#### Islamic window

**3.8.3** (1) An Authorised ~~Person~~ Firm which operates an Islamic Window must, subject to ~~(2)–(3)~~, disclose to its Clients whether or not it commingles funds attributable to its Islamic Financial Business with funds attributable to conventional financial business ~~make the~~

~~relevant disclosures required by AAOIFI FAS 18 to its Clients or any Person granted access to its facilities as is appropriate.~~

~~(2) An Authorised Market Institution which operates an Islamic Window must disclose to any Person granted access to its facilities whether or not it commingles funds attributable to its Islamic Financial Business with funds attributable to conventional financial business.~~

~~(2) (3) An Authorised Firm does not have to make the disclosure required under (1) if it is a Fund Manager of a Fund and is making an Offer of Units of that Fund in accordance with the disclosure requirements in the Collective Investment Law 2010, the CIR module and this module.~~

#### **Guidance**

~~See Guidance 3 for the type of information required to be included in a Prospectus. The disclosures required under Rule 3.8.3(1) and (2) should initially be made in writing at the beginning of the relationship with a Client or with a person granted access to an Authorised Market Institution's facilities. Additional disclosure should also be made if the Authorised Firm changes its policy relating to commingling of funds attributable to its Islamic Financial Business with funds attributable to conventional financial business.~~

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## **4 ACCOUNTING STANDARDS AND AUDITING**

### **4.1 Application**

**4.1.1** This chapter applies to every:

- ~~(a) — Authorised Person carrying on Islamic Financial Business, and~~
- ~~(b) — an auditor providing audit services to an Authorised Person carrying on Islamic Financial Business.~~

**4.1.2** ~~In the case of an Authorised Person which is a Domestic Firm, any reference to an “auditor” in this chapter includes a reference to an “Auditor”.~~

#### **Guidance**

- ~~1. GEN chapter 8 contains the general accounting and audit requirements applying to an Authorised Persons and auditors, conducting conventional Financial Services. In addition, it also contains the general requirements that apply to auditors. Therefore, Authorised Persons carrying on both Islamic and conventional Financial Services must refer to that module for accounting and audit requirements relating to their conventional Financial Services. Auditor registration requirements are also in that module.~~

2. ~~The definition of “Auditor” in GLO includes a partnership or company that is registered to provide audit services to Authorised Persons that are Domestic Firms.~~

## **4.2 Accounting standards**

**4.2.1** ~~(1) If an Authorised Person is an Islamic Financial Institution, it must prepare and maintain all financial accounts and statements in accordance with the accounting standards of the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI).~~

- ~~(2) If an Authorised Person operates an Islamic Window, it must prepare and maintain all financial accounts and statements in accordance with the IFRS, as supplemented by AAOIFI FAS 18, in respect of its Islamic Financial Business.~~

### **Guidance**

1. ~~AAOIFI FAS 18 sets out the accounting rules for recognising, measuring and presenting the assets managed and funds mobilised on the basis of Islamic Shari’a rules and principles in the financial accounts and statements of conventional financial institutions that offer Islamic financial services, as well as the income generated from these services. The standard also determines the necessary disclosures related to these services.~~
2. ~~Under AAOIFI FAS 18, Authorised Persons which operate Islamic Windows must disclose (in their relevant financial statements) the following:~~
  - a. ~~whether or not they co-mingle funds related to Islamic Financial Business with funds relating to conventional financial business;~~
  - b. ~~the sources and applications of funds mobilised and invested through their Islamic Financial Business and the sources of funds used to cover a deficit if it occurs;~~
  - c. ~~any reserves of expenditures prohibited by Shari’a and the disposition of any revenues the latter shall be determined by the Shari’a Supervisory Board;~~
  - d. ~~any reserves deducted from the funds mobilised according to Shari’a, the purpose of such reserves and to whom the reserves shall revert in the case where the activities in respect of which the reserves were deducted have ceased; and~~
  - e. ~~the percentage amount of funds relating to Islamic Financial Business in comparison with the percentage amount of funds relating to conventional financial business.~~

## **4.2 Financial statements – specific disclosures**

**4.2.1** An Authorised Person carrying on Islamic Financial Business must ensure that its financial statements required under GEN chapter 8 contain the following disclosures:

- (a) the role and authority of the Shari’a Supervisory Board in overseeing the Authorised Person’s Islamic Financial Business;

- (b) the method used in the calculation of the Zakah base;
- (c) whether Zakah has been paid by the Authorised Person;
- (d) where Zakah has been paid by the Authorised Person, the amount which has been paid; and
- (e) where Zakah has not been paid by the Authorised Person, sufficient information to allow a shareholder or other investor to compute the amount of his own liability to Zakah.

**4.2.2** An Authorised Person who operates an Islamic Window must ensure that its financial statements required under GEN chapter 8 contain the following disclosures:

- (a) a detailed statement of the funds mobilised according to Shari'a rules and principles and the assets financed by those funds;
- (b) a detailed statement of the income and expenditure attributable to its Islamic Financial Business; and
- (c) whether funds attributable to Islamic Financial Business are commingled with funds attributable to conventional financial services.

**4.2.3** An Authorised Firm which is a Takaful Insurer must ensure that the financial statements required under GEN chapter 8 for each Insurance Fund contain the following disclosures:

- (a) income from contributions to the Insurance Fund;
- (b) revenues and gains from the Insurance Fund's investments;
- (c) amounts paid to the Takaful operator;
- (d) amounts paid for reinsurance cover, net of any commissions;
- (e) amounts paid to Takaful contributors as a distribution of surplus;
- (f) amount of any loan received from, or repaid to the Takaful operator;
- (g) changes in the actuarial reserves of the Insurance Fund; and
- (h) the position of the Insurance Fund at the end of the period, including actuarial reserves, policyholders' surplus and any loans outstanding.

**4.2.4** An Authorised Firm which Manages a Profit Sharing Investment Account ("PSIA") must ensure that its financial statements required under GEN chapter 8 contain the following disclosures:

- (a) an analysis of income according to types of investments and their financing by customers;
- (b) the basis for the allocation of profits between owners' equity and PSIA holders;
- (c) the equity of PSIA holders at the end of the reporting period;

- (d) the bases used to determine any Profit Equalisation Reserve or Investment Risk Reserve;
- (e) the changes which have occurred in such reserves during the reporting period;
- (f) any deductions made by the Authorised Firm from its share of income, and any expenses borne by the Authorised Firm on behalf of PSIA holders, as a contribution to increase the income of PSIA holders, if such contribution was material; and
- (g) the identity of any person to whom any remaining balances of any Profit Equalisation Reserve or Investment Risk Reserve is attributable in the event of liquidation.

### **4.3 Accounting records and regulatory returns**

**4.3.1** — Every Authorised Person carrying on Islamic Financial Business must:

- (a) — keep accounting records which are sufficient to show and explain transactions and are such as to:
  - (i) — be capable of disclosing the financial position of the Authorised Person on an ongoing basis; and
  - (ii) — record the financial position of the Authorised Person as at its financial year end;
- (b) — maintain accounting records to enable its Governing Body to ensure that accounts prepared by the Authorised Person comply with the applicable legislation in the DIFC;
- (c) — retain its accounting records for at least ten years from the date to which they relate;
- (d) — make available at all reasonable times its accounting records for inspection by the DFSA or its auditor; and
- (e) — ensure that its accounting records are, if requested by the DFSA, be capable of reproduction, within a reasonable period not exceeding 3 business days, in hard copy and in English.

**4.3.4** — All regulatory returns required under this chapter must be prepared and submitted by the Authorised Person in accordance with the requirements set out in PIB or PIN module as is applicable.

#### **Changes to the financial year end**

- 4.3.5** — (1) — If an Authorised Person which is a Domestic Firm intends to change its financial year end, it must obtain the DFSA's prior consent before implementing the change.
- (2) — The application for consent must include reasons for the change.

- ~~(3) — The DFSA may require the Authorised Person to obtain written confirmation from its auditor that the change of financial year end would not result in any significant distortion of the financial position of the Authorised Firm.~~
- ~~(4) — If an Authorised Person carries on both conventional Financial Services and Islamic Financial Business, that person may make the relevant application under (2) or under the equivalent provision in GEN Rule 8.3.5(2).~~

~~**4.3.6** — If an Authorised Person is not a Domestic Firm and intends to change its financial year, it must provide the DFSA with reasonable advance notice prior to the change taking effect.~~

## ~~**4.4 — Appointment and termination of auditors**~~

~~**4.4.1** — An Authorised Person must:~~

- ~~(a) — notify the DFSA of the appointment of an auditor, including the name and business address of the auditor and the date of the commencement of the appointment;~~
- ~~(b) — prior to the appointment of the auditor, take reasonable steps to ensure that the auditor has the required skills, resources and experience to audit the Islamic Financial Business of the Authorised Person for which the auditor has been appointed; and~~
- ~~(c) — if it is a Domestic Firm, ensure that the auditor, at the time of appointment and for the duration of the engagement as auditor, is registered with the DFSA.~~

~~**4.4.2** — An Authorised Person must notify the DFSA immediately if the appointment of the auditor is or is about to be terminated, or on the resignation of its auditor, giving the reasons for the cessation of the appointment.~~

~~**4.4.3** — An Authorised Person must appoint an auditor to fill any vacancy in the office of auditor and ensure that the replacement auditor can take up office at the time the vacancy arises or as soon as reasonably practicable.~~

~~**4.4.4** — (1) — An Authorised Person must take reasonable steps to ensure that the relevant audit staff of the auditor are independent of and not subject to any conflict of interest with respect to the Authorised Person.~~

- ~~(2) — An Authorised Person must notify the DFSA if it becomes aware, or has reason to believe, that the relevant audit staff members of the auditor are no longer independent of the Authorised Person, or have a conflict of interest which may affect their judgement in respect of the Authorised Person.~~

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**Guidance**

1. ~~The relevant staff members of an auditor are independent of the Authorised Person if their appointment or retention by the Authorised Person is not inconsistent with any applicable professional standards or ethical guidance issued by the relevant professional supervisory body.~~
2. ~~An Authorised Person should consider requiring the rotation of the staff members appointed to the audit every five years to ensure that such staff members remain independent.~~

**4.4.5** ~~If requested by the DFSA, an Authorised Person which carries on Islamic Financial Business through a Branch must provide to the DFSA information relating to the skills, experience and independence of its appointed or proposed auditor.~~

**4.4.6** ~~Where an auditor appointed by an Authorised Person is not suitable in the opinion of the DFSA, or where an auditor has not been appointed, the DFSA may direct an Authorised Person to replace or appoint an auditor as is relevant in accordance with the requirements in this chapter.~~

**4.5 Co-operation with auditors**

**4.5.1** ~~An Authorised Person must take reasonable steps to ensure that it and its Employees:~~

- (a) ~~provide such assistance as the auditor reasonably requires to discharge its duties;~~
- (b) ~~give the auditor right of access at all reasonable times to relevant records and information;~~
- (c) ~~do not interfere with the auditor's ability to discharge its duties;~~
- (d) ~~do not provide false or misleading information to the auditor; and~~
- (e) ~~report to the auditor of any matter which may significantly affect the financial position of the Authorised Person.~~

**4.6 Function of the auditor**

**4.6.1** ~~An Authorised Person carrying on Islamic Financial Business must in writing require its auditor to:~~

- (a) ~~conduct an audit of the Authorised Person's accounts in accordance with the requirements of the relevant standards published by the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) in respect of its Islamic Financial Business;~~
- (b) ~~produce a report on the audited accounts which states:~~



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- (i) ~~whether, in the auditor's opinion, the accounts have been properly prepared in accordance with the requirements imposed by this chapter;~~
  - (ii) ~~in particular, whether the accounts give a true and fair view of the financial position of the Authorised Person for the financial year and of the state of the Authorised Person's affairs at the end of the financial year end; and~~
  - (iii) ~~any other matter or opinion relating to the requirements of this chapter;~~
  - (c) ~~produce an Auditor's Annual Report:~~
    - (i) ~~which states whether the auditor has:~~
      - (A) ~~audited the Authorised Person's annual financial statements in accordance with the AAOIFI auditing standards in respect of its Islamic Financial Business;~~
      - (B) ~~has carried out any other procedures considered necessary, having regard to the AAOIFI auditing standards in respect of its Islamic Financial Business; and~~
      - (C) ~~received all necessary information and explanations for the purposes of preparing its report to the DFSA;~~
    - (ii) ~~which contains, in the case of an Authorised Firm, the auditor's reports and opinions referred to in GEN Rules 8.6.1(c)(iv),(v),(vi),(vii) and (viii), (d), (e) and (f) so far as they are relevant or applicable to the Authorised Firm's Islamic Financial Business; and~~
    - (iii) ~~which states, in the case of an Authorised Firm which carries on the Financial Service of Managing Profit Sharing Accounts, whether the firm has complied with the additional requirements in chapter 5;~~
  - (d) ~~submit the reports produced pursuant to Rules 4.6.1(b) and (c) above to the Authorised Person; and~~
  - (e) ~~notify the DFSA in writing if he resigns due to significant concerns which have previously been raised with the senior management of the Authorised Person and which have not been addressed.~~
- 4.6.2** ~~An Authorised Person must submit any auditor's reports and financial statements required by this chapter to the DFSA within four months of the Authorised Person's financial year end.~~
- 4.6.3** ~~If requested, an Authorised Person must provide to any Person a copy of its most recent audited accounts, together with the auditor's report referred to in Rule 4.6.1(b). If the copy is made available in printed form,~~
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~~the Authorised Person may charge a fee to cover reasonable costs incurred in providing the copy.~~

## **5 MANAGING PROFIT SHARING INVESTMENT ACCOUNTS**

### **5.2 Additional disclosure requirements for PSIA's**

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#### **Additional matters to be included in the policy and procedures manual**

**5.2.4** Where an Authorised Firm Manages a PSIA, its Islamic Financial Business policy and procedures manual must address the following additional matters:

- (a) the basis upon which a PSIA will be deemed restricted or unrestricted;
- (b) the basis for allocation of profit or loss to the PSIA;
- (c) the basis for allocation of expenses to the PSIA;
- (d) the manner in which an Authorised Firm's own funds, funds of restricted PSIA's and funds from unrestricted PSIA's are to be controlled;
- (e) the manner in which the funds of each type of investment account holder will be managed;
- (f) the manner in which it will determine priority for investment of own funds and those of holders of unrestricted PSIA's;
- (g) how provisions and reserves against equity and assets ~~in accordance with AAOIFI FAS 11~~ are to be applied; and
- (h) the manner in which losses incurred as a result of the misconduct or negligence for which the Authorised Firm is responsible will be dealt with.

#### **Guidance**

For the purposes of Rule 5.2.24, the policy and procedures manual should include procedures to ensure that the Authorised Firm manages the accounts of Profit Sharing Investment Account holders in accordance with their instructions.

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## **5.4 Prudential requirements**

### **Application and Interpretation**

- 5.4.1**
- (1) This section applies when calculating Credit Risk or Market Risk in respect of Islamic Contracts invested in or held by an Authorised Firm Managing a PSIA.
  - (2) In this section, the term “investing in or holding Islamic Contracts” means investing in or holding as a principal.

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### **Systems and controls in relation to PSIA's**

#### **Guidance**

The requirements in Rules 5.4.2 and 5.4.3 amplify the requirements in GEN Chapter 5.

- 5.4.2**
- In addition to PIB Rule 2.2.2, 2.2.3, GEN Rule 5.3.1 and this module, an Authorised Firm Managing a PSIA must ensure that its senior management establishes and maintains systems and controls that ensure that the Authorised Firm is financially sound and able at all times to satisfy the specific prudential requirements arising out of such business.

- 5.4.3**
- (1) In addition to Rules in 5.2.4, an Authorised Firm Managing a PSIA must set out in a written policy how it proposes to organise and control the activities that arise from such business and ensure that its activities are conducted in accordance with Shari'a.
  - (2) The policy must as a minimum address, where appropriate, the following matters:
    - (a) how the interests of shareholders and PSIA holders are safeguarded;
    - (b) how the Authorised Firm will limit exposures of PSIA holders to the Authorised Firm;
    - (c) a description of the controls to ensure that the funds of the PSIA are invested in accordance with the investment guidelines agreed in the investment contract;
    - (d) the basis for allocating profits and losses to the PSIA holders;
    - (e) the policy for making provisions and reserves (~~Provisions and Reserves are set out in AAOIFI FAS 11~~) and, in respect of PSIA's, to whom these provisions and reserves revert in the event of a write-off or recovery;
    - (f) the Authorised Firm's policy on the prioritisation of investment of own funds and those of Unrestricted PSIA holders;

- (g) how liquidity mismatch will be monitored;
- (h) the basis for allocating expenses to PSIA holders; and
- (i) how the Authorised Firm will monitor the value of its assets.

**Guidance**

~~Guidance on the conditions for treatment of PSIA as restricted or unrestricted is found in paragraphs 12 and 13 of the AAOIFI's Statement of Concepts of Financial Accounting for Islamic Banks and Financial Institutions, and Appendix D of Financial Accounting Standard FAS 5.~~

## **6 ISLAMIC COLLECTIVE INVESTMENT FUNDS**

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### **6.5 Additional disclosure in a Prospectus of an Islamic Fund which is a Public Fund**

**Guidance**

Chapter 14 and in particular Rule 14.3.1 of the CIR module set out the Public Fund Prospectus requirements. In addition to complying with those requirements as applicable to the particular Fund, the Fund Manager of an Islamic Fund that is a Public Fund must comply with the additional requirements set out in this section.

#### **6.5.1 A Fund Manager of an Islamic Fund which is a Public Fund must state in the Fund's Prospectus:**

- (a) that all the operations in relation to the Fund will be conducted in accordance with Shari'a;
- (b) if the Fund has a Shari'a Supervisory Board appointed to it, the names of the members of the Shari'a Supervisory Board and their qualifications and experience and, whether or not the Fund Manager's Shari'a Supervisory Board is appointed to the Fund pursuant to Rule 6.2.1(2);
- (c) if the Fund does not have a Shari'a Supervisory Board appointed to it pursuant to Rule 6.2.1(3), what widely acceptable screening methodologies are used by the Fund to ensure Shari'a compliance with respect to investments made for the Fund, and the board that has approved them;
- (d) if applicable, the manner and frequency of Shari'a reviews ;
- (e) ~~the disclosures required by AAOIFI FAS 14 how earnings prohibited by Shari'a will be disposed of; and~~
- (f) whether Zakah is the responsibility of the Fund or the responsibility of the Unitholders; and

- ~~(f)~~ **(g)** the additional disclosure, if applicable, prescribed under section A1.1 of App 1.

**Guidance**

1. A Fund Manager should consider providing additional information to support the statement under Rule 6.5.1~~(4)~~ (a) as indicated in 2 and 3 below.
2. The Fund Manager should provide sufficient details setting out the basis upon which the Fund has been approved and certified as Shari'a compliant by its Shari'a Supervisory Board. Such details should include the basis of the underlying principles, i.e. the ~~fatwas~~ Fatwas or rulings, including reference to any relevant ~~ijtihad~~ Ijtihad, ~~ijma~~ Ijma, ~~qiyas~~ Qiyas or other. Where applicable, reference should be made to any Islamic indices to be used. In addition, where applicable, the screening process and any filters used should be identified.
3. The Fund Manager should set out each of the key features of the Fund and explain the rationale for determining why each of these features are considered Shari'a compliant by the Fund's Shari'a Supervisory Board.

**6.6 Additional disclosure in a Prospectus of an Islamic Fund which is a Private Fund**

**Guidance**

Chapter 14 and in particular Rules 14.3.2, 14.3.4 and 14.3.5 of the CIR module set out the Private Fund Prospectus requirements and, the disclosures set out in this section are additional requirements.

**6.6.1** A Fund Manager of an Islamic Fund which is a Private Fund must state in the Fund's Prospectus:

- (a) that all the operations in relation to the Fund will be conducted in accordance with Shari'a;
- (b) if the Fund has a Shari'a Supervisory Board appointed to it, the names of the members of the Shari'a Supervisory Board and their qualifications and experience and, whether or not the Fund Manager's Shari'a Supervisory Board is appointed to the Fund pursuant to Rule 6.2.1(2);
- (c) if the Fund does not have a Shari'a Supervisory Board appointed to it pursuant to Rule 6.2.1(3), what widely acceptable screening methodologies are used by the Fund to ensure Shari'a compliance with respect to investments made for the Fund and the board that has approved them;
- (d) if applicable, the manner and frequency of Shari'a reviews;
- (e) the disclosures required by AAOIFI FAS 14; and how earnings prohibited by Shari'a will be disposed of;
- (f) whether Zakah is the responsibility of the Fund or the responsibility of the Unitholders;

- (f) ~~(g)~~ the additional disclosure, if applicable, prescribed under section A1.1 of App 1 of CIR.

## **6.7 Investments in other Funds**

- 6.7.1** (1) An Islamic Fund which is a Public Fund may invest in Units of another Fund only where the Fund Manager has taken reasonable care to determine that:
- (a) the other Fund is the subject of an independent annual audit conducted in accordance with relevant IFRS or ~~US GAAP or AAOIFI~~ other standards as applicable;
  - (b) the other Fund has mechanisms in place to enable Unitholders to redeem their Units within a reasonable time; and
  - (c) the other Fund is prohibited from having more than 20% of its value in the Units of Funds.
- (2) The Fund Manager must also have ascertained that there is a proper and disclosed basis for asset valuation and the pricing before investing in Units in the other Fund.

## **6.8 Deleted Accounting standards for Islamic Funds**

- ~~**6.8.1** (1) The Fund Manager must in respect of an Islamic Fund prepare and maintain all financial accounts and statements in accordance with the accounting standards of the AAOIFI FAS 14.~~
- ~~(2) If the Fund Manager of an Umbrella Fund operates one or more Islamic Sub-Funds, it must prepare and maintain all financial accounts and statements in accordance with the IFRS, as supplemented by AAOIFI FAS14.~~

### **Guidance**

~~AAOIFI FAS 14 sets out the accounting rules for recognising, measuring and presenting the assets managed and funds mobilised on the basis of Islamic Shari'a rules and principles in the financial accounts and statements of conventional financial institutions that offer Islamic financial services, as well as the income generated from these services. The standard also determines the necessary disclosures related to these services.~~

## **6.9 Deleted Function of the Auditor of an Islamic Fund**

- ~~**6.9.1** A Fund Manager of an Islamic Fund must in writing require the Fund's Auditor to:~~
- ~~(a) conduct an audit of the Fund's accounts in accordance with the requirements of the relevant standards published by the~~

~~International Auditing and Assurance Standards Board (IAASB) in respect of conventional financial business and the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) in respect of any Islamic Funds; and~~

- ~~(b) produce a report on the audited accounts which states:~~
- ~~(i) whether, in the Auditor's opinion, the accounts have been properly prepared in accordance with the requirements imposed by this chapter;~~
  - ~~(ii) in particular, whether the accounts give a true and fair view of the financial position of the Fund at the end of the annual accounting period; and~~
  - ~~(iii) any other matter or opinion relating to the requirements of this chapter.~~

**Guidance**

~~The obligations under this Rule relate to an Islamic Fund. In addition to these obligations, a Fund Manager must comply with the obligations set out in chapter 4 as a firm carrying on Islamic Financial Business.~~

## **7. CONDUCT RULES FOR OFFERS OF ISLAMIC SECURITIES**

### **7.1 Application**

- 7.1.1**
- (1) Subject to (2), this chapter applies to any Person who Offers Islamic Securities in or from the DIFC.
  - (2) A Person making Offers of Islamic Securities in or from the DIFC must comply with the requirements in the Markets Law 2004 [2012] and the ~~OSR~~ MKT module except to the extent otherwise provided in this chapter.
  - (3) Islamic Securities, for the purposes of this chapter, do not include Units of an Islamic Fund.

**Guidance**

- 1. The issue of Securities is not an activity that constitutes a Financial Service. Therefore, the activities such as the issue of Shares, Debentures (Sukuks) or Warrants do not attract the Financial Services prohibitions in the Regulatory Law 2004. However, the Offer of Securities is an activity to which the Markets Law 2004 [2012] and the ~~OSR~~ MKT module apply. Under the Markets Law 2004 [2012], a Person making an Offer of Securities in or from the DIFC is subject to numerous disclosure requirements, unless exempt.
- 2. Offers of Islamic Securities which are Units of a Fund are not subject to the requirements in this section because the Collective Investment Law 2010 and CIR module provide for such activities to be regulated. Chapter 6 of this module sets out additional requirements that apply to the Fund Manager when Offering Units of an Islamic Fund.

3. The definition of the term Islamic Securities is in the GLO module.

## **7.2 Contents of a Prospectus for Islamic Securities**

**7.2.1** ~~Subject to Rule 7.2.2, Financial Accounts included in a Prospectus relating to the Offer of Islamic Securities must:~~

- ~~(a) be audited by an independent, competent and qualified auditor in accordance with the standards of the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) or other standards acceptable to the DFSA; and~~
- ~~(b) include audited financial accounts of the Issuer of the Securities for three completed financial years prior to the date of the Prospectus prepared in accordance with the AAOIFI standards.~~

**7.2.2** ~~Deleted~~

- ~~(1) For the purposes of the requirements in Rule 7.2.1, where the Issuer is a member of a Group which prepares consolidated accounts, the requirement to present individual accounts may be dispensed with, provided that the consolidated accounts for the Group are published.~~
- ~~(2) Where the Issuer has been created for a special purpose and does not fulfil the relevant accounting pre-requisites under Rule 7.1.1, the DFSA may dispense with the requirements in Rule 7.1.1.~~

**7.2.3** Where the relevant Securities are held out as being in accordance with Shari'a, the Prospectus relating to those Securities must include:

- (a) details of the members of the Shari'a Supervisory Board appointed by the Issuer who have undertaken the review of the relevant Securities;
- (b) details of the qualifications and experience of each of those Shari'a Supervisory Board members; and
- (c) in the case of issuance of Sukuks:
  - (i) the opinion of the Shari'a Supervisory Board in respect of whether the Securities are Shari'a compliant;
  - (ii) a description of the structure of the underlying transaction and an explanation of the flow of funds; and
  - (iii) where applicable, the disclosures required by the Shari'a Standards published from time to time by AAOIFI in respect of investment Sukuks; and
- (d) instead of the statement required under MKT Rule 2.5.1(3)(d), a statement prominent disclaimer in bold, on the front page of the this Prospectus as follows:



~~“A copy of this Prospectus has been filed and registered with the Dubai Financial Services Authority (DFSA) in accordance with the Markets Law 2004 and the Offered Securities Rules. In accordance with the Rules, the DFSA has no responsibility for the contents of the Prospectus and has not approved this Prospectus nor has it reviewed or verified the information in it, nor has it determined whether it is Shari’a compliant. If you do not understand the contents of this document you should consult an authorised financial advisor”.~~

“The DFSA does not accept any responsibility for the content of the information included in the Prospectus, including the accuracy or completeness of such information. The liability for the content of the Prospectus lies with the issuer of the Prospectus and other Persons, such as Experts, whose opinions are included in the Prospectus with their consent. The DFSA has also not assessed the suitability of the Securities to which the Prospectus relates to any particular investor or type of investor and has not determined whether they are Shari’a compliant. If you do not understand the contents of this Prospectus or are unsure whether the Securities to which the Prospectus relates are suitable for your individual investment objectives and circumstances, you should consult an authorised financial advisor.”