



CONSULTATION PAPER NO. 66

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**ENHANCING CLARITY AND ACCESSIBILITY OF
ISLAMIC FINANCE RULES**

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Why are we issuing this paper?

1. We propose to restructure the DFSA Rules relating to Islamic finance to better promote the visibility and accessibility of the DFSA's regulatory regime so far as it applies to Islamic financial activities conducted in or from the DIFC.
2. This Consultation Paper seeks public comments on the proposed changes which entail the introduction of:
 - (a) a more comprehensive dedicated Islamic finance module than the current Islamic Finance Business (ISF) module and renaming it as "Islamic Finance Rules (IFR) module – See Appendix 1; and
 - (b) a web-based "virtual handbook" – See Appendix 2 for a sample of such a handbook.

Who should read this paper?

3. The proposals in this paper would be of interest to Persons:
 - (a) carrying on, or considering carrying on, any Financial Service as Shari'a compliant; or
 - (b) Offering or proposing to Offer Islamic Securities.

How to provide comments?

4. All comments should be forwarded to the person specified below. You may, if relevant, identify the organisation you represent in providing your comments. The DFSA reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise at the time of making comments.

What happens next?

5. The deadline for providing comments on the proposals is **4 December 2009**. Once we receive your comments, we will consider if any further refinements are required to these proposals. We may then proceed to enact the changes to the DFSA's Rulebook. Because these are still proposals, you should not act on them until the relevant changes to the DFSA Rulebook are made. We will issue a notice on our website telling you when this happens.

Comments to be addressed to:

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DFSA
PO Box 75850
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04 3621509 or e-mailed to: DAmukotuwa@dfsa.ae

Terminology in this paper

6. In this paper, defined terms are identified throughout by the capitalisation of the initial letter of a word or of each word in a phrase and are defined in GLO or in the proposed amendments. Unless the context otherwise requires, where capitalisation of the initial letter is not used, the expression has its natural meaning.

Background

7. These proposals are designed to promote better accessibility and visibility to the DFSA requirements relating to Islamic financial activities than under the current arrangements. *The proposals do not contain any substantial Rule changes.* Under the current arrangement, Islamic specific DFSA requirements are scattered over a number of DFSA Rulebook modules such as ISF, GEN, AMI, COB, CIR, PIB and PIN modules. As a result, Persons engaging in or proposing to engage in Islamic financial activities in or from the DIFC may not be able to easily identify the relevant requirements that apply to their Islamic financial activities.

Proposals

8. To promote better visibility and accessibility of the DFSA's current requirements relating to Islamic finance, we propose:
 - (a) to create a more comprehensive dedicated Islamic Finance Rules (IFR) module than the current Islamic Financial Business (ISF) module; and
 - (b) to give web-based access to Islamic financial requirements via a "virtual handbook" (see paragraph 12).

Proposed Islamic Finance Rules (IFR) module

9. We propose to call the new dedicated Islamic finance module "Islamic Finance Rules (IFR) module to reflect that its content covers Rules relating to both Islamic Financial Business and Islamic financial products (see Attachment 1). This module will contain most of the Islamic specific requirements that apply to a specific type of a Financial Service, or an activity relating to a financial product (such as Managing a Profit Sharing Investment Account, Operating an Islamic Fund or Offering Sukuks).
10. However, to avoid extensive repetition and unnecessary fragmentation, some of the more generic requirements which are common to both Islamic and conventional business, or closely related to both types of business, such as most of the capital requirements that apply to Authorised Firms, are retained in the current modules (i.e. PIN and PIB). We have included cross references to those other modules as appropriate to facilitate easy navigation.
11. The proposed IFR module is structured so as to bring together:
 - (a) the general obligations applicable to Islamic Financial Business (see chapters 2 and 3). Islamic Financial Business covers carrying on a Financial Service as an Islamic Financial Institution or through an Islamic Window. Currently these requirements are located in two modules; those relating to Authorised Firms are found in the ISF module and those relating to Authorised Market Institutions are found in the AMI module,

although both sets of requirements are almost identical (with the exception of some variations which are easily catered to in the proposed IFR module – see IFR Rule 3.8.1(1) which applies to an Authorised Firm and IFR Rule 3.8.1(2) which applies to an Authorised Market Institution);

- (b) accounting and auditing standards applicable to Persons carrying on Islamic Financial Business, which are proposed to be removed from the GEN module and be located in IFR chapter 4;
- (c) Rules applicable to Managing Profit Sharing Investment Accounts, which is a unique form of a Financial Service that can only be carried on in accordance with Shari'a, which are proposed to be removed from ISF and GEN modules and located in IFR chapter 5;
- (d) additional disclosure and conduct Rules that apply to a Collective Investment Funds where it is operated as an Islamic Fund or Islamic REIT, which are proposed to be removed from the CIR module and located in IFR chapter 6;
- (e) disclosure and other conduct Rules applicable to the Offer of Islamic Securities, which are proposed to be removed from the OSR module and located in IFR chapter 7; and
- (f) disclosure applicable to Takaful Insurers, which are proposed to be removed from the COB module and located in IFR chapter 8.

Proposed Virtual Handbook

12. The “virtual handbook” which we propose to provide in conjunction with the dedicated Islamic Finance Rules (IFR) module will create a web-based tailored Islamic finance handbook. This would be available from the DIFCA and DFSA websites and will provide access to the relevant requirements that apply to a particular type of a Financial Service or financial product carried out or Offered as an Islamic Financial Service or Islamic financial product. A person wishing to use the virtual handbook will also be able to download all the Rules relevant to the particular Islamic financial activity from the DFSA or DIFCA website. Attachment 2 contains for illustrative purposes a model virtual handbook.

Consequential changes

13. The proposals in this paper do not envisage any substantial changes to the existing requirements relating to Islamic finance activities; instead they represent exiting requirements in a more cohesive and easy to access manner by clustering them together in the proposed IFR module. As a result, some consequential changes to other modules of the DFSA Rulebook from which the relevant requirements are extracted, such as GEN, COB, AMI and CIR, will be necessary if the current proposals are to be implemented following public consultation.
14. While we have not included the consequential changes that would result from these proposed changes as they are largely of a mechanical nature, one significant change that is noteworthy is the need to withdraw the current ISF module as all the requirements in that module will be subsumed by the proposed ISR module. We also propose to include a definition of Islamic Securities in the GLO module as meaning, except where otherwise provided, “any Security held out or Offered as Islamic or Shari'a compliant”.