

**Appendix 4**

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



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# The DFSA Rulebook

## Islamic Finance Rules

### (IFR)

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## **6 ISLAMIC COLLECTIVE INVESTMENT FUNDS**

### **6.1 Application**

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#### **Fund's constitutional documents**

- 6.1.3** (1) The Fund Manager of a Domestic Fund other than an Exempt Fund or Qualified Investor Exempt Fund must, subject to (2), ensure that its Fund's Constitution and Prospectus are, and remain, approved by the Fund's Shari'a Supervisory Board.
- (2) In the case of an Exempt Fund or Qualified Investor Exempt Fund, the Fund Manager must ensure that the Fund's Constitution and Prospectus are, and remain, approved by the Fund Manager's Shari'a Supervisory Board.

#### **Guidance**

See Guidance note 3 under Rule 6.2.1.

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### **6.2 Shari'a Supervisory Board for an Islamic Fund**

- 6.2.1** (1) A Fund Manager of a Domestic Fund other than an Exempt Fund or a Qualified Investor Exempt Fund must, subject to (3), appoint a Shari'a Supervisory Board to its Fund that meets the following requirements:
- (a) the Shari'a Supervisory Board has at least three members;
  - (b) the members appointed to the Shari'a Supervisory Board are competent to perform their functions as Shari'a Supervisory Board members of the Fund;
  - (c) any appointments, dismissals or changes in respect of members of the Shari'a Supervisory Board are approved by the Governing Body of the Fund Manager; and
  - (d) no member of the Shari'a Supervisory Board is a director or Controller of the Fund or its Fund Manager.

- (2) A Fund Manager may comply with the requirement in (1) by appointing to the Fund the same Shari'a Supervisory Board as it has appointed to the firm in accordance with Rule 3.5.1, provided the requirements in (1) are also met.
- (3) A Fund Manager is not required to comply with the requirement in (1) where it relies, for the purposes of making investments for the Fund, on a widely accepted Shari'a screening process such as investing in securities included in, or recognised by reference to, an Islamic index, sukuk, or treasury instruments issued by a Shari'a compliant financial services provider regulated by a Financial Services Regulator.

#### **Guidance**

1. In appointing a Shari'a Supervisory Board for the purposes of Rule 6.2.1(1), the Fund Manager should consider the previous experience and qualifications of the proposed Shari'a Supervisory Board members to assess whether the proposed Shari'a Supervisory Board member is competent to advise on the activities undertaken by the Islamic Fund. If the Fund Manager is appointing the same Shari'a Supervisory Board as it has appointed to the firm pursuant to Rule 6.2.1(2), the Fund Manager should still consider whether the requirements in both Rule 3.5.1(1) and 6.2.1(1) are met in respect of that board.
2. If the Fund Manager is relying on Shari'a screening methodologies such as the Dow Jones Shari'a index, such screening is generally regarded as widely accepted and accessible. However, if less widely known methodologies are used, the Fund Manager should be able, upon request by the DFSA, to demonstrate to the satisfaction of the DFSA the grounds on which it considers the particular methodology used to be acceptable and reliable.
3. Although the Fund Managers of Exempt Funds and Qualified Investor Exempt Funds are not subject to the requirement for the appointment of a Shari'a Supervisory Board for ~~an Exempt~~ such a Fund, they would need to ensure that the Exempt Funds or Qualified Investor Exempt Funds they manage continue to meet the applicable Shari'a requirements applicable to the Fund. They may use a member of the Shari'a Supervisory Board appointed at the firm level for the purposes of ascertaining compliance with the Shari'a requirements. The manner in which they demonstrate to the Unitholder of the Exempt Fund or Qualified Investor Exempt Fund as to how they achieve such compliance is a matter left to negotiation (i.e. subject to contractual terms) between the Unitholders and the Fund Manager.
4. An External Fund Manager may not be able to take advantage of IFR 6.2.1(2), unless it has a Shari'a Supervisory Board appointed at the firm level. In contrast the Fund Manager of an External Fund will be able to use its Shari'a Supervisory Board to meet the Shari'a Supervisory Board requirement relating to the Fund as set out in IFR 6.2.1(2).

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## **6.3 External Shari'a reviews and periodic reports**

**6.3.1** A Fund Manager of a Domestic Fund, other than an Exempt Fund, a Qualified Investor Exempt Fund or a Fund relying on the exemption in Rule 6.2.1(3), must ensure that all Shari'a reviews of the Fund are undertaken by the Shari'a Supervisory Board in accordance with AAOIFI GSIFI No 2.

- 6.3.2**
- (1) In the case of a Domestic Fund other than an Exempt Fund, Qualified Investor Exempt Fund or a Fund relying on the exemptions in Rule 6.2.1(3), the Fund Manager must commission an interim and an annual report relating to the Fund operations from the Shari'a Supervisory Board which complies with AAOIFI GSIFI No 1.
  - (2) The Fund Manager must deliver a copy of the annual interim report referred to in (1) to the Unitholders in accordance with CIR Rule 9.4.4 and must include the report of the Shari'a Supervisory Board in the annual report required under CIR Rule 9.4.5.

### **Guidance**

Although the Fund Managers of Exempt Funds and Qualified Investor Exempt Funds are not subject to the Shari'a review process required under section 6.3, they would need to ensure that the Exempt Fund or Qualified Investor Exempt Fund continues to meet the applicable Shari'a requirements, particularly for the purposes of their annual and interim reports, which are required to be prepared under CIR section 9.4. However, the manner in which they demonstrate to the Unitholders of the Fund how they achieve such compliance is a matter left to negotiation (i.e. subject to contractual terms) between the Unitholders and the Fund Manager.

## **6.4 Internal Shari'a review**

- 6.4.1**
- (1) The Fund Manager of a Domestic Fund other than an Exempt Fund or Qualified Investor Exempt Fund must perform an internal Shari'a review to assess the extent to which the Fund complies with fatwas, rulings and guidelines issued by the Fund's Shari'a Supervisory Board.
  - (2) The Fund Manager must perform the internal Shari'a review in accordance with AAOIFI GSIFI No. 3.
  - (3) The Fund Manager of an Umbrella Fund which has an Islamic Sub-Fund must, to the extent possible, perform the internal Shari'a review in accordance with AAOIFI GSIFI No. 3 and must document the

manner in which it will conduct that part of the internal Shari'a review that is not conducted in accordance with AAOIFI GSIFI No. 3.

### **Guidance**

1. Although the Fund Managers of Exempt Funds and Qualified Investor Exempt Funds are not subject to the specific internal Shari'a requirements under section 6.4, they would need to ensure that the Exempt Fund or Qualified Investor Exempt Fund continues to meet the applicable Shari'a requirements. However, the manner in which they demonstrate to the Unitholders of the Fund how they achieve such compliance is a matter left to negotiation (i.e. subject to contractual terms) between the Unitholders and the Fund Manager.
2. GSIFI No. (3) (Internal Shari'a Review) establishes standards and provides guidance on the internal Shari'a review in institutions that conduct business in conformity with Shari'a. The standard covers the following:
  - a. objectives;
  - b. internal Shari'a Review;
  - c. independence and objectivity;
  - d. professional proficiency;
  - e. scope of work;
  - f. performance of the internal Shari'a Review work;
  - g. management of the internal Shari'a Review;
  - h. quality assurance; and
  - i. elements of an effective internal Shari'a Review control system.

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## **~~6.6 Deleted 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) — 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; and
- (g) — the additional disclosure, if applicable, prescribed under section A1.1 of App 1 of CIR.

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