

## Appendix 3

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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## 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.

### 3.2 Constitution of an Islamic Financial Institution

3.2.1 An Authorised Person which is an Islamic Financial Institution must ensure that its constitutional documents state that its entire business will be conducted in accordance with Shari’a.

#### Guidance

Article 10 of the Law Regulating Islamic Financial Business 2004 provides that an Islamic Financial Institution is an Authorised Person whose entire business is conducted in accordance with Shari’a.

### 3.3 Systems and controls

3.3.1 (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.

(2) An Authorised Firm using a Fund Platform that has one or more Islamic Funds on the Fund Platform must ensure that the Fund Platform has systems and controls which enable the Fund Manager to comply with the applicable Shari’a requirements in respect of the Islamic Funds.

#### 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.
6. Both Islamic and conventional Funds can be established on the same Fund Platform, provided the requirements relating to Shari'a compliance are met both as to investments and as to relevant operational matters, and that appropriate governance is in place to achieve this. This would generally require either all the Funds on a Fund Platform to be Islamic Funds, or the Fund Platform to operate through an Islamic Window in the same way as the Fund Manager that is using the Fund Platform.

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## **3.8 Additional conduct requirements**

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### **Islamic window**

- 3.8.3**
- (1) An Authorised Firm which operates an Islamic Window must, subject to (3), disclose to its Clients whether or not it commingles funds attributable to its Islamic Financial Business with funds attributable to conventional financial business.
  - (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.
  - (3) An Authorised Firm does not have to make the disclosure required under (1) if it is a Fund Manager of an Islamic 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**

1. 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.

2. The requirements in Rule 3.8.3 will also apply to an Authorised Firm that uses a Fund Platform and has both Islamic and conventional Funds on the Fund Platform.

### **Disclosure relating to Client Money provisions**

- 3.8.4** An Authorised Firm must disclose to its Clients details about how any Client Money arising out of Islamic Financial Business is or will be held.

## **3.9 Prudential requirements**

- 3.9.1** An Authorised Firm in Prudential Category 1, 2, 3 or 5 which invests in or holds Islamic Contracts for purposes other than managing PSiAs must calculate its Credit Risk or Market Risk in respect of those contracts in the same way as a firm holding or investing in Islamic Contracts for the purposes of managing PSiAs as set out in section 4.4.

### **Guidance**

Substantive prudential requirements in PIB which apply to conduct of Investment Business continue to apply in the same way to firms conducting Islamic Financial Business, except to the extent added to or otherwise provided in this module.

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## **6 ISLAMIC COLLECTIVE INVESTMENT FUNDS**

### **Guidance**

This chapter contains additional requirements that apply to a Collective Investment Fund operated or held out as being operated as an Islamic Fund. A Collective Investment Fund is defined in Article 11 of the Collective Investment Law 2010 (the Law). The definition in Article 11 of the Law is very wide and can capture some Islamic financial activities. However, under Article 12 of the Law, the DFSA can make Rules excluding certain arrangements or types of arrangements from constituting a Fund. Certain types of Islamic Financial Business are not regulated as Collective Investment Funds due to express exclusions provided. Key Islamic Financial Business related exclusions under the collective investment regime are Managing Insurance, participation rights evidenced by Sukuk certificates and managing PSiAs.

### **6.1 Application**

- 6.1.1** (1) This section applies in the case of a Domestic Fund:
- (a) which is an Islamic Fund, to its Fund Manager and where appointed, its Trustee; or

- (b) which is an Umbrella Fund with one or more Islamic Sub-Funds, to its Fund Manager and where appointed, its Trustee in respect of those Sub-Funds; or
  - (c) which is an Islamic Fund on a Fund Platform, to the Fund Manager using the Fund Platform, in respect of that Fund.
- (2) The requirements that apply to a conventional Fund under the Collective Investment Law 2010 and CIR apply equally to an Islamic Fund, except as otherwise provided in this chapter.
  - (3) The requirements in MKT chapter 6 that apply to a conventional Listed Fund apply equally to an Islamic Fund, if it is or is to be a Listed Fund, except as otherwise provided in this chapter.
  - (4) In this chapter, except where otherwise provided, any reference to a Fund is to an Islamic Fund, or to an Islamic Sub-Fund of an Umbrella Fund, or to an Islamic Fund on a Fund Platform, as the case may be and any reference to a Fund Manager is a reference to a Fund Manager of such a Fund.

#### Guidance

- 1. While the CIR module contains the key requirements relating to the management and operation of conventional Collective Investment Funds, this module sets out the additional requirements that apply where such a Fund is managed or held out as being managed as an Islamic Fund. There are other requirements that apply to such firms which are found in other modules of the DFSA rulebook, such as the GEN module, COB module and PIB module.
- 2. While section 3 contains the requirements that apply to Authorised Firms which are Fund Managers of Collective Investment Funds, the requirements in this section mainly focuses on Shari'a compliance related requirements that apply at the Fund level. For example, while the systems and controls required under section 3.3 relate to the systems and controls that a firm must have in order to comply with its Shari'a obligations, Rule 6.1.3 sets out systems and controls that must be established and maintained at the Fund level.

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