

Appendix 3

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



The DFSA Rulebook

Islamic Finance Rules

(IFR)

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 PSIA's.

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.
- (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.
- ~~(3)~~(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 as the case may be and any reference to a Fund Manager is a reference to a Fund Manager of such a Fund.

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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. If an Islamic Fund is to be a Listed Fund, it must comply with chapter 6 of MKT and also comply with the additional requirements in this chapter.

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) 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; and
- (h) in place of the disclaimer required under CIR App 7 for conventional Funds, a prominent disclaimer in bold, on the front page of the Prospectus, as follows:

"The DFSA does not accept 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."

- (i) If the Islamic Fund is not a Listed Fund, in addition to the disclaimer specified in (h), an additional statement that:

"The Securities to which this Prospectus relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of such Securities should conduct their own due diligence."

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6.13 Islamic Exchange Traded Funds ("ETFs")

6.13.1 (1) A Fund is an Islamic Exchange Traded Fund or Islamic ETF if it:

- (a) is constituted as an Open-ended Public Fund;
- (b) has its Units available for trading throughout the day on an exchange that meets the criteria in (2);
- (c) has at least one market maker (Authorised Participant) who:
 - (i) purchases and redeems 'creation Units' of the Fund from the Fund Manager; and
 - (ii) is prepared to buy and sell Units of the Fund throughout the day on the relevant exchange; and
- (d) meets the Shari'a related requirements in this chapter.

(2) An exchange meets the requirement in (1)(b) if it is:

- (a) operated by an Authorised Market Institution;
 - (b) regulated by a Financial Services Regulator in a jurisdiction that is a signatory to the IOSCO Multilateral Memorandum of Understanding for sharing information; or
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- (c) regulated by a Financial Services Regulator in a jurisdiction which has entered into a bilateral memorandum of understanding with the DFSA for sharing information.
- (3) A Fund Manager, or any Person making an Offer of a Unit of Fund or otherwise marketing a Fund, must not describe the Fund in its offer document or marketing material as an “Exchange Traded Fund” (or “ETF”) or otherwise hold out the Fund as being an Exchange Traded Fund or ETF, unless the Fund meets the criteria in (2).
- (4) The Fund Manager of an Islamic ETF must ensure that the Fund has an investment objective and strategy, which is to track the performance of a specified index or benchmark as specified in its Prospectus.

Guidance

A Fund Manager of an Islamic ETF is required to comply with the requirements applicable to a conventional Fund so far as they apply to that ETF – see Rule 6.1.1.(2).

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