



---

# The DFSA Rulebook

Islamic Financial Business Module

**(ISF)**

---

## **Contents**

The contents of this module are divided into the following chapters, sections and appendices:

|          |   |           |
|----------|---|-----------|
| <b>1</b> | <b>APPLICATION .....</b>  | <b>1</b>  |
| 1.1      | Application.....  | 1         |
| <b>2</b> | <b>DISCLOSURE.....</b>  | <b>2</b>  |
| 2.1      | Disclosure requirements in relation to Islamic financial business ..... | 2         |
| <b>3</b> | <b>CONSTITUTIONAL DOCUMENTS .....</b>                                   | <b>3</b>  |
| 3.1      | Islamic financial institutions .....                                    | 3         |
| <b>4</b> | <b>SYSTEMS AND CONTROLS .....</b>                                       | <b>4</b>  |
| 4.1      | General requirement .....   | 4         |
| 4.2      | Policy and procedures manual .....                                      | 4         |
| <b>5</b> | <b>SHARI'A SUPERVISORY BOARD .....</b>                                  | <b>6</b>  |
| 5.1      | Appointment and operation of an Shari'a supervisory board .....         | 6         |
| 5.2      | Shari'a reviews .....   | 8         |
| <b>6</b> | <b>CONDUCT OF BUSINESS STANDARDS .....</b>                              | <b>10</b> |
| 6.1      | Conduct of islamic financial business.....                              | 10        |

## **1 APPLICATION**

### **1.1 Application**

- 1.1.1** This module (ISF) applies to an Authorised Firm which is an Islamic Financial Institution or which operates an Islamic Window, with respect to the conduct in or from the DIFC of Islamic Financial Business.

## **2 DISCLOSURE**

### **2.1 Disclosure requirements in relation to Islamic financial business**

**2.1.1** An Authorised Firm must disclose the following information to each Client or Commercial Customer at the outset of the relationship and thereafter whenever the information changes:

- (a) the members of the Authorised Firm's Shari'a Supervisory Board; and
- (b) if the Client or Commercial Customer requests, the manner and frequency of Shari'a reviews.

#### **Guidance**

The initial disclosures made in accordance with Rule 2.1.1 may be made within the client agreement provided under COB chapter 8.

### **3 CONSTITUTIONAL DOCUMENTS**

#### **3.1 Islamic financial institutions**

- 3.1.1** An Islamic Financial Institution must ensure that its constitutional documents state that its business operations will be conducted in accordance with Shari'a.

## **4 SYSTEMS AND CONTROLS**

### **4.1 General requirement**

**4.1.1** An Authorised Firm must establish and maintain systems and controls which ensure that it complies with Shari'a.

#### **Guidance**

Responsibility for ensuring that an Authorised Firm complies with Shari'a ultimately rests with the senior management. The systems and controls required by Rule 4.1.1 will assist senior management ensure that there is such compliance.

### **4.2 Policy and procedures manual**

- 4.2.1** (1) An Authorised Firm undertaking Islamic Financial Business must implement and maintain an Islamic Financial Business policy and procedures manual which addresses the following matters:
- (a) the manner in which the compliance function will be undertaken, in respect of Shari'a compliance;
  - (b) the manner in which the Shari'a Supervisor Board will oversee and advise in regard to the Islamic Financial Business conducted by the Authorised Firm;
  - (c) the manner in which Shari'a Supervisory Board fatwas, rulings and guidelines will be recorded, disseminated and implemented and the internal Shari'a review undertaken;
  - (d) the manner in which disputes between the Shari'a Supervisory Board and the Authorised Firm in respect of Shari'a compliance will be addressed;
  - (e) the process for approving those internal systems and controls which are in place to ensure not only that the Islamic Financial Business is carried out in compliance with Shari'a, but that information is disseminated to investors in an appropriate manner;
  - (f) the manner in which conflicts of interest will be identified and managed; and

- (g) in respect of an Authorised Firm operating an Islamic Window, the systems and controls in place to ensure the appropriate separation of the Islamic Financial Business from the conventional business of the Authorised Firm.
- (2) If an Authorised Firm undertakes Islamic Financial Business and Manages a Profit Sharing Investment Account the policy and procedures manual must also contain the following matters:
- (a) the basis upon which a Profit Sharing Investment Account will be deemed restricted or unrestricted;
  - (b) the basis for allocation of profit or loss to the Profit Sharing Investment Account;
  - (c) the basis for allocation of expenses to the Profit Sharing Investment Account;
  - (d) the manner in which an Authorised Firm's own funds, funds of restricted Profit Sharing Investment Accounts and funds from unrestricted Profit Sharing Investment Accounts 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 Profit Sharing Investment Accounts;
  - (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 4.1.2(2) 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.

## **5 SHARI'A SUPERVISORY BOARD**

### **5.1 Appointment and operation of a Shari'a supervisory board**

#### **Guidance**

Pursuant to Article 13 of the Law Regulating Islamic Financial Business 2004, an Authorised Firm undertaking Islamic Financial Business must appoint a Shari'a Supervisory Board.

#### **5.1.1** When an Authorised Firm appoints a Shari'a Supervisory Board, it must ensure that:

- (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;
- (c) any appointments, dismissals or changes in respect of members of the Shari'a Supervisory Board are approved by the Governing Body of the Authorised Firm; and
- (d) no member of the Shari'a Supervisory Board is a director or Controller of the Authorised Firm.

#### **Guidance**

For the purposes of Rule 5.1.1, an Authorised Firm 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 Islamic Financial Business to be undertaken by the Authorised Firm.

#### **5.1.2** An Authorised Firm must document its policy in relation to:

- (a) how appointments, dismissals or changes will be made to the Shari'a Supervisory Board;
- (b) the process through which the suitability of Shari'a Supervisory Board members will be considered; and
- (c) the remuneration of the members of the Shari'a Supervisory Board.

#### **5.1.3** An Authorised Firm must establish and retain, for six years, records of:



- (a) its assessment of the competency of the Shari'a Supervisory Board members;
- (b) the agreed terms of engagement of each member of the Shari'a Supervisory Board; and
- (c) the matters in Rules 5.1.1(c) and 5.1.2.

**Guidance**

The records of the assessment of competency of Shari'a Supervisory Board members should clearly indicate; at least:

- a. the factors that have been taken into account when making the assessment of competency;
- b. the qualifications and experience of the Shari'a Supervisory Board members;
- c. the basis upon which the Authorised Firm has deemed that the proposed Shari'a Supervisory Board member is suitable; and
- d. details of any other Shari'a Supervisory Boards of which the proposed Shari'a Supervisory Board member is, or has been, a member.

**5.1.4** An Authorised Firm must take reasonable steps to ensure that the Shari'a Supervisory Board B is independent of and not subject to any conflict of interest with respect to the Authorised Firm.

**5.1.5** If requested by the DFSA, an Authorised Firm must provide the DFSA with information on its appointed or proposed Shari'a Supervisory Board members with regard to the qualifications, skills, experience and independence of the Shari'a Supervisory Board members.

**5.1.6** An Authorised Firm must take reasonable steps to ensure that it and its Employees:

- (a) provide such assistance as the Shari'a Supervisory Board reasonably requires to discharge its duties;
- (b) give the Shari'a Supervisory Board right of access at all reasonable times to relevant records and information;
- (c) do not interfere with the Shari'a Supervisory Board's ability to discharge its duties; and
- (d) do not provide false or misleading information to the Shari'a Supervisory Board.

## **5.2 Shari'a reviews**

**5.2.1** An Authorised Firm must ensure that all Shari'a reviews are undertaken by the Shari'a Supervisory Board in accordance with AAOIFI GSIFI No 2.

**5.2.2** (1) An Authorised Firm must commission an annual report from the Shari'a Supervisory Board which complies with AAOIFI GSIFI No 1.

(2) An Authorised Firm must deliver a copy of the annual report of the Shari'a Supervisory Board to the DFSA within 14 days of having received it.

## **5.3 Internal Shari'a review**

**5.3.1** An Authorised Firm must perform an internal Shari'a review to assess the extent to which the Authorised Firm complies with fatwas, rulings and guidelines issued by the Authorised Firm's Shari'a Supervisory Board.

**5.3.2** An Islamic Financial Institution must perform the internal Shari'a review in accordance with AAOIFI GSIFI No. 3.

**5.3.3** An Authorised Firm which operates an Islamic Window 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**

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.

**5.3.4** An Authorised Firm must ensure that the internal Shari'a review is performed by the internal audit function or the compliance function of the Authorised Firm and that the individuals or departments involved in performing the review are competent and sufficiently independent to assess compliance with Shari'a.

**Guidance**

For the purposes of assessing competency of personnel or departments which perform the internal Shari'a review, Authorised Firms should consult AAOIFI GSIFI No. 3 paragraphs 9-16 inclusive.

## **6 CONDUCT OF BUSINESS STANDARDS**

### **6.1 Conduct of Islamic financial business**

#### **Profit sharing investment accounts**

**6.1.1** Where a transaction will involve a Client becoming a Profit Sharing Investment Account holder, an Authorised Firm must warn the Client in writing that the risk of loss rests with the Client and that the Authorised Firm will not share in the losses, unless there is negligence or misconduct for which it is responsible.

**6.1.2** An Authorised Firm must ensure that a client agreement provided to a Client in accordance with COB Rule 8.1.1 contains, in addition to those matters referred to in COB Rule 8.1.4, the following information:

- (a) how the monies of the Client will be managed and invested including details of its policy on diversification of the portfolio;
- (b) the basis for the allocation of profit between the Authorised Firm and the Client; and
- (c) confirmation of the investment objectives of the Profit Sharing Investment Account investment account holder, including details of any restrictions requested by the Client.

**6.1.3** (1) COB Rule 8.3.1 applies to an Authorised Firm as if the Authorised Firm is an investment manager in respect of those Clients who are Profit Sharing Investment Account holders.

(2) An Authorised Firm must ensure that a periodic statement provided to a Client in accordance with COB Rule 8.3.1 contains, in addition to those matters referred to in COB Rule 8.3.1, the following information:

- (a) details of the performance of the Client's investment; and
- (b) the allocation of profit between the Authorised Firm and the Client.

#### **Islamic window**

**6.1.4** An Authorised Firm that operates an Islamic Window must ensure that the disclosures required by AAOIFI FAS 18 are made to all Clients.

### **Marketing material**

- 6.1.5** Before an Authorised Firm communicates any marketing material to a Person, it must ensure that, in addition to the information required by COB Rule 6.1.4, the material states which Shari'a Supervisory Board has reviewed the products or services to which the material relates.