

Appendix 1

All provisions shown as struck through in this appendix have been moved to the Islamic Finance Rules Module of the DFSA Rulebook. Please see the destination table for further information.



The DFSA Rulebook

Authorised Market Institutions

(AMI)

1 INTRODUCTION

1.2 Financial Services, ancillary services, official lists of securities and Authorised Market Institutions

Guidance

Financial Services

1. Articles 41 and 42 prohibit a Financial Service from being carried on in or from the DIFC unless it is carried on by an Authorised Firm or an Authorised Market Institution whose Licence authorises it to do so or by a Recognised Body in respect of those Financial Services set out in its Recognition Notice. REC provides relevant Rules in respect of Recognised Bodies and, accordingly, Recognised Bodies are not the subject of this module.
2. GEN prescribes the Financial Services which may be carried on by an Authorised Firm or Authorised Market Institution.

Ancillary Services

3. Article 44(1) prohibits Ancillary Services from being carried on in or from the DIFC unless they are carried on by an Ancillary Services Provider whose registration allows it to do so.
4. The ASP module prescribes the Ancillary Services which may be carried on by an Ancillary Services Provider. An exchange, clearing house or settlement operator already established outside of the DIFC may, if not carrying on a Financial Service in or from the DIFC, instead apply to register to conduct the Ancillary Service of Operating a Management Office, Operating a Local Services Office or both in or from the DIFC.

Authorised Market Institutions and regulatory processes

5. This module sets out the DFSA's regulatory process in relation to Authorised Market Institutions. The regulatory processes contained here supplement other Rules that relate to Authorised Market Institutions. These are set out in the GEN, SUP, ENF and OSR modules of the Rulebook.
6. The following modules of the Rulebook, in addition to this module, apply to Authorised Market Institutions:

| Module | Applicable chapters |
|------------------------------------|------------------------|
| General (GEN) | 1, 2, 3, 5, 6, 7 and 8 |
| Supervision (SUP) | Chapters 2 - 8 |
| Enforcement (ENF) | All chapters |
| Offered Securities Rules (OSR) | 7 |
| <u>Islamic Finance Rules (IFR)</u> | <u>2, 3 and 4</u> |

The AMI module

7. Chapters 2 to 5 and chapter 7 set out the requirements for a new Licence application and also an application by an existing Authorised Market Institution to change the scope of its existing Licence.

8. Chapters 8, 9, 10 and 11 contain Rules relating to the ongoing obligations and supervision of Authorised Market Institutions and are in addition to those set out in SUP and include a series of notification requirements, anti money laundering provisions and supervisory directions that may be made by the DFSA to Authorised Market Institutions under Article 9 of the Markets Law.
9. Chapter 12 refers to ENF which describes the DFSA's enforcement powers under the Regulatory Law and outlines the policy for using these powers. ENF also establishes the framework for the DFSA's decision making process and the giving of notice in relation to enforcement powers.
- ~~10. Chapter 13 refers to specific requirements applying to Authorised Market Institutions undertaking Islamic Financial Business under the Law Regulating Islamic Financial Business 2004.~~

Change in control

11. Chapter 6 of this module covers the requirements with regard to changes and proposed changes to an Authorised Market Institution's Controllers.

Official lists of securities

12. Chapter 7 contains a specific Licensing Requirement for applicants who wish to maintain an Official List of Securities. Chapter 10 contains some disclosure requirements in respect of listing decisions by an Authorised Market Institution and also some supervisory powers in relation to listings. Other Rules in respect of Authorised Markets Institutions and Official Lists of Securities are contained in OSR chapter 7.

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~~13~~ ~~[DELETED]~~ **ISLAMIC FINANCIAL BUSINESS**

~~13.1~~ **Application**

~~13.1.1~~ The requirements in this chapter apply to an Authorised Market Institution whose Licence has been endorsed authorising the Authorised Market Institution to conduct Islamic Financial Business as an Islamic Financial Institution or an Islamic Window in accordance with Article 12 of the Law Regulating Islamic Financial Business 2004.

~~13.2~~ **Disclosure requirements in relation to Islamic financial business**

~~13.2.1~~ An Authorised Market Institution must disclose the following information to each Person granted access to its facilities at the outset of the relationship, following the endorsement process required by Article 12 of the Law Regulating Islamic Financial Business 2004, and thereafter whenever the information changes:

- ~~(a)~~ — the members of the Authorised Market Institution's Shari'a Supervisory Board (SSB); and
- ~~(b)~~ — if the Person granted access to its facilities requests, the manner and frequency of Shari'a reviews.

Guidance

Article 12 of the Law Regulating Islamic Financial Business 2004 sets out the basis upon which an Authorised Firm and an Authorised Market Institution must seek an endorsement on its Licence to conduct Islamic Financial Business as an Islamic Financial Institution or an Islamic Window.

~~13.3~~ **Constitutional documents**

~~13.3.1~~ An Authorised Market Institution endorsed as an Islamic Financial Institution must ensure that its constitutional documents state that its business operations will be conducted in accordance with Shari'a.

~~13.4~~ **Systems and controls**

General requirement

~~13.4.1~~ An Authorised Market Institution must establish and maintain systems and controls which ensure that it complies with Shari'a.

Guidance

~~Responsibility for ensuring that an Authorised Market Institution complies with Shari'a ultimately rests with its senior management.~~

13.5 Policy and document requirements

Policy and procedures manual

13.5.1 (1) ~~An Authorised Market Institution must implement and maintain an Islamic Financial Business policy and procedures manual which addresses the following matters:~~

- ~~(a) the manner in which the compliance with Shari'a will be ensured;~~
- ~~(b) the manner in which the SSB will oversee and advise in regard to the Islamic Financial Business conducted by the Authorised Market Institution;~~
- ~~(c) the manner in which SSB 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 SSB and the Authorised Market Institution 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 a Person granted access to its facilities in an appropriate manner; and~~
- ~~(f) the manner in which conflicts of interest will be identified and managed.~~

13.6 Shari'a Supervisory Board

Appointment and operation of a Shari'a Supervisory Board

Guidance

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

13.6.1 ~~When an Authorised Market Institution 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 Market Institution; and~~
- ~~(d) no member of the Shari'a Supervisory Board is a director or Controller of the Authorised Market Institution.~~

Guidance

~~For the purposes of Rule 6.1.1, an Authorised Market Institution 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 Market Institution.~~

13.6.2 ~~An Authorised Market Institution 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;~~

13.6.3 ~~An Authorised Market Institution must establish and maintain 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 13.6.1(c) and 13.6.2;~~

~~for six years.~~

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 Market Institution 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.~~

- ~~13.6.4~~ An Authorised Market Institution must take reasonable steps to ensure that the Shari'a Supervisory Board is independent of and not subject to any conflict of interest with respect to the Authorised Market Institution.
- ~~13.6.5~~ If requested by the DFSA, an Authorised Market Institution 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.
- ~~13.6.6~~ An Authorised Market Institution 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.

~~13.7~~ **Shari'a reviews**

- ~~13.7.1~~ An Authorised Market Institution must ensure that all Shari'a reviews are undertaken by the Shari'a Supervisory Board in accordance with AAOIFI GSIFI No 2.
- ~~13.7.2~~ (1) An Authorised Market Institution must commission an annual report from the Shari'a Supervisory Board which complies with AAOIFI GSIFI No 1.
- ~~(2)~~ An Authorised Market Institution must deliver a copy of the annual report of the Shari'a Supervisory Board to the DFSA within 14 days of having received it.

~~13.8~~ **Internal Shari'a review**

- ~~13.8.1~~ An Authorised Market Institution must perform an internal Shari'a review to assess the extent to which the Authorised Market Institution complies with fatwas, rulings and guidelines issued by the Authorised Market Institution's Shari'a Supervisory Board.
- ~~13.8.2~~ An Islamic Financial Institution must perform the internal Shari'a review in accordance with AAOIFI GSIFI No 3.
- ~~13.8.3~~ An Authorised Market Institution 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.~~

~~**13.8.4** An Authorised Market Institution must ensure that the internal Shari'a review is performed by the internal audit function or the compliance function of the Authorised Market Institution 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 Market Institutions should consult AAOIFI GSIFI No 3 paragraphs 9-16 inclusive.~~