

## **Appendix 2**

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.



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# **The DFSA Rulebook**

## **Collective Investment Rules**

### **(CIR)**

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### 3            **MARKETING AND TRANSACTIONS INVOLVING FUNDS**

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#### 3.4            **Access to Foreign Funds and availability of Prospectus**

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**3.4.4**        (1)        The Prospectus of a Foreign Fund made available by an Authorised Firm must be in the English language.

(2)        The Prospectus must contain in a prominent position, or have attached to it, a statement that clearly:

(a)        describes the foreign jurisdiction and the legislation in that jurisdiction that applies to the Fund;

(b)        states the name of the relevant Financial Services Regulator in that jurisdiction;

(c)        describes the regulatory status accorded to the Fund by that Regulator;

(d)        includes the following warning:

“This Prospectus relates to a Fund which is not subject to any form of regulation or approval by the Dubai Financial Services Authority (“DFSA”).

The DFSA has no responsibility for reviewing or verifying any Prospectus or other documents in connection with this Fund. Accordingly, the DFSA has not approved this Prospectus or any other associated documents nor taken any steps to verify the information set out in this Prospectus, and has no responsibility for it.

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

If you do not understand the contents of this document you should consult an authorised financial adviser.”;

and

(e)        if the Offer is not directed to Retail Clients, includes a prominent statement to that effect to be incorporated within the warning in (d).

(3)        In respect of an Islamic Fund which is specified in section A1.2 of IFR App1 A7.2 of App 7, the Prospectus must contain in a prominent position or have attached to it the statement prescribed in that section.

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## 8 ACCOUNTING STANDARDS

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### 8.2 Accounting standards for Funds

- 8.2.1 (1) An Operator must in respect of a Fund prepare and maintain all financial accounts and statements in accordance with USGAAP or in accordance with IFRS as supplemented by the Statement of Recommended Practice (SORP) issued from time to time by the United Kingdom's Investment Managers Association (IMA), where appropriate, unless (2) or (3) applies.
- ~~(2) If a Fund is an Islamic Fund the Operator must prepare and maintain all financial accounts and statements in accordance with the accounting standards of the Accounting and Auditing Organisation for Islamic Financial Institutions AAOIFI FAS 14.~~
- ~~(3) If the Operator of an Umbrella Fund operates one or more Islamic Sub-Funds it must prepare and maintain all financial accounts and statements in accordance with the IFRS, as supplemented by AAOIFI FAS14.~~

#### Guidance

AAOIFI FAS 14 sets out the accounting rules for recognising, measuring and presenting the assets managed and funds mobilised on the basis of Islamic Shari'a rules and principles in the financial accounts and statements of conventional financial institutions that offer Islamic financial services, as well as the income generated from these services. The standard also determines the necessary disclosures related to these services.

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## 9 PERIODIC REPORTS

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### 9.4 Contents of the annual report

- 9.4.1 An annual report on a Fund, other than a Fund which is an Umbrella Fund, must contain:
- (a) the full audited accounts for the annual accounting period;
  - (b) the report of the Auditor in accordance with Rule 9.8.1;
  - (c) the report of the Operator in accordance with Rule 9.5.1; and

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- (d) if the Fund is a Public Fund, the comparative table in accordance with Rule 9.6.1; ~~or~~
  - (e) if the Fund is a Private Fund, a statement on the performance of the Fund in accordance with the Constitution and Prospectus; ~~and~~
  - (f) if the Fund is a Public Fund, the report in accordance with Rule 9.7.1 of the Person providing oversight of the Fund;
  - (g) if the Fund is an Islamic Fund, the report specified in IFR Rule 6.10.1 ~~13.1.11(2)~~; and
  - (h) if the Fund in an Investment Trust, the report of the Trustee in accordance with Rule 9.7.1.

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## **12 AUDITORS**

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### **12.4 Function of the auditor**

**12.4.1** An Operator, as applicable, must in writing require the Fund's Auditor to:

- (a) conduct an audit of the Fund's accounts in accordance with the requirements of the relevant standards published by the International Auditing and Assurance Standards Board (IAASB) in respect of its ~~conventional financial business and the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) in respect of any Islamic Funds~~; and
- (b) produce a report on the audited accounts which states:
  - (i) whether, in the Auditor's opinion, the accounts have been properly prepared in accordance with the requirements imposed by this chapter;
  - (ii) in particular, whether the accounts give a true and fair view of the financial position of the Fund at the end of the annual accounting period; and
  - (iii) any other matter or opinion relating to the requirements of this chapter.

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## 13 SPECIALIST FUNDS

### 13.1 ~~[Deleted]~~ Islamic Funds

~~13.1.1 (1) This section applies to an Operator and Trustee of a Domestic Fund which is an Islamic Fund and to an Operator and Trustee of a Domestic Fund which is an Umbrella Fund which has one or more Islamic Sub-Funds in relation to these Sub-Funds.~~

~~(2) Section 13.2 to 13.6 also apply to an Islamic Fund described in (1) where the Fund is of the specified type dealt with under those sections.~~

#### **Systems and controls**

~~13.1.2 (1) The Operator of a Fund must establish and maintain systems and controls which ensure that its management of the Fund and the Fund Property is Shari'a compliant.~~

~~(2) The Operator must ensure that its Fund's Constitution and Prospectus are, and remain, approved by the Fund's Shari'a Supervisory Board.~~

#### **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 13.1.2 will assist senior management to ensure that there is such compliance.~~

#### **Policies and procedures manual**

~~13.1.3 The Operator of a Fund must implement and maintain an Islamic Financial Business policy and procedures manual for the Fund 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 Supervisory Board will oversee and advise in regard to the Islamic Financial Business conducted by the Operator;~~

~~(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 Operator 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 Unitholders in an appropriate manner; and~~

- (f) ~~the manner in which conflicts of interest will be identified and managed, including as prescribed in Rule 13.1.7.~~

~~**Appointment and operation of a Shari'a Supervisory Board**~~

~~**13.1.4** When the Operator of a Fund appoints a Shari'a Supervisory Board to its Fund, 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 Fund; and~~
- (d) ~~no member of the Shari'a Supervisory Board is a director or Controller of the Fund or its Operator.~~

~~**Guidance**~~

- ~~1. Pursuant to Article 13 of the Law Regulating Islamic Financial Business 2004 and Article 30(2) of the Law, an Operator undertaking Islamic Financial Business must appoint a Shari'a Supervisory Board.~~
- ~~2. For the purposes of Rule 13.1.4, a Fund 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 Fund.~~

~~**13.1.5** The Operator of a Fund must document the Fund's 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.~~

~~**13.1.6** The Operator of a Fund 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 13.1.4(c) and 13.1.5.~~

~~**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;~~
- e. ~~the basis upon which the Operator 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.~~

**13.1.7** ~~(1) The Islamic Financial Business policy and procedures manual must provide that:~~

~~(a) a member of the Shari'a Supervisory Board is obliged to notify the Operator of any conflict of interest that such member may have with respect to the Fund or Operator, or in the case of an Investment Trust, the Trustee; and~~

~~(b) the Operator will take appropriate steps to manage any such conflict of interest so that the Islamic Financial Business is carried out appropriately and in compliance with Shari'a, the interest of a Unitholder is not adversely affected and all Unitholders are fairly treated and not prejudiced by any such interests.~~

~~(2) If an Operator is unable to manage a conflict of interest as provided above, it must dismiss or replace the member as appropriate.~~

**13.1.8** ~~The Operator of a Fund must provide the DFSA at its request with information on the qualifications, skills, experience and independence of the individuals who are appointed or proposed to be approved as members of the Shari'a Supervisory Board.~~

**13.1.9** ~~(1) The Operator of a Fund must take reasonable steps to ensure that the Operator's and the Fund's 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.~~

~~(2) The Trustee must take reasonable steps to ensure that its Employees comply with (1)(a)-(d).~~

### **Shari'a reviews**

**13.1.10** ~~The Operator must ensure that all Shari'a reviews are undertaken by the Shari'a Supervisory Board in accordance with AAOIFI GSIFI No 2.~~

- ~~13.1.11~~ (1) The Operator must commission an interim and an annual report from the Shari'a Supervisory Board which complies with AAOIFI GSIFI No 1.
- (2) The Operator must deliver a copy of the annual interim report to the Unitholders in accordance with Rule 9.3.1 and must include the report of the Shari'a Supervisory Board in the annual report required under Rule 9.4.1.

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

- ~~13.1.12~~ The Operator 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.
- ~~13.1.13~~ The Operator must perform the internal Shari'a review in accordance with AAOIFI GSIFI No. 3.
- ~~13.1.14~~ The Operator 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**

~~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.~~

- ~~13.1.15~~ The Operator must ensure that the internal Shari'a review is performed by the internal audit function of the Fund or the compliance function of the Fund 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, Operators should consult AAOIFI GSIFI No. 3 paragraphs 9 to 16 inclusive.~~



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## 15 PUBLIC FUND PROSPECTUS

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### 15.5 ~~[Deleted]~~ **Drawing up a Prospectus for Islamic Funds**

~~15.5.1~~ An Operator of an Islamic 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)~~ the names of the members of the Shari'a Supervisory Board and their qualifications and experience;
- ~~(c)~~ the manner and frequency of Shari'a reviews;
- ~~(d)~~ the disclosures required by AAOIFI FAS 14; and
- ~~(e)~~ the additional disclosure, if applicable, prescribed under section A7.1 of App 7.

#### **Guidance**

- ~~1.~~ An Operator should consider providing additional information to support the statement under Rule 15.5.1 (a) as indicated in 2 and 3 below.
- ~~2.~~ The Operator should provide sufficient details setting out the basis upon which the Fund has been approved and certified as Shari'a compliant by its Shari'a Supervisory Board. Such details should include the basis of the underlying principles, i.e. the fatwas or rulings, including reference to any relevant ijthad, ijma, qiyas or other. Where applicable, reference should be made to any Islamic indices to be used. In addition, where applicable, the screening process and any filters used should be identified.
- ~~3.~~ The Operator should set out each of the key features of the Fund and explain the rationale for determining why each of these features are considered Shari'a compliant by the Fund's Shari'a Supervisory Board.

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## 16 INVESTMENT AND BORROWING POWERS

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### 16.3 Investment in other Funds

- 16.3.1** (1) A Fund may invest in Units of another Fund only where the Operator, except in relation to a Master Fund which is a Fund of Funds, has taken reasonable care to determine that:

- (a) the other Fund is the subject of an independent annual audit conducted in accordance with IFRS or US GAAP ~~or if an Islamic Fund in accordance with AAOIFI;~~
  - (b) the other Fund has mechanisms in place to enable Unitholders to redeem their Units within a reasonable time; and
  - (c) the other Fund is prohibited from having more than 20% of its value in the Units of Funds.
- (2) The Operator must also have ascertained that there is a proper and disclosed basis for asset valuation and the pricing before investing in Units in another Fund.

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## **19 PRIVATE FUND PROSPECTUS**

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### **19.5 ~~[Deleted]~~ Drawing up a Prospectus for Islamic Funds**

**19.5.1** ~~An Operator of an Islamic 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) the names of the members of the Shari'a Supervisory Board and their qualifications and experience;~~
- ~~(c) the manner and frequency of Shari'a reviews ;~~
- ~~(d) the disclosures required by AAOIFI FAS 14; and~~
- ~~(e) the additional disclosure, if applicable, prescribed under section A7.1 of App 7.~~

#### **Guidance**

- ~~1. An Operator should consider providing additional information to support the statement under Rule 19.5.1(a) as indicated in 2 and 3 below.~~
- ~~2. The Operator should provide sufficient details setting out the basis upon which the Fund has been approved and certified as Shari'a compliant by its Shari'a Supervisory Board. Such details should include the basis of the underlying principles, i.e. the fatwas or rulings, including reference to any relevant ijihad, ijma, qiyas or other. Where applicable, reference should be made to any Islamic indices to be used. In addition, where applicable, the screening process and filters used should be identified.~~
- ~~3. The Operator should set out each of the key features of the Fund and explain the rationale for determining why each of these features are considered Shari'a compliant by the Fund's Shari'a Supervisory Board.~~

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## **App 7 ~~ADDITIONAL PROSPECTUS DISCLOSURES FOR ISLAMIC FUNDS~~**

### **A7.1 ~~Shari'a approval process statement for offers of Domestic Funds from the DIFC~~**

**A7.1.1** ~~In respect of the Units of an Islamic Fund which are to be offered to prospective Unitholders in Malaysia, an Operator must ensure that the Prospectus set out in a prominent position the following statement:~~

~~"The Shari'a approval process which relates to this Fund has been carried out in accordance with the legislation applicable in the Dubai International Finance Centre (DIFC)."~~

### **A7.2 ~~Shari'a approval process statement for offers of Foreign Funds in or from the DIFC~~**

**A7.2.1** ~~In respect of an Islamic Fund which is a Fund domiciled in Malaysia and which is a Designated Fund, an Authorised Firm must ensure that the Prospectus contains in a prominent position or has attached to it the following statement:~~

~~"This Prospectus relates to an Islamic Fund, the Shari'a approval process of which is regulated by the Securities Commission of Malaysia."~~