

Appendix 7

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



The DFSA Rulebook

Islamic Finance Rules

(IFR)

1. INTRODUCTION

.....

1.2 Overview of the IFR module

Guidance

1. Rules in this module are made under or for the purposes of a number of laws, including the Regulatory Law 2004, the Law Regulating Islamic Financial Business 2004 and the Collective Investment Law ~~2006~~ 2010. Guidance may indicate the relevant legislation.
2. Chapters 2 and 3 contain the general requirements and obligations that apply to an Authorised Person who carries on any Financial Service as Islamic Financial Business. Chapter 4 contains the accounting and audit requirements that apply to such Persons.
3. Chapter 5 contains additional requirements that apply to an Authorised Firm that carries on the Financial Service of Managing Profit Sharing Accounts.
4. Chapter 6 contains the additional requirements that apply to an Fund Manager Operator of an Islamic Fund.
5. Chapter 7 contains specific requirements that apply to Reporting Entities which Offer Securities as Shari'a compliant. However, the general requirements that apply to such Offers with which the Reporting Entities must comply continue to be in the Offered Securities Rules (OSR module).
6. Chapter 8 contains the additional requirements applying to Persons who carry on Insurance Business or Insurance Intermediation as Takaful Insurance.

2 ISLAMIC FINANCE

2.4 Islamic financial instruments and products

Profit Sharing Investment Accounts (PSIAs)

3. PSIAs do not fall within the GEN definitions of Investments. They are contractual arrangements under which Islamic banks invest clients' funds, often (though not always) on a pooled basis, and are generally treated by the bank as off balance sheet. They are generally structured under Mudaraba, so that the investor in principle bears the full investment risk. Although PSIAs have the characteristics of a Collective Investment Fund, under an express exclusion provided under CIR Rule 2.3.6, they are not treated as such. Instead, Managing a PSIA is a distinct Financial Service as defined in GEN Rules 2.2.2(r) and 2.21.

3 GENERAL OBLIGATIONS

.....

3.8 Additional conduct requirements

Guidance

The COB module contains conduct of business requirements that apply to Authorised Firms conducting Financial Services. The AMI module contains additional conduct standards that apply to Authorised Market Institutions. Set out below are additional conduct requirements that apply to an Authorised Person carrying out any Financial Service in accordance with Shari'a.

Disclosure relating to Shari'a Supervisory Board

- 3.8.1** (1) An Authorised Firm, subject to (2), must disclose to each Client:
- (a) at the outset of the relationship and thereafter at any time on request, details of the members of the Authorised Firm's Shari'a Supervisory Board; and
 - (b) at any time on request, details of the manner and frequency of Shari'a reviews.
- (2) An Authorised Firm does not have to make the disclosure required under (1) if it is a Fund Manager of a 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.
- ~~(2)~~ (3) An Authorised Market Institution must disclose the following information to each Person granted access to its facilities at the outset of the relationship, and thereafter whenever the information changes:
- (a) the members of the Authorised Market Institution's Shari'a Supervisory Board; and
 - (b) if the Person granted access to its facilities requests, the manner and frequency of Shari'a reviews.

Guidance

1. An Authorised Firm may make the initial disclosures required under Rule 3.8.1(a) by including such information in the Client Agreement provided under COB chapter 3.
2. An Authorised Firm Managing a PSIA may make additional disclosure required to be made relating to PSIA by including such information in the Client Agreement. See chapter 5 for additional disclosure for PSIA's.

3. A Fund Manager making an Offer of a Unit of a Fund it manages is required under CIR Rules 14.3.1(b) and 14.3.2(b) to include information specified in Rule 3.8.1(1) in the Prospectus which it must prepare and make available to Clients, hence the exemption in Rule 3.8.1(2). A similar exemption is available to Fund Managers with regard to key information that must be provided to a Client under COB Rule 3.3.1(e).

Marketing material

- 3.8.2** In addition to information required by COB 3.2, any marketing material communicated by an Authorised Firm to a Person must state which Shari'a Supervisory Board has reviewed the products or services to which the material relates.

Guidance

1. COB section 3.2.4 sets out the meaning of “marketing material”.
2. An Authorised Firm may be able to rely on the Transitional Rules in chapter 10 of GEN for the purposes of complying with some of the provisions in this module. See for example GEN Rule 10.5.1 which provides transitional relief for marketing material.

Islamic window

- 3.8.3** (1) An Authorised Person which operates an Islamic Window must, subject to (2), make the relevant disclosures required by AAOIFI FAS 18 to its Clients or any Person granted access to its facilities as is appropriate.
- (2) An Authorised Firm does not have to make the disclosure required under (1) if it is a Fund Manager of a 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

See Guidance 3 for the type of information required to be included in a Prospectus.

.....

4 ACCOUNTING STANDARDS

.....

4.6 Function of the auditor

4.6.1 An Authorised Person carrying on Islamic Financial Business must in writing require its auditor to:

- (a) conduct an audit of the Authorised Person's accounts in accordance with the requirements of the relevant standards published by the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) in respect of its Islamic Financial Business;
- (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 Authorised Person for the financial year and of the state of the Authorised Person's affairs at the end of the financial year end; and
 - (iii) any other matter or opinion relating to the requirements of this chapter;
- (c) produce an Auditor's Annual Report:
 - (i) which states whether the auditor has:
 - (A) audited the Authorised Person's annual financial statements in accordance with AAOIFI in respect of its Islamic Financial Business;
 - (B) has carried out any other procedures considered necessary, having regard to the AAOIFI auditing standards in respect of its Islamic Financial Business; and
 - (C) received all necessary information and explanations for the purposes of preparing its report to the DFSA;

.....

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~~ ~~45~~ of the Collective Investment Law ~~2006~~ ~~2010~~ (the Law). The definition in Article ~~11~~ ~~45~~ of the Law is very wide and can capture some Islamic financial activities. However, under Article ~~12~~ ~~46~~ 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 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.~~

- (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 apply equally to an Islamic Fund, except as otherwise provided in this chapter.
- (3) 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.

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 ~~operated~~ or held out as being managed ~~operated~~ as an Islamic Fund. There are other requirements that ~~applying~~ 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 ~~Operators~~ of eCollective 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.

Systems and controls

- 6.1.2** (1) The Fund Manager 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) A Fund Manager may, where it is practicable to do so, include the systems and controls required under (1) within those it is required to establish and maintain pursuant to Rule 3.3.1.

Guidance

1. Article 38 of the Collective Investment Law 2010 requires the Fund Manager to establish and maintain systems and controls, including, but not limited, to financial and risk controls to ensure sound management of the Fund in accordance with the Fund's Constitution and its most recent Prospectus, taking due account of the nature, scale and complexity of the Fund's investments and operations.
2. Rule 3.3.1 requires a Fund Manager of Islamic Funds to establish and maintain systems and controls to ensure its Shari'a compliance.

Fund's constitutional documents

- 6.1.3** (1) The Fund Manager of a Domestic Fund other than an Exempt Fund Operator must, subject to (2), ensure that its Fund's Constitution and Prospectus are, and remain, approved by the Fund's Shari'a Supervisory Board.
- (2) In the case of an Exempt Fund, the Fund Manager must ensure that the Fund's Constitution and Prospectus are, and remain, approved by the Fund Manager's Shari'a Supervisory Board.

Guidance

See Guidance note 3 under Rule 6.2.1.

Islamic Financial Business policy and procedures manual

Guidance

A Fund Manager may, instead of having a separate Islamic Financial Business policy and procedures manual both at the firm level and at the Fund level, While it may appear possible for an Operator to maintain a single Islamic Financial Business policy and procedures manual for the firm and the Funds it manages, operates because there are specific legal obligations relating to the Fund such as those dealing with conflicts of interests between the Fund and the Operator, it is more appropriate to have separate manuals. If a single manual is to be maintained, it should clearly address Fund specific requirements within it.

- 6.1.4** The Fund Manager 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 Fund Manager 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 Fund Manager 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 6.2.4.

6.2 Shari'a Supervisory Board for an Islamic Fund

- 6.2.1** (1) ~~An Operator~~ A Fund Manager of an Islamic a Domestic Fund other than an Exempt Fund must, subject to (3), appoint a Shari'a Supervisory Board to its Fund that meets the following requirements:
- (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 of the Fund;
 - (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 Manager; and
 - (d) no member of the Shari'a Supervisory Board is a director or Controller of the Fund or its Fund Manager Operator.
- (2) A Fund Manager may comply with the requirement in (1) by appointing to the Fund the same Shari'a Supervisory Board as it has appointed to the firm in accordance with Rule 3.5.1, provided the requirements in (1) are also met.
- (3) A Fund Manager is not required to comply with the requirement in (1) where it relies, for the purposes of making investments for the Fund, on a widely accepted Shari'a screening process such as investing in securities included in, or recognised by reference to, an Islamic index, sukuk, or treasury instruments issued by a Shari'a compliant financial services provider regulated by a Financial Services Regulator.

Guidance

1. In appointing a Shari'a Supervisory Board ~~For~~ for the purposes of Rule 6.2.1(1), the Fund Manager ~~Operator~~ 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 activities undertaken by the Islamic Fund. If the Fund Manager is appointing the same Shari'a Supervisory Board as it has appointed to the firm pursuant to Rule 6.2.1(2), the Fund Manager should still consider whether the requirements in both Rule 3.5.1(1) and 6.2.1(1) are met in respect of that board.
2. If the Fund Manager is relying on Shari'a screening methodologies such as the Dow Jones Shari'a index, such screening is generally regarded as widely accepted and accessible. However, if less widely known methodologies are used, the Fund Manager should be able, upon request by the DFSA, to demonstrate to the satisfaction of the DFSA the grounds on which it considers the particular methodology used to be acceptable and reliable.
3. Although the Fund Managers of Exempt Funds are not subject to the requirement for the appointment of a Shari'a Supervisory Board for an Exempt Fund, they would need to ensure that the Exempt Funds they manage continue to meet the applicable Shari'a requirements applicable to the Fund. They may use a member of the Shari'a Supervisory Board appointed at the firm level for the purposes of ascertaining compliance with the Shari'a requirements. The manner in which they demonstrate to the Unitholder of the Exempt Fund as to how they achieve such compliance is a matter left to negotiation (i.e. subject to contractual terms) between the Unitholders and the Fund Manager.
4. An External Fund Manager may not be able to take advantage of IFR 6.2.1(2), unless it has a Shari'a Supervisory Board appointed at the firm level. In contrast the Fund Manager of an External Fund will be able to use its Shari'a Supervisory Board to meet the Shari'a Supervisory Board requirement relating to the Fund as set out in IFR 6.2.1(2).

6.2.2 (1) Subject to (2), ~~the Fund Manager~~ 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.

(2) If the Fund Manager, pursuant to Rule 6.2.1(2), appoints to the Fund the same Shari'a Supervisory Board it has appointed to the firm, the documents required under Rule 6.2.2(1) must be included in or otherwise form part of the records required under Rule 3.5.2.

6.2.3 (1) Subject to (2), ~~the Fund Manager~~ 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 6.2.1(1) (c) and 6.2.2.
- (2) If the Fund Manager, pursuant to Rule 6.2.1(2), appoints to the Fund the same Shari'a Supervisory Board it has appointed to the firm, the records required under Rule 6.2.3(1) must be included in or otherwise form part of the records required under Rule 3.5.3.

Guidance

1. 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 Fund Manager 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.
2. If the Fund Manager is relying on Rule 6.2.1(2), then the due diligence process, and the records maintained under Rules 3.5.2 and 3.5.3, should be augmented with the matters specified under Rule 6.2.1(1).

- 6.2.4**
- (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 Fund Manager Operator of any conflict of interest that such member may have with respect to the Fund or the Fund Manager Operator, and if appointed, or in the case of an Investment Trust, the Trustee; and
 - (b) the Fund Manager 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 a Fund Manager ~~Operator~~ is unable to manage a conflict of interest as provided above, it must dismiss or replace the member as appropriate.

- 6.2.5**
- The Fund Manager 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.

- 6.2.6** (1) The Fund Manager Operator of a Fund must take reasonable steps to ensure that the Fund Manager 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) If appointed, ~~the~~ Trustee must also take reasonable steps to ensure that its Employees comply with (1)(a)-(d).

6.3 External Shari'a reviews and periodic reports

6.3.1 ~~The Operator~~ A Fund Manager of a Domestic Fund, other than an Exempt Fund or a Fund relying on the exemption in Rule 6.2.1(3), must ensure that all Shari'a reviews of the Fund are undertaken by the Shari'a Supervisory Board in accordance with AAOIFI GSIFI No 2.

- 6.3.2** (1) In the case of a Domestic Fund other than an Exempt Fund or a Fund relying on the exemptions in Rule 6.2.1(3), ~~the Fund Manager Operator~~ must commission an interim and an annual report relating to the Fund operations from the Shari'a Supervisory Board which complies with AAOIFI GSIFI No 1.
- (2) The Fund Manager Operator must deliver a copy of the annual interim report referred to in (1) to the Unitholders in accordance with CIR Rule 9.3.1 and must include the report of the Shari'a Supervisory Board in the annual report required under CIR Rule 9.4.1.

Guidance

Although the Fund Managers of Exempt Funds are not subject to the Shari'a review process required under section 6.3, they would need to ensure that the Exempt Fund continues to meet the applicable Shari'a requirements, particularly for the purposes of their annual and interim reports, which are required to be prepared under CIR section 9.4. However, the manner in which they demonstrate to the Unitholders of the Fund how they achieve such compliance is a matter left to negotiation (i.e. subject to contractual terms) between the Unitholders and the Fund Manager.

6.4 Internal Shari'a review

- 6.4.1** (1) The Fund Manager of a Domestic Fund other than an Exempt Fund 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.
- 6.4.2** (2) The Fund Manager Operator must perform the internal Shari'a review in accordance with AAOIFI GSIFI No. 3.
- 6.4.3** (3) The Fund Manager of 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

1. Although the Fund Managers of Exempt Funds are not subject to the specific internal Shari'a requirements under section 6.4, they would need to ensure that the Exempt Fund continues to meet the applicable Shari'a requirements. However, the manner in which they demonstrate to the Unitholders of the Fund how they achieve such compliance is a matter left to negotiation (i.e. subject to contractual terms) between the Unitholders and the Fund Manager.
2. 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.

- 6.4.4 6.4.2** The Fund Manager Operator must ensure that the internal Shari'a review referred to in this section 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, Fund Manager Operators should consult AAOIFI GSIFI No. 3 paragraphs 9 to 16 inclusive.

6.5 Additional disclosure in a Prospectus of a Public Islamic Fund

Guidance

Chapter ~~15~~ 14 and in particular Rule 14.3.1 of the CIR module sets out the Public Fund Prospectus requirements. In addition to complying with those requirements as applicable to the particular Fund, the Fund Manager Operator of an Islamic Fund that is a Public Fund must comply with the additional requirements set out in this section.

6.5.1 ~~An Operator~~ 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)~~ (e) if applicable, the manner and frequency of Shari'a reviews;
- ~~(e)~~ (d) the disclosures required by AAOIFI FAS 14; and
- ~~(f)~~ (e) the additional disclosure, if applicable, prescribed under section A1.1 of App 1.

Guidance

1. A Fund Manager ~~n Operator~~ should consider providing additional information to support the statement under Rule 6.5.1 (1)(a) as indicated in 2 and 3 below.
2. The Fund Manager ~~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 ijtehad, 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 ~~Fund Manager~~ ~~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.

6.6 Additional disclosure in a Prospectus of a Private Islamic Fund

Guidance

Chapter ~~19~~ ~~14~~ and in particular Rules 14.3.2, 14.3.4 and 14.3.5 of the CIR module sets out the Private Fund Prospectus requirements and, the disclosures set out in this section are additional requirements.

6.6.1 ~~An Operator~~ A Fund Manager of an Islamic Fund which is a Private 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;
- ~~(b) the names of the members of the Shari'a Supervisory Board and their qualifications and experience;~~
- ~~(d)~~ (e) if applicable, the manner and frequency of Shari'a reviews ;
- (e) ~~(d)~~ the disclosures required by AAOIFI FAS 14; and
- (f) ~~(e)~~ the additional disclosure, if applicable, prescribed under section A1.2 of App 1.

6.7 Investments in other Funds

- ### **6.7.1**
- (1) An Islamic Fund which is a Public Fund may invest in Units of another Fund only where the ~~Fund Manager~~ ~~Operator~~ has taken reasonable care to determine that:
 - (a) the other Fund is the subject of an independent annual audit conducted in accordance with relevant IFRS or US GAAP or AAOIFI standards as applicable;

- (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 Fund Manager 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~~ the other Fund.

6.8 Accounting standards for Islamic Funds

- 6.8.1**
- (1) The Fund Manager Operator must in respect of an Islamic Fund prepare and maintain all financial accounts and statements in accordance with the accounting standards of the AAOIFI FAS 14.
 - (2) If the Fund Manager 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.

6.9 Function of the Auditor of an Islamic Fund

- 6.9.1** A Fund Manager Operator of an Islamic Fund 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 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.

Guidance

The obligations under this Rule relate to an Islamic Fund. In addition to these obligations, a Fund Manager ~~n-Operator~~ must comply with the obligations set out in chapter 4 as a firm carrying on Islamic Financial Business.

6.10 Periodic Reports of an Islamic Fund

Guidance

Chapter 9 of CIR sets out the periodic reports and related requirements. These are additional requirements that apply to Islamic Funds.

- 6.10.1** In addition to the matters specified in CIR ~~9.4.1~~ section 9.4, an annual report of an Islamic Fund, other than a Fund which is an Umbrella Fund, must contain the report specified in Rule 6.3.2(2).

6.11 Islamic Real Estate Investment Trusts (Islamic REITs)

- 6.11.1** (1) A Fund Manager ~~n-Operator~~ must ensure that it does not call, or otherwise hold out, a Fund as being an Islamic Real Estate Investment Trust or as being an Islamic REIT unless it is a Public Property Fund which is constituted in accordance with (2).

- (2) An Islamic REIT is a Public Property Fund which:
- (a) is constituted either as an Investment Company or as an Investment Trust;
 - (b) is primarily aimed at investments in income generating Real Property which complies with Shari'a principles; and
 - (c) distributes to the Unitholders at least 80% of its audited annual net income.

- 6.11.2** (1) A Fund Manager ~~n-Operator~~ of an Islamic REIT must ensure that it distributes to the Unitholders as dividends each year an amount not less than 80% of its audited annual net income.

- (2) The Persons providing oversight functions in respect of the Fund must determine if any;

- (a) revaluation surplus credited to income, or
- (b) gains on disposal of Real Property,

shall form part of net income for distribution to Unitholders.

6.11.3 Where an Islamic REIT holds any Real Property via one or more Special Purpose Vehicles, the Fund Manager Operator must ensure that each Special Purpose Vehicle distributes to the Fund all of its income as permitted by the laws and regulations of the jurisdiction where the Special Purpose Vehicle is established.

- 6.11.4**
- (1) A Fund Manager Operator of an Islamic REIT must ensure, subject to (2), that any investment made in respect of property under development whether on its own or in a joint venture is undertaken only where the REIT intends to hold the developed property upon completion.
 - (2) The total contract value of the property under development in (1) must not exceed 30% of the net asset value of the Fund Property of the Islamic REIT.

Guidance

For the purposes of this Rule, the DFSA would not consider property development activities to include refurbishment, retrofitting and renovation.

6.11.5 A Fund Manager Operator of an Islamic REIT may borrow either directly or through its Special Purpose Vehicle up to 70% of the total net asset value of the Fund and such borrowings are Shari'a compliant.

Guidance

As there are no specific risks that arise by virtue of a Fund being an Islamic Fund, the prudential requirements that apply to a Category 3 firm as set out in the PIB module apply to such Fund Managers Operators. However, if the underlying assets of the Fund are invested in financial products or instruments that are Islamic and have certain features which would raise any prudential risks, it is the responsibility of the Fund Manager Operator to address such risks. The DFSA would provide any additional clarifications regarding such matters upon request.

7. CONDUCT RULES FOR OFFERS OF ISLAMIC SECURITIES

7.1 Application

- 7.1.1**
- (1) Subject to (2), this chapter applies to any Person who Offers Islamic Securities in or from the DIFC.
 - (2) A Person making Offers of Islamic Securities in or from the DIFC must comply with the requirements in the Markets Law 2004 and the OSR module except to the extent otherwise provided in this chapter.
 - (3) Islamic Securities, for the purposes of this chapter, do not include Units of an Islamic Fund.

Guidance

1. The issue of Securities is not an activity that constitutes a Financial Service. Therefore, the activities such as the issue of Shares, Debentures (Sukuks) or Warrants do not attract the Financial Services prohibitions in the Regulatory Law 2004. However, the Offer of Securities is an activity to which the Markets Law 2004 and the OSR module apply. Under the Markets Law 2004, a Person making an Offer of Securities in or from the DIFC is subject to numerous disclosure requirements, unless exempt.
2. Offers of Islamic Securities which are Units of a Fund are not subject to the requirements in this section because the Collective Investment Law ~~2006~~ 2010 and CIR module provide for such activities to be regulated. Chapter 6 of this module sets out additional requirements that apply to the Fund Manager Operators when Offering Units of an Islamic Fund.
3. The definition of the term Islamic Securities is in the GLO module.

.....

APP 1 PROSPECTUS DISCLOSURES FOR ISLAMIC FUNDS**A1.1 Shari'a approval process statement for offers of Domestic Funds from the DIFC**

A1.1.1 In respect of the Units of an Islamic Fund which are to be offered to prospective Unitholders in Malaysia, a Fund Manager ~~n-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)".

A1.2 Shari'a approval process statement for offers of Foreign Funds in or from the DIFC

A1.2.1 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."