

Islamic Finance Rules Rulebook (IFR)

*In this attachment underlining indicates new text and striking through indicates deleted text.



1. INTRODUCTION

1.1 Application

1.1.1 These Islamic Finance Rules apply to:

- (a) every Authorised Person who carries on, or holds itself out as carrying on, an Islamic Financial Business in ~~the~~ ADGM whether as an Islamic Financial Institution or through an Islamic Window;
- (b) a Fund Manager of a Domestic Fund which is operated or held out as being operated as an Islamic Fund;
- (c) a Person making an Offer in ~~the~~ ADGM relating to a Security which is, or is held out as being, a Shari'a-compliant Security; and
- (d) a Recognised Body that carries on, or holds itself out as carrying on, an Islamic Financial Business in ~~the~~ ADGM.

Guidance

- (i) A subset certain of the requirements that apply to Authorised Persons Conducting Islamic Financial Business or distributing Shari'a-compliant Securities are included in these Islamic Finance Rules. An Authorised Person that has a Financial Services Permission to operate as an Islamic Financial Institution or that has a Financial Services Permission to operate an Islamic Window will also be subject to the requirements relating to such Regulated Activity or specified category of Regulated Activity that are included in other Rulebooks ~~issued by the Regulator~~ as required by the terms of that Authorised Person's Financial Services Permission.
- (ii) A subset of the requirements that apply to Recognised Bodies Conducting Islamic Financial Business are included in these Islamic Finance Rules. A Recognised Body that has a Recognition Order to operate an Islamic Financial Business will also be subject to those Rules in the FSRA's Rulebooks that are applicable to Recognised Bodies.

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- 2.3.3 An Authorised Person, other than an Islamic Financial Institution, that has a Financial Services Permission to operate an Islamic Window is an Authorised Person that conducts Islamic Financial Business as a segregated part of its overall business operations.

Guidance

- (i) Part 4 of FSMR governs the making of an application for a Financial Services Permission to conduct Islamic Financial Business.

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- (iv) An Authorised Person may, subject to meeting any requirements and restrictions in the Rulebooks ~~issued by the Regulator~~, carry on more than one Regulated Activity (including, without limitation, more than one Islamic Financial Business), provided that such activities fall within the scope of the Authorised Person's Financial Services Permissions required.

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Authorised Persons

2.4.1 Unless otherwise stated in these Islamic Finance Rules, an Authorised Person (whether acting as an Islamic Financial Institution or through an Islamic Window) will be entitled to carry on any Regulated Activity or specified category of Regulated Activity as Islamic Financial Business provided that:

- (a) it has complied with all other applicable provisions of the Rulebooks ~~issued by the Regulator~~ in relation to the Regulated Activity or specified category of Regulated Activity to be carried on as Islamic Financial Business; and
- (b) the carrying on of such Regulated Activity or specified category of Regulated Activity as an Islamic Financial Business has been approved by its Shari'a Supervisory Board.

Guidance

- (i) Whether or not a Regulated Activity or specified category of Regulated Activity is to be carried on as Islamic Financial Business that Regulated Activity or specified category of Regulated Activity must be carried out in compliance with (or in reliance on an exemption from) all other relevant parts of the Rulebooks ~~issued by the Regulator~~.

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- (v) The ADGM regulatory regime applies to any Authorised Person carrying on any Islamic Financial Business in ~~the ADGM~~ if the activity:
 - (A) relates to a financial instrument or product of the kind described in Guidance Notes (viii) and (ix) (Profit Sharing Investment Accounts), (x) and (xi) (Investments), and (xii) to (xv) (Takaful) below; and/or
 - (B) is conducted by way of business and not expressly excluded from regulation as a Regulated Activity. Note there are a number of such exclusions in FSMR.

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- (vii) The issue of financial products which are securities such as shares, bonds (falling under paragraphs 88 or 90 of Schedule 1 to FSMR), Sukuk or units in a Collective Investment Fund (in each case as defined in FSMR) attracts product-specific disclosure requirements such as the publication of a Prospectus or an Exempt

Disclosure Statement. Where such securities are included on an Official List of securities or made available to the public in ~~the~~ ADGM, there are initial and ongoing disclosure and other obligations that apply to the Reporting Entity (generally the issuer) under the MKT Rulebook. These MKT obligations are distinct from the obligations that apply to Persons carrying on Regulated Activities in respect of such Securities.

Profit Sharing Investment Accounts (PSIAs)

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- (ix) Because Managing a PSIA is a Regulated Activity, the ADGM regulatory regime that applies to Authorised Persons carrying on Regulated Activities in ~~the~~ ADGM applies to Islamic Financial Institutions and Islamic Windows that Manage PSIAs. As PSIAs are not financial products, the issue of PSIAs, or any advising or arranging activities conducted in relation to PSIAs, especially by a third party, do not attract prospectus-like disclosure or any advising or dealing-related COBS requirements (such as a suitability assessment). Instead, they attract a tailored regulatory regime under these Islamic Finance Rules that applies to the Authorised Person that Manages the PSIA (see IFR 5).

Specified Investments

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- (xii) The ADGM regulatory regime applies to Authorised Persons who carry on in ~~the~~ ADGM any regulatory activity in relation to any Shari'a-compliant products that fall within the definition of Specified Investments. However, particular products or instruments including, without limitation, Profit Sharing Investment Accounts (PSIAs), Takaful and Islamic Funds attract product/instrument specific additional conduct and other requirements, which are included in these Islamic Finance Rules.

Takaful

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- (xiv) Any Authorised Persons conducting Takaful activities shall, for the purposes of the Rulebooks ~~issued by the Regulator~~, be deemed to be conducting insurance business. There are two types of Regulated Activities that comprise insurance business: Effecting Contracts of Insurance as principal or Carrying Out Contracts of Insurance as Principal. Accordingly, any Authorised Person carrying on these Regulated Activities is subject to the ADGM regime for regulating Regulated Activities. Where an Authorised Person carries out the activities described under Effecting Contracts of Insurance or Carrying Out Contracts of Insurance as Principal in connection with Takaful such Authorised Person will be subject to the ADGM regime for regulating Regulated Activities and, in addition, will be subject to the Takaful-specific requirements set out in this Rulebook (see IFR 8). In addition, there are certain activities relating to insurance, such as advising and

arranging, which are regulated as Insurance Intermediation as defined in Chapter 4 of Schedule 1 to FSMR. Authorised Persons conducting those activities in relation to Takaful are regulated in the same way as Authorised Persons conducting such activities in relation to conventional insurance.

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Recognised Bodies

2.4.2 Unless otherwise stated in these Islamic Finance Rules, a Recognised Body will be entitled to carry on all, or any part, of its business as Islamic Financial Business provided that:

- (a) it has complied with all other applicable provisions of the Rulebooks ~~issued by the Regulator~~ in relation to the part of its business to be carried on as Islamic Financial Business; and
- (b) the carrying on of such part of its business as an Islamic Financial Business has been approved by its Shari'a Supervisory Board.

Guidance

- (i) Whether or not all, or any part, of a Recognised Body's business is to be carried on as Islamic Financial Business, that business must be carried out in compliance with all other relevant parts of the Rulebooks ~~issued by the Regulator~~.

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3.1.1 This chapter applies to an Authorised Person or Recognised Body that carries on Islamic Financial Business in ~~the~~ ADGM.

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6.1 Application

6.1.1 (a) This chapter applies in the case of a Domestic Fund:

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Guidance

- (i) The Fund Rules contains the key requirements relating to the management and operation of conventional Collective Investment Funds. These Islamic Finance Rules set out the additional requirements that apply where such a Fund is managed or held out as being managed as an Islamic Fund. There are other requirements that apply to Authorised Persons managing Islamic Funds which are found in the Rulebooks ~~issued by the Regulator~~, such as the GEN Rulebook, COBS Rulebook and PRU Rulebook.

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6.3.1 A Fund Manager of a Domestic Fund that is a Public Fund, other than a Fund relying on the exemption in IFR 6.2.1(c), 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 (a) In the case of a Domestic Fund that is a Public Fund other than a Fund relying on the exemptions in IFR 6.2.1(c), the Fund Manager 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).

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6.4 Internal Shari'a review

6.4.1 (a) The Fund Manager of a Domestic Fund that is a Public Fund must perform an internal Shari'a review to assess the extent to which the Fund complies with fatwa, rulings and guidelines issued by the Fund's Shari'a Supervisory Board.

(b) The Fund Manager must perform the internal Shari'a review in accordance with AAOIFI GSIFI No. (3).

(c) The Fund Manager 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).

6.4.2 The Fund Manager must ensure that the internal Shari'a review referred to in this IFR 6 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 should consult AAOIFI GSIFI No. (3) paragraphs 9 to 16 inclusive.

7.1.1 (a) Subject to (b), this chapter applies to any Person who Offers Islamic Securities in ~~the~~ ADGM, unless the Offer is an Exempt Offer.

(b) A Person making an Offer of Islamic Securities in ~~the~~ ADGM must comply with the requirements in FSMR and the MKT Rulebook except to the extent otherwise provided in this chapter.

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Guidance

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- (iii) The issue of Securities is not an activity that constitutes a Regulated Activity. Therefore, activities such as the issue of Shares, Debentures (Sukuk) or Warrants do not attract the Regulated Activity prohibitions in FSMR. The Offer of Securities, however, is an activity to which FSMR and the MKT Rulebook apply. Under FSMR, a Person making an Offer of Securities in ~~the~~ ADGM is subject to numerous disclosure requirements, unless exempt.

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- 8.2.1 Where an insurer or an insurance intermediary conducts Takaful with a Retail Client, the disclosure for the purposes of COBS 6.7 must include:

- (a) the nature of the contracts between the Takaful Fund and the Takaful Operator;

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Guidance

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- (ii) Note that structures of Takaful Operators (including Retakaful Providers) vary, as do the Islamic contracts governing their business. As the Regulator has not as yet thought it appropriate to limit the permissible structures and contracts, the Regulator is willing to consider modifications to the Rulebooks ~~issued by the Regulator~~ to apply the most appropriate prudential regime to a Takaful Operator. For many Takaful Operators, this is likely to involve capital tests at the level of the Takaful participants' fund or funds, and for the firm as a whole.

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