



**AIFC ISLAMIC FINANCE RULES  
(IFR)**

**AIFC RULES NO. FR0013 OF 2017**

(with amendments as of 2 December 2018,  
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## CONTENTS

<b>1. GENERAL</b>	<b>4</b>
1.1. Application	4
1.2. Purpose	4
1.3. Commencement	4
1.4. Effect of definitions, notes, examples and references	4
1.5. Islamic Financial Business	5
1.6. Prohibition from conducting Islamic Financial Business	5
1.7. Islamic Financial Institution	5
1.8. Islamic Window	5
1.9. Islamic Banking Business	5
1.10. Providing Islamic Financing	6
1.11. Managing a Restricted Profit Sharing Investment Account (RPSIA)	6
1.12. Definition of Islamic Financial Contract	6
<b>2. CONDUCT OF ISLAMIC FINANCIAL BUSINESS</b>	<b>8</b>
2.1. Requirements for Authorisation	8
2.2. Licensing condition for compliance with Shari'ah	8
2.3. Prohibition on holding out as conducting Islamic Financial Business	8
2.4. Prohibition on non-Shari'ah Compliant activities	8
<b>3. DISCLOSURES</b>	<b>9</b>
3.1. Islamic Financial Institutions to disclose status	9
<b>4. INTERNAL GOVERNANCE – POLICIES, SYSTEMS AND CONTROLS</b>	<b>10</b>
4.1. General Requirements	10
4.2. Requirement for procedures, processes, systems, controls and limits	10
4.3. Responsibility for compliance	10
4.4. Responsibility for compliance with Shari'ah	10
4.5. Policy and Procedures Manual	11
<b>5. SHARI'AH SUPERVISORY BOARD (SSB)</b>	<b>12</b>
5.1. Appointment of SSB	12
5.2. Policy in relation to SSB	12
5.3. Independence of SSB	12
5.4. Information about SSB to be given to AFSA	13
5.5. Obligation to assist SSB	13
5.6. Record-keeping	13
5.7. Records of assessment of competency of SSB	13
5.8. Shari'ah reviews to be undertaken	13
5.9. Annual Shari'ah report	13



5.10. Financial promotions and communications .....	14
5.11. Internal Shari’ah reviews .....	14
<b>6. ISLAMIC WINDOWS.....</b>	<b>15</b>
6.1. Islamic Window - Definition .....	15
6.2. Operation of Islamic windows.....	15
6.3. Performance of internal Shari’ah review .....	15
<b>7. ISLAMIC INVESTMENT FUNDS .....</b>	<b>16</b>
7.1. Application .....	16
7.2. Systems and controls .....	16
7.3. Fund’s constitutional documents .....	17
7.4. Islamic Financial Business policy and procedures manual.....	17
7.5. SSB for an Islamic Investment Fund.....	17
7.6. External Shari’ah reviews and periodic reports.....	19
7.7. Internal Shari’ah review .....	20
7.8. Additional disclosures in Prospectus of a Non-Exempt Islamic Fund.....	20
7.9. Investments in other Funds .....	21
<b>8. OFFERS OF ISLAMIC SECURITIES.....</b>	<b>22</b>
8.1. Application .....	22
8.2. Contents of a Prospectus for Islamic Securities.....	22
8.3. Continuing disclosures relating to Islamic Securities .....	23



## **1. GENERAL**

### **1.1. Application**

These IFR Rules apply to:

- (a) every Person who carries on, or holds itself out as carrying on, a Financial Service or making an offer of Securities, in or from the AIFC in a Shari'ah-compliant manner;
- (b) a Domestic Fund which is operated or held out as being operated as an Islamic Fund; and
- (c) an Authorised Firm which carries on, or holds itself out as carrying on, a Regulated Activity in a Shari'ah compliant manner.

### **1.2. Purpose**

The purpose of this IFR Rules is to establish the regulatory framework based on:

- (a) the standards and guidelines issued by the Islamic Financial Services Board (IFSB) on the conduct of Islamic finance activities;
- (b) the standards and guidelines issued by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) on accounting, auditing and Shari'ah governance of Islamic financial institutions; and
- (c) international standards in the form of Core Principles for Effective regulation and Supervision, issued by International Association of Insurance Supervisors, International Organization of Securities Commissions (IOSCO) and the Basel Committee on Banking Supervision.

#### **Guidance: Overview of the IFR Rules**

The IFR Rules include specific regulatory requirements that apply to Persons conducting Financial Services or providing financial products in a Shari'ah-compliant manner. In addition to the specific regulatory requirements specified in these rules, other general requirements relating to such financial services activities or products are set out in the relevant AFSA Regulations and Rules.

### **1.3. Commencement**

These rules commence on 1 January 2018.

### **1.4. Effect of definitions, notes, examples and references**

- (a) A note in or to these rules is explanatory and is not part of these rules. However, examples and guidance are part of these rules.
- (b) An example is not exhaustive, and may extend, but does not limit, the meaning of these rules or the provision of these rules to which it relates.
- (c) Unless the contrary intention appears, a reference in these rules to an accord, principle, standard or other similar instrument is a reference to that instrument as amended from time to time.



**1.5. Islamic Financial Business**

Conducting Islamic Financial Business means carrying out one or more Regulated Activities and/or providing financial products or services to customers in a Shari'ah-compliant manner.

**1.6. Prohibition from conducting Islamic Financial Business**

An Authorised Firm must not conduct or hold itself out as conducting Islamic Financial Business unless it is authorised to conduct Islamic Financial Business either:

- (a) as an Islamic Financial Institution; or
- (b) by operating an Islamic Window.

**1.7. Islamic Financial Institution**

- (1) An Islamic Financial Institution is an Authorised Person whose license or authorisation includes a specific condition that the whole of its business is conducted in a manner fully compliant with Shari'ah.
- (2) An Islamic Financial Institution must ensure that its constitutional documents state that its entire business will be conducted in a manner fully compliant with Shari'ah.

**1.8. Islamic Window**

An Authorised Firm other than an Islamic Financial Institution, operates an Islamic Window if it conducts Islamic Financial Business as a part of its business operations.

**1.9. Islamic Banking Business**

Islamic Banking Business is defined as a Regulated Activity in Schedule 1 of AIFC GEN Rules, as carrying out the following activities, in a Shariah-compliant manner:

- (a) Raising, accepting and managing funds or money placements; and/or
- (b) Managing Unrestricted Profit Sharing Investment Accounts; and
- (c) Providing financing or making Investments by entering as principal or agent into any Islamic Financial Contract.

**Guidance: Regulated Activity of Islamic Banking Business**

The Regulated Activity of Islamic Banking Business includes three primary determinant activities which must be carried out in a Shari'ah-compliant manner:

- i) raising, accepting and managing funds or money placements;
- ii) managing Unrestricted Profit Sharing Investment Accounts (UPSIs); and
- iii) providing financing or making investments by using a range of Islamic Financial Contracts.

In other words, Islamic Banking Business must involve at least one of the two following activities - raising, accepting and managing funds or money placements or managing Unrestricted Profit Sharing Investment Accounts (UPSIs). It must involve the activity of providing financing or making investments by using a range of Islamic Financial Contracts.



In addition, various supplementary activities may also be undertaken which normally form part of banking business. These supplementary activities may include, but are not limited to, providing remittance and/or money exchange services and issuing or administering means of payment. Authorised Firms licensed to carry out Regulated Activity of Islamic Banking Business may carry out the activity of Managing Restricted Profit Sharing Investment Accounts (RPSIAs), though that would not be a determinant factor for considering them as eligible to carry out Islamic Banking Business.

A Person who does not qualify as an Islamic Financial Institution or Islamic Windows, will not be licensed by the AFSA to carry out Islamic Banking Business. Such entities which do not qualify as Islamic Financial Institutions or Islamic Windows are prohibited from carrying out Islamic Banking Business.

#### **1.10. Providing Islamic Financing**

- (1) Providing Islamic Financing is defined as a Regulated Activity in Schedule 1 of AIFC GEN Rules, as providing financing in a Shari'ah-compliant manner by entering into any Islamic Financial Contract.
- (2) The Regulated Activity of Providing Islamic Financing may be carried out only by an Islamic Financial Institution or by an Islamic Window.

##### **Guidance: Regulated Activity of Providing Islamic Financing**

A Person who does not qualify as an Islamic Financial Institution or an Islamic Window, will not be licensed by the AFSA to carry out the Regulated Activity of Providing Islamic Financing. Such Persons which do not qualify as Islamic Financial Institutions or Islamic Windows are prohibited from carrying out the Regulated Activity of Providing Islamic Financing.

#### **1.11. Managing a Restricted Profit Sharing Investment Account (RPSIA)**

Managing a Restricted Profit Sharing Investment Account means managing an account or portfolio which is a Restricted Profit Sharing Investment Account (RPSIA).

##### **Guidance: Regulated Activity of a Restricted Profit Sharing Investment Account**

An Islamic Financial Institution or an Islamic Window can be licensed to carry out the Regulated activity of either Managing Unrestricted PSIA's or for Managing Restricted PSIA's or both. The application of rules including but not limited to AIFC PRU Rules and AIFC COB Rules may differ based on the type of PSIA's, an Authorised Firm is licensed to manage.

#### **1.12. Definition of Islamic Financial Contract**

An Islamic Financial Contract may include any of the following:

- (i) *murabahah* and its variations;
- (ii) *salam* and its variations;
- (iii) *tawarruq* and its variations;
- (iv) *istisna* and its variations;
- (v) *ijarah* and its variations;
- (vi) *musharakah* and its variations;



- (vii) *mudarabah* and its variations;
- (viii) *qard*;
- (ix) any other Islamic Financial Contract that is approved to be so by the relevant Authorised Firm's SSB.



## **2. CONDUCT OF ISLAMIC FINANCIAL BUSINESS**

### **2.1. Requirements for Authorisation**

- (1) An application for a condition on the Licence authorising a Person to conduct Islamic Financial Business may be made to the AFSA by any:
  - (a) body corporate; or
  - (b) partnershipwhen applying for a Licence under relevant AIFC Regulations and Rules or at any point in time after being licensed.
- (2) An applicant for authorisation as an Islamic Financial Institution that proposes to conduct its business in accordance with Shari'ah must state that fact in its application. The AFSA may grant an authorisation as an Islamic financial Institution only if the applicant's constitutional documents require the business to be conducted in accordance with Shari'ah.
- (3) An Authorised Firm may apply to the AFSA to vary the condition on its License authorising it to conduct Islamic Financial Business as an Islamic Financial Institution or by operating an Islamic Window.

### **2.2. Licensing condition for compliance with Shari'ah**

The AFSA may grant an application for the condition or a variation to the condition referred above in 2.1, if it is satisfied that the requirements for the specific condition or variation of the condition have been met.

### **2.3. Prohibition on holding out as conducting Islamic Financial Business**

A Person that is not authorised to conduct Islamic Financial Business by way of an appropriate condition on its License:

- (a) must not hold itself out as either an Islamic Financial Institution or as an Islamic Window; and
- (b) must not hold itself out as conducting Islamic Financial Business activities.

### **2.4. Prohibition on non-Shari'ah Compliant activities**

An Islamic Financial Institution or an Islamic Window:

- (a) must not hold itself out as conducting any financial services or providing financial services or products other than Islamic Financial Business activities which are compliant with Shari'ah; and
- (b) must not carry on any Regulated Activity otherwise than in accordance with Shari'ah.





### 3. DISCLOSURES

#### 3.1. Islamic Financial Institutions to disclose status

- (1) An Islamic Financial Institution must ensure that it discloses appropriately to each of its clients:
  - (a) that it is an Islamic Financial Institution or an Islamic Window, as applicable; and
  - (b) that its business is required to be conducted in accordance with Shari'ah.
- (2) An Islamic Financial Institution must disclose the following information to each client with whom or on behalf of whom it conducts, or proposes to conduct, Islamic Financial Business activities:
  - (a) the members of the institution's SSB;
  - (b) if the client requests, the manner and frequency of Shari'ah reviews.
- (3) An Islamic Financial Institution or an Islamic Window must disclose the information referred to in (2) above to its relevant clients:
  - (a) prior to conducting Islamic Financial Business activities with or on behalf of that client; and
  - (b) thereafter, whenever the information changes.

#### **Guidance: Disclosures by an Islamic Financial Institution**

An Islamic Financial Institution may include the information required by the Rule 3.1 in the terms of business it provides to a client.



## **4. INTERNAL GOVERNANCE – POLICIES, SYSTEMS AND CONTROLS**

### **4.1. General Requirements**

An Islamic Financial Institution must establish, implement and maintain policies, procedures, systems and controls that ensure that its business is conducted in a Shari’ah-compliant manner.

### **4.2. Requirement for procedures, processes, systems, controls and limits**

In these Rules, a requirement for an Authorised Firm conducting Islamic Financial Business to have a policy also requires it to have the procedures, processes, systems, controls and limits required to implement the policy.

### **4.3. Responsibility for compliance**

- (1) The Governing Body of an Islamic Financial Institution is responsible for its compliance with the regulatory requirements set out in the AIFC Regulations and Rules.
- (2) The Governing Body must ensure that the Authorised Firm’s senior management establishes and implements policies to give effect to these rules. The Governing Body must approve significant policies and any changes to them (other than formal changes) and must ensure that the policies are fully integrated with each other.
- (3) The Governing Body must review the Authorised Firm’s significant policies from time to time, considering changed operating circumstances, activities and risks. The interval between reviews must be appropriate for the nature, scale and complexity of the firm’s business, but must not be longer than 12 months.
- (4) The Governing Body must ensure that the policies are made known to, and understood by, all relevant staff.

### **4.4. Responsibility for compliance with Shari’ah**

- (1) An Authorised Firm’s Shari’ah Supervisory Board (SSB) must ensure that the Islamic Financial Business of the Authorised Firm is conducted in accordance with Shari’ah. The SSB:
  - (a) must establish, implement and supervise the Islamic Financial Institution’s Shari’ah governance and compliance;
  - (b) every year, must prepare a report in accordance with the AAOIFI standards relating to preparing and assessing compliance with Shari’ah;
  - (c) must ensure that reviews to assess the Islamic Financial Institution’s compliance with Shari’ah are carried out in accordance with those AAOIFI standards; and
  - (d) must review every service or product that is the subject of a financial communication before the firm issues the communication.
- (2) The SSB is responsible for expressing binding opinion about the extent to which the operations, transactions and contracts of the Authorised Firm conducting Islamic Financial Business comply with Shari’ah. The SSB must review any matter that is assigned to it by the firm’s Governing Body.



**4.5. Policy and Procedures Manual**

An Islamic Financial Institution must establish, implement and maintain an Islamic Financial Business policy and procedures manual that addresses the following matters:

- (a) how the compliance oversight function will be undertaken in relation to compliance with Shari’ah;
- (b) how the institution’s SSB will oversee and advise it in regard to its Islamic Financial Business activities and operations;
- (c) how fatwas, rulings and guidelines of the SSB will be recorded, disseminated and implemented and the internal Shari’ah review undertaken;
- (d) how disputes between the SSB and the institution in relation to Shari’ah compliance will be addressed;
- (e) the process for approving the internal policies, procedures, systems and controls to ensure that Islamic Financial Business is conducted in accordance with Shari’ah;
- (f) the process for approving the internal policies, procedures, systems and controls to ensure that information is disseminated to investors appropriately;
- (g) how conflicts of interest and potential conflicts of interest will be identified and managed.



## **5. SHARI'AH SUPERVISORY BOARD (SSB)**

### **5.1. Appointment of SSB**

- (1) An Islamic Financial Institution must appoint a SSB.
- (2) An Islamic Financial Institution must ensure that:
  - (a) its SSB consists of at least 3 members; and
  - (b) the members appointed to the SSB are competent to perform their functions as SSB members taking into account their qualifications and previous experience; and
  - (c) any appointments, dismissals or changes in respect of members of the SSB are approved by the Governing Body of the Islamic Financial Institution; and
  - (d) no member of the SSB is a director or controller of the Islamic Financial Institution.

Guidance: The AFSA may request the AIFC Central Shari'ah Board to provide guidance or advice on Shari'ah matters.

### **5.2. Policy in relation to SSB**

An Islamic Financial Institution must document its policy in relation to:

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

### **5.3. Independence of SSB**

- (1) An Islamic Financial Institution must take reasonable steps to ensure that the members of the SSB are independent of and not subject to any conflict of interest with respect to the firm.
- (2) An Authorised Firm conducting Islamic Financial Business must ensure that the systems and controls it is required to maintain under Rule 4.1 provides that:
  - (a) a member of the SSB is obliged to notify that Authorised Firm of any conflict of interest that such member may have with respect to the Authorised Firm or, in the case of an Investment Trust, the Trustee;
  - (b) the Authorised Firm will take appropriate steps to manage any such conflict of interest so that the Islamic Financial Business activities are conducted appropriately and in compliance with Shari'ah, the interest of a Client is not adversely affected, and all Clients are fairly treated and not prejudiced by any such interests; and
  - (c) If the Authorised Firm is unable to manage a conflict of interest as provided above, it must dismiss or replace the member as appropriate.



**5.4. Information about SSB to be given to AFSA**

An Islamic Financial Institution must provide AFSA upon request, with information on its appointed or proposed SSB members about their qualifications, skills, experience and independence.

**5.5. Obligation to assist SSB**

An Islamic Financial Institution must take reasonable steps to ensure that it and its employees:

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

**5.6. Record-keeping**

An Islamic Financial Institution must establish and retain records of:

- (a) its assessment of the competence of the SSB members; and
- (b) the agreed terms of engagement of each member of the SSB;

for at least 6 years following the date on which the individual ceased to be a member of the SSB.

**5.7. Records of assessment of competency of SSB**

The records of the assessment of competence of SSB members in Rule 5.6 above, where applicable, must include at a minimum:

- (a) the factors that have been considered when making the assessment of competence; and
- (b) the qualifications and experience of the SSB members; and
- (c) the basis upon which the Islamic Financial Institution considers that the proposed SSB member is suitable; and
- (d) details of any other SSBs of which the proposed SSB member is, or has been, a member.

**5.8. Shari'ah reviews to be undertaken**

An Islamic Financial Institution must ensure that all Shari'ah reviews are undertaken by the SSB in accordance with the AAOIFI Standards on Governance (GSIFI No 2).

**5.9. Annual Shari'ah report**

- (1) An Islamic Financial Institution must commission an annual report from the SSB which complies with the AAOIFI Standards on Governance (GSIFI No 1).



- (2) An Islamic Financial Institution must give the AFSA, a copy of each annual report of the institution's SSB within 3 months after the day the relevant financial year of the institution ends.

**5.10. Financial promotions and communications**

- (1) Before an Islamic Financial Institution issues or approves a financial promotion or communication, it must ensure that the communication material discloses the identity of the SSB which has reviewed the relevant products or services. These disclosures are in addition to the information required to be disclosed in financial promotions, by the AIFC COB Rules.
- (2) Financial communication means any communication (made through any medium including brochures, telephone calls and presentations) the purpose or effect of which is:
  - (a) to promote or advertise specified products;
  - (b) to promote or advertise any regulated activity (or any activity that would be a regulated activity if it was carried on in or from the AIFC); or
  - (c) to invite or induce any person to enter into an agreement with any person in relation to a specified product; or
  - (d) to invite or induce any person to engage in any regulated activity (or an activity that would be a regulated activity if it was carried on in or from the AIFC)

**5.11. Internal Shari'ah reviews**

- (1) An Islamic Financial Institution must perform an internal Shari'ah review to assess the extent to which the institution complies with fatwas, rulings and guidelines issued by its SSB.
- (2) An Islamic Financial Institution must perform the internal Shari'ah review in accordance with the AAOIFI Standards on Governance (GSIFI No. 3).
- (3) An Islamic Financial Institution must ensure that:
  - (a) the internal Shari'ah review is performed by its internal audit function or compliance oversight function; and
  - (b) the individuals or departments involved in performing the review are competent and sufficiently independent to assess compliance with Shari'ah.

**Guidance**

For the purposes of assessing competency of personnel or departments which perform the internal Shari'ah review, Islamic Financial Institutions should consult the AAOIFI Standards on Governance (GSIFI No. 3).



## **6. ISLAMIC WINDOWS**

### **6.1. Islamic Window - Definition**

If an Authorised Firm conducts a part (but not the whole) of its business in a Shari'ah-compliant manner, the part so conducted in a Shari'ah-compliant manner, is an Islamic window.

### **6.2. Operation of Islamic windows**

- (1) An applicant for authorisation that proposes to operate an Islamic Window must state that fact in its application.
- (2) An Authorised Firm that proposes to operate an Islamic Window must apply to the AFSA for an appropriate variation of the conditions of its authorisation.
- (3) An Authorised Firm that operates an Islamic Window:
  - (a) must identify the part or parts of its business that are to be conducted in accordance with Shari'ah; and
  - (b) must establish and maintain policies, procedures, systems and controls that ensure that the part or those parts are so conducted.
- (4) An Authorised Firm that operates an Islamic Window must comply with:
  - (a) Chapter 3 of this IFR Rules;
  - (b) Chapter 4 of this IFR Rules;
  - (c) Chapter 5 of this IFR Rules; and
  - (d) Chapter 6 of this IFR Rules.

in relation to the part or parts of its business conducted by means of the window.
- (5) For the application of Chapters 3, 4, 5 and Chapter 6 to such an Authorised Firm, references to an Islamic Financial Institution are to be read as including references to an Authorised Firm that operates an Islamic Window.
- (6) The Islamic Window must ensure that the disclosures required by AAOIFI FAS 18 "Islamic Financial Services offered by Conventional Financial Institutions" are made to each client with whom, or on whose behalf, it conducts Islamic Financial Business.

### **6.3. Performance of internal Shari'ah review**

- (1) An Authorised Firm that operates an Islamic Window must, to the extent possible, perform the internal Shari'ah review in accordance with the AAOIFI Standards on Governance (GSIFI No. 3).
- (2) If the firm cannot perform its entire internal Shari'ah review in accordance with those standards, it must document how it will perform the remainder of that review.
- (3) An Authorised Firm that operates an Islamic window must perform an internal Shari'ah review of the firm's compliance with fatwas, rulings and guidelines issued by its SSB.



## 7. ISLAMIC INVESTMENT FUNDS

### Guidance

This chapter contains additional requirements that apply to investment funds operated or held out as being operated as an Islamic Investment Fund. A Collective Investment Scheme is defined in the Master Glossary of the AIFC Regulations and Rules. Specific products or activities forming part of Islamic Financial Business are not regulated as Collective Investment Schemes (CIS) due to their unique characteristics and the specific regulations applied to them. Hence, such Islamic Financial Business activities are expressly excluded from the remit of these rules. Key Islamic Financial Business-related exclusions under the collective investment regime are operating a Takaful business, participation rights evidenced by Sukuk certificates and managing PSIAs both Restricted and Unrestricted.

### 7.1. Application

- (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

While the AIFC CIS Rules specify key requirements relating to the management and operation of conventional Investment Funds, this module sets out the additional requirements that apply where such a Fund is managed or held out as being managed as an Islamic Investment Fund. There are other requirements that apply to such firms which are found in other modules of the AIFC Rules, such as the GEN, COB and PRU Rules.

### 7.2. Systems and controls

- (1) The Fund Manager of a Fund must establish and maintain systems and controls which ensure that its management of the Fund and the Fund Property is Shari'ah 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 4.1 of this Rules.

### Guidance

AIFC CIS Rules require a 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.





**7.3. Fund's constitutional documents**

- (1) The Fund Manager of a Domestic Fund that is a Non-Exempt Fund must ensure that the relevant Fund's Constitution and Prospectus are approved by the Fund's SSB. In such cases, the relevant Fund's Constitution and Prospectus must be reviewed and approved by the Fund's SSB at least on an annual basis.
- (2) The Fund Manager of an Exempt Fund must ensure that the Fund's Constitution and Prospectus are, approved by the Fund Manager's SSB. In such cases, the relevant Fund's Constitution and Prospectus must be reviewed and approved by the Fund Manager's SSB at least on an annual basis.

**7.4. Islamic Financial Business policy and procedures manual**

The Fund Manager 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'ah compliance;
- (b) the manner in which the SSB will oversee and advise in regard to the Shari'ah-compliant activities conducted by the Fund Manager;
- (c) the manner in which SSB's fatwas, rulings and guidelines will be recorded, disseminated and implemented and the internal Shari'ah review undertaken.
- (d) the manner in which any disputes between the SSB and the Fund Manager in respect of Shari'ah-compliance will be addressed;
- (e) the process for approving those internal systems and controls which are in place to ensure not only that its activities are carried out in compliance with Shari'ah, 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 7.5.

**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, maintain a single Islamic Financial Business policy and procedures manual for the firm which would apply to all the Funds it manages.

**7.5. SSB for an Islamic Investment Fund**

- (1) A Fund Manager of a Domestic Fund that is a Non-Exempt Fund must, subject to (3), appoint a SSB to its Fund that meets the following requirements:
  - (a) the SSB has at least three members;
  - (b) the members appointed to the SSB are competent to perform their functions as SSB members of the Fund;
  - (c) any appointments, dismissals or changes in respect of members of the SSB are approved by the Governing Body of the Fund Manager; and



- (d) no member of the SSB is a director or Controller of the Fund or its Fund Manager.
- (2) A Fund Manager may comply with the requirement in (1) by appointing to the Fund its own SSB, provided the requirements in (1) are also met.
- (3) A Fund Manager is not required to comply with the requirement (1) in where it relies, for the purposes of making Investments for the Fund, on a widely accepted Shari'ah 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'ah compliant financial services provider.

**Guidance**

- i) In appointing a SSB for the purposes of Rule 7.5(1), the Fund Manager should consider the previous experience and qualifications of the proposed SSB members to assess whether the proposed SSB member is competent to advise on the activities undertaken by the Islamic Fund.
  - ii) Although the Fund Managers of Exempt Funds are not subject to the requirement for the appointment of a SSB for such a Fund, they would need to ensure that the Exempt Funds they manage continue to meet the applicable Shari'ah requirements applicable to the Fund. They may use a member of the SSB appointed at the firm level for the purposes of ascertaining compliance with the Shari'ah 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.
  - iii) An External Fund Manager may not be able to take advantage of Rule 7.5 (2) above, unless it has a SSB appointed for their own firm. In contrast the Fund Manager of an External Fund will be able to use its SSB to meet the SSB requirement relating to the Fund as set out in Rule 7.5(2) above.
- (4) If the Fund Manager appoints to the Fund the same SSB it has appointed to meet its own requirements at the firm level, the documents required under Rule 7.5 (5) below must be included in or otherwise form part of its Shari'ah Governance policies and procedures.
  - (5) The Fund Manager of a Fund must establish and retain, for six years, records pertaining to:
    - (a) Its assessment of the competency of the SSB members; and
    - (b) the agreed terms of engagement of each member of the SSB.

**Guidance**

The records of the assessment of competency of SSB members should clearly indicate, at least:

- i) the factors that have been taken into account when making the assessment of competency;
- ii) the qualifications and experience of the SSB members;
- iii) the basis upon which the Fund Manager has deemed that the proposed SSB member is suitable; and



- iv) details of any other SSBs of which the proposed SSB member is, or has been, a member.
- (6) The Islamic Financial Business policy and procedures manual must provide that:
  - (a) a member of the SSB is obliged to notify the Fund Manager of any conflict of interest that such member may have with respect to the Fund or the Fund Manager, and if appointed, or in the case of an Investment Trust, the Trustee; and
  - (b) the Fund Manager 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'ah, the interest of a Unitholder is not adversely affected, and all Unitholders are fairly treated and not prejudiced by any such interests.
- (7) If a Fund Manager is unable to manage a conflict of interest as provided above in Rule 7.5(6), it must dismiss or replace the member as appropriate.
- (8) The Fund Manager of a Fund must provide the AFSA 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 SSB.
- (9) The Fund Manager of a Fund must take reasonable steps to ensure that the Fund Manager and the Fund's Employees:
  - (a) provide such assistance as the SSB reasonably requires to fulfill its duties;
  - (b) give the SSB right of access at all reasonable times to relevant records and information
  - (c) do not interfere with the SSB's ability to discharge its duties; and
  - (d) do not provide false or misleading information to the SSB.
- (10) In the event of a Trustee being appointed to the Fund, the Trustee must also take reasonable steps to ensure that its Employees comply with (a)-(d) of the rule 7.5(9) above.

#### **7.6. External Shari'ah reviews and periodic reports**

- (1) A Fund Manager of a Domestic Fund that is a Non-Exempt Fund, must ensure that all Shari'ah reviews of the Fund, wherever applicable, are undertaken by the SSB in accordance with AAOIFI GSIFI No 2.
- (2) In the case of a Domestic Fund that is a Non-Exempt Fund, the Fund Manager must commission an interim and an annual report relating to the Fund operations from the SSB which complies with AAOIFI GSIFI No 1.
- (3) The Fund Manager must deliver a copy of the interim and annual report referred to in (2) above, to the Unitholders and must include the report of the SSB in the annual report required under the AIFC CIS Rules.

#### **Guidance**

Although the Fund Managers of Exempt Funds are not subject to the Shari'ah review process, they would need to ensure that the Exempt Fund continues to meet the Shari'ah requirements, particularly for the purposes of their annual and interim reports, which are required to be



prepared under applicable the AIFC CIS Rules. 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.

#### **7.7. Internal Shari'ah review**

- (1) The Fund Manager of a Domestic Fund that is a Non-Exempt Fund must perform an internal Shari'ah review to assess the extent to which the Fund complies with fatwas, rulings and guidelines issued by the Fund's SSB.
- (2) The Fund Manager must perform the internal Shari'ah review in accordance with AAOIFI GSIFI No. 3.

#### **Guidance**

- i) The Fund Manager of an umbrella Fund which has an Islamic Sub-Fund should, to the extent possible, perform the internal Shari'ah review in accordance with AAOIFI GSIFI No. 3 and must document the manner in which it will conduct that part of the internal Shari'ah review that is not conducted in accordance with AAOIFI GSIFI No. 3.
- ii) Although the Fund Managers of Exempt Funds are not subject to the specific internal Shari'ah requirements, they would need to ensure that the Exempt Fund continues to meet the applicable Shari'ah 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.
- iii) The Fund Manager must ensure that the internal Shari'ah 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'ah.

#### **Guidance**

For the purposes of assessing competency of personnel or departments which perform the internal Shari'ah review, Fund Manager should consult AAOIFI GSIFI No. 3 paragraphs 9 to 16 inclusive.

#### **7.8. Additional disclosures in Prospectus of a Non-Exempt Islamic Fund**

#### **Guidance**

In addition to complying with the requirements set out in the AIFC CIS Rules relevant to Fund Prospectus, the Fund Manager of a Non-Exempt Islamic Fund must comply with the additional requirements set out in this section.

- (1) A Fund Manager of a Non-Exempt 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'ah;
  - (b) if the Fund has a SSB appointed to it, the names of the members of the SSB and their qualifications and experience and, whether or not the Fund Manager's SSB is appointed to the Fund;



- (c) if the Fund does not have a SSB appointed to it pursuant to Rule 7.5(3), what widely acceptable screening methodologies are used by the Fund to ensure Shari'ah compliance with respect to Investments made for the Fund, and the board that has approved them;
- (d) if applicable, the manner and frequency of Shari'ah reviews;
- (e) how earnings prohibited by Shari'ah will be disposed of; and
- (f) whether Zakat is the responsibility of the Fund or the responsibility of the Unitholders.

**Guidance**

- i) The Fund Manager should provide sufficient details setting out the basis upon which the Fund has been approved and certified as Shari'ah compliant by its SSB. Such details should include the basis of the underlying principles, i.e. the Fatwas or rulings, including reference to any relevant Ijtihad, 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.
- ii) The Fund Manager 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'ah-compliant by the Fund's SSB.

**7.9. Investments in other Funds**

- (1) A Non-Exempt Islamic Investment Fund may invest in Units of another Fund only where the Fund Manager 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 other 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 must also have ascertained that there is a proper and disclosed basis for asset valuation and the pricing before investing in Units in the other Fund.



## 8. OFFERS OF ISLAMIC SECURITIES

### 8.1. Application

- (1) A Person making Offers of Islamic Securities in or from the AIFC must comply with the requirements in the AIFC MAR Rules, except to the extent specified in this section of IFR Rules.
- (2) This section of IFR Rules applies to any Person who Offers Islamic Securities in or from the AIFC.
- (3) Islamic Securities, for the purposes of the IFR Rules, do not include Units of an Islamic Investment Fund.

#### Guidance

- i) The issue of Securities is not a Regulated Activity. However, the Offer of Securities is an activity to which the AIFC FSFR and MAR Rules apply. Under the AIFC Regulations and Rules, a Person making an Offer of Securities in or from the AIFC would be subject to a range of disclosure requirements, unless exempt by specific provisions.
- ii) Offers of Islamic Securities which are Units of a Fund are not subject to the requirements in this section because the AIFC CIS Rules provide for such activities to be regulated.
- iii) The definition of the term Islamic Securities is in the AIFC Master Glossary.

### 8.2. Contents of a Prospectus for Islamic Securities

- (1) The Prospectus relating to Islamic Securities being offered in the AIFC must include:
  - (a) details of the members of the SSB appointed by the Issuer who have undertaken the review of the relevant Securities; and
  - (b) details of the qualifications and experience of each of the members of that SSB.
- (2) The Prospectus issued in relation to an issue of Sukuk must include;
  - (a) the opinion of the SSB in respect of whether the Sukuk are Shari'ah compliant;
  - (b) a detailed description of the structure of the underlying transaction and an explanation of the flow of funds; and
  - (c) the disclosures required by the AAOIFI Shari'ah Standards in respect of investment Sukuk.
- (3) The prospectus relating to Islamic Securities being offered in the AIFC must also include a prominent disclaimer in bold, on its front page as follows:

**“The AFSA does not accept any responsibility for the content of the information included in the Prospectus, including the accuracy or completeness of such information. The liability for the content of the Prospectus lies with the issuer of the Prospectus and other Persons, such as Experts, whose opinions are included in the Prospectus with their consent. The AFSA has also not assessed the suitability of the Securities to which the Prospectus relates to any particular investor or type of investor and has not determined whether they are Shari'ah compliant. If you do not understand the contents of this Prospectus or are unsure whether the Securities are Shari'ah-compliant you should**



consult an authorised financial advisor.”

### **8.3. Continuing disclosures relating to Islamic Securities**

- (1) The Issuer or the Reporting Entity responsible for an issue of Islamic Securities must, without delay, disclose to the markets and to the AFSA details of any changes to the membership of its SSB, the identity, qualifications and experience of any new members of that SSB and the identity of any SSB member who resigned or was dismissed.
- (2) A listed entity with Islamic Securities admitted to the Official List of Securities must make the required market disclosures in accordance with the requirements under the AIFC MAR Rules and comply with the other continuing obligations specified below.
- (3) The Issuer or the Reporting Entity responsible for an issue of Islamic equity Securities must appoint an independent SSB to evaluate the Shari’ah compliance of those securities and notify the AFSA of that fact, at least on an annual basis.
- (4) A Reporting Entity, must disclose to the market immediately, any material change in the status of Shari’ah compliance of any of the securities for which it is responsible as a Reporting Entity.
- (5) In cases, where there is a material change to the structure of the Islamic Securities issued by the Reporting Entity, or in the use of its proceeds, the Reporting Entity must take adequate steps to obtain and disclose to the market, a new Shari’ah opinion considering the changed circumstances.