



## **Islamic Finance Rules (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; ~~and~~
- (c) ~~an Authorised 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 of the ADGM Rulebook~~ 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.

### 1.2 Overview of the IFR Rulebook

References in these Islamic Finance Rules to numbered IFRs are references to specific numbered chapters of these Islamic Finance Rules.

#### Guidance

- (i) The rules in these Islamic Finance Rules are made under, or for the purposes of, ~~the Financial Services and Markets Regulations 2015-FSMR~~. Guidance may indicate any additional rulebook to which these Islamic Finance Rules relate.
- (ii) IFR 2 and IFR 3 contain the general requirements and obligations that apply to an Authorised Person who conducts any Islamic Financial Business. IFR 4 contains the accounting and audit requirements that apply to such Authorised Persons.
- (iii) ...

## 2. ISLAMIC FINANCE

### 2.1 Application

2.1.1 This ~~Chapter IFR 2~~ applies to every Authorised Person and Recognised Body to whom these Islamic Finance Rules apply in accordance with IFR 1.1.

### 2.2 Activities that constitute Conducting Islamic Financial Business

Conducting Islamic Financial Business means:

- (a) in relation to an Authorised Person, carrying on one or more Regulated Activities or specified category of Regulated Activity in accordance with Shari'a; and
- (b) in relation to a Recognised Body, carrying on all or any part of its business in accordance with Shari'a.

and Islamic Financial Business shall be construed accordingly.

#### Guidance

~~The Financial Services and Markets Regulations 2015~~ FSMR sets out the activities that constitute Regulated Activities.

### 2.3 Conducting Islamic Financial Business

#### Authorised Persons

2.3.1 An Authorised Person shall not hold itself out as Conducting Islamic Financial Business unless it has a Financial Services Permission authorising it to Conduct Islamic Financial Business either:

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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 ~~the Financial Services and Markets Regulations 2015~~ FSMR governs the making of an application for a Financial Services Permission to conduct Islamic Financial Business.

...

- (iv) An Authorised Person may, subject to meeting any requirements and restrictions in the ~~ADGM~~ 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.

#### Recognised Bodies

2.3.4 A Recognised Body shall not hold itself out as Conducting Islamic Financial Business unless it has a Recognition Order with a stipulation permitting it to do so.

**Guidance**

- (i) Part 12 of FSMR governs the making of an application for a Recognition Order, including to conduct Islamic Financial Business.
- (ii) A Recognised Body must obtain a Recognition Order with a stipulation permitting it to do so before carrying on Islamic Financial Business.
- (iii) A Recognised Body with a Recognition Order permitting it to conduct Islamic Financial Business may conduct any part of its business that is held out as being conventional business without regard for these Islamic Finance Rules, but shall conduct any of its business expressed to be Islamic Financial Business in accordance with these Islamic Finance Rules, as applicable.

**2.4 Islamic financial instruments and products**

**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 ~~ADGM~~-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 ~~ADGM~~ 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 ~~the Financial Services and Markets Regulations 2015~~ FSMR.

- (vi) The Regulator will, when considering the treatment of Islamic Financial Business arrangements, take a "substance over form" approach giving particular weight to the economic substance of a particular activity over the legal and/or Shari'a form taken by it.
- (vii) The issue of financial products which are securities such as shares, bonds (falling under paragraphs 88 or 90 of Schedule 1 to ~~the Financial Services and Markets Regulations 2015~~ FSMR), Sukuk or units in a Collective Investment Fund (in each case as defined in ~~the Financial Services and Markets Regulations 2015~~ 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)**

- (viii) PSIAs do not fall within the definitions of Dealing in Investments, Arranging Deals in Investments or Advising on Investments or Credit in Schedule 1 to ~~the Financial Services and Markets Regulations 2015~~ FSMR or the definition of Investments in the Glossary ("GLO"). 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 the Shari'a principle of Mudaraba, the guiding principle of which is that the investor bears the full investment risk. Although PSIAs have the characteristics of a Collective Investment Fund, under an express exclusion provided under paragraph 63 of Schedule 1 to ~~the Financial Services and Markets Regulations 2015~~ FSMR, they are not treated as such. Instead, Managing a PSIA is a distinct Regulated Activity as defined in paragraph 64 of Schedule 1 to ~~the Financial Services and Markets Regulations 2015~~ FSMR.
- (ix) ...

#### **Specified Investments**

- (x) Specified Investments are defined paragraphs 84 to 99 of ~~the Financial Services and Markets Regulations 2015~~ FSMR. Any of the conventional specified investments defined paragraphs 85 to 99 of Schedule 1 to ~~the Financial Services and Markets Regulations 2015~~ FSMR can be offered in Shari'a-compliant form, provided that the directions of the Shari'a Supervisory Board engaged in connection with such offer are complied with. Shari'a-compliant Specified Investment include, without limitation:

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**Takaful**

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- (xiv) Any Authorised Persons conducting Takaful activities shall, for the purposes of the ADGM 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 ~~the Financial Services and Markets Regulations 2015~~ 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.

**(xv) Family Takaful**

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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.
- (ii) These Islamic Finance Rules set out the specific instances where additional Rules are required in order to ensure that certain aspects of a Recognised Body's business activities qualify as Islamic Financial Business and to ensure that such business remains Shari'a-compliant.
- (iii) For any part of a Recognised Body's business carried on as Islamic Financial Business that is not specifically referred to in these Islamic Finance Rules, the requirement under IFR 2.4.2(b) will be sufficient to qualify that business as

Islamic Financial Business without the need for additional steps to be taken unless the Regulator believes that any such additional steps may be necessary.

- (iv) The Regulator shall have the power to designate any part of a Recognised Body's business as not being in compliance with Shari'a in the event that the Regulator believes that such activity or specified category of activities involves matters that are contrary to the aims of Shari'a.
- (v) The Regulator will, when considering the treatment of Islamic Financial Business arrangements, take a "substance over form" approach giving particular weight to the economic substance of a particular activity over the legal and/or Shari'a form taken by it.
- (vi) The issue of Financial Instruments that are Securities, such as Shares, Debentures (falling under paragraphs 88 or 90 of Schedule 1 of FSMR), Sukuk or Units attracts product-specific disclosure requirements such as the publication of a Prospectus or an Exempt Disclosure Statement. Where such Securities are included on the Official List of Securities or made via an Offer of Securities within ADGM, there are initial and ongoing disclosure and other obligations that apply to the Issuer/Reporting Entity under the MKT Rulebook. These MKT obligations are distinct from the obligations that apply to Recognised Bodies in respect of such Securities.

## 2.5 Shari'a-compliant Regulated Activity

- 2.5.1 For the purposes of paragraph 64 of Schedule 1 to the ~~Financial Services and Markets Regulations 2015~~ FSMR, carrying on a Regulated Activity in manner that complies with Shari'a is a specified kind of activity. Such Shari'a-compliant Regulated Activities shall include without limitation:

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- 2.5.3 The Shari'a-compliant Regulated Activities listed in IFR 2.5.1(c) and IFR 2.5.1(d) above shall not constitute the Conducting of Islamic Financial Business and shall not require an Authorised Person that engages in the Regulated Activities listed in IFR 2.5.1(c) and IFR 2.5.1(d) to have a Financial Services Permission under IFR 2.3 in the limited circumstances in which the parties to that Investment or the provision of Credit are each separately advised as to matters of Shari'a and the Authorised Person undertaking such Regulated Activity:

- (a) has a Financial Services Permission authorising it carry out such Regulated Activity under the ~~Financial Services and Markets Regulations 2015~~ FSMR;

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## 3. GENERAL OBLIGATIONS

### 3.1 Application

- 3.1.1 This ~~IFR 3~~ chapter applies to an Authorised Person or Recognised Body that carries on Islamic Financial Business in the ADGM.

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### 3.3 Systems and controls

- 3.3.1 An Authorised Person or Recognised Body Conducting Islamic Financial Business must establish and maintain systems and controls which enable it to comply with the applicable Shari'a requirements.

#### Guidance

- (a) This ~~IFR 3~~ chapter should be read in conjunction with GEN 3.
- (b) Responsibility for ensuring that an Islamic Financial Institution ~~or~~ Islamic Window or the part of a Recognised Body's business Conducting Islamic Financial Business, complies with Shari'a ultimately rests with the senior management of that Authorised Person's or Recognised Body, as relevant senior management. The systems and controls required by IFR 3.3.1 will assist senior management to ensure that there is such compliance.
- (c) The Governing Body should, when setting the business objectives and strategies of an Islamic Financial Institution ~~or~~ an Islamic Window or for a Recognised Body Conducting Islamic Financial Business and on an on-going basis, make use of the expertise of the Shari'a Supervisory Board of the Islamic Financial Institution's ~~or~~ Islamic Window's or Recognised Body, Shari'a Supervisory Board as appropriate.
- (d) Similarly, Approved Person(s) or Recognised Person(s) performing Controlled Function(s) or Recognised Function(s) within the Islamic Financial Institution ~~or~~ Islamic Window or Recognised Body, particularly compliance and internal audit, should have easy access to the Shari'a Supervisory Board in relation to matters involving Shari'a compliance.
- (e) The members of the Shari'a Supervisory Board of an Islamic Financial Institution ~~or~~ Islamic Window or Recognised Body should also have adequate access to the Governing Body, senior management and the Persons performing Control Functions as appropriate to ensure that their roles can be effectively discharged.

### 3.4 Policy and procedures manual

- 3.4.1 An Authorised Person or Recognised Body Conducting Islamic Financial Business must implement and maintain an Islamic Financial Business policy and procedures manual in relation to its Islamic Financial Business 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 Authorised Person or Recognised Body;
  - (c) the manner in which Shari'a Supervisory Board ~~fatawa~~ fatwa, 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 Authorised Person or the Recognised Body, as relevant, 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, using an appropriate method and manner, to investors and Persons to whom access to its facilities are provided;
- (f) the manner in which conflicts of interest will be identified and managed including where prescribed; and
- (g) in respect of an Authorised Person operating an Islamic Window, or a Recognised Body carrying on all or part of its business as Islamic Financial Business, the systems and controls in place to ensure the appropriate separation of the Islamic Financial Business of the Authorised Person from its conventional business.

### 3.5 Shari'a Supervisory Board

3.5.1 Where an Authorised Person has been granted a Financial Services Permission or a Recognised Body holds a Recognition Order with a stipulation permitting it to conduct Islamic Financial Business, it shall comply at all times with the following, as relevant to it:

- (a) An Authorised Person that has a Financial Services Permission authorising it to conduct Islamic Financial Business as an Islamic Financial Institution shall appoint a Shari'a Supervisory Board.
- (b) An Authorised Person that has a Financial Services Permission authorising it to conduct Islamic Financial Business through an Islamic Window shall appoint a Shari'a Supervisory Board.
- (c) A Recognised Body that has a Recognition Order with a stipulation permitting it to conduct Islamic Financial Business shall appoint a Shari'a Supervisory Board. The Regulator may make, vary or withdraw rules prescribing the appointment, formation, conduct and operation of a Shari'a Supervisory Board.

3.5.2 When an Authorised Person or Recognised Body appoints a Shari'a Supervisory Board, it must ensure that:

- (a) the Shari'a Supervisory Board has at least three members;
- (b) the members appointed to the Shari'a Supervisory Board are competent to perform their functions as Shari'a Supervisory Board members;
- (c) any appointments, dismissals or changes in respect of members of the Shari'a Supervisory Board are approved by the Governing Body of the Authorised Person or Recognised Body, as relevant; and
- (d) no member of the Shari'a Supervisory Board is a director or Controller of the Authorised Person or Recognised Body, as relevant.

### Guidance

For the purposes of IFR 3.5.2, an Authorised Person or Recognised Body should consider the previous experience and qualifications of the proposed Shari'a Supervisory Board members to assess whether the proposed Shari'a Supervisory Board member is competent to advise on the Islamic Financial Business to be undertaken by the Authorised Person or Recognised Body, as relevant.

- 3.5.3 An Authorised Person or Recognised Body must document its policy in relation to:
- (a) how appointments, dismissals or changes will be made to the Shari'a Supervisory Board;
  - (b) the process through which the suitability of Shari'a Supervisory Board members will be considered; and
  - (c) the remuneration of the members of the Shari'a Supervisory Board.
- 3.5.4 An Authorised Person or Recognised Body must establish and maintain, 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 ~~IFR-Rules~~ IFR-Rules 3.5.2(c) and 3.5.3.

### Guidance

The records of the assessment of competency of Shari'a Supervisory Board 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 Shari'a Supervisory Board members;
  - (iii) the basis upon which the Authorised Person or Recognised Body has deemed that the proposed Shari'a Supervisory Board member is suitable; and
  - (iv) details of any other Shari'a Supervisory Boards of which the proposed Shari'a Supervisory Board member is, or has been, a member.
- 3.5.5 (a) The Authorised Person or Recognised Body must ensure that the Islamic Financial Business policy and procedures manual it is required to maintain under IFR 3.4.1 provides that:
- (i) a member of the Shari'a Supervisory Board is obliged to notify the Authorised Person or Recognised Body of any conflict of interest that such member may have with respect to the Authorised Person, Recognised Body or, in the case of an Investment Trust, the Trustee; and
  - (ii) the Authorised Person or Recognised Body 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 client is not adversely affected and all clients are fairly treated and not prejudiced by any such interests.

- (b) If an Authorised Person or Recognised Body is unable to manage a conflict of interest as provided above, it must dismiss or replace the member as appropriate.

3.5.6 If requested by the Regulator, an Authorised Person or Recognised Body must provide the Regulator with information on its appointed or proposed Shari'a Supervisory Board members with regard to the qualifications, skills, experience and independence of the Shari'a Supervisory Board members.

3.5.7 An Authorised Person or Recognised Body must take reasonable steps to ensure that it and its Employees:

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

### 3.6 **Shari'a reviews**

3.6.1 An Authorised Person or Recognised Body must ensure that all Shari'a reviews are undertaken by the Shari'a Supervisory Board in accordance with AAOIFI GSIFI No 2.

3.6.2 (a) An Authorised Person or Recognised Body must commission an annual report from the Shari'a Supervisory Board which complies with AAOIFI GSIFI No 1.

- (b) An Authorised Person or Recognised Body must deliver a copy of the annual report of the Shari'a Supervisory Board to the Regulator within 14 days of having received it.

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

3.7.1 An Authorised Person or Recognised Body must perform an internal Shari'a review to assess the extent to which the Authorised Person or Recognised Body complies with ~~fatwa~~ fatwa, rulings and guidelines issued by its Shari'a Supervisory Board.

3.7.2 An Islamic Financial Institution must perform the internal Shari'a review in accordance with AAOIFI GSIFI No. 3.

3.7.3 An Authorised Person which operates an Islamic Window must, to the extent possible, perform the internal Shari'a review in accordance with AAOIFI GSIFI No. 3 and must document the manner in which it will conduct that part of the internal Shari'a review that is not conducted in accordance with AAOIFI GSIFI No. 3.

3.7.4 A Recognised Body that carries on all, or part, of its business as an Islamic Financial Business must, to the fullest 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 all, or that part, as applicable, of the internal Shari'a review that is not conducted in accordance with AAOIFI GSIFI No. 3.

### **Guidance**

GSIFI No. (3) (Internal Shari'a Review) establishes standards and provides guidance on the internal Shari'a review in institutions that conduct business in accordance with Shari'a. The standard covers the following:

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- 3.7.45 An Authorised Person or Recognised Body must ensure that the internal Shari'a review is performed by the internal audit function or the compliance function of the Authorised Person or Recognised Body 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, an Authorised Person or Recognised Body should consult AAOIFI GSIFI No. 3 paragraphs 9 to 16 inclusive.

## **3.8 Additional conduct requirements**

### **Guidance**

The COBS Rulebook contains conduct of business requirements that apply to Authorised Persons conducting Regulated Activities. Set out below are additional conduct requirements that apply to an Authorised Person carrying out any Regulated Activity in accordance with Shari'a. Certain conduct requirements detailed below also apply to a Recognised Body Conducting Islamic Financial Business.

### **Disclosure relating to Shari'a Supervisory Board**

- 3.8.1 (a) An Authorised Person or Recognised Body; must, subject to IFR 3.8.1(b) below, disclose to each client:
- (i) at the outset of the relationship and thereafter at any time on request, details of the members of the Shari'a Supervisory Board of the Authorised Person's or Recognised Body, as relevant Shari'a Supervisory Board; and
  - (ii) at any time on request, details of the manner and frequency of Shari'a reviews.
- (b) An Authorised Person does not have to make the disclosure required under IFR 3.8.1(a) if it is a Fund Manager of an Islamic Fund and is making an Offer of Units of that Islamic Fund in accordance with the disclosure requirements of these Islamic Finance Rules.
- (c) An Authorised Person or Recognised Body 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:

- (i) the members of the Shari'a Supervisory Board of the Authorised Person's or Recognised Body Shari'a Supervisory Board; and
- (ii) if the Person granted access to its facilities requests, the manner and frequency of Shari'a reviews.

### **Guidance**

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- (iv) A Recognised Body may make the initial disclosures required under (a) by including such information on its website.

### **Marketing ~~M~~material**

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

### **Guidance**

COBS 3.2.4 sets out the meaning of "~~M~~marketing ~~M~~material".

### **Islamic window**

- 3.8.3 (a) An Authorised Person that operates an Islamic Window must, subject to ~~IFR 3.8.3(b)~~ disclose to its clients and any Person granted access to its facilities whether or not it commingles funds attributable to its Islamic Financial Business with funds attributable to conventional financial business.
- (b) An Authorised Person does not have to make the disclosure required under ~~IFR 3.8.3(a)~~ if it is a Fund Manager of an Islamic Fund and is making an Offer of Units of that Islamic Fund in accordance with the disclosure requirements in these Islamic Finance Rules.

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## **3.9 Prudential requirements**

- 3.9.1 An Authorised Person in ~~P~~prudential Category 1, 2, 3 or 5, as specified in the PRU Rulebook, which invests in or holds Islamic Contracts for purposes other than Managing PSiAs must calculate its Credit Risk or Market Risk in respect of those contracts in the same way as an Authorised Person holding or investing in Islamic Contracts for the purposes of Managing PSiAs as set out in IFR 5.4.

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## **4. ACCOUNTING AND AUDITING**

### **4.1 Application**

- 4.1.1 This IFR 4 applies to every Authorised Person or Recognised Body carrying on Islamic Financial Business.

## Guidance

GEN 6 contains the general accounting and audit requirements applying to Authorised Persons and Recognised Bodies.

### 4.2 Financial statements – specific disclosures

4.2.1 An Authorised Person or Recognised Body carrying on Islamic Financial Business must ensure that the financial statements required to be produced by it under GEN 6 contain the following additional disclosures:

- (a) the role and authority of the Shari'a Supervisory Board in overseeing the Authorised Person's or Recognised Body's Islamic Financial Business;
- (b) the method used in the calculation of the Zakat base;
- (c) whether Zakat has been paid by the Authorised Person or Recognised Body;
- (d) where Zakat has been paid by the Authorised Person or Recognised Body, the amount which has been paid; and
- (e) where Zakat has not been paid by the Authorised Person or Recognised Body, sufficient information to allow a shareholder or other investor to compute the amount of his own liability to Zakat.

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## 5. MANAGING PROFIT SHARING INVESTMENT ACCOUNTS

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### 5.4 Prudential requirements

#### Application and Interpretation

- 5.4.1 (a) This section IFR-5 applies when calculating Credit Risk or Market Risk in respect of Islamic Contracts invested in or held by an Authorised Person Managing a PSIA, which is an Unrestricted PSIA.
- (b) In Rule IFR-5.4.1 (a), the Islamic Contracts referred to are contracts which are funded by amounts invested in the relevant Unrestricted PSIA.
- (c) In this section IFR-5, the term "investing in or holding Islamic Contracts" means investing in or holding as principal.

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5.4.2 An Authorised Person Managing a PSIA must ensure that its senior management establishes and maintains systems and controls that ensure that the Authorised Person is financially sound and able at all times to satisfy the specific prudential requirements arising out of Managing PSIA's, as detailed in the PRU Rulebook.

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- 5.4.5 (a) An Authorised Person's Displaced Commercial Risk Capital Requirement is based on 35% of the sum of CRCOM and the Market Risk capital requirement

of assets funded by Unrestricted PSIA holders and is calculated using the following formula:

$$\text{PSIACOM} = \text{PSIACOM}_{\text{credit}} + \text{PSIACOM}_{\text{market}} \times 35\%.$$

- (b) PSIACOM is the Displaced Commercial Risk Capital Requirement;
- (c)  $\text{PSIACOM}_{\text{credit}}$  is the Credit Risk capital requirement for assets funded by Unrestricted PSIA holders and is calculated in accordance with PRU Section 4.8; and
- (d)  $\text{PSIACOM}_{\text{market}}$  is the Market Risk capital requirement for assets funded by Unrestricted PSIA holders and is calculated in accordance with PRU Chapter 5.

### **Credit risk and counterparty risk for Islamic contracts**

- 5.4.6 (a) An Authorised Person Managing a PSIA, which is an Unrestricted PSIA, must calculate its  $\text{PSIACOM}_{\text{credit}}$  in relation to all Islamic Contracts financed by Unrestricted PSIA holders in the manner prescribed in this IFR 5.
- (b) An Authorised Person must, when undertaking the calculation in IFR 5.4.6(a), apply an appropriate risk weighting for the relevant Islamic Contract.

- 5.4.7 (a) In this IFR 5:
- (i) "E" represents the Exposure determined by an Authorised Person as applicable to an Islamic Contract; and
  - (ii) "CRW" represents the risk weighting or capital charge assessed by an Authorised Person as appropriate to that Islamic Contract.

- (b) Where an Islamic Contract is in the Non-Trading Book, an Authorised Person must determine the  $\text{PSIACOM}_{\text{credit}}$  for that contract by applying the following formula:

$$\text{PSIACOM}_{\text{credit}} = E \times \text{CRW} \times 10\%.$$

- (c) Where an Islamic Contract is in the Trading Book, an Authorised Person must determine the  $\text{PSIACOM}_{\text{credit}}$  for that contract in accordance with the methodology in PRU Rules A4.7 and A4.8 as appropriate.
- (d) An Authorised Person must calculate its  $\text{PSIACOM}_{\text{credit}}$  of all contracts by:
  - (i) identifying all Islamic Contracts to which this section applies;
  - (ii) valuing the underlying investment or asset of each Islamic Contract and reducing the value of any such investment or asset in the manner stipulated in Rule 4.9 of PRU, the result of which constitutes "E" for that Islamic Contract;
  - (iii) determining the risk weighting or capital charge appropriate to each contract, which will constitute the CRW for that contract in accordance with PRU Rules 4.10, 4.11 and 4.12;

- (iv) applying the respective formula in IFR 5.4.7(b) or (c) to determine of  $PSIACOM_{credit}$  in respect of each contract; and
- (v) summing the  $PSIACOM_{credit}$  of each contract to determine the  $PSIACOM_{credit}$  applicable to the Authorised Person.

### Guidance

- (i) The Regulator considers that this Guidance will assist an Authorised Person in applying the appropriate risk weighting or capital charge to each Islamic Contract for the purpose of IFR 5.4.7. Accordingly, the Regulator expects an Authorised Person managing PSIA, which are Unrestricted PSIA, to pay due regard to this Guidance.
- (ii) The rules in this IFR 5 and this Guidance are also relevant to an Authorised Person which invests in or holds Islamic Contracts, when calculating CRCOM for Islamic Contracts under PRU Rule 4.
- (iii) Table 2 contains Guidance on how an Authorised Person (whether acting as an Islamic Financial Institution or through an Islamic Window) Managing a PSIA, which is an Unrestricted PSIA should apply risk weightings for Islamic Contracts in respect of calculating relevant E and CRW for its  $PSIACOM_{credit}$  component of the  $PSIACOM$ .

**Table 2**

| 1.<br>Islamic Contract type | 2.<br>Underlying investment or asset | 3.<br>CRW |
|-----------------------------|--------------------------------------|-----------|
|-----------------------------|--------------------------------------|-----------|

(iv) ...

### Market risk

5.4.8 An Authorised Person Managing a PSIA, which is an Unrestricted PSIA, must calculate its  $PSIACOM_{market}$  in relation to all underlying Islamic Contracts in the manner prescribed in PRU Chapter 5, except as may be provided in IFR 5.4.9 to 5.4.17.

...

## 6. ISLAMIC COLLECTIVE INVESTMENT FUNDS

### Guidance

This IFR 6 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 Part 11 of the ~~Financial Services and Markets Regulations 2015~~ FSMR. The definition in Part 11 of the ~~Financial Services and Markets Regulations 2015~~ FSMR is very wide and can capture some Islamic Financial Business. However, under Part 1 of the ~~Financial Services and Markets Regulations 2015~~ FSMR and the Fund Rules, the Regulator 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 (in the form of Takaful), participation rights evidenced by Sukuk certificates and Managing PSIA.

## 6.1 Application

### 6.1.1 (a) ...

#### 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 ~~other modules of the ADGM-Rulebooks~~ issued by the Regulator, such as the GEN Rulebook, COBS Rulebook and PRU Rulebook.

- (ii) ...

#### Fund's constitutional documents

### 6.1.3 (a) ...

#### Guidance

See Guidance note (iii) under IFR 6.2.1. Although the Fund Managers of Exempt Funds and Qualified Investor Funds are not subject to the requirement for the appointment of a Shari'a Supervisory Board for such a Fund, they would need to ensure that the Exempt Funds or Qualified Investor Funds they manage continue to meet the Shari'a requirements applicable to the relevant 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 or Qualified Investor 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.

#### Islamic Financial Business policy and procedures manual

...

### 6.1.4 The Fund Manager of an Islamic 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;
- (c) the manner in which Shari'a Supervisory Board ~~fatawa~~ fatwa, rulings and guidelines will be recorded, disseminated and implemented and the internal Shari'a review undertaken;
- (d) ...

## 6.2 Shari'a Supervisory Board for an Islamic Fund

- 6.2.1 (a) A Fund Manager of a Domestic Fund that is a Public Fund must, subject to ~~IFR 6.2.16.2.1(c)~~, appoint a Shari'a Supervisory Board to its Fund that meets the following requirements:
- (i) the Shari'a Supervisory Board has at least three members;
  - (ii) the members appointed to the Shari'a Supervisory Board are competent to perform their functions as Shari'a Supervisory Board members of the Fund;
  - (iii) 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
  - (iv) no member of the Shari'a Supervisory Board is a director or Controller of the Fund or its Fund Manager.
- (b) A Fund Manager may comply with the requirement in ~~IFR 6.2.16.2.1(a)~~ by appointing to the Fund the same Shari'a Supervisory Board as it has appointed to itself as an Authorised Person (and whether acting as an Islamic Financial Institution or through an Islamic Window) in accordance with IFR 3.5.2, provided the requirements in ~~IFR 6.2.1(a)~~ are also met.
- (c) A Fund Manager is not required to comply with the requirement in ~~IFR 6.2.1(a)~~ 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 an international recognised and reputable financial services regulator.

### Guidance

- (i) In appointing a Shari'a Supervisory Board for the purposes of ~~IFR 6.2.1(a)~~, the Fund Manager 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 ~~IFR 6.2.1(b)~~, the Fund Manager should still consider whether the requirements in both (a) and IFR 3.5.2(a) and ~~IFR 6.2.1(a)~~ are met in respect of that board.
  - (ii) ...
  - (iv) A Foreign Fund Manager may not be able to take advantage of ~~IFR 6.2.1(b)~~, unless it has a Shari'a Supervisory Board appointed at the firm level. In contrast the Authorised Fund Manager of a Foreign 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(b)~~.
- 6.2.2 (a) Subject to ~~6.2.2(b)~~, the Fund Manager of a Fund must document the Fund's policy in relation to:
- (i) ...

- (b) If the Fund Manager, pursuant to IFR 6.2.1(b), appoints to the Fund the same Shari'a Supervisory Board it has appointed to the firm, the documents required under ~~IFR 6.2.2~~ (a) must be included in or otherwise form part of the records required under IFR 3.5.3.
- 6.2.3 (a) Subject to ~~IFR 6.2.3~~(b), the Fund Manager of a Fund must establish and retain, for six years, records of:
- (i) ....
- (b) If the Fund Manager, pursuant to IFR 6.2.1(b), appoints to the Fund the same Shari'a Supervisory Board it has appointed to itself as an Authorised Person (and whether acting as an Islamic Financial Institution or through an Islamic Window), the records required under ~~IFR 6.2.3~~(a) must be included in or otherwise form part of the records required under IFR 3.5.4.
- ...

#### 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-fatwa~~, rulings and guidelines issued by the Fund's Shari'a Supervisory Board.
- (b) ...

#### 6.5 Additional disclosure in a Prospectus of an Islamic Fund which is a Public Fund

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- 6.5.1 A Fund Manager of an Islamic Fund which is a Public Fund must state in the Fund's Prospectus:

....

##### Guidance

- (i) ...
- (ii) The Fund Manager 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 ~~Fatwa~~ Fatwa 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.
- (iii) ...

....

## 7. OFFERS OF ISLAMIC SECURITIES

### 7.1 Application

- 7.1.1 (a) Subject to ~~IFR 7.1.1(b) below~~, this IFR 7 applies to any ~~Authorised Person~~ who Offers Islamic Securities in the ADGM, unless the Offer is an Exempt Offer.
- (b) A Person making an Offers of Islamic Securities in the ADGM must comply with the requirements in ~~the Financial Services and Markets Regulations 2015~~FSMR and ~~the Markets Regulations 2015~~ and the MKT Rulebook except to the extent otherwise provided in this IFR 7.
- (c) Islamic Securities, for the purposes of this IFR 7, do not include Units of an Islamic Fund.

### Guidance

- (i) IFR 7 applies to any ~~Authorised Person~~ that makes a Prospectus Offer ~~Offers~~ of Islamic Securities in ADGM.
- (ii) When an Authorised Person Offers Islamic Securities in ADGM, IFR 7 applies irrespective of whether such Authorised Person is an Islamic Financial Institution, acts through an Islamic Window or is a conventional institution. A conventional institution may be held to offer Islamic Securities where it acts as the underwriter of an issuance of Sukuk or where it elects to act as the obligor under a Sukuk issuance.
- (iii) The issue of Securities is not an activity that constitutes a Regulated Activity. Therefore, ~~the activities~~ such as the issue of Shares, Debentures (Sukuk) or Warrants do not attract the Regulated Activity prohibitions in ~~the Financial Services and Markets Regulations 2015~~ FSMR. However, ~~the~~ Offer of Securities, however, is an activity to which ~~the Financial Services and Markets Regulations 2015~~ FSMR and the MKT Rulebook apply. Under ~~the Financial Services and Markets Regulations 2015~~ FSMR, a Person making an Offer of Securities in the ADGM is subject to numerous disclosure requirements, unless exempt.
- (iii)v) Offers of Islamic Securities which are Units of a Fund are not subject to the requirements in this IFR 7 because ~~the Financial Services and Markets Regulations 2015~~ FSMR and Fund Rules provide for such activities to be regulated. IFR 6 sets out additional requirements that apply to the Fund Manager when Offering Units of an Islamic Fund.
- (iv) The definition of the term Islamic Securities is in GLO.

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### 7.3 Continuosing disclosure relating to Islamic Securities

- 7.3.1 The Reporting Entity responsible for Islamic Securities must, without delay, ~~disclose to the markets and the Regulator~~ Disclose details of any changes to the membership of its Shari'a Supervisory Board, the identity, qualifications and experience of any new Shari'a Supervisory Board members and the identity of any Shari'a Supervisory Board members who resign or are dismissed.

7.3.2 A Listed Entity with Islamic Securities admitted to the Official List of Securities must make the required ~~market-d~~Disclosures in accordance with the requirements under section A1.1 of App 1 and comply with the other continuing obligations under section A1.2 of App 1.

...

## 8. TAKAFUL

...

### 8.2 Specific disclosure for Takaful

...

#### **Guidance**

- (i) Authorised Persons conducting insurance business comprising Takaful must comply with the requirements in PIN. Takaful-related prudential requirements are not included in these Islamic Finance Rules because of the closely integrated nature of such requirements with the requirements that apply to conventional insurance.
- (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 ~~ADGM~~-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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