

Appendix 4

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



Notice of Amendments

Further Miscellaneous Enhancements to the DFSA's Rulebook

GENERAL MODULE (GEN)

1 INTRODUCTION

1.1 Overview of the module

Guidance

1. Chapter 2 prescribes, pursuant to Article 41(2) of the Regulatory Law 2004, the activities which constitute a Financial Service and, pursuant to Article 42(1) of the Regulatory Law 2004, the kind of Financial Services that may be carried on by Authorised Firms and Authorised Market Institutions. It also specifies various exclusions in relation to the 'by way of business' requirement and, where applicable, in relation to each Financial Service. Further, the appendices contain detailed definitions of what constitutes a Deposit, Investment, Collective Investment Fund and Contract of Insurance.
- ~~2. Chapter 3 prescribes, pursuant to Article 42(1), the kinds of Financial Services that may be carried on by Authorised Firms and Authorised Market Institutions.~~
2. Chapter 3 sets out the requirements for a Person making or intending to make a Financial Promotion in or from the DIFC.
3. Chapter 4 sets out the Principles for Authorised Firms and Authorised Individuals.
4. Chapter 5 specifies the requirements upon senior management to implement effective systems and controls. There are also requirements upon the Authorised Firm to apportion material responsibility among its senior management.
5. Chapter 6 contains mainly guidance in respect of: interpretation of the Rulebook, emergency procedures, disclosure, the location of offices, close links, complaints against the DFSA and the public register.
6. Chapter 7 specifies DFSA's authorisation requirements for any applicant intending to become an Authorised Firm or Authorised Individual.
7. Chapter 8 specifies, in relation to Authorised Persons, the auditing and accounting requirements which deal with such matters as the appointment and termination of auditors, accounts and regulatory returns and the functions of an auditor. There are also requirements for auditors to register with the DFSA.
8. Chapter 9 prescribes the manner in which an Authorised Firm must handle Complaints made against it by Retail Clients or Professional Clients.
9. Chapter 10 contains two sets of Transitional Rules.
 - a. Rules 10.1.2 and sections 10.2, 10.3, 10.4 and 10.5 impact on various modules of the Rulebook, particularly COB and CIR. These Rules enable Authorised Firms to make a smooth transition to the Current Regime that came into force on 1 July 2008 under Rulemaking Instrument No 56, following the DFSA's "Key Policy Review" outlined in Consultation Paper 52. They also provide for the continued application of some of the provisions of the Previous Regime under the Current Regime; and
 - b. Section 10.6 contains Transitional Rules that allow, with effect from 4 January 2009:

- i. an Authorised Person to carry on a Financial Service in respect of a Designated Investment as if that Designated Investment were a Structured Product; and
 - ii. a Designated Investment included in an Official List of Securities before that date to continue to be a listed Structured Product,
10. Chapter 11 specifies the DFSA’s supervisory requirements for any Authorised Person being regulated by the DFSA.

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2 FINANCIAL SERVICES

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2.2 Financial Service activities

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2.2.2

Guidance

Note that the ambit of these activities in Rule 2.2.2 may be restricted under COB, AMI or REP and may be fettered by the continuing operation of the Federal Law.

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2.3 By way of business

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2.3.3 A Person does not carry on an activity specified under paragraphs (d), (e), (f) or (h) of Rule 2.2.2 by way of business if the activity is carried on solely for the purposes of or in connection with the acquisition or disposal of Shares in a Body Corporate, other than an ~~investment company or investment limited liability partnership~~ Investment Company or Investment Limited Liability Partnership, provided that:

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2.9 Arranging credit or deals in investments

2.9.1

Guidance

In regard to arrangements under Rule 2.9.1(3)(b), pursuant to Rule ~~3.2.7~~ 2.2.10, an Authorised Firm (other than a Representative Office) may carry on an activity of the kind described in Rule 2.26.1 that constitutes marketing without the need for any additional authorisation to do so.

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2.17 Operating an exchange

2.17.1

Guidance

The effect of the exemption in relation to the by way of business ‘test’ set out in Rule ~~2.3.3(1)~~ 2.3.4(1) is that the activity in Rule 2.17.1 of Operating an Exchange also includes the carrying on of any activity specified under Rule 2.2.2, other than Operating a Clearing House and Operating an Alternative Trading System, if the activity is carried on as part of an Exchange’s business as an Exchange. Such an Authorised Market Institution is, therefore, automatically authorised under its Licence in respect of such activities unless the DFSA imposes a restriction on the Authorised Market Institution’s Licence to remove such authorisation. Rule 2.3.4(3) covers the situation where the Authorised Market Institution is Operating both as an Exchange and as a Clearing House.

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2.18 Operating a clearing house

2.18.1

Guidance

The effect of the exemption in relation to the by way of business ‘test’ set out in Rule ~~2.3.3(2)~~ 2.3.4(2) is that the activity in Rule 2.18.1 of Operating a Clearing House also includes the carrying on of any activity specified under Rule 2.2.2, other than Operating an Exchange or Operating an Alternative Trading System, if the activity is carried on for the purpose of, or in connection with, the provision of clearing services by a Clearing House. Such an Authorised Market Institution is, therefore, automatically authorised under its Licence in respect of such activities unless the DFSA imposes a restriction on the Authorised Market Institution’s Licence to remove such authorisation. Rule 2.3.4(3) covers the situation where the Authorised Market Institution is Operating both as an Exchange and as a Clearing House.

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2.19 Insurance intermediation

2.19.1

Guidance

In regard to arrangements under Rule 2.19.1(5), pursuant to Rule ~~3.2.7~~ 2.2.10, an Authorised Firm (other than a Representative Office) may carry on an activity of the kind described in Rule 2.26.1 that constitutes marketing without the need for any additional authorisation to do so.

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2.23 Providing Trust Services

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Exclusions

~~2.23.2~~ Subject to ~~Rule 2.23.3~~ an ASP which Provides Legal Services or Provides Accountancy Services is exempt from the requirement to hold a Licence in respect of Providing Trust Services.

~~2.23.3~~ Under Rule 2.23.2(b) an ASP may only:

A Person who is an Ancillary Service Provider does not provide Trust Services where it only:

- (a) arranges for a Person to act as trustee in respect of an express trust; or
- (b) provides services with respect to the creation of an express trust;

provided that:

- (i) the provision of such services is solely incidental to the practice of law or accounting as the case may be; and
- (ii) the ASP is not holding itself out as Providing Trust Services.

Guidance

Acting as trustee, protector or enforcer or Providing Trust Administration Services are not activities incidental to the practice of law or accounting and require a Licence.

~~2.23.4~~ 2.23.3 A Person is not Providing Trust Services if that Person is the Trustee of a Fund and the activities are in connection with or arise from, acting as the Trustee of the Fund.

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5 MANAGEMENT, SYSTEMS AND CONTROLS

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5.3 Systems and controls

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5.3.19

Guidance

1. When considering whether an Employee is fit and proper, competent and capable, an Authorised Firm should consider any training undertaken or required by an Employee, the nature of the Clients to whom an Employee provides Financial

Services, and the type of activities performed by an Employee in the provision of such Financial Services including any interface with Clients.

2. When assessing the fitness and propriety of Employees, an Authorised Firm should be guided by the matters set out in ~~AUT section A1.3~~ section 2.3 of the RPP Sourcebook and should also monitor conflicts or potential conflicts of interest arising from all of the individual's links and activities.

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Conduct

5.3.20

Guidance

An Authorised Firm should adopt, at a minimum, a policy on ethics and professional conduct and clearly communicate such a policy to those persons involved in its affairs in order to comply with the obligations under this Rule and its general duty to observe high standards of integrity and fair dealing under ~~Rule~~ section 4.2.

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5.3.24 ~~[Deleted][RM56][VER19-07/08]~~

Records

~~5.3.25~~ **5.3.24** (1) An Authorised Person must make and retain records of matters and dealings, including accounting records which are the subject of requirements and standards under the legislation applicable in the DIFC.

(2) Such records, however stored, must be capable of reproduction on paper within a reasonable period not exceeding 3 business days.

~~5.3.26~~ **5.3.25** Subject to Rule ~~5.3.27~~ 5.3.26, the records required by Rule ~~5.3.25~~ 5.3.24 or by any other Rule in this Rulebook must be maintained by the Authorised Person in the English language.

~~5.3.27~~ **5.3.26** If an Authorised Person's records relate to business carried on from an establishment in a territory outside the DIFC, an official language of that territory may be used instead of the English language as required by Rule ~~5.3.26~~ 5.3.25.

~~5.3.28~~ **5.3.27** An Authorised Person must have systems and controls to fulfil the Authorised Person's legal and regulatory obligations with respect to adequacy, access, period of retention and security of records.

Fraud

5.3.28

Relevant United Nations Resolutions and Sanctions

~~5.3.30~~ **5.3.29**

Guidance

1. In relation to the term “make appropriate use” in Rule ~~5.3.50~~ 5.3.29 this may mean that an Authorised Person cannot undertake a transaction for or on behalf of a Person or that it may need to undertake further due diligence in respect of a Person.
2. Relevant resolutions or sanctions mentioned in Rule ~~5.3.30~~ 5.3.29 may, among other things, relate to money laundering and terrorist financing or financing of weapons of mass destruction or otherwise be relevant to the Financial Services carried on or the other business activities conducted by the Authorised Person. For example:
 - a. an Authorised Firm should exercise due care to ensure that it does not provide Financial Services to, or conduct business with, a Person engaged in money laundering or terrorist financing or financing of weapons of mass destruction; and
 - b. an Authorised Market Institution should exercise due care to ensure that it does not facilitate fund raising activities or listings by Persons engaged in money laundering or terrorist financing or financing of weapons of mass destruction.
3. In respect of the United Nations Security Council’s resolutions or sanctions, the MLRO should also refer to AML Rules 3.3.3(2)(h), 3.3.4(d) and 3.9.1(h) and AMI Rules 11.6.2(2)(k), 11.6.3(g) and 11.12.1(j) for requirements relating to the MLRO’s responsibility, reporting and training and awareness.

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6 GENERAL PROVISIONS

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6.3 Emergency

6.3.1

Guidance

1. Procedures for notification to the DFSA are set out in section 11.11 ~~SUP chapter 7~~.
2. The Rules in section 6.3 do not affect the powers of the DFSA under Article 9 of the Markets Law 2004.

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6.4 Disclosure of regulatory status

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6.4.2

- (5) Rules 6.4.2(1) – to (4) also apply to the operation and administration of an Official List of Securities by an Authorised Market Institution.

6.6 Close links

6.6.1

Guidance

1. Procedures for notification to the DFSA are set out in section 11.11 SUP ~~chapter 7~~.
2. Under the fit and proper test for Authorised Firms and the Licensing Requirements for Authorised Market Institutions, an Authorised Firm or Authorised Market Institution which does not satisfy the DFSA with respect of its Close Links will, on this point alone, not be considered fit and proper or able to satisfy the Licensing Requirements.

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8 ACCOUNTING AND AUDITING

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8.4 Appointment and termination of auditors

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8.4.4

Guidance

1. The relevant staff of an auditor are independent if their appointment or retention by an Authorised Person is not contrary to any applicable ethical guidance issued by the professional supervisory body.
2. An Authorised Person should consider rotating the appointed relevant staff of the auditor every five years to ensure that the relevant staff of the auditor remains independent.
3. Additional requirements relevant to Auditors appointed for a Fund (see CIR Rule 9.3.4) apply independently of the requirements in the Rules in this Chapter.

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8.7 Registration of Auditors

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8.7.2 An applicant for registration must:

- (a) complete and submit the appropriate form in AFN, supported by such additional material as may be required by the DFSA, ~~and~~
- (b) ~~pay to the DFSA the prescribed application fee in GEN App 6.~~

Guidance

~~There are additional requirements that apply to Auditors that are appointed for a Domestic Firm or Domestic Fund (see GEN 8.4.4 and CIR Rule 12.2.4). These requirements must be met independently of the requirements that are set out in the Rules in this Chapter.~~

Applicants and Auditors are required to pay fees as prescribed in FER.

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8.8 Regulatory appeals

8.8.1

Guidance

Under Article 98 of the Regulatory Law 2004, the DFSA may in its absolute discretion grant or refuse to grant registration.

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8.12 Withdrawal of registration

Guidance

Under Article 98(3) of the Regulatory Law 2004, the DFSA may make Rules setting out how and on what grounds registration may be withdrawn.

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8.13 Withdrawal on the DFSA's initiative

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8.13.3

Guidance

Generally, the DFSA will only consider exercising the power to withdraw the registration of an Auditor on its own initiative after a thorough investigation. For example, the DFSA may receive a notification of termination of that Auditor of a Domestic Fund under CIR Rule 12.2.2. Whether or not the DFSA would exercise its discretion to withdraw registration of the Auditor would depend on the grounds upon which the cessation of the appointment had occurred and the DFSA's investigation.

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8.14 Suspension by the DFSA

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8.14.5 Upon deciding to exercise its powers under Rule 48.14.1, the DFSA must, without delay, inform the Auditor in writing of:

- (a) its decision;
- (b) the reasons for the suspension; and
- (c) the date on which the decision is to take effect and, if known, the duration of the suspension.

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9 COMPLAINTS HANDLING AND DISPUTE RESOLUTION

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9.2 Complaints handling procedures for Retail Clients

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Systems and controls

9.2.14

Guidance

An Authorised Firm should consider whether it is required to notify the DFSA, pursuant to ~~SUP Rule 7.3.4~~ 11.10.7, of any recurring or systemic problems identified from Complaints.

GLOSSARY MODULE (GLO)

A

Authorised ISPV	<p>An ISPV who <u>which</u> holds a Licence to carry on out one or more <u>either or both</u> of the following Financial Services:</p> <p>(a) Effect Contracts of Insurance; or</p> <p>(b) Carry Out Contracts of Insurance</p>
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C

Cell	<p>A cell created by a Protected Cell Company for the purpose of segregating and protecting cellular assets in the manner provided by the <u>DIFC Companies Regulations</u>, made under the Companies Law 2004.</p>
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D

Designated Fund	<p>A Foreign Fund which has been designated by the DFSA under <u>Article 55 of the Collective Investment Law 2010</u> or, pursuant to Article 1(b) of that law, under Article 20 of the <u>Collective Investment Law 2006</u>.</p>
DIFC Incorporated Insurer	<p>An Insurer that is a Body Corporate incorporated under the <u>DIFC Companies Law 2004</u>.</p>
DIFC Registrar of Companies	<p>The registrar of companies appointed pursuant to the <u>DIFC Companies Law 2004</u>.</p>
Director	<p>(1) In relation to an undertaking established under the <u>DIFC Companies Law 2004</u>, a Person who appears on the Register of Directors maintained by the DIFC Registrar of Companies; and</p> <p>(2) In relation to all other undertakings, a Person who has been admitted to a register which has a corresponding meaning to the Register of Directors or performs the function of acting in the capacity of a Director, by whatever name called.</p>

F

Financial Service	<p>A financial activity prescribed in GEN section 2.2. <u>Has the meaning given in GEN Rule 2.2.1.</u></p>
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G

Guidance	<p>Guidance is indicative and non-binding and may comprise:</p> <p>(a) guidance made and issued by the Chief Executive under law administered by the DFSA; and</p> <p>(b) any standard or code of practice issued by the Board which has not been incorporated into the Rules.</p> <p><u>Has the meaning given in Article 2 of Schedule 1 to the Regulatory Law 2004.</u></p>
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H

Holding Company	Has the meaning given in Schedule 1 to the <u>DIFC Companies Law 2004</u> .
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I

Independent Valuer	A Person who carries on the business or profession of valuing Real Property and who meets the criteria set out under CIR <u>Rule 13.4.19 43.5</u> .
Insurance Bank Account	A bank account with an Eligible Bank in the U.A.E. which has been opened by an Insurance Intermediary in accordance with COB Rule <u>44.3.4 7.12.5</u> .
Investment Business	<p>The business of:</p> <p>(a) Dealing in Investments as Principal;</p> <p>(b) Dealing in Investments as Agent;</p> <p>(c) Arranging Credit or Deals in Investments</p> <p>(d) Managing Assets;</p> <p>(e) Advising on Financial Products or Credit;</p> <p>(f) Operating <u>Managing</u> a Collective Investment Fund;</p> <p>(g) Providing Custody;</p> <p>(h) Arranging Custody;</p> <p>(i) Managing a Profit Sharing Investment Account;</p> <p>(j) Operating an Alternative Trading System; or</p> <p>(k) Acting as the Trustee of a Fund.</p>

Investment Company	An open or closed ended company established for the sole purpose of collective investment which is incorporated under Article 90 of the <u>DIFC</u> Companies Law 2004 in accordance with chapter 13 of Companies (C) the Regulations made under that Law.
<u>Islamic Securities</u>	<u>Any Security Offered, or held out expressly or implicitly, as Islamic or Shari'a compliant.</u>

L

Local Services Office	Has the meaning given in ASP Rule 8.4.1.
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O

Offer	(1) In relation to Securities other than Units, an offer of Securities falling within Article 13 of the Markets Law 2004. (2) In relation to Units, an offer of Units falling within Article 12 <u>19</u> of the Collective Investment Law 2006 <u>2010</u> .
Operating Managing a Collective Investment Fund	Has the meaning given in GEN section 2.12.
Operating a Local Services Office	Has the meaning given in ASP Rule 2.3.4.
Operating a Management Office	Has the meaning given in ASP Rule 2.3.5.

P

Parent	A Holding Company as defined in Schedule 1 of the <u>The DIFC</u> Companies Law 2004 .
Private Fund	A Fund which falls within the meaning given under Article 54 <u>16</u> of the Collective Investment Law 2006 <u>2010</u> and satisfies the criteria prescribed in section 18.3 <u>11.2</u> of CIR.
Prospectus	(1) In relation to an Offer of Securities other than Units, a document containing the information prescribed under the Markets Law 2004 and the OSR Rules, and includes a Supplementary Prospectus. (2) In relation to a Fund, a document containing the information prescribed under the Collective Investment Law 2006 <u>2010</u> and the CIR Rules, including a Short Form Prospectus or Supplementary Prospectus.
Protected Cell Company	A company incorporated as, or converted into, a Protected Cell Company in accordance with the provisions of the Regulations made under the <u>DIFC</u> Companies Law 2004 .

Providing Compliance Services	Has the meaning given in ASP Rule 2.3.6.
Providing Market Information Services	Has the meaning given in ASP Rule 2.3.3.
PRU	The Prudential Returns module of the Rulebook Sourcebook.

R

Recognised Jurisdiction	A jurisdiction which has been recognised by the DFSA under <u>Article 55 of the Collective Investment Law 2010 or, pursuant to Article 1(b) of that law, under Article 20 of the Collective Investment Law 2006.</u>
Recognised Jurisdiction Notice	A notice issued by the DFSA, pursuant to <u>Article 55 of the Collective Investment Law 2010 or, pursuant to Article 1(b) of that law, under Article 20 of the Collective Investment Law 2006</u> , listing countries and territories which are Recognised Jurisdictions and Foreign Funds which are Designated Funds in respect of these jurisdictions.
Regulation	Legislation made by the DFSA under any DIFC law <u>that is not administered by the DFSA.</u>
Rule	Legislation made by the Board under <u>any DIFC law Article 23 of the Regulatory Law 2004 for the purposes of that law or any law administered by the DFSA.</u>

S

Safekeeping Arrangement	An agreement in writing which fulfils the criteria in CIR App 1.
SFO Regulations	Means the Single Family Office Regulations made for the purposes of the <u>DIFC Companies Law 2004</u> by the board of the Dubai International Financial Centre Authority.
Subsidiary	Has the meaning given in Schedule 1 to the <u>DIFC Companies Law 2004.</u>
Supplementary Prospectus	An updated or replacement Prospectus produced in accordance with Article 15 of the Markets Law 2004 or <u>Article 52 of the Collective Investment Law 2006 2010</u> , as applicable.

ISLAMIC FINANCE RULE (IFR)

2 ISLAMIC FINANCE

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2.4 Islamic financial instruments and products**Guidance**

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Profit Sharing Investment Accounts (PSIAs)

3. PSIAs do not fall within the GEN definitions of Investments. They are contractual arrangements under which Islamic banks invest clients' funds, often (though not always) on a pooled basis, and are generally treated by the bank as off balance sheet. They are generally structured under Mudaraba, so that the investor in principle bears the full investment risk. Although PSIAs have the characteristics of a Collective Investment Fund, under an express exclusion provided under CIR Rule ~~2.3.6~~ 2.1.13, they are not treated as such. Instead, Managing a PSIA is a distinct Financial Service as defined in GEN Rules 2.2.2(r) and 2.21.

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4 ACCOUNTING STANDARDS

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4.6 Function of the auditor**4.6.1**

- (c) produce an Auditor's Annual Report:
- (i) which states whether the auditor has:
- (A) audited the Authorised Person's annual financial statements in accordance with the AAOIFI auditing standards in respect of its Islamic Financial Business;
- (B) has carried out any other procedures considered necessary, having regard to the AAOIFI auditing standards in respect of its Islamic Financial Business; and
- (C) received all necessary information and explanations for the purposes of preparing its report to the DFSA;

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6 ISLAMIC COLLECTIVE INVESTMENT FUNDS

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6.3 External Shari'a reviews and periodic reports

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- 6.3.2** (1) In the case of a Domestic Fund other than an Exempt Fund or a Fund relying on the exemptions in Rule 6.2.1(3), the Fund Manager must commission an interim and an annual report relating to the Fund operations from the Shari'a Supervisory Board which complies with AAOIFI GSIFI No 1.
- (2) The Fund Manager must deliver a copy of the annual interim report referred to in (1) to the Unitholders in accordance with CIR Rule ~~9.3.4~~ 9.4.4 and must include the report of the Shari'a Supervisory Board in the annual report required under CIR Rule ~~9.4.1~~ 9.4.5.

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

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6.6 Additional disclosure in a Prospectus of an Private Islamic Fund which is a Private Fund

6.6.1

- (f) the additional disclosure, if applicable, prescribed under section A1.2 A1.1 of App 1.

REPRESENTATIVE OFFICE MODULE (REP)

4 GENERAL PROVISIONS

4.1 General

4.1.1 A Representative Office must have a place of business within ~~its~~ the geographical boundaries of the DIFC.

4.1.2 A Representative Office must not:

- (a) share an office with another Authorised Firm;
- (b) represent anyone other than itself or a member of its Group; or
- (c) permit any staff member to be an Employee of another Authorised Person.