

# **AUTHORISATION MODULE**

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<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-A: Introduction</b>

## AU-A.1 Purpose

### *Executive Summary*

- AU-A.1.1 The Authorisation Module sets out the CBB's approach to licensing providers of regulated investment services in the Kingdom of Bahrain. It also sets out CBB requirements for approving persons undertaking key functions in those providers.
- AU-A.1.2 Persons who provide any of the following regulated investment services within or from the Kingdom of Bahrain, and are not otherwise licensed by CBB as a bank, are required to be licensed by CBB as an investment firm licensee:
- Dealing in financial instruments as principal;
  - Dealing in financial instruments as agent;
  - Arranging deals in financial instruments;
  - Managing financial instruments;
  - Safeguarding financial instruments (i.e. a custodian);
  - Advising on financial instruments; and
  - Operating a collective investment undertaking (i.e. an operator).
- AU-A.1.3 Three categories of investment firm license are provided for, depending on the type of regulated investment services undertaken. The requirements in Volume 4 (Investment Business) are tailored in certain respects, according to the license Category concerned, in order to address the specific features and risks associated with each type of regulated investment service.
- AU-A.1.4 Collectively, licensed providers of regulated investment services are called investment firm licensees. Bahrain-incorporated investment firm licensees are called Bahraini investment firm licensees. Investment firm licensees that are incorporated in an overseas jurisdiction and operate via a branch presence in the Kingdom of Bahrain are called overseas investment firm licensees. The same naming convention applies to the various sub-categories of investment firms (e.g. Bahraini Category 1 investment firm, overseas Category 1 investment firm etc).
- AU-A.1.5 Regulated investment services are defined in Section AU-1.4. Their definition excludes operating a recognised exchange (such as the Bahrain Stock Exchange) and related infrastructure (such as central clearing and depository systems). These activities are separately addressed, in the form of individual regulations issued by the CBB's Capital Markets Supervision Directorate, and the Bahrain Stock Exchange.
- AU-A.1.6 Persons undertaking certain functions in relation to investment firm licensees require prior CBB approval. These functions (called controlled functions) include Directors and members of senior management. The controlled functions regime supplements the licensing regime by ensuring that key persons involved in the running of investment firm licensees are fit and proper. Those authorised by the CBB to undertake controlled functions are called approved persons.

<b>MODULE</b>	<b>AU: Authorisation</b>
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## AU-A.1 Purpose (continued)

### *Retaining Authorised Status*

**AU-A.1.7** The requirements set out in Chapters **AU-2** and **AU-3** represent the minimum conditions that have to be met in each case, both at the point of authorisation and on an on-going basis thereafter, in order for authorised status to be retained.

### *Representative Offices and Ancillary Services Providers*

**AU-A.1.8** Neither representative offices of foreign investment firms, nor ancillary services providers, are covered in Volume 4 (Investment Business). Requirements covering these types of activities will instead be included in Volume 5.

**AU-A.1.9** Until such time as Volume 5 (Specialised Activities) of the **CBB** Rulebook is issued, representative offices of foreign investment firms remain subject to the requirements contained in the **CBB's** 'Standard Conditions and Licensing Criteria', dealing with representative offices.

**AU-A.1.10** Until such time as Volume 5 (Specialised Activities) of the **CBB** Rulebook is issued, ancillary services providers remain subject to the requirements contained in the **CBB's** 'Standard Conditions and Licensing Criteria', dealing with providers of ancillary services to the financial sector.

### *Legal Basis*

**AU-A.1.11** This Module contains the Central Bank of Bahrain ('CBB') Directive regarding authorisation under Volume 4 of the CBB Rulebook. It is applicable to all investment firm licensees (as well as to approved persons), and is issued under the powers available to the CBB under Article 38 of the Central Bank of Bahrain and Financial Institutions Law 2006 ('CBB Law'). Requirements regarding the obligation to hold a license and the conditions for issuing such a license are also included in Regulations, to be issued by the CBB.

**AU-A.1.12** For an explanation of the CBB's rule-making powers and different regulatory instruments, see Section UG-1.1.

<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-A: Introduction</b>

## AU-A.2 Module History

### *Evolution of Module*

AU-A.2.1 This Module was first issued in April 2006, as part of the first phase of Volume 4 (Investment Business) to be released. Any material changes that have subsequently been made to this Module are annotated with the calendar quarter date in which the change was made: Chapter UG-3 provides further details on Rulebook maintenance and version control.

AU-A.2.2 When the CBB replaced the BMA in September 2006, the provisions of this Module remained in force. Volume 4 was updated in July 2007 to reflect the switch to the CBB, as well as other policy changes. However, new calendar quarter dates were only issued where these involved changes in the substance of Rules.

AU-A.2.3 A list of recent changes made to this Module is provided below:

Module Ref.	Change Date	Description of Changes
AU-A.1.3	07/2006	Deletion of reference to 'acting as a trust service provider'.
AU-1.1.13	07/2006	Deletion of reference to 'acting as a trust service provider'.
AU-1.1.14	07/2006	Clarification of scope of exemption.
AU-1.4.50	07/2006	Deletion of paragraph relating to 'acting as a trust service provider'.
AU-1.4.51	07/2006	Deletion of paragraph relating to 'acting as a trust service provider'.
AU-A.1	07/2007	Changes to reflect new CBB Law and reclassification of administrators as ancillary services providers (i.e. licensees, to be subject to Volume 5 of the CBB Rulebook).
AU-1.3	07/2007	Deletion of this Section to reflect reclassification of administrators as ancillary services providers (i.e. licensees, to be subject to Volume 5 of the CBB Rulebook).
AU-1.4	07/2007	Clarification of exemption in Rule AU-1.4.8; and minor change to definition of collective investment undertaking (to align with new Module CIU, Volume 6).
AU-4	07/2007	Chapter deleted to reflect reclassification of administrators as ancillary services providers (i.e. licensees, to be subject to Volume 5 of the CBB Rulebook).
AU-5.1	07/2007	Section amended to reflect new procedures reflecting CBB Law.
AU-5.3	07/2007	Deleted following reclassification of administrators as ancillary services providers (i.e. licensees, to be subject to Volume 5 of the CBB Rulebook).
AU-5.4	07/2007	Amended to reflect new CBB Law procedures.
AU-5.5	07/2007	Amended to reflect new CBB Law procedures.
AU-6	07/2007	New Chapter AU-6 on application and license fees (old material on fees, previously contained in Module GR, deleted).

<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-A: Introduction</b>

## AU-A.2 Module History (continued)

### *Superseded Requirements*

AU-A.2.4 This Module supersedes the following provisions contained in circulars or other regulatory instruments:

Circular / other reference	Provision	Subject
Standard Conditions and Licensing Criteria: investment advisers/ brokers	All articles	Scope of license and licensing conditions.
Standard Conditions and Licensing Criteria: broking company	All articles	Scope of license and licensing conditions.
Standard Conditions and Licensing Criteria: stockbrokerage	All articles	Scope of license and licensing conditions.
Circular BC/11/98, dated 27/7/98	All articles	Appointment and suitability of Directors and senior managers ('fit and proper').

AU-A.2.5 Further guidance on the implementation and transition to Volume 4 (Investment business) is given in Module ES (Executive Summary).

<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-B: Scope of Application</b>

## AU-B.1 The Public

AU-B.1.1 The Authorisation requirements in Chapter AU-1 are generally applicable to the public, in that they prevent a person (whether legal or natural) from undertaking certain specified activities if they do not hold the appropriate authorisation from the CBB. In addition, those applying for authorisation are also required to comply with the relevant requirements and procedures contained in this Module.

AU-B.1.2 Two types of authorisation are prescribed:

- (i) Any person seeking to provide a regulated investment service within or from the Kingdom of Bahrain must hold the appropriate CBB license (see AU-1.1); and
- (ii) Natural persons wishing to perform a controlled function in an investment firm licensee also require prior CBB approval, as an approved person (see AU-1.2).

AU-B.1.3 Because of the general applicability of many of the requirements contained in this Module, they are supported by way of a Regulation (see Section UG-1.1 for an explanation of the CBB's rule-making powers and different regulatory instruments).

<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-B: Scope of Application</b>

## AU-B.2 Licensees and Approved Persons

AU-B.2.1 Various requirements in Chapters AU-2 to AU-5 inclusive also apply to persons once they have been authorised by the CBB (whether as licensees or approved persons).

AU-B.2.2 Chapter AU-2 applies to investment firm licensees (not just applicants), since licensing conditions have to be met on a continuous basis by licensees. Similarly, Chapter AU-3 applies to approved persons on a continuous basis; it also applies to investment firm licensees seeking an approved person authorisation. Chapter AU-5 contains requirements applicable to licensees, with respect to the starting up of their operations, as well as to licensees and approved persons, with respect to the amendment or cancellation of their authorised status. Finally, Section AU-6.2 imposes annual fees on licensees.



<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-1: Authorisation Requirements</b>

## AU-1.1 **Licensing**

### AU-1.1.1

No person may:

- (a) **Undertake** (or hold themselves out to undertake) regulated investment services, **by way of business**, within or from the Kingdom of Bahrain unless duly licensed by the **CBB**; or
- (b) **Hold** themselves out to be licensed by the **CBB** unless they have as a matter of fact been so licensed.

### AU-1.1.2

For the purposes of Rule AU-1.1.1(a), please refer to Section AU-1.4 for the definition of ‘regulated investment services’ and ‘**by way of business**’. Such activities will be deemed to be undertaken within or from the Kingdom of Bahrain if, for example, the person concerned:

- (a) **Is** incorporated in the Kingdom of Bahrain;
- (b) **Uses** an address situated in the Kingdom of Bahrain for its correspondence; or
- (c) **Directly** solicits clients, who are resident within the Kingdom of Bahrain.

### AU-1.1.3

For the purposes of **Rule** AU-1.1.1(b), persons would be considered in breach of this requirement if they were to trade as, or incorporate a company in Bahrain with a name containing the words (or the equivalents in any language) **adviser**, **consultant**, or **manager** in combination with “investment”, or **portfolio**, without holding the appropriate **CBB** license or the prior approval of the **CBB**.

### AU-1.1.4

Where a person is licensed under Volumes 1 or 2, i.e. as a bank, then a separate license under Volume 4 is not required in order to undertake activities of the kind specified under Section AU-1.4.

### AU-1.1.5

Persons licensed as banks by **the CBB** may also undertake the specific activities covered by the definition of regulated investment services (such as trading in financial instruments as principal), since these specific activities also form part of the definition of regulated banking services (or regulated Islamic banking services in the case of Islamic banks). In such cases, banks are not required to hold a separate investment firm license.

### AU-1.1.6

Depending on the type of regulated investment services that a person wishes to undertake, applicants must seek to be licensed either as a Category 1, a Category 2 or a Category 3 investment firm.

### AU-1.1.7

Persons wishing to be licensed to undertake regulated investment services within or from the Kingdom of Bahrain must apply in writing to the **CBB**.

### AU-1.1.8

An application for a license must be in the form prescribed by the **CBB** and must contain, inter alia:

- (a) **A** business plan specifying the type of business to be conducted;
- (b) **Application** forms for all controllers; and
- (c) **Application** forms for all controlled functions.

<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-1: Authorisation Requirements</b>

## AU-1.1 **Licensing** (continued)

AU-1.1.9 The **CBB** will review the application and duly advise the applicant in writing when it has:

- (a) **Granted** the application without conditions;
- (b) **Granted** the application subject to conditions specified by the **CBB**; or
- (c) **Refused** the application, stating the grounds on which the application has been refused and the process for appealing against that decision.

AU-1.1.10 Detailed rules and guidance regarding information requirements and processes for licenses can be found in Section AU-5.1. As specified in Paragraph AU-5.1.12, the **CBB** will provide a formal decision on a license application within **60 calendar days** of all required documentation having been submitted in a form acceptable to the **CBB**.

**AU-1.1.11** All applicants seeking an investment firm license must satisfy the **CBB** that they meet, by the date of authorisation, the minimum criteria for licensing, as contained in Chapter AU-2. Once licensed, investment firm licensees must maintain these criteria on an on-going basis.

### *Investment Firm License Categories*

**AU-1.1.12** For the purposes of Volume 4 (Investment Business), regulated investment services may be undertaken under three categories of investment firms as follows:

#### *Category 1*

**AU-1.1.13** For the purposes of Volume 4 (Investment Business), Category 1 investment firms may undertake (subject to Rule AU-1.1.19) any regulated investment service, as listed below:

- a) Dealing in financial instruments as principal;
- b) Dealing in financial instruments as agent;
- c) Arranging deals in financial instruments;
- d) Managing financial instruments;
- e) Safeguarding financial instruments (i.e. a **custodian**);
- f) Advising on financial instruments; and
- g) Operating a **collective investment undertaking (i.e. an operator)**.

AU-1.1.14 The activity of dealing in financial instruments as principal includes underwriting, so only a Category 1 investment firm may undertake to underwrite the issuance of a financial instrument.

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<b>CHAPTER</b>	<b>AU-1:</b>	<b>Authorisation Requirements</b>

## AU-1.1 **Licensing** (continued)

### *Category 2*

**AU-1.1.15** For the purposes of Volume 4 (Investment Business), Category 2 investment firms may undertake (subject to Rule AU-1.1.19) any regulated investment service (as listed in Rule AU-1.1.13), *except* that of 'dealing in financial instruments as principal'.

AU-1.1.16 A Category 2 investment firm cannot, therefore, trade in financial instruments for its own account ('dealing in financial instruments as principal'), but it may conduct all other types of regulated investment services, including holding client assets.

### *Category 3*

**AU-1.1.17** For the purposes of Volume 4 (Investment Business), Category 3 investment firms may undertake (subject to Rules AU-1.1.18 and AU-1.1.19) the following regulated investment services only:

- a) Arranging deals in financial instruments; and
- b) Advising on financial instruments.

**AU-1.1.18** When undertaking either of the regulated investment services listed under Rule AU-1.1.17, Category 3 investment firms may not hold any client assets.

### *Combining Regulated Investment Services*

**AU-1.1.19** Investment firm licensees may combine two or more regulated investment services, providing these fall within the permitted list of services for their investment firm Category, and such combinations are not restricted by Module BC (Business Conduct).

AU-1.1.20 Module BC (Business Conduct) may restrict licensees from undertaking certain combinations of activities, where such combinations potentially create conflicts of interest that could compromise the interests of customers. See Chapter BC-2.

### *Suitability*

**AU-1.1.21** Those seeking authorisation must satisfy the **CBB** as to their suitability to carry out the regulated investment services for which they are seeking authorisation.

AU-1.1.22 In assessing applications for a license, the **CBB** will assess whether an applicant satisfies the licensing conditions (as specified in Chapter AU-2) with respect to all the regulated investment services that the applicant proposes undertaking.

<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-1: Authorisation Requirements</b>

## AU-1.1 **Licensing** (continued)

### *Conventional and Islamic Investment Firms*

**AU-1.1.23** **Investment firm licensees** may deal in both conventional and Islamic financial instruments. Only those **investment firm licensees** whose operations are fully shari'a compliant, however, may hold themselves out to be an **Islamic investment firm**.

AU-1.1.24 **Islamic investment firms** are required to maintain a Shari'a Supervisory Board, to verify that their operations are shari'a compliant; and are required to comply with relevant AAOIFI standards (see Rule AA-4.1.1, for instance).

**AU-1.1.25** **Investment firm licensees** (whether conventional or Islamic) may not accept shari'a money placements or deposits. They may not enter into shari'a financing contracts (except where it is an incidental part of assisting a client to buy, sell, subscribe for or underwrite a financial instrument). Finally, they may not offer Shari'a Profit Sharing Investment Accounts (whether restricted or unrestricted).

AU-1.1.26 Shari'a money placements or deposits include money taken under *q'ard* or *al-wadia* contracts. Shari'a financing contracts include contracts such as *murabaha*, *bay muajjal*, *bay islam*, *ijara wa iktina* and *istisna'a*. Profit sharing investment accounts include those accounts undertaken under *mudaraba* and *musharaka* contracts.

AU-1.1.27 The transactions prohibited under Rule AU-1.1.25 may only be undertaken by bank licensees.

<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-1: Authorisation Requirements</b>

## AU-1.2 Approved Persons

### *General Requirement*

**AU-1.2.1** All persons wishing to undertake a controlled function in an investment firm licensee must be approved by the **CBB** prior to their appointment, subject to the variations contained in AU-1.2.3 to AU-1.2.5.

**AU-1.2.2** Controlled functions are those of:

- (a) Director;
- (b) Chief Executive or General Manager;
- (c) Head of function;
- (d) Compliance officer;
- (e) Money Laundering Reporting Officer;
- (f) Member of Shari'a Supervisory Board (where applicable);
- (g) Financial Instruments Trader; and
- (h) Investment consultant or investment adviser.

**AU-1.2.3** In the case of Bahraini investment firm licensees, prior approval is required for controlled functions (a), (b), (c) and (f). Prior approval is also required for controlled functions (d), (e), (g) and (h): these functions, however, may be combined with other functions.

**AU-1.2.4** In the case of overseas investment firm licensees, prior approval is required for controlled function (b), defined as the **'Branch Manager'** of the Bahrain branch (however titled by the licensee). It is also required for controlled functions (c) and (f) where applicable. Prior approval is also required for controlled functions (d), (e), (g) and (h), although these functions may be combined with other functions.

**AU-1.2.5** Approval for controlled function (f) is required for all investment firm licensees undertaking Islamic transactions.

### *Basis for Approval*

**AU-1.2.6** Approval under Paragraph AU-1.2.1 is only granted by the **CBB**, if it is satisfied that the person is fit and proper to hold the particular position in the licensee concerned. **'Fit and proper'** is determined by the **CBB** on a case-by-case basis. The definition of **'fit and proper'** and associated guidance is provided in Sections AU-3.1 and AU-3.2 respectively.

<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-1: Authorisation Requirements</b>

## AU-1.2 Approved Persons (continued)

### *Definitions*

- AU-1.2.7** Director is any person who occupies the position of a **Director**, as defined in Article 173 of the Commercial Companies Law (Legislative Decree No. 21 of 2001).
- AU-1.2.8 The fact that a person may have **Director** in their job title does not of itself make them a Director within the meaning of the definition noted in Paragraph AU-1.2.7. For example, a ‘Director of Marketing’, is not necessarily a member of the Board of **Directors** and therefore may not fall under the definition of Paragraph AU-1.2.7.
- AU-1.2.9** The Chief Executive or General Manager means a person who is responsible for the conduct of the licensee (regardless of actual title). The Chief Executive or General Manager must be resident in Bahrain. This person is responsible, alone or jointly, for the conduct of the whole of the firm, or, in the case of an overseas investment firm licensee, for all of the activities of the branch.
- AU-1.2.10** Head of function means a person who exercises major managerial responsibilities, is responsible for a significant business or operating unit, or has senior managerial responsibility for maintaining accounts or other records of the licensee.
- AU-1.2.11 Whether a person is a head of function will depend on the facts in each case and is not determined by the presence or absence of the word in their job title. Examples of head of function might include, depending on the scale, nature and complexity of the business, a deputy Chief Executive; heads of departments such as Risk Management, Compliance or Internal Audit; or the Chief Financial Officer.
- AU-1.2.12** Financial Instruments Trader means a person who is engaged in buying or selling **financial instruments**.
- AU-1.2.13** An investment consultant or investment adviser refers to the function of arranging deals in **financial instruments** and/or advising on **financial instruments**, with respect to a client.
- AU-1.2.14** Where a firm is in doubt as to whether a function should be considered a controlled function it must discuss the case with the **CBB**.

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AU-1.3 [This Section deleted 07/2007]

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<b>CHAPTER</b>	<b>AU-1: Authorisation Requirements</b>

## AU-1.4 Definition of Regulated Investment Services

**AU-1.4.1** For the purposes of Volume 4 (Investment Business), regulated investment services are any of the activities listed under Paragraph AU-1.1.13, as further defined in this Section, carried on by way of business.

**AU-1.4.2** For the purposes of Volume 4 (Investment Business), carrying on a regulated investment service by way of business means:

- (a) **U**ndertaking one or more of the activities listed under Paragraph AU-1.1.12 on a professional basis and for commercial gain;
- (b) **H**olding oneself out as willing and able to engage in that activity; or
- (c) **R**egularly soliciting other persons to engage in transactions constituting that activity.

### *General Exclusions*

**AU-1.4.3** A person does not carry on an activity constituting a regulated investment service if the activity:

- (a) **I**s carried on in the course of a business which does not ordinarily constitute the carrying on of a regulated activity;
- (b) **M**ay reasonably be regarded as a necessary part of any other services provided in the course of that business; and
- (c) **I**s not remunerated separately from the other services.

**AU-1.4.4** A person does not carry on an activity constituting a regulated investment service if the person is a body corporate and carries on that activity solely with or for other bodies corporate that are members of the same group.

**AU-1.4.5** A person does not carry on an activity constituting a regulated investment service if such person carries on an activity with or for another person, and they are both members of the same family.

**AU-1.4.6** A person does not carry on an activity constituting a regulated investment service if the sole or main purpose for which the person enters into the transaction is to limit any identifiable risks arising in the conduct of his business, providing the business conducted does not itself constitute a regulated activity.

**AU-1.4.7** For example, an industrial company entering into an interest rate swap to switch floating-rate borrowings for fixed rate borrowings, in order to manage interest rate risk, would not be considered to be dealing in financial instruments as principal, and would not therefore be required to be licensed as an investment firm.



<b>MODULE</b>	<b>AU: Authorisation</b>
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## AU-1.4 Definition of Regulated Investment Services (continued)

**AU-1.4.8** A person does not carry on an activity constituting a regulated investment service if that person enters into that transaction solely as a nominee for another person, and acts under instruction from that other person; or is an employee or Director of a person who is an investment firm licensee.

**AU-1.4.9** A person does not carry on an activity constituting a regulated investment service if that person is a government body charged with the management of financial instruments on behalf of a government or public body.

**AU-1.4.10** A person does not carry on an activity constituting a regulated investment service if that person is an exempt person, as specified by Royal decree.

### *Dealing in Financial Instruments as Principal*

**AU-1.4.11** Dealing in financial instruments as principal means buying, selling, subscribing for or underwriting any financial instrument on own account.

**AU-1.4.12** A person carries on an activity specified in Rule AU-1.4.11 only if he is a market maker or deals on own account on an organised, frequent and systematic basis by providing a system accessible to third parties in order to engage in dealings with them.

**AU-1.4.13** A licensee that carries on an activity of the kind specified by Rule AU-1.4.11 is authorised to act as a market maker and has the ability to deal in financial instruments on terms determined by it. Such a licensee undertakes such an activity using its own financial resources, but may also control client assets or liabilities in the course of its designated investment business.

**AU-1.4.14** A person does not carry on an activity specified in Rule AU-1.4.11 if the activity relates to the person issuing his own shares/debentures, warrants or bonds.

**AU-1.4.15** The activity specified in Rule AU-1.4.11 may also include providing credit, where it is an incidental part of buying, selling, subscribing for or underwriting financial instruments.

**AU-1.4.16** Examples of the type of 'incidental' credit activity provided for under Rule AU-1.4.15 include the provision of margin facilities on trading accounts or credit elements intrinsic to a structured or leveraged financial product.

<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-1: Authorisation Requirements</b>

## AU-1.4 Definition of Regulated Investment Services (continued)

### *Dealing in Financial Instruments as Agent*

**AU-1.4.17** Dealing in financial instruments as agent means buying, selling, subscribing for or underwriting financial instruments on behalf of a client.

AU-1.4.18 A licensee that carries on an activity of the kind specified by Rule AU-1.4.17 is not a market maker, does not have the ability to deal in financial instruments on terms determined by it and does not use its own financial resources for the purpose of buying, selling, subscribing for or underwriting financial instruments. Such a licensee may however receive or hold client assets in connection with a client transaction, in its capacity as agent.

### *Arranging Deals in Financial Instruments*

**AU-1.4.19** Arranging deals in financial instruments means making arrangements with a view to another person, whether as principal or agent, buying, selling, subscribing for or underwriting deals in financial instruments.

**AU-1.4.20** A person does not carry on an activity specified in Rule AU-1.4.19 if the arrangement does not bring about the transaction to which the arrangement relates.

**AU-1.4.21** A person does not carry on an activity specified in Rule AU-1.4.19 if a person's activities are limited solely to introducing clients to licensees.

AU-1.4.22 The exclusion in Rule AU-1.4.21 does not apply if the agent receives from any person, other than the client, any pecuniary reward or other advantage, for which he does not account to the client, arising out of his entering into the transaction. Thus, if A receives a commission from B for arranging credit or deals in investment for C, the exclusion in Rule AU-1.4.21 does not apply.

**AU-1.4.23** A person does not carry on an activity specified in Rule AU-1.4.19 merely by providing the means of communication between two parties to a transaction.

**AU-1.4.24** A person does not carry on an activity specified in Rule AU-1.4.19 if they operate an exchange, duly recognised and authorised by the **CBB**.

AU-1.4.25 The Bahrain Stock Exchange, as an authorised exchange, is not therefore classed as an investment firm licensee subject to Volume 4 (Investment Business). It is subject to separate rules issued by the **Central Bank of Bahrain** (see Volume 6 of the **CBB Rulebook**).

<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-1: Authorisation Requirements</b>

## **AU-1.4 Definition of Regulated Investment Services (continued)**

AU-1.4.26 Negotiating terms for an investment on behalf of a client is an example of an activity which may be regarded as activities of the kind specified in Rule AU-1.4.19.

AU-1.4.27 The following are examples of activities which, when taken in isolation, are unlikely to be regarded as an activity of the kind specified in Rule AU-1.4.19:

- (a) Appointing professional advisers;
- (b) Preparing a prospectus/business plan;
- (c) Identifying potential sources of funding;
- (d) Assisting investors/subscribers/borrowers to complete and submit application forms; or
- (e) Receiving application forms for processing/checking and/or onward transmission.

**AU-1.4.28** The activity specified in Rule AU-1.4.19 may also include arranging credit, where it is an incidental part of assisting a client to buy, sell, subscribe for or underwrite any financial instrument.

AU-1.4.29 Under Rule AU-1.4.28, arranging credit is an activity specified in Rule AU-1.4.19, only where it forms part of other arrangements to assist a client to buy, sell, subscribe for or underwrite a financial instrument. The activity of solely arranging credit is not a regulated activity for the purposes of Rule AU-1.4.19.

### ***Managing Financial Instruments***

**AU-1.4.30** Managing financial instruments means managing on a discretionary basis financial instruments on behalf of another person.

AU-1.4.31 Activities involving initiating and carrying out investment transactions on behalf of a client on a discretionary basis are included under the definition of Rule AU-1.4.30.

### ***Safeguarding Financial Instruments (i.e. Custodian)***

**AU-1.4.32** Safeguarding financial instruments means the safeguarding of financial instruments for the account of clients.

**AU-1.4.33** A person does not carry on an activity specified in Rule AU-1.4.32 if the person receives documents relating to a financial instrument for the purpose of onward transmission to, from or at the direction of the person to whom the financial instrument belongs; or else is simply providing a physical safekeeping service such as a deed box.

**AU-1.4.34** A person does not carry on an activity specified in Rule AU-1.4.32 if a third person, namely a qualifying custodian, accepts responsibility with regard to the financial instrument.

<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-1: Authorisation Requirements</b>

## AU-1.4 Definition of Regulated Investment Services (continued)

**AU-1.4.35** A **'qualifying custodian'** means a person who is:

- (a) A licensee who has permission to carry on an activity of the kind specified in Rule AU-1.4.32; or
- (b) An exempt person in relation to activities of that kind.

**AU-1.4.36** A person does not carry on an activity specified in Rule AU-1.4.32 if they are managing a central depository, which is part of an exchange recognised by the **CBB**.

**AU-1.4.37** A person undertaking an activity of the kind specified under Rule AU-1.4.32 **cannot execute** negotiable instruments such as cheques on behalf of a client.

AU-1.4.38 The following are examples of activities which, when taken in isolation, are unlikely to be regarded as an activity of the kind specified under Rule AU-1.4.32:

- (a) Providing information as to the number of units or the value of any assets safeguarded; and
- (b) Converting currency.

AU-1.4.39 A person undertaking an activity of the kind specified under Rule AU-1.4.32 may also be engaged in the administration **of financial instruments**, including related services such as cash/collateral management.

AU-1.4.40 [This Paragraph deleted 07/2007.]

### *Advising on Financial Instruments*

**AU-1.4.41** Advising on **financial instruments** means giving advice to an investor or potential investor (or a person in his capacity as an agent for an investor or potential investor) on the merits of buying, selling, subscribing for or underwriting a particular **financial instrument** or exercising any right conferred by such a **financial instrument**.

AU-1.4.42 The following are examples of activities, which may be regarded as an activity as defined by Rule AU-1.4.41:

- (a) A person may offer to tell a client when shares reach a certain value on the basis that when the price reaches that value it would be a good time to buy or sell them;
- (b) Recommendation on the size or timing of transactions; and
- (c) Advice on the suitability of the **financial instrument**, or on the characteristics or performance of the **financial instrument** or credit facility concerned.

<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-1: Authorisation Requirements</b>

## AU-1.4 Definition of Regulated Investment Services (continued)

**AU-1.4.43** A person does not carry on an activity specified in **Rule AU-1.4.41** by giving advice in any newspaper, journal, magazine, broadcast services or similar service in any medium if the principal purpose of the publication or service, taken as a whole, is neither:

- (a) That of giving advice of the kind mentioned in **Rule AU-1.4.41**; nor
- (b) That of leading or enabling persons to buy, sell, subscribe for or underwrite a financial instrument.

**AU-1.4.44** The following are examples of activities which, when taken in isolation, are unlikely to be regarded as an activity as defined by **Rule AU-1.4.41**:

- (a) Explaining the structure or the terms and conditions of a financial instrument or credit facility;
- (b) Valuing financial instruments for which there is no ready market;
- (c) Circulating company news or announcements;
- (d) Comparing the benefits and risks of one financial instrument to another; and
- (e) Advising on the likely meaning of uncertain provisions in an agreement relating to, or the terms of, a financial instrument or on the effect of contractual terms and their commercial consequences or on terms that are commonly accepted in the market.

**AU-1.4.45** A person undertaking an activity of the kind specified under **Rule AU-1.4.41** cannot accept or hold client assets or execute negotiable instruments such as cheques on behalf of a client.

### *Operating a Collective Investment Undertaking (i.e. operator)*

**AU-1.4.46** Operating a collective investment undertaking ('CIU') means operating, establishing or winding up a collective investment undertaking.

**AU-1.4.47** For the purposes of **Rule AU-1.4.46**, a collective investment undertaking is an undertaking the sole object of which is the collective investment of capital raised from the public in financial instruments or other assets and which operates on the basis of risk-spreading; and the holdings of which are re-purchased or redeemed, directly or indirectly, out of those undertakings' assets.

**AU-1.4.48** A person does not carry on an activity specified in **Rule AU-1.4.46** if the activity relates to the person establishing or winding up a collective investment undertaking, and that activity may be reasonably regarded as a necessary in the course of providing legal services or providing accounting services.

<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-1: Authorisation Requirements</b>

## AU-1.4 Definition of Regulated Investment Services (continued)

AU-1.4.49 In the case of CIUs whose holdings are listed and traded on a stock exchange (such as a closed-ended fund), actions taken by the CIU to align the stock exchange value of its holdings and its net asset value is taken as equivalent to the repurchase or redemption specified in Rule AU-1.4.47. The definition in Rule AU-1.4.47 thus recognises both open-ended funds and closed-ended funds: unit trusts, investment trusts, mutual funds, SICAV and collective investment schemes are all examples of CIUs. CIUs may also be constituted under contract law (as common funds managed by management companies); trust law (as unit trusts); or under statute (as investment companies).

AU-1.4.49A See Module CIU, Volume 6 of the CBB Rulebook, for the rules that apply to CIUs domiciled in Bahrain or domiciled in an overseas jurisdiction, and offered to investors resident in Bahrain. These rules also contain requirements that apply to the operators of such CIUs.

AU-1.4.50 [Paragraph deleted 07/2006.]

AU-1.4.51 [Paragraph deleted 07/2006.]

<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-1: Authorisation Requirements</b>

## AU-1.5 Definition of Financial Instruments

For the purposes of Volume 4, a financial instrument means any of the following:

### *Transferable Securities*

- AU-1.5.1** Those classes of securities which are negotiable, with the exception of instruments of payment. Transferable securities include:
- (a) Shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares;
  - (b) Bonds or other forms of securitised debt, including depositary receipts in respect of such securities;
  - (c) Warrants;
  - (d) Any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures.

### *Islamic Financial Instruments*

- AU-1.5.2** Those financial instruments – as defined elsewhere in Section AU-1.5 – that are shari'a compliant.

### *Money-market Instruments*

- AU-1.5.3** Those classes of instruments which are normally dealt in on the money market, such as treasury bills and commercial papers and excluding instruments of payment.

### *Holdings in Collective Investment Undertakings*

- AU-1.5.4** Rights or interests (however described) of the participants in a collective investment undertaking.

### *Derivative Contracts other than Commodity Derivatives*

- AU-1.5.5** Options, futures, forwards, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash.

MODULE	AU: Authorisation
CHAPTER	AU-1: Authorisation Requirements

## AU-1.5 Definition of Financial Instruments (continued)

### *Derivative Contracts relating to commodities Settled in Cash*

**AU-1.5.6** Options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event).

### *Derivative Contracts Relating to Commodities*

**AU-1.5.7** Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled.

**AU-1.5.8** Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in **Rule AU-1.5.7** above and not being for commercial purposes, which have the characteristics of other derivative financial instruments.

### *Credit Derivatives*

**AU-1.5.9** Over the counter derivative instruments, which provide for the transfer of credit risk.

### *Financial Contracts for Differences*

**AU-1.5.10** Comprise rights under a contract for differences, or any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in:

- The value or price of investment or property of any description;
- Any currency;
- The rate of interest in any currency or any index of such rates (including interest rate options);
- The level of any index which is derived for the prices of an investment or physical commodity (including index options); or
- Any combination of the above.



MODULE	AU:	Authorisation
CHAPTER	AU-1:	Authorisation Requirements

## AU-1.5 Definition of Financial Instruments (continued)

**AU-1.5.11** The following are excluded from this definition of contracts for differences:

- (a) Contracts where the parties intend that the profit is to be secured or the loss to be avoided by taking delivery of property; and
- (b) Contracts under which money is received by way of deposit on terms that any return to be paid on the sum deposited will be calculated by reference to an index, interest rate, exchange rate or other factor.

### *Other Derivative Contracts*

**AU-1.5.12** Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments.

### *Interests in Real Estate Property*

**AU-1.5.13** Any financial instrument giving right to or interests in real estate property other than owner occupied properties. This excludes the taking of charges over real estate property.

### *Certificates Representing Certain Securities*

**AU-1.5.14** Certificates or other instruments which confer contractual or property rights:

- (a) In respect of any investment held by someone other than the person on whom the rights are conferred by the certificate or other instrument; and
- (b) The transfer of which may be effected without requiring the consent of that person.

### *Rights or Interests in Financial Instruments*

**AU-1.5.15** Rights to or interests in all financial instruments under Section AU-1.5.

MODULE	AU:	Authorisation
CHAPTER	AU-2:	Licensing Conditions

## AU-2.1 Condition 1: Legal Status

### *Category 1 and 2 Investment Firms*

#### AU-2.1.1

The legal status of a Category 1 or 2 investment firm licensee must be:

- (i) A Bahraini joint stock company (BSC); or
- (ii) A branch resident in Bahrain of a company incorporated under the laws of its territory of incorporation and (where local regulation so requires) authorised as market-maker in that territory.

### *Category 3 Investment Firms*

#### AU-2.1.2

The legal status of a Category 3 investment firm licensee must be:

- (i) A Bahraini joint stock company (BSC);
- (ii) A Bahraini company with limited liability ('WLL'); or
- (iii) A branch resident in Bahrain of a company incorporated under the laws of its territory of incorporation and (where local regulation so requires) authorised as market-maker in that territory.

#### AU-2.1.3

Where the investment firm licensee is a branch of an overseas investment firm, an application for licensing will be considered after extensive enquiries into the firm's shareholders, management structure, financial position, its activities and how these activities are regulated.

MODULE	AU:	Authorisation
CHAPTER	AU-2:	Licensing Conditions

## AU-2.2 Condition 2: Mind and Management

**AU-2.2.1** Investment firm licensees with their Registered Office in the Kingdom of Bahrain must maintain their Head Office in the Kingdom. Overseas investment firm licensees must maintain a local management presence and premises in the Kingdom appropriate to the nature and scale of their activities.

AU-2.2.2 In assessing the location of an investment firm licensee's Head Office, the CBB will take into account the residency of its Directors and senior management. The CBB requires the majority of key decision makers in executive management – including the Chief Executive - to be resident in Bahrain. In the case of overseas investment firm licensees, the CBB requires the branch or subsidiary of a foreign owned company to have a substantive presence, demonstrated by a level of staff and other resources sufficient to ensure adequate local scrutiny and control over business booked in the Bahrain branch or subsidiary.

<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-2: Licensing Conditions</b>

## AU-2.3 Condition 3: Controllers and Close Links

- AU-2.3.1** Investment firm licensees must satisfy the **CBB** that their controllers are suitable and pose no undue risks to the licensee. Investment firm licensees must also satisfy the **CBB** that their close links do not prevent the effective supervision of the investment firm licensee by the **CBB** and otherwise pose no undue risks to the licensee.
- AU-2.3.2 Chapters GR-5 and GR-6 contain the **CBB's** requirements and definitions regarding controllers and close links.
- AU-2.3.3 In summary, controllers are persons who directly or indirectly are significant shareholders in an investment firm licensee, or who are otherwise able to exert significant influence on the investment firm licensee. The **CBB** seeks to ensure that controllers pose no significant risks to the licensee. In general terms, controllers are assessed in terms of their financial standing, their judicial and regulatory record, and standards of business and (where relevant) personal probity.
- AU-2.3.4 In summary, an investment firm licensee has close links with its subsidiaries, with its parent undertakings, and with subsidiaries of its parent undertakings. It also has close links with any entity in which the licensee, its subsidiaries, its parent undertakings, and the subsidiaries of its parent undertakings has an equity interest of more than 20% (either in terms of capital or voting rights). The **CBB** seeks to ensure that these closely linked entities do not pose any material financial, reputational or other risks to the licensee. The **CBB** also seeks to ensure that the structure and geographical spread of the group is such that it is subject to adequate scrutiny at group level.
- AU-2.3.5 In all cases, when judging applications from existing groups, the **CBB** will have regard to the reputation and financial standing of the group as a whole. Where relevant, the **CBB** will also take into account the extent and quality of supervision applied to overseas members of the group and take into account any information provided by other supervisors in relation to any member of the group.

<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-2: Licensing Conditions</b>

## AU-2.4 Condition 4: Board and Employees

**AU-2.4.1** Those nominated to carry out controlled functions must satisfy **CBB's** approved person's requirements.

AU-2.4.2 The definition of controlled functions is contained in AU-1.2, whilst AU-3 sets out **CBB's** approved persons requirements. Applications for approved person status must be submitted using the prescribed approved persons form.

**AU-2.4.3** The investment firm licensee's staff, taken together, must collectively provide a sufficient range of skills and experience to manage the affairs of the **licensee** in a sound and prudent manner. Investment firm licensees must ensure their employees meet any training and competency requirements specified by the **CBB**.

AU-2.4.4 The **CBB's** training and competency requirements are contained in Module TC (Training and Competency).

MODULE	AU:	Authorisation
CHAPTER	AU-2:	Licensing Conditions

## AU-2.5 Condition 5: Financial Resources

**AU-2.5.1** Investment firm licensees must maintain a level of financial resources, as agreed with the **CBB**, adequate for the level of business proposed. The level of financial resources held must exceed at all times the minimum requirements contained in Module CA (Capital Adequacy), as specified for the Category of investment license held.

**AU-2.5.2** A 3-year business plan, with financial projections, must be submitted with any application for a license, demonstrating the adequacy of financial resources over that period.

**AU-2.5.3** **Overseas applicants** are required to provide written confirmation from their head office that the head office will provide financial support to the branch sufficient to enable it to meet its obligations as and when they fall due. **Overseas applicants** must also demonstrate that the company as a whole is adequately resourced for the amount of risks undertaken.

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## AU-2.6 Condition 6: Systems and Controls

- AU-2.6.1** Investment firm licensees must maintain systems and controls that are, in the opinion of the **CBB**, adequate for the scale and complexity of their activities. These systems and controls must meet the minimum requirements contained in Modules HC (High-level Controls) and RM (Risk Management), as specified for the Category of **investment firm license** held.
- AU-2.6.2** Investment firm licensees must maintain adequate segregation of responsibilities in their staffing arrangements, to protect against the misuse of systems or errors. Such segregation should ensure that no single individual has control over all stages of a transaction.
- AU-2.6.3** Investment firm licensees must maintain systems and controls that are, in the opinion of the **CBB**, adequate to address the risks of financial crime occurring in the licensee. These systems and controls must meet the minimum requirements contained in Module FC (Financial Crime), as specified for the Category of **investment firm license** held.
- AU-2.6.4** As part of the licensing approval process, applicants must demonstrate in their business plan (together with any supporting documentation) what risks their business would be subject to and how they would manage those risks. Applicants may also be asked to provide an independent assessment of the appropriateness of their systems and controls to the **CBB**.
- AU-2.6.5** Investment firm licensees must, in connection with any **client assets** received in the course of their business, establish and maintain separate **client** accounts, segregated from those used for their own funds, as required in Module CL.

MODULE	AU:	Authorisation
CHAPTER	AU-2:	Licensing Conditions

## AU-2.7 Condition 7: External Auditors

**AU-2.7.1** Investment firm licensees must appoint external auditors, subject to prior **CBB** approval. The minimum requirements regarding auditors contained in Module AA (Auditors and Accounting Standards) must be met.

**AU-2.7.2** Applicants must submit details of their proposed external auditors to the **CBB** as part of their license application.



MODULE	AU:	Authorisation
CHAPTER	AU-2:	Licensing Conditions

## AU-2.8 Condition 8: Other Requirements

### *Books and Records*

**AU-2.8.1** Investment firm licensees must maintain comprehensive books of accounts and other records, which must be available for inspection within the Kingdom of Bahrain by the **CBB**, or persons appointed by the **CBB**, at any time. Investment firm licensees must comply with the minimum record-keeping requirements contained in Module GR. Books of accounts must comply with IAS (and relevant AAOIFI) standards.

### *Provision of Information*

**AU-2.8.2** Investment firm licensees must act in an open and cooperative manner with the **CBB**. Investment firm licensees must meet the regulatory reporting and public disclosure requirements contained in Modules BR and PD respectively.

### *General Conduct*

**AU-2.8.3** Investment firm licensees must conduct their activities in a professional and orderly manner, in keeping with good market practice standards. Investment firm licensees must comply with the general standards of business conduct contained in Module PB, as well as the standards relating to treatment of customers contained in Module BC.

### *License Fees*

**AU-2.8.4** Investment firm licensees must comply with any license fee requirements applied by the **CBB**.

AU-2.8.5 License fee requirements are contained in **Chapter AU-6**.

<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-2: Licensing Conditions</b>

## AU-2.8 Condition 8: Other Requirements (continued)

### *Additional Conditions*

**AU-2.8.6** Investment firm licensees must comply with any other specific requirements or restrictions imposed by the **CBB** on the scope of their license.

AU-2.8.7 When granting a license, **the CBB** specifies the regulated investment services that the licensee may undertake and the category of investment firm license granted. Licensees must respect the scope of their license. AU-5.4 sets out the process for varying the scope of an authorisation, should a licensee wish to undertake new regulated investment services.

AU-2.8.8 In addition, **the CBB** may vary existing requirements or impose additional restrictions or requirements, beyond those already specified in Volume 4, to address specific risks.

<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-3: Approved Persons Conditions</b>

## AU-3.1 Condition 1: 'Fit and Proper'

**AU-3.1.1** Licensees seeking an approved person authorisation for an individual, must satisfy the CBB that the individual concerned is 'fit and proper' to undertake the controlled function in question.

AU-3.1.2 The authorisation requirement for persons nominated to carry out controlled functions is contained in Section AU-1.2. The authorisation process is described in Section AU-5.2.

**AU-3.1.3** To be considered 'fit and proper', those nominated must demonstrate:

- (a) Personal integrity, honesty and good reputation;
- (b) Professional competence, experience and expertise, sufficient for the controlled function for which authorisation is being applied for, and given the scale, complexity and nature of the investment business licensee concerned; and
- (c) Financial soundness.

AU-3.1.4 In assessing the conditions prescribed in Rule AU-3.1.3, the CBB will take into account the criteria contained in Section AU-3.2. The CBB reviews each application on a case-by-case basis, taking into account all relevant circumstances. A person may be considered 'fit and proper' to undertake one type of controlled function but not another, depending on the function's job size and required levels of experience and expertise. Similarly, a person approved to undertake a controlled function in one investment firm licensee may not be considered to have sufficient expertise and experience to undertake nominally the same controlled function but in a much bigger licensee.

**AU-3.1.5** Approved persons undertaking a controlled function must act prudently, and with honesty, integrity, care, skill and due diligence in the performance of their duties. They must avoid conflicts of interest arising whilst undertaking a controlled function.

AU-3.1.6 In determining where there may be a conflict of interest arising, factors that may be considered will include whether:

- (a) A person has breached any fiduciary obligations to the company or terms of employment;
- (b) A person has undertaken actions that would be difficult to defend, when looked at objectively, as being in the interest of the licensee; and
- (c) A person has failed to declare a personal interest that has a material impact in terms of the person's relationship with the licensee.

<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-3: Approved Persons Conditions</b>

## AU-3.2 Interpretative Guidance on 'Fit and Proper'

AU-3.2.1 In assessing a person's fitness and propriety, the CBB will consider previous professional and personal conduct (in Bahrain or elsewhere) including, but not limited to, the following:

- (a) The propriety of a person's conduct, whether or not such conduct resulted in a criminal offence being committed, the contravention of a law or regulation, or the institution of legal or disciplinary proceedings;
- (b) A conviction or finding of guilt in respect of any offence, other than a minor traffic offence, by any court or competent jurisdiction;
- (c) Any adverse finding in a civil action by any court or competent jurisdiction, relating to fraud, misfeasance or other misconduct in connection with the formation or management of a corporation or partnership;
- (d) Whether the person has been the subject of any disciplinary proceeding by any government authority, regulatory agency or professional body or association;
- (e) The contravention of any financial services legislation or regulation;
- (f) Whether the person has ever been refused a license, authorisation, registration or other authority;
- (g) Dismissal or a request to resign from any office or employment;
- (h) Disqualification by a court, regulator or other competent body, as a Director or as a manager of a corporation;
- (i) Whether the person has been a Director, partner or manager of a corporation or partnership which has gone into liquidation or administration or where one or more partners have been declared bankrupt whilst the person was connected with that partnership;
- (j) The extent to which the person has been truthful and open with supervisors;
- (k) The extent to which the person has appropriate professional and other qualifications for the controlled function in question;
- (l) The extent to which the person has sufficient experience, or is otherwise able to perform the functions of the controlled function in question;
- (m) Whether the person has ever been adjudged bankrupt, entered into any arrangement with creditors in relation to the inability to pay due debts, or failed to satisfy a judgement debt under a court order.

AU-3.2.2 With respect to AU-3.2.1(b), (c), (d) and (e), the CBB will take into account the length of time since any such event occurred, as well as the seriousness of the matter in question.

AU-3.2.3 Further guidance on the process for assessing a person's 'fit and proper' status is given in Module EN (Enforcement): see Chapter EN-8.

MODULE	AU:	Authorisation
CHAPTER	AU-4:	[This Chapter deleted 07/2007]

<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-5: Information Requirements and Processes</b>

## AU-5.1 Licensing

### *Application Form and Documents*

- AU-5.1.1** Applicants for a license must submit a duly completed Form 1 (Application for a License), under cover of a letter signed by an authorised signatory of the applicant marked for the attention of the Director, Licensing and Policy Directorate. The application must be accompanied by the documents listed in Rule AU-5.1.5, unless otherwise directed by the **CBB**.
- AU-5.1.2 Articles 44 to 47 of the CBB Law govern the licensing process. This prescribes a single stage process, with the CBB required to take a decision within 60 calendar days of an application being deemed complete (i.e. containing all required information and documents). See below, for further details on the licensing process and time-lines.
- AU-5.1.3 References to applicant mean the proposed licensee seeking authorisation. An applicant may appoint a representative – such as a law firm or professional consultancy – to prepare and submit the application. However, the applicant retains full responsibility for the accuracy and completeness of the application, and is required to certify the application form accordingly. The CBB also expects to be able to liaise directly with the applicant during the authorisation process, when seeking clarification of any issues.
- AU-5.1.4 Investment firm licensees who were licensed prior to the publication of Volume 4 of the Rulebook do not need to resubmit an application for a license. Their license Category, and the scope of their authorisation, will be confirmed in an exchange of letters. Such licensees, however, will have to comply with all other requirements of the Rulebook, as set out in Module ES (Executive Summary), unless different transition arrangements have been agreed in writing with the **CBB** beforehand.
- AU-5.1.5** Unless otherwise directed by the **CBB**, the following documents must be provided in support of a Form 1:
- A duly completed Form 2 (Application for Authorisation of Controller) for each controller of the proposed licensee;
  - A duly completed Form 3 (Application for Approved Person status), for each individual proposed to undertake controlled functions (as defined in Rule AU-1.2.2) in the proposed licensee;
  - A comprehensive business plan for the application, addressing the matters described in AU-5.1.6;
  - For overseas companies, a copy of the company's current commercial registration or equivalent documentation;
  - Where the applicant is a Bahraini company, a copy of the applicant's commercial registration certificate;

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## AU-5.1 Licensing (continued)

### *Application Form and Documents (continued)*

#### AU-5.1.5 (continued)

- (f) A certified copy of a Board resolution of the applicant, confirming its decision to seek a CBB investment firm license;
- (g) Details of the proposed licensee's close links, if any, as defined under Chapter GR-6;
- (h) In the case of applicants that are part of a regulated group, a letter of non-objection to the proposed license application from the applicant's lead supervisor, together with confirmation that the group is in good regulatory standing and is in compliance with applicable supervisory requirements, including those relating to capital requirements;
- (i) In the case of branch applicants, a letter of non-objection to the proposed license application from the applicant's home supervisor, together with confirmation that the applicant is in good regulatory standing and the company concerned is in compliance with applicable supervisory requirements, including those relating to capital;
- (j) In the case of branch applicants, copies of the audited financial statements of the applicant (head office) for the three years immediately prior to the date of application;
- (k) In the case of applicants that are part of a group, copies of the audited financial statements of the applicant's group, for the three years immediately prior to the date of application;
- (l) In the case of applicants not falling under either (j) or (k) above, copies of the audited financial statements of the applicant's major shareholder (where they are a legal person), for the three years immediately prior to the date of application;
- (m) In the case of applicants seeking to raise part of their capital through a private placement, a draft of the relevant private placement memorandum, together with a formal, independent legal opinion that the memorandum comply with all applicable capital markets laws and regulations;
- (n) A copy of the applicant's memorandum and articles of association (in draft form for applicants creating a new company) addressing the matters described in AU-5.1.8;
- (o) In the case of branch applicants, an acceptably worded letter of guarantee from the applicant's head office, confirming responsibility for all of the liabilities of the proposed branch, together with evidence of the power to give such a guarantee; and
- (p) In the case of applicants not falling under (o) above, an acceptably worded letter of guarantee from the applicant's major shareholder, confirming its willingness to support the proposed licensee in case of need.

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## AU-5.1 Licensing (continued)

### *Application Form and Documents (continued)*

**AU-5.1.6** The business plan submitted in support of an application must explain:

- (a) An outline of the history of the applicant and its shareholders;
- (b) The reasons for applying for a license, including the applicant's strategy and market objectives;
- (c) The proposed type of activities to be carried on by the applicant in/from the Kingdom of Bahrain;
- (d) The proposed Board and senior management of the applicant and the proposed organisational structure of the applicant;
- (e) An assessment of the risks that may be faced by the applicant, together with the proposed systems and controls framework to be put in place for addressing those risks and to be used for the main business functions; and
- (f) An opening balance sheet for the applicant, together with a three-year financial projection, with all assumptions clearly outlined, demonstrating that the applicant will be able to meet applicable capital adequacy requirements.

**AU-5.1.7** In the case of applicants seeking to raise capital (refer to AU-5.1.5(m)), the CBB's review is aimed at checking that the proposed private placement complies with applicable capital markets laws and regulations, and that the information contained in the private placement memorandum ("PPM") is consistent with the information provided in the license application. The CBB's review does not in any way constitute an approval or endorsement as to any claims made in the PPM regarding the future value of the company concerned. Note also that the CBB will not license applicants without a core group of sponsoring shareholders (who can demonstrate a strong business track record with relevant expertise), and where failure of the private placement to raise its targeted amount would leave the institution unable to comply with the CBB's minimum capital requirements. The CBB will normally expect core shareholders to account for at least 40% of the applicant's initial proposed total capital.

**AU-5.1.8** The applicant's memorandum and articles of association must explicitly provide for it to undertake the activities proposed in the license application, and must preclude the applicant from undertaking other regulated services, or commercial activities, unless these arise out of its investment activities or are incidental to those.

**AU-5.1.9** All documentation provided to the CBB as part of an application for a license must be in either the Arabic or English languages. Any documentation in a language other than English or Arabic must be accompanied by a certified English or Arabic translation thereof.



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## AU-5.1 Licensing (continued)

### *Application Form and Documents (continued)*

**AU-5.1.10** Any material changes or proposed changes to the information provided to the **CBB** in support of an authorisation application that occurs prior to authorisation must be reported to the **CBB**.

AU-5.1.11 Failure to inform the **CBB** of the changes specified in **Rule** AU-5.1.10 is likely to be viewed as a failure to provide full and open disclosure of information, and thus a failure to meet licensing condition Rule AU-2.8.2.

### *Licensing Process and Timelines*

AU-5.1.12 By law, the 60 day time limit referred to in Paragraph AU-5.1.2 only applies once the application is complete and all required information (which may include any clarifications requested by the CBB) and documents have been provided. This means that all the items specified in Rule AU-5.1.5 have to be provided, before the **CBB** may issue a license.

AU-5.1.12A The CBB recognises, however, that applicants may find it difficult to secure suitable senior management (refer AU-5.1.5(b) above) in the absence of preliminary assurances regarding the likelihood of obtaining a license. Likewise, a Bahrain company proposing to undertake financial services activities would not be able to obtain a commercial registration from the Ministry of Commerce and Industry without such assurances (refer AU-5.1.5(e) above).

AU-5.1.12B Therefore, applicants may first submit an unsigned Form 1 in draft, together with as many as possible of the items specified in Rule 5.1.5. This draft application should contain at least items AU-5.1.5(a); AU-5.1.5(b), with respect to proposed Directors (but not necessarily senior management); AU-5.1.5(c); AU-5.1.5(d); and AU-5.1.5(g) to AU-5.1.5(m) inclusive.

AU-5.1.12C On the basis of the information specified in Paragraph AU-5.1.12B, the CBB may provide an initial 'in principle' confirmation that the applicant appears likely to meet the CBB's licensing requirements, subject to the remaining information and documents being assessed as satisfactory. The 'in principle' confirmation will also list all outstanding documents required before an application can be considered complete and subject to formal consideration.

AU-5.1.12D An 'in principle' confirmation does not constitute a license approval, nor does it commit the CBB to issuing a license. However, it provides sufficient assurance for an applicant to complete certain practical steps, such as forming the company (if a Bahrain registered company is to be formed), and securing suitable executive staff that satisfy CBB's 'fit and proper' requirements. Once this has been done, the applicant may finalise its application, by submitting the remaining documents required under Rule AU-5.1.1 and, once assessed as complete by CBB, a signed and dated final version of Form 1.

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## AU-5.1 Licensing (continued)

### *Licensing Process and Timelines (continued)*

**AU-5.1.12E** Regardless of whether an applicant submits a draft application or not, all potential applicants are strongly encouraged to contact the CBB at an early stage to discuss their plans, for guidance on the CBB's license categories and associated requirements. The Licensing & Policy Directorate would normally expect to hold at least one pre-application meeting with an applicant, prior to receiving an application (either in draft or in final).

**AU-5.1.12F** Potential applicants should initiate pre-application meetings in writing, setting out a short summary of their proposed business and any issues or questions that they may have already identified, once they have a clear business proposition in mind and have undertaken their preliminary research. The Central Bank can then guide the applicant on the specific areas in the Rulebook that will apply to them and the relevant requirements that they must address in their application.

**AU-5.1.12G** At no point should an applicant hold themselves out as having been licensed by the CBB, prior to receiving formal written notification of the fact in accordance with Rule AU-5.1.12H below. Failure to do so may constitute grounds for refusing an application and result in a contravention of Articles 40 and 41 of the CBB Law (which carries a maximum penalty of BD 1 million).

### *Granting or Refusal of License*

**AU-5.1.12H** To be granted a license, an applicant must demonstrate compliance with the applicable requirements of the CBB Law and this Module. Should a license be granted, the CBB will notify the applicant in writing of the fact; the CBB will also publish its decision to grant a license in the Official Gazette and in two local newspapers (one published in Arabic, the other in English). The license may be subject to such terms and conditions as the CBB deems necessary for the additional conditions being met.

**AU-5.1.12I** The CBB may refuse to grant a license if in its opinion:

- (a) The requirements of the CBB Law or this Module are not met;
- (b) False or misleading information has been provided to the CBB, or information which should have been provided to the CBB has not been so provided; or
- (c) The CBB believes it necessary in order to safeguard the interests of potential customers.

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## AU-5.1 Licensing (continued)

### *Granting or Refusal of License (continued)*

**AU-5.1.12J** Where the CBB proposes to refuse an application for a license, it must give the applicant written notice to that effect. Applicants will be given a minimum of 30 calendar days from the date of the written notice to appeal the decision, as per the appeal procedures specified in the notice; these procedures will comply with the provisions contained in Article 46 of the CBB Law.

### *Starting Operations*

**AU-5.1.13** Within 6 months of the license being issued, the new **licensee** must provide to the **CBB (if not previously submitted)**:

- (a) **The** registered office address and details of premises to be used to carry out the business of the proposed **licensee**;
- (b) **The** address in the Kingdom of Bahrain where full business records will be kept;
- (c) **The licensee's** contact details including telephone and fax number, e-mail address and website;
- (d) **A copy of its** business continuity plan;
- (e) **A** description of the IT system that will be used, including details of how IT systems and other records will be backed up;
- (f) **A** copy of the auditor's acceptance to act as auditor for the applicant;
- (g) **A copy of an auditor's opinion certifying that the licensee's capital – as specified in the business plan submitted under Rule AU-5.1.5 – has been paid in;**
- (h) **A** copy of the **licensee's** professional indemnity insurance policy or confirmation that a deposit to an amount specified by the **CBB** has been placed in escrow in an account at a bank licensed in the Kingdom of Bahrain (see Section GR-9.1); and
- (i) **Any** other information as may be specified by the **CBB**.

**AU-5.1.14** New licensees must start their operations within 6 months of being granted a license by the **CBB**, failing which **the CBB** may cancel the license, as per the powers and procedures set out in **Article 48** of the **CBB** Law.

**AU-5.1.15** The procedures for amending or cancelling licenses are contained in Sections AU-5.4 and AU-5.5 respectively.

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## AU-5.2 Approved Persons

**AU-5.2.1** Investment firm licensees must obtain **CBB** approval before a person is formally appointed to a controlled function. The request for **CBB** approval must be made by submitting to **the CBB** a duly completed Form 3 (Application for Approved Person status).

**AU-5.2.2** When the request for approved person status forms part of a license application, the Form 3 must be marked for the attention of the Director, Licensing and Policy Directorate. When the submission to undertake a controlled function is in relation to an existing investment business licensee, the Form 3 must be marked for the attention of the Director, **Financial Institutions** Supervision Directorate.

AU-5.2.3 Licensees should give the **CBB** a reasonable amount of notice in order for an application to be reviewed. The **CBB** aims to respond within 2 weeks of receipt of an application, although in some cases, where referral to an overseas supervisor is required, the response time is likely to be longer.

AU-5.2.4 Licensees seeking to appoint Board Directors should seek **CBB** approval for all the candidates to be put forward for election at a shareholder meeting, in advance of the agenda being issued to shareholders. **CBB** approval of the candidates does not in any way limit shareholders' rights to refuse those put forward for election.

AU-5.2.5 All refusals by the **CBB** to grant a person approved person status have to be reviewed and approved by an Executive Director of the **CBB**. A notice of intent is issued to the person concerned, setting out the basis for the decision. The person has 30 calendar days from the date of the notice in which to appeal the decision. The **CBB** then has 30 calendar days from the date of the representation in which to make a final determination. See also Chapter EN-8.

**AU-5.2.6** Investment firm licensees must immediately notify **the CBB** when an approved person ceases to hold a controlled function. In such cases, their approved person status is automatically withdrawn by **the CBB**.

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AU-5.3 [This Section deleted 07/2007]

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## AU-5.4 Amendment of Authorisation

### *Licenses*

**AU-5.4.1** Investment firm licensees wishing to vary the scope of their license must obtain the CBB's written approval, before effecting any such change. Approval must be sought whenever a licensee wishes to add or cease undertaking a regulated investment service, or to vary a condition imposed on their license.

AU-5.4.2 Failure to secure the CBB approval prior to effecting such changes is likely to be viewed as a serious breach of a licensee's regulatory obligations, and may constitute a breach of Article 40(a), as well as Article 50(a), of the CBB Law.

**AU-5.4.3** In addition to any other information requested by the CBB, and unless otherwise directed by the CBB, an investment firm licensee requesting CBB approval to undertake a new regulated investment service must provide the following documentation:

- (a) A summary of the rationale for undertaking the proposed new service;
- (b) A description of how the new service will be managed and controlled; and
- (c) An analysis of the financial impact of the new service.

AU-5.4.4 The CBB will only agree to amend a license if doing so poses, in its judgement, no unacceptable risks to customers. As provided for under Article 48 of the CBB Law, the CBB may itself move to amend a license, for instance if a licensee fails to satisfy any of its existing license conditions or protecting the legitimate interests of customers or creditors of the licensee requires such a change. See also Chapter EN-7, regarding the cancellation or amendment of licenses, including the procedures used in such instances.

### *Approved Persons*

**AU-5.4.5** Investment firm licensees must seek prior CBB approval before an approved person may move from one controlled function to another within the same licensee.

AU-5.4.6 In such instances, a new Form 3 (Application for Approved Person status) should be completed and submitted to the CBB. Note that a person may be considered 'fit and proper' for one controlled function, but not for another, if for instance the new role requires a different set of skills and experience. Where an approved person is moving to a controlled function in another licensee, the first licensee should notify the CBB of that person's departure (see Rule AU-5.5.5), and the new licensee should submit a request for approval under Rule AU-1.2.1.

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## AU-5.5 Cancellation of Authorisation

### *Cancellation of License*

**AU-5.5.1** Investment firm licensees wishing to cancel their license must obtain the CBB's written approval, before ceasing their activities. All such requests must be made in writing to the Director, Financial Institutions Supervision, setting out in full the reasons for the request and how the business is to be wound up.

**AU-5.5.2** Investment firm licensees must satisfy the CBB that their customers' interests are to be safeguarded during and after the proposed cancellation. The requirements contained in Module GR regarding cessation of business must be satisfied.

**AU-5.5.3** Failure to comply with Rule AU-5.5.1 may constitute a breach of Article 50(a) of the CBB Law. The CBB will only approve such a request where it has no outstanding regulatory concerns and any relevant customer interests would not be prejudiced. A voluntary surrender of a license will not be accepted where it is aimed at pre-empting supervisory actions by the CBB. A voluntary surrender will only be allowed to take effect once the licensee, in the opinion of the CBB, has discharged all its regulatory responsibilities to customers.

**AU-5.5.4** As provided for under Article 48 of the CBB Law, the CBB may itself move to cancel a license, for instance if a licensee fails to satisfy any of its existing license conditions or protecting the legitimate interests of customers or creditors of the licensee requires a cancellation. See also Chapter EN-7, regarding the cancellation or amendment of licenses, including the procedures used in such instances.

### *Approved Persons*

**AU-5.5.5** Investment firm licensees must promptly notify the CBB in writing when a person undertaking a controlled function will no longer be carrying out that function, together with an explanation as to the reasons why.

**AU-5.5.6** The explanation given for any such changes should simply identify if the planned move was prompted by any concerns over the person concerned, or is due to a routine staff change, retirement or similar reason.

**AU-5.5.7** The CBB may also move to declare someone as not 'fit and proper', in response to significant compliance failures or other improper behaviour by that person: see Chapter EN-8 regarding the cancellation of 'fit and proper' approval.

MODULE	AU: <b>Authorisation</b>
CHAPTER	<b>AU-6:</b> <b>License Fees</b>

## AU-6.1      **License Application Fees**

**AU-6.1.1**      With immediate effect, applicants seeking an investment firm license from the CBB must pay a non-refundable license application fee of BD 100 at the time of submitting their formal application to the CBB.

AU-6.1.2      There are no application fees for those seeking approved person status.



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<b>CHAPTER</b>	<b>AU-6: License Fees</b>

## AU-6.2 Annual License Fees

**AU-6.2.1** Investment firm licensees must pay the relevant annual license fee to the CBB, in April each year.

**AU-6.2.2** The relevant fees are specified in Rules AU-6.2.3 to AU-6.2.5 below: different fees are specified for Category 1, Category 2 and Category 3 investment firms. The fees due in April are those due for the same calendar year, but are normally calculated on the basis of the firm's financials for the previous calendar year: i.e. the fee payable in April 2007 (for example), is that due for the calendar year 2007, and is calculated using the audited financial statements for 2006. Where a licensee does not operate its accounts on a calendar-year basis, then the most recent audited financial statements available are used instead.

**AU-6.2.3** Category 1 investment firms must pay 0.25% of their relevant operating expenses, subject to a minimum ('floor') of BD 6,000 and a maximum ('cap') of BD 24,000.

**AU-6.2.4** Category 2 investment firms must pay 0.25% of their relevant operating expenses, subject to a minimum ('floor') of BD 4,000 and a maximum ('cap') of BD 12,000.

**AU-6.2.5** Category 3 investment firms must pay 0.25% of their relevant operating expenses, subject to a minimum ('floor') of BD 1,000 and a maximum ('cap') of BD 4,000.

**AU-6.2.6** Relevant operating expenses are defined as the total operating expenses of the licensee concerned, as recorded in the most recent audited financial statements available, subject to the adjustments specified in Rule AU-6.2.7.

**AU-6.2.7** The adjustments to be made to relevant operating expenses are the exclusion of the following items from total operating expenses:

- (a) Training costs;
- (b) Charitable donations;
- (c) CBB fees paid; and
- (d) Non-executive Directors' remuneration.

**AU-6.2.8** For the avoidance of doubt, operating expenses for the purposes of this Section, do not include items such as depreciation, provisions, interest expense, and dividends.

**AU-6.2.9** The CBB would normally rely on the audited accounts of a licensee as representing a true and fair picture of its operating expenses. However, the CBB reserves the right to enquire about the accounting treatment of expenses, and/or policies on intra-group charging, if it believes that these are being used artificially to reduce a license fee.

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<b>CHAPTER</b>	<b>AU-6: License Fees</b>

## **AU-6.2 Annual License Fees (continued)**

**AU-6.2.10** Investment firm licensees must complete and submit Form ALF (Annual License Fee) to the CBB, no later than 30 April each year, together with the payment due under Rule AU-6.2.1.

**AU-6.2.11** For new licensees, their first annual license fee is payable when their license is issued by the CBB. The amount payable is the floor amount specified for their category of license, reduced on a pro-rata basis such that they are charged only for the number of complete months left in the current calendar year.

**AU-6.2.12** For example, if a Category 1 investment firm is issued a license on 6 June 2007, then it would be asked to pay an annual license fee that same month, covering the remaining period left for the calendar year 2007. The fee would be calculated as BD 6,000 (the minimum amount payable by a Category 1 investment firm), multiplied by 6/12 (the number of complete months left in the year, i.e. July to December inclusive, divided by the total number of months in the year), giving a fee liability of BD 3,000. The following year, the licensee would submit a Form ALF by end-April 2008 as normal, and calculate its fee using its audited financial numbers for 2007 (or alternative arrangements as agreed with CBB, should its first set of accounts cover an 18-month period).

**AU-6.2.13** In exceptional circumstances – for instance where a licensee is in financial distress – the CBB may waive all or part of a license fee. In such situations, the CBB would normally reclaim waived fees, should the financial soundness of the licensee be restored. Where a license is cancelled (whether at the initiative of the firm or the CBB), no refund is paid for any months remaining in the calendar year in question, should a fee have been paid for that year.