



AUTHORISATION MODULE

MODULE:	AU (Authorisation)
Table of Contents	

		Current Issue Date
AU-A Introduction		
AU-A.1	Purpose	07/2006
AU-A.2	Module History	07/2006
AU-B Scope of Application		
AU-B.1	General Prohibitions	04/2006
AU-B.2	Authorised Persons	04/2006
AU-1 Authorisation Requirements		
AU-1.1	Investment firm licensees	07/2006
AU-1.2	Approved Persons	04/2006
AU-1.3	Registered Administrators	04/2006
AU-1.4	Definition of Regulated Investment Services	07/2006
AU-1.5	Definition of Financial Instruments	04/2006
AU-2 Licensing Conditions		
AU-2.1	Condition 1: Legal Status	04/2006
AU-2.2	Condition 2: Mind and Management	04/2006
AU-2.3	Condition 3: Controllers and Close Links	04/2006
AU-2.4	Condition 4: Board and Employees	04/2006
AU-2.5	Condition 5: Financial Resources	04/2006
AU-2.6	Condition 6: Systems and Controls	04/2006
AU-2.7	Condition 7: External Auditors	04/2006
AU-2.8	Condition 8: Other Requirements	04/2006
AU-3 Approved Persons Conditions		
AU-3.1	Condition 1: “Fit and Proper”	04/2006
AU-3.2	Interpretative Guidance on “Fit and Proper”	04/2006
AU-4 Registration Conditions		
AU-4.1	Condition 1: Relevant Expertise	04/2006
AU-4.2	Condition 2: General Suitability	04/2006
AU-4.3	Condition 3: Systems and Controls	04/2006
AU-4.4	Condition 4: External Auditors	04/2006
AU-4.5	Condition 5: Other Requirements	04/2006
AU-5 Information Requirements and Processes		
AU-5.1	Licensing	04/2006
AU-5.2	Approved Persons	04/2006
AU-5.3	Registration	04/2006
AU-5.4	Variations to Authorisation	04/2006
AU-5.5	Withdrawal of Authorised Status	04/2006

MODULE	AU: Authorisation
CHAPTER	AU-A: Introduction

AU-A.1 Purpose

AU-A.1.1 The Authorisation Module sets out the BMA’s approach to licensing providers of regulated investment services in the Kingdom of Bahrain. It also sets out BMA requirements for approving persons undertaking key functions in those providers. Finally, it sets out requirements for the registration of certain support services (registered administrators).

AU-A.1.2 The Module builds on the legal requirements contained in Legislative Decree No. 23 of 1973, with respect to financial and investment organisations (“the BMA Law 1973”). The Module is issued under legal powers granted to the BMA by the BMA Law 1973, contained in articles 14(d), 14(g) and 41.

Licensing

AU-A.1.3 Persons who provide any of the following regulated investment services within or from the Kingdom of Bahrain, and are not otherwise licensed by BMA as a bank, are required to be licensed by BMA as an investment firm licensee:

- 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. Custodian)
- f) Advising on financial instruments
- g) Operating a Collective Investment Undertaking

AU-A.1.4 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.1.5 Collectively, licensed providers of regulated investment business 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.1.6 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 BMA’s Capital Markets Supervision Directorate, and the Bahrain Stock Exchange.

MODULE	AU: Authorisation
CHAPTER	AU-A: Introduction

AU-A.1 Purpose (continued)

Approved Persons

AU-A.1.7 Persons undertaking certain functions in relation to investment firm licensees require prior BMA 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 business licensees are fit and proper. Those authorised by the BMA to undertake controlled functions are called approved persons.

Registered Administrators

AU-A.1.8 Persons carrying on the business of an administrator require prior registration by the BMA. Administrators are persons who administer financial instruments and related services such as cash/collateral management. They must satisfy certain basic conditions in order to be registered, following which they are subject to only a few on-going requirements. Unlike licensees, registered administrators are not subject to detailed on-going supervision or extensive regulation. Those authorised by the BMA to carry on administration services are called registered administrators.

Retaining Authorised Status

AU-A.1.9 The requirements set out in Chapters AU-2, AU-3 and AU-4 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 Service Providers

AU-A.1.10 Neither representative offices of foreign investment firms, nor ancillary service providers, are covered in Volume 4 (Investment Business). Requirements covering these types of activities will instead be included in Volume 5.

AU-A.1.11 Until such time as Volume 5 (Specialised Activities) of the BMA Rulebook is issued, representative offices of foreign investment firms remain subject to the requirements contained in the BMA’s “Standard Conditions and Licensing Criteria”, dealing with representative offices.

AU-A.1.12 Until such time as Volume 5 (Specialised Activities) of the BMA Rulebook is issued, ancillary service providers remain subject to the requirements contained in the BMA’s “Standard Conditions and Licensing Criteria”, dealing with providers of ancillary services to the financial sector.

MODULE	AU: Authorisation
CHAPTER	AU-A: Introduction

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. It is dated April 2006. All subsequent changes to this Module are annotated with the end-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 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'

Superseded Requirements

AU-A.2.3 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.2.4 Further guidance on the implementation and transition to Volume 4 (Investment business) is given in Module ES (Executive Summary).

MODULE	AU: Authorisation
CHAPTER	AU-B: Scope of Application

AU-B.1 General Prohibitions

AU-B.1.1 The Authorisation requirements in Chapter AU-1 have general applicability, in that they prevent a person from undertaking certain specified activities without the appropriate authorisation from BMA.

AU-B.1.2 Any person who provides a regulated investment service within or from the Kingdom of Bahrain requires a license (see AU-1.1). Persons undertaking certain functions in relation to BMA investment business licensees require prior BMA approval (see AU-1.2). And any person who wishes to provide administration services in relation to financial instruments, within the Kingdom of Bahrain, is required to register with the BMA (see AU-1.3).

MODULE	AU: Authorisation
CHAPTER	AU-B: Scope of Application

AU-B.2 Authorised Persons

AU-B.2.1 The requirements in Chapters AU-2 to AU-5 inclusive apply to those persons who are authorised by BMA, or to those seeking BMA authorisation.

AU-B.2.2 Chapter AU-2 applies to investment firm licensees, and those seeking authorisation as an investment firm licensee. Chapter AU-3 applies to investment firm licensees and those persons nominated by them to be authorised by BMA as an approved person. Chapter AU-4 applies to administrators that are either registered by BMA or are seeking to be registered by the BMA. Chapter AU-5 applies to all those seeking a BMA authorisation.

MODULE	AU: Authorisation
CHAPTER	AU-1: Authorisation Requirements

AU-1.1 Investment firm licensees

AU-1.1.1

No person may:

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

AU-1.1.2

A person will be deemed to be undertaking business within or from the Kingdom of Bahrain if, for example:

- (a) such person is incorporated in the Kingdom of Bahrain;
- (b) such person uses an address situated in the Kingdom of Bahrain for its correspondences; or
- (c) such person directly solicits clients, who are resident within the Kingdom of Bahrain.

AU-1.1.3

For the purposes of 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 BMA license or the prior approval of the BMA.

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 BMA 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 BMA.

AU-1.1.8

An application for a license must be in the form prescribed by the BMA 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.

MODULE	AU: Authorisation
CHAPTER	AU-1: Authorisation Requirements

AU-1.1 Investment business licensees (continued)

AU-1.1.9 The BMA 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 BMA; 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, BMA will provide a formal decision on a license application within three months of all required documentation having been submitted in a form acceptable to BMA.

AU-1.1.11 All applicants seeking an investment firm license must satisfy the BMA 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 ongoing 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 licences 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. Custodian)
- f) Advising on financial instruments
- g) Operating a Collective Investment Undertaking

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.

MODULE	AU: Authorisation
CHAPTER	AU-1: Authorisation Requirements

AU-1.1 Investment business licensees (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 licensee 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 money.

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
- 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 money.

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 BMA 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 BMA will assess whether an applicant satisfies the licensing conditions (as specified in Chapter AU-2) with respect to all the regulated services that the applicant proposes undertaking.

MODULE	AU: Authorisation
CHAPTER	AU-1: Authorisation Requirements

AU-1.1 Investment business licensees (continued)

Conventional and Islamic investment firms

AU-1.1.23 Investment firms may deal in both conventional and Islamic financial instruments. Only those investment firms 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 firms (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.

MODULE	AU: Authorisation
CHAPTER	AU-1: Authorisation Requirements

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 BMA 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 BMA, 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 BMA 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.

MODULE	AU: Authorisation
CHAPTER	AU-1: Authorisation Requirements

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 BMA.

MODULE	AU: Authorisation
CHAPTER	AU-1: Authorisation Requirements

AU-1.3 Registered Administrators

AU-1.3.1 A person may not carry on the business of an administrator without being registered as such with the BMA.

AU-1.3.2 For the purposes of Rule AU-1.3.1, administrators are defined as persons who administer financial instruments and related services such as cash/ collateral management.

AU-1.3.3 Acting as an administrator refers to administering certain specified functions in relation to financial instruments that include the following:

- a) legal and fund management accounting services;
- b) client inquiries;
- c) valuation and pricing (including tax returns);
- d) regulatory compliance monitoring;
- e) maintenance of unit-holder register;
- f) distribution of income;
- g) unit issues and redemption;
- h) contract settlements (including certificate dispatch); and
- i) record keeping.

AU-1.3.4 An application for registration must be in the form prescribed by the BMA in Section AU-5.3.

AU-1.3.5 A registered administrator may not undertake any regulated investment services.

MODULE	AU: Authorisation
CHAPTER	AU-1: Authorisation Requirements

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-1.1.12, 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) undertaking one or more of the activities listed under Paragraph AU-1.1.12 on a professional basis and for commercial gain;
- (b) holding oneself out as willing and able to engage in that activity; or
- (c) regularly 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) is carried on in the course of a business which does not ordinarily constitute the carrying on of a regulated activity;
- (b) may reasonably be regarded as a necessary part of any other services provided in the course of that business; and
- (c) is 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.

MODULE	AU: Authorisation
CHAPTER	AU-1: Authorisation Requirements

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.

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.

MODULE	AU: Authorisation
CHAPTER	AU-1: Authorisation Requirements

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 assets in connection with an arrangement to secure 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 BMA.

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 regulations issued by the Bahrain Monetary Agency.

MODULE	AU: Authorisation
CHAPTER	AU-1: Authorisation Requirements

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.

MODULE	AU: Authorisation
CHAPTER	AU-1: Authorisation Requirements

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 BMA.

AU-1.4.37 A person undertaking an activity of the kind specified under Rule AU-1.4.32 cannot accept or hold client money or 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 the financial instruments, including related services such as cash/ collateral management.

AU-1.4.40 A person only undertaking the activity of administering financial instruments does not require a license under the provisions of Rule AU-1.4.32.

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.

MODULE	AU: Authorisation
CHAPTER	AU-1: Authorisation Requirements

AU-1.4 Definition of Regulated Investment Services (continued)

AU-1.4.43

A person does not carry on an activity specified in section 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 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 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 AU-1.4.41 cannot accept or hold client money or execute negotiable instruments such as cheques on behalf of a client.

Operating a Collective Investment Undertaking

AU-1.4.46

Operating a collective investment undertaking means operating, establishing or winding up a collective investment undertaking.

AU-1.4.47

For the purposes of AU-1.4.46, a collective investment undertaking means any arrangements, authorised by or registered with the Agency, with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements to participate in or receive profits or income arising from the acquisition, holding or disposal of the property or sums paid out of such profits or income.

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.

MODULE	AU: Authorisation
CHAPTER	AU-1: Authorisation Requirements

AU-1.4 Definition of Regulated Investment Services (continued)

AU-1.4.49 Collective investment undertakings of the kind specified in Rule AU-1.4.47 may be open-ended (i.e. with shares continuously issued and redeemed to meet investor demand) or close-ended (where there is a single issue of shares and investors can only realise their investments on the winding-up of the fund).

AU-1.4.50 [Paragraph deleted 07/2006.]

AU-1.4.51 [Paragraph deleted 07/2006.]

MODULE	AU: Authorisation
CHAPTER	AU-1: Authorisation Requirements

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.

Units in collective investment undertakings

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

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 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:

- (a) the value or price of investment or property of any description;
- (b) any currency;
- (c) the rate of interest in any currency or any index of such rates (including interest rate options);
- (d) the level of any index which is derived for the prices of an investment or physical commodity (including index options); or
- (e) 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) authorized 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) authorized 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 BMA will take into account the residency of its directors and senior management. The BMA requires the majority of key decision makers in executive management – including the chief executive officer - to be resident in Bahrain. In the case of overseas investment firm licensees, the BMA 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.

MODULE	AU: Authorisation
CHAPTER	AU-2: Licensing Conditions

AU-2.3 Condition 3: Controllers and Close Links

AU-2.3.1 Investment firm licensees must satisfy the BMA that their controllers are suitable and pose no undue risks to the licensee. Investment firm licensees must also satisfy the BMA that their close links do not prevent the effective supervision of the investment firm licensee by the BMA and otherwise pose no undue risks to the licensee.

AU-2.3.2 Chapters GR-5 and GR-6 contain the BMA'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 BMA 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 BMA seeks to ensure that these closely linked entities do not pose any material financial, reputational or other risks to the licensee. The BMA 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 BMA will have regard to the reputation and financial standing of the group as a whole. Where relevant, the BMA 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.

MODULE	AU: Authorisation
CHAPTER	AU-2: Licensing Conditions

AU-2.4 Condition 4: Board and Employees

AU-2.4.1 Those nominated to carry out controlled functions must satisfy BMA'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 BMA'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 BMA.

AU-2.4.4 The BMA'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 BMA, 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 investment 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 investment applicants must also demonstrate that the company as a whole is adequately resourced for the amount of risks undertaken.

MODULE	AU: Authorisation
CHAPTER	AU-2: Licensing Conditions

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 BMA, 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 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 BMA, 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 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 BMA.

AU-2.6.5 Investment firm licensees must, in connection with any client monies 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 BMA 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 BMA 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 BMA, or persons appointed by the BMA, 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 BMA. 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 BMA.

AU-2.8.5 License fee requirements are contained in Module GR (General Requirements).

MODULE	AU: Authorisation
CHAPTER	AU-2: Licensing Conditions

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 BMA on the scope of their license.

AU-2.8.7 When granting a license, BMA specifies the regulated investment services that the licensee may undertake and the category of investment business that the licensee may undertake. 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 activities.

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

MODULE	AU: Authorisation
CHAPTER	AU-3: Approved Persons Conditions

AU-3.1 Condition 1: “Fit and Proper”

AU-3.1.1 Licensees seeking an approved person authorisation for an individual, must satisfy the BMA 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 AU-3.1.3, the BMA will take into account the criteria contained in Section AU-3.2. The BMA 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.

MODULE	AU: Authorisation
CHAPTER	AU-3: Approved Persons Conditions

AU-3.2 Interpretative Guidance on “Fit and Proper”

- AU-3.2.1** In assessing a person’s fitness and propriety, the BMA 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 BMA 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: Registration Conditions

AU-4.1 Condition 1: Relevant Expertise

AU-4.1.1 Administrators seeking registration must satisfy the BMA that they have relevant expertise. They must hold appropriate professional qualifications from a relevant, recognised professional body.

AU-4.1.2 In the case of corporate persons wishing to provide administration services, the BMA expects management and other staff collectively to have sufficient appropriate expertise to ensure a professional level of service.

MODULE	AU: Authorisation
CHAPTER	AU-4: Registration Conditions

AU-4.2 Condition 2: General Suitability

AU-4.2.1 Administrators seeking registration must satisfy the BMA that they are generally suitable to operate as such.

AU-4.2.2 The Agency will have regard to the fitness and propriety of the person seeking registration to operate as Administrators, using the rules and guidance contained in Sections AU-3.1 and AU-3.2.

AU-4.2.3 The Agency will have regard to the person's reputation, financial soundness, and business conduct. The BMA will also review closely linked entities against the same criteria, using the definition of close links contained in Module GR (General Requirements).

MODULE	AU: Authorisation
CHAPTER	AU-4: Registration Conditions

AU-4.3 Condition 3: Systems and Controls

AU-4.3.1 Administrators seeking registration must maintain systems and controls that are, in the opinion of the BMA, adequate for the scale and complexity of their activities.

AU-4.3.2 Administrators seeking registration must maintain systems and controls that are, in the opinion of the BMA, adequate to address the risks of financial crime occurring. These systems and controls must meet the minimum requirements contained in Module FC (Financial Crime)

MODULE	AU: Authorisation
CHAPTER	AU-4: Registration Conditions

AU-4.4 Condition 4: External Auditors

AU-4.4.1 Administrators seeking registration must appoint external auditors, subject to prior BMA approval. The minimum requirements regarding auditors contained in Module AA (Auditors and Accounting Standards) must be met.

AU-4.4.2 Administrators seeking registration must submit details of their proposed external auditors to the BMA.

MODULE	AU: Authorisation
CHAPTER	AU-4: Registration Conditions

AU-4.5 Condition 5: Other requirements

Books and Records

AU-4.5.1 Administrators must maintain comprehensive books of accounts and other records, which must be available for inspection within the Kingdom of Bahrain by the BMA, or persons appointed by the BMA, at any time. Administrators must comply with the minimum record keeping requirements contained in Module GR.

Provision of Information

AU-4.5.2 Administrators must act in an open and cooperative manner with the BMA.

MODULE	AU: Authorisation
CHAPTER	AU-5: Information Requirements and Processes

AU-5.1 Licensing

AU-5.1.1 The application process for an investment firm license consists of two parts: Phase 1 and Phase 2. For Phase 1, applicants for a license must submit a duly completed Form 1 (Phase 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 Paragraph AU-5.1.5, unless otherwise directed by the BMA.

AU-5.1.2 If, after submission of a duly completed Form 1 (Phase 1) and associated documents, an applicant is granted a conditional approval for a license, the applicant must submit Form 1 (Phase 2), together with the documents referred to in Paragraph AU-5.1.7.

AU-5.1.3 References to applicant mean the proposed licensee seeking an investment license. The applicant may choose to have an authorized representative acting on its behalf. In instances where an authorized representative is used by the applicant, the application form should provide all details regarding the authorized representative and is to be signed by both the applicant and authorized representative.

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 authorization, will be confirmed in an exchange of letters. Such licensees, however, will have to comply with the other requirements of the Rulebook, as set out in Module ES (Executive Summary), unless different transition arrangements have been agreed in writing with the BMA beforehand.

AU-5.1.5 Unless otherwise directed by the BMA, the following documents must be provided as Part of Phase 1 in support of a license application:

- (a) a duly completed Form 2 (Application for Authorisation of Controller) for each controller of the proposed licensee;
- (b) a duly completed Form 3 (Application for Approved Person status), for each proposed director of the proposed licensee;
- (c) a comprehensive business plan for the application, addressing the matters described in AU-5.1.6;
- (d) where the applicant is already incorporated, a copy of the applicant's commercial registration (or equivalent in the case of companies incorporated in an overseas jurisdiction);

MODULE	AU: Authorisation
CHAPTER	AU-5: Information Requirements and Processes

AU-5.1 Licensing (continued)

AU-5.1.5 (continued)

- (e) where the applicant is already incorporated, a certified copy of a board resolution of the applicant, confirming its decision to seek a BMA investment firm license;
- (f) details of the proposed licensee's close links as required under Chapter GR-6;
- (g) 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 home 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 and solvency requirements;
- (h) 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 is in compliance with applicable supervisory requirements, including those relating to capital and solvency requirements;
- (i) 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; and
- (j) in the case of other applicants, copies of the audited financial statements of the applicant's major shareholder and/or group (as directed by the BMA), for the three years immediately prior to the date of application.

AU-5.1.6

The business plan submitted in support of an application should 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.

MODULE	AU: Authorisation
CHAPTER	AU-5: Information Requirements and Processes

AU-5.1 Licensing (continued)

AU-5.1.7 As part of Phase 2 of the licensing application process, unless otherwise directed by the BMA, the following documents and information must be provided:

- (a) a duly completed Form 3 (Application for Approved Person status), for each individual (other than for directors, submitted as part of Phase 1) applying to undertake controlled functions in the applicant;
- (b) a draft copy of the applicant's memorandum and articles of association (or of its parent in the case of branch applications) addressing the matters described in AU-5.1.8;
- (c) a letter of guarantee from the applicant's major shareholder, confirming its willingness to support the proposed licensee in case of need; and
- (d) in the case of branch applicants, a 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.

AU-5.1.8 The applicant's memorandum and articles of association must explicitly provide for it to undertake the activities proposed in the licensed application, and must preclude the applicant from undertaking other regulated investment 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 BMA 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.

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

AU-5.1.11 Failure to inform BMA of the changes specified in 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.

MODULE	AU: Authorisation
CHAPTER	AU-5: Information Requirements and Processes

AU-5.1 Licensing (continued)

AU-5.1.12 As part of the Phase 1 review of the application, the BMA 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 BMA. Once an “in principal” approval has been granted for Phase 1, the applicant must submit within 6 months of the “in principal” approval, all requirements for Phase 2 as outlined in Paragraph AU-5.1.7. The BMA will provide a final decision within 30 calendar days of all Phase 2 documentation having been submitted in a form acceptable to the BMA. Applicants are encouraged to approach the BMA to discuss their application at an early stage, so that any specific questions can be dealt with prior to the finalisation of the application.

AU-5.1.13 Within 6 months of the license being issued, the new licensee must provide to the BMA:

- (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 description of the 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 the Ministry of Commerce commercial registration certificate;
- (h) a copy of the licensee’s professional indemnity insurance policy or confirmation that a deposit to an amount specified by the BMA has been placed in escrow in an account at a bank licensed in the Kingdom of Bahrain (see section GR-9.1); and
- (i) other information as may be specified by the BMA.

AU-5.1.14 New licensees must start their operations within 6 months of being granted a license by the BMA, failing which BMA may cancel the license, as per the powers and procedures set out in Articles 66 and 67 of the BMA Law.

AU-5.1.15 Applicants who are refused a license have a right of appeal, as specified in Article 68 of the BMA Law 1973.

MODULE	AU: Authorisation
CHAPTER	AU-5: Information Requirements and Processes

AU-5.2 Approved Persons

AU-5.2.1 Investment firm licensees must obtain BMA approval before a person is formally appointed to a controlled function. The request for BMA approval must be made by submitting to BMA 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, Investment Business Supervision Directorate.

AU-5.2.3 Licensees should give the BMA a reasonable amount of notice in order for an application to be reviewed. The BMA 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 BMA approval for all the candidates to be put forward for election at a shareholder meeting, in advance of the agenda being issued to shareholders. BMA 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 BMA to grant a person approved person status have to be reviewed and approved by an Executive Director of the BMA. 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 BMA 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 BMA when an approved person ceases to hold a controlled function. In such cases, their approved person status is automatically withdrawn by BMA.

MODULE	AU: Authorisation
CHAPTER	AU-5: Information Requirements and Processes

AU-5.3 Registered Persons

AU-5.3.1 Persons wishing to be registered as an administrator must submit a duly completed Form 4 (Application for Registration). The form must be marked for the attention of the Director, Licensing and Policy Directorate.

AU-5.3.2 BMA aims to respond to applications for registration within 2 weeks of receipt of a Form 4, although in some cases, where referral to an overseas supervisor is required, the response time is likely to be longer.

AU-5.3.3 All refusals by the BMA to grant a person registered person status have to be reviewed and approved by an Executive Director of the BMA. 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 BMA then has 30 calendar days from the date of the representation in which to make a final determination. See also Chapter EN-10.

MODULE	AU: Authorisation
CHAPTER	AU-5: Information Requirements and Processes

AU-5.4 Variations to Authorisation

AU-5.4.1 Persons wishing to vary the scope of their authorisation must obtain BMA approval in advance of effecting any such change. Investment firm licensees must seek prior BMA approval before undertaking new activities.

AU-5.4.2 Failure to secure the BMA approval prior to effecting such changes is likely to be viewed as a serious breach of a licensee's regulatory obligations. When in doubt, investment firm licensees should consult the BMA for guidance as to what constitutes a material change.

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

- (a) a summary of the rationale for undertaking the proposed new activities;
- (b) a description of how the new business will be managed and controlled; and
- (c) an analysis of the financial impact of the new activities

AU-5.4.4 Module BR (BMA Reporting) sets out a list of notification and approval requirements for licensees. A request for approval to undertake new activities submitted in compliance with Module BR satisfies the requirement in Rule AU-5.4.1 above, and vice-versa.

MODULE	AU: Authorisation
CHAPTER	AU-5: Information Requirements and Processes

AU-5.5 Withdrawal of Authorised Status

Voluntary Surrender

AU-5.5.1 All requests for the voluntary surrender of authorised status are subject to BMA approval. Such requests must be made in writing to the Director of Investment Business Supervision, setting out in full the reasons for the request and how the voluntary surrender is to be carried out.

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

AU-5.5.3 In the case of approved persons, investment firm licensees must explain why the person concerned is no longer carrying out a controlled function.

AU-5.5.4 The BMA will only approve a voluntary surrender where it has no outstanding regulatory concerns and any relevant customers' interests would not be prejudiced. A voluntary surrender will not be accepted where it is aimed at pre-empting supervisory actions by the BMA. In the case of investment firm licensees, a voluntary surrender will only take effect once the licensee, in the opinion of the BMA, has discharged all its regulatory responsibilities to customers.

Cancellation

AU-5.5.5 Cancellation of authorised status requires the BMA to issue a formal notice of cancellation to the person concerned. The notice of cancellation must describe the BMA's rationale for the proposed cancellation.

AU-5.5.6 Failure to meet the relevant conditions contained in Chapters AU-2, AU-3 or AU-4 (as applicable) can lead to cancellation of authorised status by the BMA. The BMA generally views cancellation of an authorisation as appropriate only in the most serious of circumstances, and generally tries to address supervisory concerns through other means beforehand. Further guidance is contained in Module EN (Enforcement), regarding BMA's approach to enforcement and on the process for issuing a notice of cancellation and the recipient's right to appeal the notice.

MODULE	AU: Authorisation
CHAPTER	AU-5: Information Requirements and Processes

AU-5.5 Withdrawal of Authorised Status (continued)

Cancellation (continued)

- AU-5.5.7 Normally, where cancellation of a license has been confirmed by BMA, BMA will only effect the cancellation once a licensee has discharged all its regulatory responsibilities to customers. Until such time, BMA will retain all its regulatory powers with regards to the licensee, and will direct the licensee such that no new investment activity may be undertaken whilst the licensee discharges its obligations to customers.