



AUTHORISATION MODULE



MODULE:

AU (Authorisation)

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| CHAPTER | AU-1: Authorisation Requirements |

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;
- (b) Hold themselves out to be licensed by the CBB unless they have as a matter of fact been so licensed; or
- (c) Market any financial services in the Kingdom of Bahrain unless:
 - (i) Allowed to do by the terms of a license issued by the CBB;
 - (ii) The activities come within the terms of an exemption granted by the CBB by way of a Directive; or
 - (iii) Has obtained the express written permission of the CBB to offer financial services.

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.

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-1.1.3A

In accordance with Resolution No. (16) for the year 2012 and for the purpose of Subparagraph AU-1.1.1(c), the word 'market' refers to any promotion, offering, announcement, advertising, broadcast or any other means of communication made for the purpose of inducing recipients to purchase or otherwise acquire financial services in return for monetary payment or some other form of valuable consideration.

AU-1.1.3B

Persons in breach of Subparagraph AU-1.1.1(c) are considered in breach of Resolution No. (16) for the year 2012 and are subject to penalties under Articles 129 and 161 of the CBB Law (see also Section EN-10.2A).

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.



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AU-1.1 Licensing (continued)

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, a Category 3 or a Category 4 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 for authorisation of all controllers; and
- (c) Application for authorisation of all controlled functions.

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.



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AU-1.1 Licensing (continued)

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;
- (ff) Arranging Credit and Advising on Credit; and
- (g) Operating a collective investment undertaking (i.e. an operator).

AU-1.1.13A

[This Paragraph has been moved to AU-1.1.24].

AU-1.1.14

[This Paragraph was moved and amended to Paragraph AU-1.4.11A in January 2012].

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.



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AU-1.1 Licensing (continued)

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; and
- (c) Arranging Credit and Advising on Credit.

AU-1.1.18

When undertaking either of the regulated investment services listed under Rule AU-1.1.17, Category 3 investment firms:

- (a) Must be independent;
- (b) May not hold any client assets;
- (c) Must refrain from receiving any fees or commissions from any party other than the client; and
- (d) Must not have an 'agency' relationship (tied agent) with an investment provider.

AU-1.1.18A In assessing the independence of a Category 3 investment firm, the CBB will take into account the regulated investment services offered in relation to financial instruments of a related party.

AU-1.1.18B For the purpose of Paragraph AU-1.1.18A, a related party of a Category 3 investment firm includes:

- (a) A controller of the Category 3 investment firm as defined in Module GR;
- (b) A close link of the Category 3 investment firm as defined in Module GR;
- (c) An associate of a controller as defined in Module GR;
- (d) The extended family of a controller including a father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, or grandparent;
- (e) A corporate entity, whether or not licensed or incorporated in Bahrain, where any of the persons identified in Sub-Paragraphs (c) and (d) is a Director or would be considered a controller were the definition of controller set out in Paragraph GR-5.2.1 applied to that corporate entity; and
- (f) (This Subparagraph has been deleted).



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AU-1.1 Licensing (continued)

Category 4

AU-1.1.18C

For the purposes of Volume 4 (Investment Business), category 4 investment firms are permitted to provide the following regulated investment services to accredited investors:

- Operating a collective investment undertaking (CIU); and
- In respect of venture capital CIUs that the category 4 investment firm operates/manages, act as custodian (i.e. safeguarding financial instruments).

AU-1.1.18D

While category 1 investment firms and category 2 investment firms can operate/manage all types of CIUs, targeting retail clients, expert investors and accredited investors, category 4 investment firm license caters to the business models of specialist fund managers who operate/manage CIUs targeted at accredited investors only. Examples of such CIUs are private equity funds, hedge funds, structured funds, real estate funds, venture capital funds and other alternative investment funds. An operator of CIUs who markets or manages a CIU targeted at retail clients or expert investors would not be eligible to obtain a category 4 investment firm license. Category 4 investment firms also act as placement agents of overseas domiciled CIUs they operate/manage.

AU-1.1.18E

Category 4 investment firms must appoint independent custodians to safeguard client assets. However, in accordance with Sub-paragraph AU-1.1.18C(b), category 4 investment firms may be authorised by the CBB to act as custodians of the venture capital CIUs they operate/manage provided they meet the requirements stipulated in Section C4-3.3 of the CBB Rulebook, Volume 4 regarding the safeguarding of client assets and client money. This entails that category 4 investment firms can safeguard the illiquid assets of the venture capital CIUs, but client money must be kept in a client bank account.

AU-1.1.18F

Category 4 investment firms are only subject to Sections AU-1.1, AU-1.4, AU-1.5 and the provisions of Modules PB, C4, FC and EN. Category 4 investment firms must also comply with CBB Rulebook Volume 7 requirements for authorisation/registration/filing of CIUs to be offered to accredited investors.

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).



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AU-1.1 Licensing (continued)

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 [This Paragraph was deleted in January 2011].

AU-1.1.22 [This Paragraph was deleted in January 2011].

AU-1.1.22A As per Article 48 of the CBB Law, investment firm licensees must seek CBB's prior written approval before undertaking new regulated investment services.

AU-1.1.22B Investment firm licensees wishing to undertake the activity of Arranging Credit and Advising on Credit must satisfy the CBB that they have sufficient expertise to undertake this activity and must obtain the CBB's prior written approval for undertaking the same.

AU-1.1.22C For purposes of Paragraph AU-1.1.22B, investment firm licensees must ensure that the officer responsible for dealing with the customers for Arranging Credit and Advising on Credit is competent and has demonstrated his competence through appropriate qualifications and experience to carry out such function.

AU-1.1.22D Investment firm licensees wishing to undertake the following regulated investment services involving crypto-assets that fall under the definition of financial instruments must seek the CBB's prior approval before undertaking such activity:

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

Investment firm licensees must not undertake the activity of dealing in crypto-assets as principal.



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AU-1.1 Licensing (continued)

AU-1.1.22E Investment firm licensees offering the regulated investment services referred to in Paragraph AU-1.1.22D must comply with the requirements stipulated in Appendix AU-1, as applicable.

AU-1.1.22F Investment firm licensees undertaking the regulated investment service involving safe custody of crypto-assets (custody service), whether through “in house” arrangement or through a “third party”, remain responsible for safeguarding, storing, holding or maintaining custody of crypto-assets and must have systems and controls in place to:

- (a) Ensure the proper safeguarding of crypto-assets;
- (b) Ensure that such safe custody of crypto-assets is identifiable and secure at all times; and
- (c) Ensure protection against the risk of loss, theft or hacking.

AU- 1.1.22G For the purpose of Paragraph AU-1.1.22F, investment firm licensees may implement the following three types of custodial arrangements or any other type of custodial arrangement that is acceptable to the CBB:

- (a) The licensee is wholly responsible for custody of client’s crypto-assets and provides this service “in-house” through its own crypto-assets wallet solution. Such an arrangement includes scenarios where a licensee provides its own inhouse proprietary wallet for clients to store any crypto-assets bought through that licensee or transferred into the wallet from other sources.
- (b) The licensee is wholly responsible for the custody of client’s crypto-assets but outsources this service to a third party crypto-asset custodian. Such an arrangement includes the scenario where a licensee uses a third-party service provider to hold all its clients’ crypto-assets (e.g., all or part of the clients’ private keys).
- (c) The licensee wholly allows clients to “self-custodise” their crypto-assets. Such an arrangement includes scenarios where licensees require clients to self-custodise their crypto-assets. Such licensees only provide the platform for clients to buy and sell crypto-assets. Clients are required to source and use their own third party crypto-asset custodians (which the licensee have no control over or responsibility for). This arrangement also includes the scenario where licensees provide an in-house wallet service for clients, but also allow clients to transfer their crypto-assets out of this wallet to another wallet from a third-party wallet provider chosen by the client (and which the licensee does not control).



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AU-1.1 Licensing (continued)

AU-1.1.22H Where investment firm licensees provide a third-party crypto-asset custodian to a client it must undertake an appropriate risk assessment of that crypto-asset custodian. Licensees must also retain ultimate responsibility for safe custody of crypto-assets held on behalf of clients and ensure that they continue to meet all their regulatory obligations with respect to crypto-asset custody service and outsourced activities.

AU-1.1.22I Investment firm licensees offering the regulated investment services referred to in Paragraph AU-1.1.22D must provide a report from an independent third-party expert that they have established adequate policies, procedures, systems and controls to manage the associated risks and undertake such activities in compliance with the requirements of Chapter FC-11 and Appendix AU-1. In addition, licensees must satisfy the CBB that they have sufficient competence and expertise to undertake the activities.

AU-1.1.22J For purpose of Paragraph AU-1.1.22D, investment firm licensees must submit a board resolution to undertake the activity together with the following information:

- (a) Description of the services/products;
- (b) Changes to organisation structure and framework (if any);
- (c) Experience of resources responsible for such services and their details; and
- (d) Enhancements to its risk management framework to capture, monitor, measure, control and report risks arising from the activity.

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 Where licensees are undertaking regulated activities in accordance with Shari'a, all transactions and contracts concluded by investment firm licensees must comply with Shari'a standards issued by the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI). The validity of the contract or transaction is not impacted, if at a later date, the relevant AAOIFI Shari'a standard are amended.



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AU-1.1 Licensing (continued)

AU-1.1.24A In accordance with Paragraph HC-9.2.1, Category 1 and 2 Islamic investment firms must maintain a Shari'a Supervisory Board, comprised of at least 3 Shari'a board members, to verify that their operations are Shari'a compliant.

AU-1.1.24B Category 3 and Category 4 Islamic investment firms must appoint a minimum of one Shari'a advisor or scholar to verify that their operations are Shari'a compliant.

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.