



CORPORATE GOVERNANCE MODULE



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MODULE	CG: Corporate Governance
CHAPTER	CG-A: Introduction

CG-A.1 Purpose

Executive Summary

CG-A.1.1 Bahrain domiciled CIUs must maintain an adequate framework for the governance and operation of the CIU to ensure that the CIU is governed effectively and in the best interests of the CIU's participants.

CG-A.1.2 The main aim of the framework should be to ensure that when faced with a conflict of interest, the CIU respects all applicable rules and contractual obligations from an objective perspective, without favouring CIU insiders (including relevant persons) at the expense of the interests of the CIU's participants.

Legal Basis

CG-A.1.3 This Module contains the CBB's Directive (as amended from time to time) regarding corporate governance applicable to collective investment undertakings and is issued under the powers available to the CBB under Article 38 of the Central Bank of Bahrain and Financial Institutions Law 2006 ('CBB Law').

CG-A.1.4 For an explanation of the CBB's rule-making powers and different regulatory instruments, see Section UG-1.1.



MODULE	CG: Corporate Governance
CHAPTER	CG-A: Introduction

CG-A.2 Module History

Evolution of Module

- CG-A.2.1 This Module was first issued in April 2007, as part of the initial release of the contents of Volume 6 (Capital Markets); it was given an effective date of 1 June 2007, with a one-year transition for existing CIUs.
- CG-A.2.2 The Module was subsequently revised in April 2012, by the addition of several sections catering for the role and responsibilities of relevant persons, the registration and authorisation requirements, corporate governance, and other relevant Chapters and has been reissued as Volume 7.
- CG-A.2.3 A list of recent changes made to this Module subsequent to the April 2012 revision is provided below:

Module Ref.	Change Date	Description of Changes

Superseded Requirements

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

Circular / other reference
Volume 6 Module CIU

- CG-A.2.5 Further guidance on the implementation and transition to Volume 7 (Collective Investment Undertakings) is given in Module ES (Executive Summary).

MODULE	CG: Corporate Governance
CHAPTER	CG-1: Governing Body

CG-1.1 General Requirements

CG-1.1.1 The governing body of a Bahrain domiciled CIU is the Board of Directors, appointed by the operator or trustee, as appropriate.

CG-1.1.2 Bahrain domiciled CIUs are in addition required to comply with any legal requirements imposed by virtue of the legal form used to create the CIU.

CG-1.1.3 The Board is responsible for oversight of the management and performance of the CIU, however, ultimate accountability for ensuring that proper and continued corporate governance is in place for the CIU, must remain with the operator/trustee of the CIU, as appropriate.

CG-1.1.4 The Board must not delegate its oversight responsibilities.

MODULE	CG: Corporate Governance
CHAPTER	CG-2: Members of the Board of Directors

CG-2.1 Appointment and Removal of Directors

CG-2.1.1 The operator/trustee of the CIU must obtain the CBB's prior approval before a person is formally appointed to the Board. The request for CBB approval must be made by submitting to the CBB a Form 2 CIU Board Member Form with a covering letter, and enclosing the following documentation:

- (a) A board resolution from the operator/trustee ratifying the appointment;
- (b) A current CV of the proposed board member; and
- (c) A certified and valid passport copy of the proposed board member.

CG-2.1.2 The operator/trustee must be diligent in verifying that all the information contained in the submitted documents, including previous experience, is accurate.

CG-2.1.3 The operator/trustee must immediately notify the CBB in case of any material change to the information provided in the request for appointment of a board member.

CG-2.1.4 The operator/trustee must immediately notify the CBB when it becomes aware of any of the following events, affecting one of the board members:

- (a) The conviction by a court, whether in Bahrain or elsewhere, for a crime affecting honesty;
- (b) A declaration of bankruptcy by a court;
- (c) A court ruling that the board member's legal capacity is totally or partially impaired; or
- (d) A sanction by a professional body of a fine, suspension, expulsion or censure.

CG-2.1.5 The operator/trustee of the CIU must immediately notify the CBB when a board member resigns from his position, or if his membership is terminated, together with an explanation as to the reasons why.

MODULE	CG: Corporate Governance
CHAPTER	CG-2: Members of the Board of Directors

CG-2.1 Appointment and Removal of Directors (continued)

CG-2.1.6 The operator/trustee must ensure that the Memorandum and Articles of Association or Trust Deed, as appropriate, of Bahrain domiciled CIUs, adequately set out procedures for the appointment, removal and retirement of directors.

CG-2.1.7 These should, amongst other things, include procedures for removing directors in case of non-attendance or other failure to discharge properly their responsibilities as directors. The CBB expects board members who fail to attend at least three-quarters of all board meetings in any twelve-month period to step down, unless the board is able to satisfy the CBB that there are valid reasons for the director concerned to remain a board member.

MODULE	CG: Corporate Governance
CHAPTER	CG-2: Members of the Board of Directors

CG-2.2 Fit and Proper Criteria

CG-2.2.1 As individuals, directors on the board of a Bahrain domiciled CIU must hold qualifications and have relevant experience to undertake this function.

CG-2.2.2 The acceptable level of qualifications and experience will be considered by the CBB on a case by case basis.

CG-2.2.3 The operator/trustee must ensure that the board of directors of a CIU demonstrate that it has, when taken as a whole, the necessary expertise required to fulfil the functions of the board.

CG-2.2.4 In assessing the fit and proper criteria for directors, the operator/trustee should take into account the following:

- (a) The relevant experience needed to demonstrate sound business decision-making;
- (b) A good understanding of the industry and its regulatory environment;
- (c) Holding of a relevant professional qualification; and
- (d) A minimum length of service (at least 5 years at director or senior management level) in the industry.

MODULE	CG: Corporate Governance
CHAPTER	CG-3: Board Composition and Meetings

CG-3.1 Composition of the Board of Directors

CG-3.1.1 Except as provided under Paragraph CG-3.1.2, the board of a CIU must comprise at least 3 members at all times, appointed from and representing the operator.

CG-3.1.2 If the CIU is structured as a trust, the board must comprise of at least 3 members at all times, to be appointed by the trustee, of which the majority must be from and representing the trustee. The remaining members must be nominated by the fund manager.

CG-3.1.3 The members of the board of a CIU:

- (a) Must hold senior positions at the operator/trustee;
- (b) Must be senior in position to individual members managing the CIU; and
- (c) Must not be involved in the investment management function of the CIU.

CG-3.1.4 The board must ensure that collectively it has sufficient expertise to understand the important issues relating to the nature, operation and control of the CIU.

CG-3.1.5 To fulfil its responsibilities outlined in Chapter CG-5, the board must periodically assess its composition, size and members' contribution to the CIU.

MODULE	CG: Corporate Governance
CHAPTER	CG-3: Board Composition and Meetings

CG-3.2 Meetings and Attendance

CG-3.2.1 The board of a Bahrain domiciled CIU must meet at regular intervals, but not less than four times a year, taking into account the CIU's size and complexity, to review the performance and operations of the CIU and to discharge its responsibilities effectively.

CG-3.2.2 Board members must attend as a minimum three quarters of all board meetings called for a CIU and attendance by proxy will not be permitted.

CG-3.2.3 Participation in board meetings by means of video or telephone conferencing is regarded as attendance and may be recorded as such.

CG-3.2.4 Board rules must require members to step down if they are not actively participating in board meetings.

MODULE	CG: Corporate Governance
CHAPTER	CG-3: Board Composition and Meetings

CG-3.3 Meeting of CIU Participants

CG-3.3.1 If the CIU participants have a right to call for a general meeting of CIU participants, the instrument constituting the CIU must state how the meeting may be convened, and the board must call for such meeting at the CIU participants' request.

CG-3.3.2 If a general meeting of CIU participants is called, the board must ensure that:

- (a) Each CIU participant is given at least 14 calendar days written notice before the meeting;
- (b) The notice specifies the place, day and time of the meeting; and
- (c) The terms and resolutions to be proposed, as well as a copy of the notice, are sent to the CIU's fund administrator, custodian and to the CBB.

MODULE	CG: Corporate Governance
CHAPTER	CG-4: Record Keeping Requirements

CG-4.1 Record of Board Meetings

CG-4.1.1	The board must maintain adequate records of its meetings, such that key decisions and how they are arrived at can be traced. Such records must be maintained by the <u>CIU fund administrator</u> .
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MODULE	CG: Corporate Governance
CHAPTER	CG-5: Roles and Responsibilities of the Board

CG-5.1 General Requirements

CG-5.1.1 The board must establish and maintain a statement of its responsibilities, defining its functions and tasks. This statement must be clearly communicated to board members.

CG-5.1.2 The board must have effective policies and processes in place, in line with the requirements of the Commercial Companies Law, to prevent, avoid and manage its members' potential or actual conflicts of interest, including matters such as:

- (a) Related party transactions;
- (b) The misuse of assets belonging to the CIU; and
- (c) The use of privileged information for personal advantage (including insider trading).

CG-5.1.3 Board members should also absent themselves from any discussion or decision-making that involves a subject where they are incapable of providing objective advice, or which involves a subject, transaction or proposed transaction where there is a potential conflict of interest.

CG-5.1.4 The board and its members must act with honesty, integrity, due skill, care and diligence, and in the best interests of the CIU and CIU participants.

CG-5.1.5 In assessing compliance with Rule CG-5.1.4, the CBB will take into account all actions of the board and its members. The interest of the CIU includes the CIU's continued compliance with all relevant rules and regulations. The interest of CIU participants includes the current and future value of the assets of a CIU, transparency, disclosure of information and ensuring that the CIU fulfils its obligations under its prospectus and treats all participants fairly and pays equal regard to the interests of all CIU participants.

CG-5.1.6 The board must ensure that it is supplied with information in a timely manner in a form and of a quality appropriate to enable it to discharge its duties.

CG-5.1.7 There should also be agreed upon procedures by the board, for directors to take independent advice if necessary at the CIU's expense.

MODULE	CG: Corporate Governance
CHAPTER	CG-5: Roles and Responsibilities of the Board

CG-5.2 Approval and Review of Prospectus and Constitutional Documents

CG-5.2.1 The board is responsible for the correctness of the information contained in the CIU prospectus.

CG-5.2.2 The board must collectively approve the CIU's prospectus, the subscription documents, the CIU's documents and its material contracts.

CG-5.2.3 The approval referred to in Paragraph CG-5.2.2 will usually be given at the initial board meeting of the CIU.

CG-5.2.4 The board is responsible for committing the CIU to any obligations under the various material contracts entered into by the CIU.

CG-5.2.5 The board must clearly set out and review on a regular basis the authority of directors to commit the CIU to its contractual obligations. In doing so, the Board must:

- (a) Stipulate in writing which directors (or which combination of directors) can commit the CIU to its contractual obligations; and
- (b) Ensure that there are always at least two directors (or two combinations of directors, not dependent on each other) who have the requisite authority to commit the CIU to a contractual obligation.

CG-5.2.6 In order to fulfil the responsibility outlined above, the board is expected to conduct reviews on a periodic basis and whenever material changes or revisions are made, of the CIU's prospectus and subscription documents and of the material contracts, to ensure that they are up to date.

MODULE	CG: Corporate Governance
CHAPTER	CG-5: Roles and Responsibilities of the Board

CG-5.3 Monitoring Adherence to the Overall Investment Policy and Restrictions

CG-5.3.1 The board must periodically monitor the CIU's compliance with its investment policies and restrictions, stated in the prospectus.

CG-5.3.2 In fulfilling the requirements of Paragraph CG-5.3.1, the CBB expects that the board requests from the fund manager, reports on the CIU's compliance with its investment policies and restrictions as stated in the prospectus. The frequency and format of such reports should be pre-agreed with the fund manager and reviewed at each board meeting.

CG-5.3.3 The board must ensure that the fund manager has systems and procedures in place to detect and remedy investment policy breaches. Such systems and procedures must include provisions for timely reporting of breaches to the board and the CBB, and prompt rectification.

MODULE	CG: Corporate Governance
CHAPTER	CG-5: Roles and Responsibilities of the Board

CG-5.4 Review of Investment Performance

CG-5.4.1 The board must regularly review the performance of the fund manager and the investment performance of the CIU, and compare the performance of the CIU to its investment objectives, stated in the prospectus.

CG-5.4.2 In fulfilling the requirements of Paragraph CG-5.4.1, the CBB expects that the board requests copies of all relevant investment reports from relevant persons on a timely basis. Such reports should explain how the performance was achieved and what risk profile was adopted to generate returns.

MODULE	CG: Corporate Governance
CHAPTER	CG-5: Roles and Responsibilities of the Board

CG-5.5 Monitoring NAV Calculation Process

- CG-5.5.1** The board must have the ultimate responsibility for monitoring the valuation of the CIU assets, which must be undertaken by the fund administrator or an acceptable valuator who is expert in the asset class, as appropriate.
- CG-5.5.2** The board is responsible for the oversight of the entire NAV calculation process, including but not limited to the pricing of illiquid and exotic instruments.
- CG-5.5.3** The board must ensure that there is adequate segregation of duties in the NAV determination process.
- CG-5.5.4** In complying with the Rule CG-5.5.3, the board must delegate the calculation, determination and production of the NAV to a suitable independent, competent and experienced fund administrator.
- CG-5.5.5** The board must establish robust controls to manage conflicts of interest in the NAV evaluation process, if they arise.
- CG-5.5.6** The board must approve any documented valuation procedures, including valuation practices and controls, in advance of the CIU's launch and on a regular basis thereafter. Such procedures must be disclosed in the CIU's prospectus.
- CG-5.5.7** Valuation procedures should clearly explain the role of each party in the valuation process, identify the sources for pricing of each instrument type and address the management and reporting of exceptions.
- CG-5.5.8** The board must set procedures for reporting any issues that may arise in connection to the valuation (for example, stale pricing, liquidity, difficult trading markets, illiquid assets).

MODULE	CG: Corporate Governance
CHAPTER	CG-5: Roles and Responsibilities of the Board

CG-5.5 Monitoring NAV Calculation Process (continued)

CG-5.5.9	The board is responsible for the decision to suspend and resume the NAV calculation. However, any such decision must be satisfactorily supported by relevant documentation.
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MODULE	CG: Corporate Governance
CHAPTER	CG-5: Roles and Responsibilities of the Board

CG-5.6 Monitoring Marketing and CIU Participant Relations

CG-5.6.1 The board must request and review the plans set by the fund manager with respect to promoting the CIU, the target client base, the existing client base and its break-down by type of investor, the legal capacity of the CIU, the restrictions (if any) on marketing the CIU in certain jurisdictions.

CG-5.6.2 In fulfilling this responsibility, the CBB expects that the board requests a quarterly report from the fund manager, summarizing the following:

- (a) Gross and net subscriptions, to monitor the size of the CIU against its theoretical capacity; and
- (b) A summary of CIU participants correspondence, highlighting key issues being raised such as concerns about performance or administration.

CG-5.6.3 The board must ensure that the prospectus or trust deed of a CIU, as appropriate, does not allow any discretionary waivers with respect to a CIU, and that all CIU participants are treated equally and fairly.



MODULE	CG: Corporate Governance
CHAPTER	CG-5: Roles and Responsibilities of the Board

CG-5.7 Anti-Money Laundering (AML) Responsibilities

CG-5.7.1 The board must understand the nature of the AML regulations which apply with respect of the CIU and must establish and regularly review procedures to monitor the AML measures for a CIU.

CG-5.7.2 The board must obtain regular feedback from the placement agent(s), or sub-placement agent(s) to ascertain that formal AML procedures in place are being adhered to, and that any suspicious findings were raised and investigated accordingly. All suspicious findings and the results of the subsequent investigation must be promptly reported to the board and to the concerned authority.

CG-5.7.3 The board must be responsible for the following with respect to the AML policies and procedures:

- (a) The AML policies and procedures adopted by the placement agent(s) or sub-placement agent(s) must be in compliance with the AML laws and regulations which apply to the CIU; and
- (b) Any changes in the applicable AML laws and regulations are promptly addressed and suitable procedures are adopted.

CG-5.7.4 The board must ensure that the following procedures are applied with respect to CIU subscriptions and redemption monies:

- (a) The AML policy must ensure that, until the AML procedures are completed satisfactorily, any new subscription monies remain in the subscriptions bank account and are not transferred into the CIU's account;
- (b) The AML policy must ensure that the prospectus requires that redemptions are paid into the account from which the original investment was wired. In the event that the redeeming investor requests that redemption proceeds be paid into an account different from that which the investment was paid, the redeeming investor would normally be asked to confirm in writing reason(s) for the request; and
- (c) In the event that a subscription has been accepted without receipt of the full AML documentation, the custodian must retain the subscription proceeds until the outstanding documentation has been completed and provided.

MODULE	CG: Corporate Governance
CHAPTER	CG-5: Roles and Responsibilities of the Board

CG-5.8 Review of the Appointment and Performance of other Service Providers

CG-5.8.1 The board must regularly review the performance of the relevant persons of a CIU to ensure that they carry out their roles and responsibilities towards the CIU effectively.

CG-5.8.2 In fulfilling the requirements of Paragraph CG-5.8.1, the CBB expects the Board to ensure that there is no conflict of interest among the relevant persons of a CIU and that each relevant person adheres to its responsibilities with respect to the CIU in accordance with the prospectus and in the best interest of CIU participants.

MODULE	CG: Corporate Governance
CHAPTER	CG-5: Roles and Responsibilities of the Board

CG-5.9 Provision of Information to CIU Participants

CG-5.9.1 The board must oversee the process of disclosure of information to all CIU participants.

CG-5.9.2 The board must ensure that all information, including that which the CIU's prospectus states, be provided to CIU participants in a fair, transparent, comprehensive and timely manner.

MODULE	CG: Corporate Governance
CHAPTER	CG-5: Roles and Responsibilities of the Board

CG-5.10 Compliance with Listing Rules and Continuing Obligations

CG-5.10.1 The board must ensure that in the case that a CIU is listed on a licensed exchange, the CIU is compliant with the requirements and regulations of that exchange.

MODULE	CG: Corporate Governance
CHAPTER	CG-5: Roles and Responsibilities of the Board

CG-5.11 Reporting to the CBB

CG-5.11.1 The board must be aware of any material breach that may affect the overall operation of the CIU, including but not limited to any breach to the investment policy of a CIU and report it to the CBB on a prompt and timely manner, in writing.

CG-5.11.2 The board must report to the CBB, on a prompt basis, any event that may directly or indirectly impact the CIU.

CG-5.11.3 In the event that the fund manager foresees, due to adverse market conditions, that it is in the best interest of CIU participants to shift from investments into cash and cash equivalents, the board is required to:

- (a) Immediately notify the CBB and the registrar stating the reason and the expected time by which the stipulated limits will be met; and
- (b) Immediately notify the CBB and the registrar once the CIU resumes investing in accordance with the investment limits stipulated in the prospectus.

CG-5.11.4 The board must provide the CBB, upon request, with any additional information relevant to the CIU, on a prompt basis.