

# PRIVATE INVESTMENT UNDERTAKINGS MODULE



#### MODULE: PIU (Private Investment Undertakings) Table of Contents

|       |            |                                 | Date Last<br>Changed |
|-------|------------|---------------------------------|----------------------|
| PIU-A | Introduct  | ion                             |                      |
|       | PIU-A.1    | Purpose                         | 04/2012              |
|       | PIU-A.2    | Module History                  | 07/2013              |
| PIU-B | Definitior | 18                              |                      |
|       | PIU-B.1    | Private Investment Undertakings | 04/2012              |
|       | PIU-B.2    | High Net Worth Investor         | 04/2012              |
| PIU-1 | Relevant   | Persons                         |                      |
|       | PIU-1.1    | General Requirements            | 04/2012              |
|       | PIU-1.2    | Appointment of Relevant Persons | 04/2012              |
| PIU-2 | Registrati | on                              |                      |
|       | PIU-2.1    | General Requirements            | 04/2012              |
|       | PIU-2.2    | Registration Process            | 04/2012              |
|       | PIU-2.3    | Granting of Registration        | 04/2012              |
|       | PIU-2.4    | Refusal of Registration         | 04/2012              |
|       | PIU-2.5    | Fees Payable to the CBB         | 07/2013              |
| PIU-3 | Private O  | ffering Document                |                      |
|       | PIU-3.1    | General Requirements            | 04/2012              |
| PIU-4 | Holdings   |                                 |                      |
|       | PIU-4.1    | Registration Requirements       | 04/2012              |
| PIU-5 | Books and  | d Records                       |                      |
|       | PIU-5.1    | General Requirements            | 04/2012              |
| PIU-6 | Financial  | Statements                      |                      |
|       | PIU-6.1    | Registration Requirements       | 04/2012              |



#### MODULE: PIU (Private Investment Undertakings) Table of Contents

|                              |  | Date Last<br>Changed  |
|------------------------------|--|---|
| Reporting                    | to the CBB   | Onanged   |
| PIU-7.1                      | Reporting Requirements                                     | 04/2012   |
| <b>Liquidatio</b><br>PIU-8.1 | on<br>General Requirements                                 | 04/2012   |
| Revocatio                    | n of Registration<br>CBB Revocation of Registration Pavers | 04/2012   |
|                              | PIU-7.1<br>Liquidatic<br>PIU-8.1                           | Liquidation<br>PIU-8.1 General Requirements<br>Revocation of Registration |

| MODULE  | PIU:   | Private Investment Undertakings |
|---------|--------|---------------------------------|
| CHAPTER | PIU-A: | Introduction                    |

#### PIU-A.1 Purpose

#### Executive Summary

PIU-A.1.1 This Module sets out the Central Bank of Bahrain's (CBB) requirements for <u>Private</u> <u>Investment Undertakings</u>.

#### Legal Basis

- **PIU-A.1.2** This Module contains the CBB's Directive (as amended from time to time) regarding <u>private investment undertakings</u> 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').
- PIU-A.1.3 For an explanation of the CBB's rule-making powers and different regulatory instruments, see Section UG-1.1.

| MODULE  | PIU:   | Private Investment Undertakings |
|---------|--------|---------------------------------|
| CHAPTER | PIU-A: | Introduction                    |

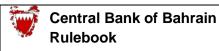
#### PIU-A.2 Module History

#### Evolution of Module

- PIU-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 <u>CIUs</u>.
- PIU-A.2.2 The Module was subsequently revised in April 2012, by the addition of several sections catering for the role and responsibilities of <u>relevant persons</u>, the registration and authorisation requirements, corporate governance, and other relevant Chapters and has been reissued as Volume 7.
- PIU-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                                  |
|-------------|----------------------|---|
| PIU-2.5     | <mark>07/2013</mark> | Amended due date and collection process for annual fee. |
|             |                      |   |
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PIU-A.2.4 Further guidance on the implementation and transition to Volume 7 (Collective Investment Undertakings) is given in Module ES (Executive Summary).



| MODULE  | PIU:   | Private Investment Undertakings |
|---------|--------|---------------------------------|
| CHAPTER | PIU-B: | Definitions                     |

#### PIU-B.1 Private Investment Undertakings

- **PIU-B.1.1** Private investment undertakings (PIUs) are defined as investment undertakings/funds that are registered with the CBB and may be initiated by or offered to high net worth individuals or institutional investors, and impose a minimum initial investment/participatory interest of USD 3 million (or equivalent in any other currency).
- PIU-B.1.2 <u>PIUs</u> are structures that have been created to facilitate private investments with a capacity to fit the criteria of such schemes. The role of the CBB is limited to processing the registration of <u>PIUs</u> in line with this Module, and to subsequently gather statistical information related to <u>PIUs</u>, for the purpose of monitoring developments in the financial services sector only. <u>PIUs</u> are not subject to the CBB's on-going supervisory requirements and are not subject to any of the provisions in the Volume 7, other than this Module.

| MODULE  | PIU:   | Private Investment Undertakings |
|---------|--------|---------------------------------|
| CHAPTER | PIU-B: | Definitions                     |

#### PIU-B.2 High Net Worth Investor

PIU-B.2.1 <u>PIUs</u> are only regulated to the extent that they are only subject to the reporting requirements under rule PIU-7.1.1 of this Module, for the purpose of monitoring the growth in the financial sector. They are not subject to any restrictions on their investment policies, as a result of which they may exhibit high risk characteristics, such as high levels of leverage and the taking of large speculative positions. Accordingly, <u>PIUs</u> may only be offered to a highly restricted investor base (i.e. those defined as <u>high net worth investors</u>).



#### High net worth investors are:

- (a) Individuals holding financial assets (either singly or jointly with their spouse) of USD 25 million or more;
- (b) Companies, partnerships, trusts or other commercial undertakings, which have financial assets available for investment of not less than USD 25 million; or
- (c) Governments, supranational organisations, central banks or other national monetary authorities, and state organisations whose main activity is to invest in <u>financial instruments</u> (such as state pension funds).
- **PIU-B.2.3** A <u>PIU</u> must be able to demonstrate that each of its <u>PIU participants</u> falls within the definition of a <u>high net worth investor</u>. It should also be able to demonstrate that the risk exposure potentially represented by a <u>PIU</u> has been clearly communicated and understood by the <u>PIU participants</u>.
- PIU-B.2.4 To help demonstrate compliance with Rule PIU-B.2.3, a <u>PIU</u> should be able to provide a written confirmation from each <u>PIU participant</u>, stating that they satisfy the definition of a <u>high net worth investor</u> and confirming that they understand the types of risks involved in a <u>PIU</u>.
- PIU-B.2.5 The minimum initial investment requirement specificed in Rule PIU-B.1.1 means that the first investment made by an investor into the <u>PIU</u> must be at least USD 3 million (or its equivalent in any other currency). Subsequent investments may be for smaller amounts. Subsciptions on commitment basis must be for at least USD 3 million (or its equivalent in any other currency).

| MODULE  | PIU:   | Private Investment Undertakings |
|---------|--------|---------------------------------|
| CHAPTER | PIU-1: | Relevant Persons                |

#### PIU-1.1 General Requirements

### PIU-1.1.1

The appointment of <u>relevant persons</u> to the <u>PIU</u>, must observe the following:

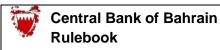
- (a) <u>Operator</u>, which must be a licensed entity;
- (b) <u>Custodian</u>, which must a <u>CBB licensee</u>;
- (c) <u>Trustee</u> (if applicable), which must be a <u>CBB licensee</u>;
- (d) <u>Fund Manager</u> (if applicable), which must be a licensed entity;
- (e) <u>Fund Administrator</u>, which must be a <u>CBB licensee</u>;
- (f) Investment Advisor (optional); and
- (g) External Auditor, based in the Kingdom of Bahrain.

#### Combination of Relevant Persons

#### PIU-1.1.2

The combination of <u>relevant persons</u> to the <u>PIU</u>, must observe the following:

- (a) The <u>operator</u> of a <u>PIU</u>, may either be combined with the <u>custodian</u> or with the <u>fund manager</u>, but not both;
- (b) If the PIU is structured as a trust, the <u>trustee</u>, who will be assuming the role of the <u>operator</u>, must not be combined with the <u>fund manager</u>;
- (c) The <u>trustee</u> may be combined with the <u>custodian/fund</u> <u>administrator;</u>
- (d) The appointment of a <u>fund manager</u> is optional, however, if a <u>fund manager</u> is appointed, it must not be combined with the <u>custodian/fund administrator;</u>
- (e) The <u>custodian</u> may be combined with the <u>operator</u> and/or <u>fund</u> <u>administrator</u>; and
- (f) The <u>fund administrator</u> may be combined with the <u>custodian</u>.



| MODULE  | PIU:   | Private Investment Undertakings |
|---------|--------|---------------------------------|
| CHAPTER | PIU-1: | Relevant Persons                |

#### PIU-1.2 Appointment of Relevant Persons

#### **Operator/Custodian**

**PIU-1.2.1** The initial appointment of the <u>operator/custodian</u> of a <u>PIU</u> will be approved by the CBB as part of the process of registration.

#### Other Relevant Persons

**PIU-1.2.2** All <u>relevant persons</u> to a <u>PIU</u> must be appointed by the <u>operator/custodian</u> of a <u>PIU</u>, after it conducts an assessment and is satisfied as to the suitablity of the <u>relevant person</u> to undertake that role, prior to entering into an agreement with the <u>PIU</u>.

#### Market Conduct

**PIU-1.2.3** <u>Relevant persons</u> must maintain proper standards of market conduct, in relation to their role with respect to a <u>PIU</u>, in addition to any applicable legal and regulatory requirements (such as those imposed on them by virtue of their license, in the case of <u>CBB licensees</u>).

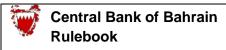
#### Roles and Responsibilities

PIU-1.2.4 For further guidance on the expected responsibilities and roles of <u>relevant persons</u>, reference may be made to Module RP.

| MODULE  | PIU:   | Private Investment Undertakings |
|---------|--------|---------------------------------|
| CHAPTER | PIU-2: | Registration                    |

#### PIU-2.1 General Requirements

- **PIU-2.1.1** <u>PIUs</u> must be registered with the CBB prior to being offered to <u>high</u> <u>net worth investors</u>.
- **PIU-2.1.2** An application for registration may only be made by the <u>operator/custodian</u> of the <u>PIU.</u>



| MODULE  | PIU:   | Private Investment Undertakings |
|---------|--------|---------------------------------|
| CHAPTER | PIU-2: | Registration                    |

#### PIU-2.2 Registration Process

- (a) Draft Private Offering Document;
- (b) Draft Memorandum and Articles of Association or Trust Instrument (or trust deed, where appropriate);
- (c) Certified and valid passport copies and CVs of the <u>directors</u>; and
- (d) A board resolution of the <u>operator</u>, approving the application to seek registration of the PIU.
- PIU-2.2.2 The documents requested in Paragraph PIU-2.2.1 are required for filing purposes only and will not be reviewed by the CBB as to the contents or accuracy of the information contained within. As such, the CBB will bear no responsibility for the correctness of such documents.
- **PIU-2.2.3** The request for registration must identify a representative in their capacity as the person responsible for submitting the application for the <u>PIU</u>. This person must be:
  - (a) An officer of the <u>operator/custodian</u> of the <u>PIU</u>; and
  - (b) An individual capable of being contacted by the CBB by post, telephone, fax and/or e-mail.

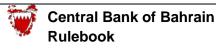
#### **PIU-2.2.4**

PIU-2.2.1

The <u>operator/custodian</u> of a <u>PIU</u> together with the <u>directors</u> of the <u>PIU</u> concerned, or <u>trustees</u>, as appropriate, must ensure that the documents constituting the <u>PIU</u>:

- (a) Do not contain information that is false or misleading;
- (b) Do not contain any provisions that conflict with either CBB requirements or other laws and regulations, that may apply to the <u>PIU</u> <u>operator/custodian</u>, <u>fund manager</u> and other <u>relevant</u> <u>persons</u> to the <u>PIU</u>; and
- (c) Are not unfairly prejudicial to the interests of the <u>PIU</u> <u>participants</u>, either generally or to a particular class of <u>PIU</u> <u>participants</u>.

A request for registration under Rule PIU-2.2.1 must be made by submitting a formal letter containing the structure of the <u>PIU</u> and the <u>relevant persons</u> to the PIU, and signed by an authorised signatory of the applicant, together with all supporting documentation, as follows:



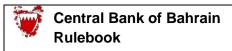
| MODULE  | PIU:   | Private Investment Undertakings |
|---------|--------|---------------------------------|
| CHAPTER | PIU-2: | Registration                    |

#### PIU-2.2 Registration Process (continued)

PIU-2.2.5 An applicant may appoint a representative – such as a law firm to prepare and submit the application. An applicant may also appoint on his behalf a professional consultant to prepare and submit the application, in which case the application has to be reviewed by a professional law firm or internal legal counsel prior to submision to the CBB. In all cases, the applicant retains full responsibility for the accuracy and completeness of the application, and is required to certify the application form accordingly. The CBB also expects to be able to liaise directly with the applicant during the registration process, when seeking clarification of any issues.

# **PIU-2.2.6** The applicant must be satisfied that the lawyer appointed to make the request for registration of the <u>PIU</u> on his behalf, has reviewed the proposed structure or operations in detail.

- PIU-2.2.7 The CBB's review of a request for registration is mainly limited to satisfying itself that the conditions specified in this Module are likely to be complied with.
- PIU-2.2.8 The CBB will acknowledge requests for registration of <u>PIUs</u> within 2 business days of receipt and provide formal feedback (if any) on the request within 5 business days of receipt. This feedback will confirm whether the request is complete, or whether further information/documents are required.
- PIU-2.2.9 Should further information/documents be required, then the applicant has 90 calendar days from the date of the CBB's feedback in which to complete the application, failing which the CBB reserves the right to cancel the request and require the submission of a new one.



| MODULE  | PIU:   | Private Investment Undertakings |
|---------|--------|---------------------------------|
| CHAPTER | PIU-2: | Registration                    |

#### PIU-2.3 Granting of Registration

PIU-2.3.1

To be registered, an applicant must demonstrate compliance with the conditions specified in this Module. Should the request for registration be accepted, the CBB will notify the applicant in writing of the fact. The registration may be subject to additional conditions being met.

| MODULE  | PIU:   | Private Investment Undertakings |
|---------|--------|---------------------------------|
| CHAPTER | PIU-2: | Registration                    |

#### PIU-2.4 Refusal of Registration

- PIU-2.4.1 The CBB may refuse to register a <u>PIU</u>, if in its opinion:
  - (a) The requirements in this Module are unlikely to be met; or
  - (b) False or misleading information has been provided to the CBB, or information which should have been provided to the CBB has not been so provided.
- PIU-2.4.2 Where the CBB proposes to refuse a request for registration, it must give the applicant written notice to that effect. Applicants have 30 calendar days from the date of the written notice to appeal the decision.



| MODULE  | PIU:   | Private Investment Undertakings |
|---------|--------|---------------------------------|
| CHAPTER | PIU-2: | Registration                    |

#### PIU-2.5 Fees Payable to the CBB

**Application Fees** 

PIU-2.5.1 Each request for registration of a <u>PIU</u> must be accompanied by a nonrefundable BD100 processing fee at the time of submitting the formal application to the CBB.

Annual Fees

- PIU-2.5.2 Each <u>PIU</u> registered by the CBB is subject to an annual fee of BD2,000. The fee is payable on the 15<sup>th</sup> January of the annual year for which the fee is due.
- **PIU-2.5.3** For newly registered <u>PIUs</u>, the first annual registration fee is payable when the registration letter is issued by the CBB. The amount payable is the annual fee of BD2,000 on a monthly prorata basis as determined by the CBB.
- PIU-2.5.4 All annual fees are collected by direct debit and all operators/trustees of PIUs must ensure that they submit to the CBB the completed Direct Debit Authorisation Form (available under Part B of Volume 7) by 15<sup>th</sup> October prior to the year for which the fees are due.
- PIU-2.5.5 Where the <u>PIU</u> is de-registered, (whether at the initiative of the <u>operator/custodian</u> or the CBB), no refund is paid for any months remaining in the calendar year in question.

| MODULE  | PIU:   | Private Investment Undertakings |
|---------|--------|---------------------------------|
| CHAPTER | PIU-3: | Private Offering Document       |

#### PIU-3.1 General Requirements

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PIU-3.1.1
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Every <u>PIU</u> registered under Chapter PIU-2 must have in place a private offering document.

PIU-3.1.2

- The board of the <u>PIU</u>, as appropriate, must ensure that the information contained in the <u>private offering document</u>:
- (a) Is complete and transparent;
- (b) Is not false, misleading, or is unfairly prejudicial to the interests of the <u>PIU participants</u> generally or to the <u>participants</u> of other classes of instruments issued by the <u>PIU</u>;
- (c) Does not contain any provision that conflicts with any Rule in this Volume, or other legal or regulatory requirements that apply to the <u>PIU</u> or other <u>relevant persons</u> connected to the <u>PIU</u>; and
- (d) Does not conflict with any other Laws or Regulations in any jurisdiction.

PIU-3.1.3

The <u>private offering document</u> of a <u>PIU</u> must clearly display a statement to the fact that the <u>PIU</u>:

- (a) Is subject only to registration by the CBB and that the CBB does not assume any obligations or liabilities as a result of its registration; and
- (b) Will not violate the Laws of the Kingdom of Bahrain or any other jurisdiction.

| MODULE  | PIU:   | Private Investment Undertakings |
|---------|--------|---------------------------------|
| CHAPTER | PIU-4: | Holdings                        |

#### PIU-4.1 General Requirements

## **PIU-4.1.1**

<u>Holdings</u> may only be created, issued or sold, and redeemed, repurchased, reimbursed or repaid (as may be appropriate):

- (a) In accordance with the <u>private offering document</u> constituting the <u>PIU</u>; and
- (b) Only to or by investors qualifying as <u>high net worth investors</u>.

| MODULE  | PIU:   | Private Investment Undertakings |
|---------|--------|---------------------------------|
| CHAPTER | PIU-5: | Books and Records               |

#### PIU-5.1 General Requirements

## PIU-5.1.1

<u>PIUs</u> must prepare, retain for 10 years and make available to the CBB upon request, such records that enable:

- (a) The <u>PIU</u> and its <u>relevant persons</u>, as appropriate, to comply with the Rules in this Module; and
- (b) The <u>PIU</u> to demonstrate at any time that such compliance has been achieved.
- PIU-5.1.2 The records referred to under Rule PIU-5.1.1 include but are not limited to, the minutes of the board of <u>Director's</u> meetings, the <u>private offering document</u>, contractual agreements, documents constituting the <u>PIU</u>, transaction records, annual audited statements and KYC documents for each <u>CIU participant</u>, in original form or in the form of a certified copy.



| MODULE  | PIU:   | Private Investment Undertakings |
|---------|--------|---------------------------------|
| CHAPTER | PIU-6: | Financial Statements            |

#### PIU-6.1 General Requirements

- **PIU-6.1.1** <u>PIUs</u> must prepare annual audited financial statements for each financial year, by a qualified independent <u>external auditor</u> located in Bahrain.
- **PIU-6.1.2** The annual audited financial statements of the <u>fund company</u> (if applicable) must be submitted to the CBB, within 3 months of the financial year-end of the <u>fund company</u>.



| MODULE  | PIU:   | Private Investment Undertakings |
|---------|--------|---------------------------------|
| CHAPTER | PIU-7: | Reporting to the CBB            |

#### PIU-7.1 Reporting Requirements

**PIU-7.1.1** The <u>operator/custodian</u> of a <u>PIU</u> must report to the CBB, 21 calendar days of each quarter end, the total net asset value of the <u>PIU</u> with a breakdown of the figure as follows:

- (a) Resident institutions;
- (b) Resident individuals;
- (c) Non-resident institutions; and
- (d) Non-resident individuals.

#### PIU-7.1.2

For the purpose of reporting requirements under this Section, the quarter end of a PIU must be a 3-month period ending on 31<sup>st</sup> March, 30<sup>th</sup> June, 30<sup>th</sup> September or 31<sup>st</sup> December.



| MODULE  | PIU:   | Private Investment Undertakings |
|---------|--------|---------------------------------|
| CHAPTER | PIU-8: | Liquidation                     |

#### PIU-8.1 General Requirements

**PIU-8.1.1** A <u>PIU</u> intending to liquidate must notify the CBB of such intent and must seek legal advice on how to complete the process in a satisfactory manner.

# **PIU-8.1.2** Upon completion of the liquidation process, the <u>operator/custodian</u> of the <u>PIU</u> must notify the CBB of such fact.



| MODULE  | PIU:   | Private Investment Undertakings |
|---------|--------|---------------------------------|
| CHAPTER | PIU-9: | Revocation of Registration      |

#### PIU-9.1 CBB Revocation of Registration Powers

PIU-9.1.1 The CBB may revoke registration of a <u>PIU</u> in the following cases:

- (a) If any of the applicable requirements contained in this Module are not met; or
- (b) If false or misleading information has been provided to the CBB, or significant information which should have been provided to the CBB has not been so provided.
- PIU-9.1.2 A registration may be revoked by the CBB, subsequent to the ruling of a competent authority, such as a court that has issued an order to liquidate the <u>PIU</u>.
- PIU-9.1.3Where the CBB proposes to cancel a <u>PIU's</u> registration, it shall give the <u>PIU</u><br/>concerned a written notice of its intention to do so and the reasons for such action.<br/>The <u>PIU</u> has 30 calendar days from the date of the written notice to appeal the<br/>decision.