

A large, abstract graphic of a network or sphere made of interconnected blue nodes and lines, positioned in the upper right background of the page.

# Bahrain

## Regulation

FUNDS AND FUND MANAGEMENT 2009

The Central Bank of Bahrain (the CBB) formerly known as Bahrain Monetary Agency is the principal regulator of the investment funds industry in Bahrain. All investment funds established and/or marketed in/from the Kingdom of Bahrain are supervised and regulated by the CBB pursuant to its regulation and principles/guidelines referred to in the following paragraphs of this report. Investment funds are commonly referred to as collective investment schemes (scheme) in Bahrain.

## 2.1 Type of funds

A scheme has been defined by the CBB for regulatory purposes, as any scheme, including but not limited to a mutual fund investment company with fixed or variable capital, the sole object of which is to collectively invest the capital raised from public in transferable securities or other forms of investment, based on the principle of risk spreading, and as disclosed to and agreed by the CBB. A scheme should also provide for the repurchase, redemption, reimbursement, direct/indirect payment of the holdings, or interests of the investors, at the request of the investors and in accordance with the scheme documents, out of the assets of the scheme.

No scheme can be established and/or marketed in/from Bahrain without the prior written authorization and approval of the CBB. Furthermore, the documents of the scheme (scheme documents), that is, information memorandum of the scheme and other key agreements relating to the scheme are required to be approved by the CBB. The scheme documents have not been specified by the CBB in its regulation/principles as these vary from scheme to scheme, depending upon the nature and type of each scheme. Normally, scheme documents include management agreement, custodian agreement, guarantee documents, investment management agreement, Memorandum and Articles of Association of the mutual fund investment company and the administrator agreement. Prior approval of the CBB is required to effect any material changes to the terms and conditions and other features of a scheme originally authorized and approved under this regulation.

The following types of schemes may be formed under the CBB laws:

- Schemes established and marketed in/from Bahrain

- Schemes established outside Bahrain and marketed in Bahrain

### Schemes established and marketed in/from Bahrain

Prior to 1999 only banks or financial institutions operating in/from Bahrain and licensed by the CBB were allowed to establish and market schemes in Bahrain. These banks/financial institutions are regulated by the provisions of the Bahrain Commercial Companies Law and the CBBs license requirements.

However, as part of the process of developing Bahrain as a banking and finance center, the CBB amended the regulation in 1999 to allow banks and financial institutions which are not operating in/from Bahrain to establish and market schemes in/from Bahrain, provided the institutions are of high standing, good reputation, and are operating from reputable international financial centers.

The activities and business of the schemes and to the extent appropriate, of the persons involved in the management, operation, and marketing of schemes are supervised and regulated by the CBB. The written approval of the CBB is required for establishing and marketing a scheme in/from Bahrain.

These banks/financial institutions are required to incorporate a mutual fund investment company in Bahrain which will be governed by the provisions of Bahrain Commercial Companies Law and approved by the CBB and will be formed with the intention of establishing and marketing schemes under its umbrella with different investment objectives. The mutual fund investment company is normally incorporated as an exempt company, which is one of the types of companies allowed to be incorporated under the Bahrain Commercial Companies Law. The mutual fund investment company is required to specify in its Memorandum and Articles of Association, the intention to float several sub-schemes under its umbrella. The mutual fund investment company may also float a single scheme, as stated in the Memorandum and Articles of Association of the company and agreed with the CBB.

Schemes which are marketed in/from Bahrain are open for subscription to the residents of any country, subject to the approval of the CBB.

The schemes normally launched are of two kinds:

- Open-ended schemes: Allows the investors to redeem their interest in the scheme (units) and also allows prospective investors to purchase units during the tenor of the scheme at the net asset value of the scheme prevailing on the date of redemption/purchase.
- Closed-ended schemes: The scheme will have a fixed lock-in-period and the units will be available for redemption only on the maturity of the scheme. Also, purchase of units of the scheme is not possible during the tenor of the scheme.

## Schemes established outside Bahrain and marketed in Bahrain

Refer paragraph 2.13 on Foreign schemes.

### 2.2 Laws

Schemes are principally regulated in Bahrain under the following laws and regulations:

- The CBB's regulation with respect to the general supervision, operation, and marketing of collective investment schemes (OG/356/92) and the amendment to the regulation
- Principles of supervision, operation and marketing issued by the CBB, with respect to collective investment schemes
- Guidelines issued by the CBB on advertising and public announcements for collective investment schemes
- Bahrain Commercial Companies Law 2001
- Listing requirements of the Bahrain Stock Exchange.

### 2.3 Managers, trustees, and custodians

The CBB's principles for regulation of collective investment schemes lay down the following broad criteria to be satisfied by the managers, investment managers, custodians, and administrators (relevant persons) of the collective investment schemes.

- All relevant persons should be bodies corporate with their registered office in the Kingdom of Bahrain.
- Relevant persons should have sufficient financial resources at their disposal to enable them to conduct their business effectively and to meet their liabilities.
- Relevant persons should not engage in activities which are inconsistent with their functions and duties.
- Relevant persons are sufficiently experienced and qualified to carry out the duties imposed on them in relation to a particular scheme.
- A relevant person shall be:
  - a bank licensed by the CBB;
  - a company approved by the CBB which is wholly owned by a licensed bank; or
  - any other person approved by the CBB.

The relevant persons of the scheme should be initially approved by the CBB along with the scheme documents. The CBB has not specified in its regulation/principles the financial resources, qualification and the experience required by the relevant persons. The CBB normally considers these factors on a case by case basis as part of the approval procedure. The relevant persons may retire, be discharged, or replaced from time to time in accordance with the provisions of scheme documents or by the order of the CBB acting at its discretion.

The CBB has not specified who the relevant persons are in relation to a scheme in its regulation/principles. The CBB has merely defined relevant persons as persons who are involved in the management, operation, and marketing of schemes. KPMG in Bahrain has included managers, investment managers, custodians, and administrators of a scheme as relevant persons, based on KPMG in Bahrain’s understanding of the definition.

## 2.4 Investment restrictions

The CBB’s principles for regulation of collective investment schemes lay down the broad investment policies to be followed by the schemes. Prior written consent of the CBB is required for the schemes to adopt an investment policy, which is inconsistent with the investment policies laid down by the CBB. The following are the broad investment guidelines and related investment restrictions.

Investments	Limits
Transferable securities listed on stock exchanges recognized by the CBB.	No overall ceiling specified for this investment portfolio. However, a scheme cannot invest more than 10% of its total assets in transferable securities of one entity.
Unlisted transferable securities.	This investment portfolio should not exceed 10% of the total assets of the scheme.
Transferable securities issued or guaranteed by any government (or its agencies) or public international bodies.	No overall ceiling specified for this investment portfolio. However, a scheme cannot invest more than 20% of its total assets in securities of one entity.
Transferable debt instruments.	This investment portfolio should not exceed 10% of the total assets of the scheme.
Options and warrants for hedging purposes.	The combined total value of investments in options and warrants held for both hedging and trading purposes should not exceed 15% of the total assets of the scheme.
Financial futures contracts for both hedging and trading purposes.	The aggregate value of such investments together with investments in physical

Investments	Limits
	commodities and commodity-based investments should not exceed 20% of the total assets of the scheme.
Physical commodities and commodity based investments.	The aggregate value of such investments together with investments in financial futures contracts for hedging and trading purposes should not exceed 20% of the total assets of the scheme.
Investment in units of other schemes.	This investment portfolio should not exceed 10% of the total assets of the scheme.

Note: Total assets mean the net asset value of the scheme on the date the above investments are to be made.

The CBB's principles lay down the following additional restrictions on the investment policy of a scheme:

- A scheme is not allowed to lend, assume, guarantee, endorse, or otherwise become directly or contingently liable for or in connection with any obligation or indebtedness of any person unless otherwise it is in accordance with the scheme documents.
- A scheme shall not lend, in particular to any company in which the scheme has invested. This is extended to prohibit lending to the parent, subsidiary, or other associates of the company in which the scheme has invested.
- A scheme is not allowed to acquire any asset which involves the assumption of any liability which is unlimited.
- A scheme is not allowed to invest in any security of any class in any company or body corporate if any director, officer, or broker of the scheme and/or as may be appropriate, any one or more relevant persons (or related or associated persons) owns more than 0.5 percent of the total nominal amount of all the issued securities of that class or collectively the directors, officers, or brokers of the scheme and/or, as may be appropriate, any one or more of the relevant persons (or related or associated persons) own more than 5 percent of the nominal amount of those securities. The related or associated persons have the same meaning as defined in the International Accounting Standards.
- The above prohibition shall also apply where the ownership of the directors and other persons referred to above is in the parent, subsidiary or associates of the company in which the scheme is to make the investment.

- A scheme shall not invest in any security where a call is to be made for any sum to be paid on that security unless that call could be paid in full out of cash (or near cash) by the scheme's portfolio.

The following points are also important to note in this regard:

- The scheme should expressly state in its scheme documents the investment policies and the prospectus or any other promotional literature should draw attention to such policies.
- The above guidelines do not apply to an umbrella scheme as if it were a single scheme, but shall apply to each sub-scheme of the umbrella scheme as if each separate part thereof were a separate scheme.
- If the investment policies and limits outlined above are breached, the scheme and/or, as may be appropriate any one or more of the relevant persons shall, in accordance with the scheme documents, take as a priority objective, all steps as are necessary to remedy the situation, taking into account the interests of the scheme and the scheme participants.
- If the name or particulars of a scheme indicates a specific objective, geographic region or market, the scheme should invest at least 50 percent of its non-cash assets in securities and other investments to reflect the objective, region or market.
- Neither a scheme, nor any one or more relevant persons involved in the management, operation, and marketing of a number of schemes which fall within the scope of these principles, may acquire any securities carrying voting rights which will enable it or them to exercise significant influence over the management of an issuing body.

### 2.5 Borrowing

The CBB's principles specify that neither a scheme nor one or more of the relevant persons or any other person acting for and on behalf of the scheme shall borrow more than 20 percent of its asset value.

### 2.6 Accounts and prospectus

Schemes are required to publish a prospectus along with other documents relevant to the establishment of the scheme, that is, scheme documents. The CBB reserves the right to specify which of the scheme documents should form an integral part of the prospectus of the scheme and which should be appended. Prior approval of the CBB is required for all the documents, that is, prospectus, scheme documents, and any amendments to the documents, before it is made available to the prospective investors for execution of the contract. The prospectus along with other scheme documents approved by the

CBB must be offered to the investors free of charge prior to the conclusion of a contract.

The CBB has issued a circular (No. BC/05/2002 dated 1 June 2002) prescribing information to be contained in the prospectus of the scheme. The following is the minimum information relating to the scheme, which the prospectus has to contain:

- Constitution of the scheme
- Manager, custodian, investment advisor, registrar, auditors, and any other service providers having significant responsibility in management of the scheme;
- Investment policy, investment restrictions, and the risk warning statements
- The number of units, characteristics of units, procedure for sale, and redemptions of units of the scheme
- Frequency and methodology of valuation of the assets and liabilities of the scheme
- Fees and charges payable by the scheme and the unitholders
- Dividend distribution policy
- Reports and accounts
- Other matters like inspection of documents, termination of the scheme, governing law, taxation, statement indicating measures to be taken to comply with the CBB's money laundering regulation and any other general information

A scheme is also required to publish and supply to the CBB, the investors and the potential investors in accordance with its scheme documents, the following documents:

- An audited annual report of the scheme for each financial year within three months from the end of such year, prepared in accordance with the International Accounting Standards and audited by an auditor approved by the CBB
- An unaudited half yearly report covering the first six months of the financial year, within two months from the end of such period
- Any other information as the CBB may stipulate from time to time.

Schemes are also required to submit to the CBB, quarterly returns summarizing key information relating to the schemes i.e. name and type of the scheme, duration of the scheme, overall subscription in the scheme, net assets value of the scheme, type of investment, geographical location of the investment, and the approval authority for the scheme.

### 2.7 Supervision

The supervisory authority for all schemes established and/or marketed in/from Bahrain is the Financial Institutions Directorate, Central Bank of Bahrain, PO Box 27, Manama, Kingdom of Bahrain.

### 2.8 Fund ownership

There are no restrictions on the number of units which one person or related group of persons may hold in a scheme. A scheme must promote the sale of its units to the public. However, there are no provisions in the regulation/principles that prevent a scheme from placing the units for subscription privately, without marketing to the public.

Principles issued by the CBB only provide that the minimum subscription price per unit on issue shall be BD 100 (or equivalent) for schemes established in Bahrain and USD 2,000 per unit (or equivalent) for schemes established outside Bahrain. Prior written approval of the CBB is required for schemes to have a different minimum unit subscription price.

### 2.9 Fund structure

The regulation issued by the CBB broadly lays down that a scheme can be established in Bahrain by banking firms or financial institutions operating in/from Bahrain and licensed by the CBB. However, this was amended subsequently in 1999 to include financial institutions of good reputation established outside Bahrain. Based on the provisions of the CBB's regulations in this respect, schemes may be structured in the following manner:

- A banking or financial institution operating in/from Bahrain and licensed by the CBB or a banking or financial institution of good reputation established outside Bahrain and approved by the CBB can establish schemes with different objectives to be marketed in/from Bahrain. These institutions are required to incorporate a mutual fund investment company in Bahrain, which can launch the scheme(s). The mutual fund investment company is normally incorporated as an exempt company.
- The mutual fund investment company is required to be licensed by the CBB and will also be governed by the provisions of Bahrain Commercial Companies Law. The CBB regulation specifies that the mutual fund investment company should have at all times an initial paid up capital which

is acceptable to the CBB. The minimum capital requirement for an exempt company as per Bahrain Commercial Companies Law is BHD 20,000. With the prior approval of the CBB, a mutual fund investment company may launch more than one scheme under its umbrella. In the event of the company launching more than one scheme, it would represent an umbrella scheme. Each sub-scheme under the umbrella will be treated as a separate scheme and all the rules of the CBB will apply as though these were separate schemes, unless otherwise expressly stated in the regulation/principles. Also, the CBB's approval is required before the launch of each scheme.

- Unless the CBB expressly agrees otherwise in writing, the net asset value of the scheme must reach USD 5 million within six months of the commencement of the scheme. In the event of the net asset value failing to reach the specified amount or falls below the specified amount at any time thereafter, the CBB may require the scheme to be wound up or require other appropriate action to be taken, in accordance with its instructions. The CBB normally considers the prevailing market conditions and other factors relevant to the scheme while applying this rule.
- A banking or financial institution operating in/from Bahrain or a banking or financial institution of good reputation established outside Bahrain can market schemes established outside Bahrain in Bahrain, subject to the approval of the CBB. Refer paragraph 2.13 on foreign schemes for further details.

### 2.10 Stock exchange

Schemes established and marketed in/from Bahrain and schemes established outside Bahrain and marketed in Bahrain may be listed on the Bahrain Stock Exchange (BSE). The salient features of the listing requirements that apply to the schemes are given below:

- A formal letter of approval from the CBB
- A formal letter from the scheme manager for listing the scheme on the BSE
- A copy of the scheme's prospectus
- The scheme's Memorandum and Articles of Association
- If the issuer of the scheme is a foreign company, then the issuer should appoint a local financial institution to act as its representative on behalf of the scheme.

- If the scheme has commenced its operation before the submission of its application, then the financial statements for the previous years should be submitted along with the application.

Upon submission of the above and following the approval of the BSE's director, the scheme is normally granted approval to list immediately on the Bahrain Stock Exchange. On receiving approval the scheme is required to pay the registration and the annual subscription fees and also sign the listing agreement. The registration fee for both a single scheme and an umbrella scheme is BHD 300. The annual subscription fee for a single scheme is BHD 250. In the case of an umbrella scheme an annual subscription fee of BHD 250 is required to be paid for each scheme launched under the umbrella. Once registered the scheme is required to comply with all the requirements stated in the prospectus and the listing requirements specified in the listing agreement.

## 2.11 Bank secrecy

In Bahrain, a bank is under a duty to keep secret and confidential information in relation to its customers and their accounts. The source of this duty arises from the general rules of confidentiality relating to banks. The circumstances in which bank's secrecy rules can be overridden principally relate to anti-money laundering measures.

Money Laundering in Bahrain is regulated by the Amiri Decree No 4 of 2001 (Preventing and Prohibiting Money Laundering) and the money laundering regulation issued by the CBB in October 2001 pursuant to this Amiri Decree. This regulation is binding on all the CBB's licensees.

This regulation applies to investment funds which are registered in Bahrain and regulated by the CBB. All the provisions of the money laundering regulation which include provisions relating to know your customers etc. are applicable to an investment fund, similar to other licensees. There are no specific provisions relating to money laundering for investment funds.

Consequent to the introduction of this law, no institution can plead before the investigation magistrate or the competent court, secrecy or confidentiality in respect of accounts, identification of customers, or record keeping, based on the provisions of any other laws or general rules of confidentiality.

## 2.12 Fund set-up

A scheme can usually be established in Bahrain in a period of 8 to 10 weeks, depending on the nature and complexity. The cost, including professional fee but excluding the paid up capital for the mutual fund investment company is likely to be in the range of BHD 15,000 to BHD 20,000, but again this depends on the nature and complexity of the scheme.

## 2.13 Foreign funds

The schemes established and managed outside Bahrain are allowed to be marketed in Bahrain. The bank/financial institution in Bahrain through which a scheme established outside Bahrain is marketed in Bahrain must obtain the authorization and approval of the CBB prior to the commencement of marketing. Marketing of the scheme in Bahrain implies that Bahraini residents can also subscribe for units in the scheme.

Essentially, the information required by the CBB for the marketing of a foreign scheme in Bahrain are:

- confirmation from the licensing authorities in the jurisdiction in which the scheme is established to the effect that the scheme is licensed in that jurisdiction;
- a copy of the scheme's rules and other scheme documents;
- the prospectus;
- scheme's latest yearly and half-yearly reports;
- details of the arrangements for the marketing of the scheme in Bahrain; and
- details of the parent/group companies of the bank/financial institution marketing the scheme and if relevant of the scheme itself.

Similar to the schemes established and marketed in Bahrain, these schemes can be individual schemes or sub-schemes of an umbrella scheme and can be either an open-ended or closed-ended schemes.

## 2.14 Bearer shares

Regulations issued by the CBB require that all investors should be issued with registered certificates representing holdings of units in the scheme or alternatively should be provided with written confirmation of entry in a register for the units held in the scheme. Hence it is the intention of the CBB that all units should be registered.

## 2.15 Use of the internet

The Central Bank of Bahrain (the CBB), which is the regulator for investment funds in Bahrain, has not yet issued guidance on how it views the use of the Internet as a medium for marketing schemes.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.