

Resolution No. (70) of 2024

Regarding

**Provisions of Increasing the Capital of Closed-End Funds with Fixed Capital Listed
on the Exchange**

Having Perused:

- Law No. 7 of 2010 Regarding the Establishment of the Capital Markets Authority and Regulating Securities Activities and its Executive Bylaws, and their amendments; and
- CMA Board of Commissioners Resolution passed in its meeting No. (4-17) of 2024 held on 29/05/2024.

The Following Was Resolved

Article (1)

Module Thirteen (Collective Investment Schemes) of the Executive Bylaws of Law No. 7 of 2010 Regarding the Establishment of the Capital Markets Authority and Regulating Securities Activities and their amendments are hereby amended pursuant to Annex (1) attached to this Resolution.

Article (2)

Attachment (7) Investment Controls of Real Estate Income-Generating Fund (Traded) of Appendix 4 (Investment Controls for Each Type of Fund) of Module Thirteen (Collective Investment Schemes) of the Executive Bylaws of Law No. 7 of 2010 Regarding the Establishment of the Capital Markets Authority and Regulating Securities Activities and their amendments is hereby amended pursuant to Annex (2) attached to this Resolution.

Article (3)

Appendix 11 (Detailed Subscription Statement) of Module Thirteen (Collective Investment Schemes) of the Executive Bylaws of Law No. 7 of 2010 Regarding the Establishment of the Capital Markets Authority and Regulating Securities Activities and their amendments is hereby added pursuant to Annex (3) attached to this Resolution.

Article (4)

The concerned bodies shall execute this Resolution, each within its jurisdiction. This Resolution shall come into force from the date of its issuance, and it shall be published in the Official Gazette.

Prof. Ahmad Al-Melhem

Issued on: 02/06/2024.

Annex 1

#	Module	Chapter	Article	Amendment Type	Text before Amendment	Text After Amendment
1	Thirteen	Two	2-4-3	Adding Article	-	<p>The listed <u>Fund</u> may increase its capital during the listing period. The listed <u>Fund</u> that wishes to increase its capital shall comply with the following measures and provisions:</p> <ol style="list-style-type: none"> 1. Present the purpose of the capital increase and details of the investment opportunity if it was predetermined. If the investment opportunity included real estate, the real estate shall be determined as well as its valuations and the purchase or the right to the usufruct (Intifa'a) price over the <u>Unitholders</u>. Prior approval of more than 50% of the capital shall be obtained to adjust the article of the <u>Fund</u>'s capital and its payment mechanism in the Articles of Association. 2. The <u>Authority</u>'s approval shall be obtained for the capital increase through cash or in-kind participation or both, provided that it shall not conflict with Article (2-4-1) of this Module. The application shall include the <u>Unit</u> holders' approval and the detailed subscription statement mentioned in this Article in the event of a cash increase only. 3. The cash capital increase shall be offered in a <u>Public Offer</u>. The <u>Prospectus</u> may be replaced with a detailed subscription statement approved by the <u>Authority</u>, provided that it contains the necessary information to enable the investor to assess the financial position, performance, and opportunities of the <u>Fund</u> in accordance with Appendix 11 of this Module. 4. Further to the requisites of the previous Item, a printed or electronic copy of the Articles of Association must be provided to each new participant or any <u>Person</u> that intends to subscribe/participate in the <u>Fund</u> for the first time within the capital increase. The signature of the participant on the printed or electronic subscription/participation application – after reviewing the <u>Fund</u>'s Articles of Association – is considered an approval of this scheme. 5. The period for offering new <u>Units</u> shall be five <u>Business Days</u> at a minimum, and not more than fifteen <u>Business Days</u>. The offering shall start within a period of not more than six months from the date of the <u>Authority</u>'s approval, otherwise the <u>Authority</u>'s approval shall be considered null and void. 6. The <u>Unit</u> holders, on the day of the <u>Authority</u>'s approval, shall have <u>Pre-emptive Right</u> to subscribe

						<p>in the new <u>Units</u> – only in case of cash increase – in accordance with the requirements of listing <u>Pre-Emptive Rights</u> stipulated in Chapter Seven of the <u>Exchange</u> rules. The mentioned <u>Prospectus</u> may be replaced with a detailed subscription statement.</p> <p>7. In the event that the subscription is not fully covered by the old <u>Unit</u> owners, they shall be offered for subscription by the public.</p> <p>8. Meet any other conditions required by the <u>Authority</u>.</p> <p>9. In the event of violating any of the restrictions stipulated in this Article due to unforeseen circumstances to the <u>Fund Manger</u> without correcting the <u>Violation</u> within five <u>Business Days</u> from the date of its occurrence, the <u>Fund Manager</u> shall immediately notify the <u>Authority</u> and the <u>Investment Controller</u> of the procedures and measures required to correct it and the period required for that by the <u>Authority</u>, and the <u>Authority</u> may minimize such period.</p>
2	Thirteen	Two	2-4-4	Adding Article	-	<p>Provisions of Real Estate Income-Generating Fund (Traded)</p> <p>Further to the provisions stipulated in the previous Article, the <u>Real Estate Income-Generating Fund (Traded)</u> seeking to increase its capital shall comply with the following measures and controls:</p> <p>1. In the event of cash increase, the <u>Fund</u> shall provide the <u>Authority</u> with a binding contract for the sale of the real estate subject to investment to the <u>Fund</u>, or a contract arranging the right to the usufruct on the real estate (Intifa'a), or transfer of ownership as specified in the terms and conditions of the <u>Fund's</u> Articles of Association.</p> <p>2. In the event of in-kind subscriptions, the in kind asset shall be appraised in accordance with the provisions for in-kind contributions referenced in Module Eleven (Dealing in Securities) of these <u>Bylaws</u>.</p> <p>3. The <u>Unit</u> holder who subscribes in-kind is prohibited from disposing of 10% of the number of <u>Units</u> allocated to them in exchange for the in-kind subscription during the first year of its trading commencement.</p> <p>4. The real estate asset is subject to investment controls – according to the type of <u>Fund</u> – provided for in Attachment (7) Investment Controls of Real Estate Income-Generating Fund (Traded) of Appendix 4 (Investment Controls for Each Type of Fund) of this Module.</p>

Annex 2

Attachment (7)

Investment Controls of Real Estate Income-Generating Fund (Traded)

Investment Controls of Real Estate Income-Generating Fund (Traded)

The Real Estate Income-Generating Fund (Traded) is a close-ended Fund, listed in the Exchange. It aims to invest the Fund's money in Real Estate Income-Generating Funds Assets.

The provisions of the Funds provided for in this Module shall apply to the Real Estate Income-generating Fund (Traded) unless otherwise specified in this attachment and in a manner consistent with its nature and objectives, and subject to the following terms and conditions:

First: The rules of subscription increase for Real Estate Income-Generating Fund (Traded)

1. Real Estate Income-Generating Funds (Traded) shall be offered for public subscription at the time of incorporation. In all cases, the subscription shall result in the fulfillment of the requirements of listing in the Exchange. In the event of not meeting the listing requirement, the Fund Manager shall refund the funds to the subscribers in accordance with the provisions of the Prospectus.
2. The real estate subject of the fund's investment or the right to the usufruct (Intifa'a) over real estate and its valuations must be specified in the Fund's prospectus.
3. It is permissible, upon the incorporation of the Real Estate Income-Generating Fund (Traded), to participate in an in kind share according to the following conditions:
 - a. The Articles of Association shall permit participation in the Fund with in kind shares.
 - b. The asset provided as an in kind share shall meet the conditions stipulated in this Appendix.
 - c. The prospectus must include the property, its valuations, and the purchase or the right to the usufruct (Intifa'a) price in accordance with the contract in Item 5 (First) of this Appendix.
4. The Fund Manager shall complete the procedures for listing in the Exchange within sixty days from the date of obtaining the final license to incorporate the Fund from the Authority. The

Authority may, if it deems it necessary, extend this period for an additional period of up to thirty days upon a reasoned request by the Fund Manager. The Fund Manager shall be liable for disciplinary action in the event of a delay in completing the listing procedures unless the delay is due to unforeseen circumstances.

5. Upon submitting the application for incorporation, the Fund Manager shall provide the Authority with a binding contract for the sale of the real estate subject to investment to the Fund or a contract arranging the right to the usufruct the asset (Intifa'a) or transfer of ownership as specified in the terms and conditions of the Fund's Articles of Association.
6. Upon submitting the application form for incorporation, the Fund Manager shall provide the Authority with a contract concluded between the Fund Manager and a real estate management company to manage the Fund's real estate.
7. The capital of the Real Estate Income-generating Fund (Traded) may not be reduced.
8. The capital of the Fund may be increased by means of in kind shares in accordance with the same conditions stipulated in clause (3) (First) of this Appendix. The increase shall be allocated to the owner of the in kind shares. The Pre-emptive Right shall not be applied to subscription of old Unitholders.

Second: Rules of Investment in Real Estate Income-Generating Fund (Traded)

1. The Fund invests mainly in developed real estates that generate income periodically for a period of not less than one year and may generate periodic income in accordance with these controls. The Fund Manager may not invest in lands.
2. The Fund Manager shall distribute 90% of the operations' revenues to the Unitholders on an annual basis, unless the Articles of Association provide for a shorter period.
3. The Fund may invest no more than 25% of its net asset value in Money Market Funds or Real Estate Income-Generating Funds (Traded) under the following conditions:
 - a. Funds invested in shall be licensed by the Authority or subject to another Regulatory Body.
 - b. The Fund's Articles of Association provide that it is permissible to invest in Money Market Funds or Real Estate Income-Generating Funds (Traded).
 - c. The investments made in one Fund may not exceed 15% of the net asset value of the Fund.
 - d. None of the Funds invested in shall be managed by the same Fund Manager.
 - e. The investments made in Funds managed by one manager may not exceed 15% from the net asset value of the Fund.
 - f. The investments made in Private Funds may not exceed 10% of the net asset value of the Fund.

4. The Fund investments may not exceed, directly or indirectly, 30% of the Fund's net asset value upon contracting in a single real estate, except for the Fund that aims to invest in a specific asset of at least KD 30 million. The provision of this clause applies only if one or more properties are offered as an in kind share in the Fund.
5. The Fund investments may not exceed, directly or indirectly, 30% of the Fund's net asset value upon contracting in a single real estate, except for the Fund that contains a specific asset of at least KD 30 million at the time of investment.
The provision of this clause applies only if one or more properties are offered as an in kind share in the Fund.
6. The Fund may not borrow or enter into transactions that may give rise to liabilities over 50% of its net asset value whether directly or indirectly, and to be invested in real estate only.
7. The Fund may not invest in real estate outside the State of Kuwait.
8. In the event that the property is directly owned by the Fund, the property must be wholly owned by the Fund or the Fund shall have a separate share therein. In the event the investment in the property is an arrangement of the right to the usufruct (Intifa'a), such rights shall include the entire property or a separate share therein.
9. The Fund may incorporate or take part in the incorporation of companies for possessing real estate in the state of Kuwait, provided that the percentage owned by the Fund shall not be less than 51% of such company and shall have control over its management. The property to be invested in is required to have a minimum of one operating year.
10. The term of the Fund shall not be less than 10 years, and may be renewed in accordance with the Fund's Articles of Association.
11. The Fund Manager, when investing in real estate, shall observe the following:
 - a. The purchase price or obtaining the right to the usufruct (Intifa'a) for it shall not exceed 5% above the average of valuations that the Fund Manager has received from the real estate valuers. In the event it wishes to invest at a price higher than the average of the valuations, the approval of the Unit holders' assembly shall be obtained by a majority of more than 50% of the issued Fund's capital. The Unit holders of parties relevant to the seller or assignor of the right to the usufruct (Intifa'a) may not vote on this decision.
 - b. The sale price of the property or the waiver of the right to the usufruct (Intifa'a) shall not be less than the average of valuations that the Fund Manager received from the real estate valuers. In the event of an intention to sell or waiver at a price lower than the average of the valuations, the approval of the Unit holders' assembly shall be obtained by a majority

- of more than 50% of the issued capital of the Fund. The Unit holders from the parties relevant to the buyer or assignor shall not vote on this decision.
- c. Without prejudice to Item (a) and Item (b) above, the approval of the Investment Controller and the Authority must be obtained when dealing in investments in which the counterparty is one of the parties related to the Fund.

Third: The requirements of the assets of the Real Estate Income-Generating Fund (Traded)

1. Except for the right to the usufruct (Intifa'a), all the properties of the Fund shall be owned pursuant to a deed of title issued by the designated governmental authority.
2. All the properties of the Fund subject to the project must be approved in respect of its planning and it shall be free of violations, or be built with an official statement from the designated governmental authority (description certificate).
3. All Fund properties must have been valued at the time of the investment.
4. In the event of a purchase, the property shall be registered in the name of the Fund or the company that it establishes for this purpose. In the event of obtaining the right to the usufruct (Intifa'a), this must be done under a written contract in accordance with the provisions of the relevant laws.
5. The Fund Manager shall ensure that the real estate subject of investment meets the following conditions:
 - a. Generate periodic income for a period not less than one year, and commensurate with the feasibility of investing in them.
 - b. Have a good historical record or there is a promising prospect that the Fund will have a good income level from the revenues generated from the property.
 - c. Having economic feasibility in accordance with market studies.
 - d. Free of any attachment, mortgage, or privilege rights, except for mortgage rights restricted to the property as a result of the facilities or loans received by the Fund.
6. The Fund Manager shall, in the event of obtaining the right to the usufruct (Intifa'a) of a property favor of the Fund or in favor of a company established by him, ascertain the approval of the designated authorities to transfer the usufruct contract in the name of the Fund.
7. The Fund Manager must insure at one or more insurance companies for all the properties invested in, in full value and the risk of loss of rent at the occurrence of the incident covered by the insurance.

Fourth: Regulatory requirements for the Real Estate Income-Generating Fund (Traded)

1. Where the purpose of the Real Estate Income-Generating Fund (Traded) is to invest in a single property, it is necessary to obtain the approval of the Unit holders' assembly at the time of selling or waiver of the right to the usufruct (Intifa'a) of the sole property that the Fund invests in. The Articles of Association of the Real Estate Income-Generating Fund (Traded) may include restrictions regarding the Fund Manager's freedom to dispose of the properties owned by the Fund or the companies it establishes.
2. The Fund Manager shall appoint one or more real estate companies whose purposes permit managing real estate properties in order for it to manage the properties of the Fund. The Fund Manager must ensure that the company has the necessary expertise in the field of property management, which is responsible for all aspects of real estate management, including but not limited to the management, maintenance, rental, collection of rent and other management matters.
3. All notices of Unit holders applicable to the Fund Manager towards the Unit holders, and stipulated in Chapter Two of this Module, shall be replaced with disclosures by the Fund Manager in the disclosure system in force at the Exchange in accordance with the terms specified for each notice, to the extent that it does not conflict with the nature of the Real Estate Income-Generating Fund (Traded).
4. In the event of delisting the Real Estate Income-Generating Fund (Traded) from listing in the Exchange, it must be liquidated in accordance with the procedures adopted in these Bylaws, unless the Unit holders assembly approves by a majority of more than 50% of the issued capital of the fund to continue as a real estate Fund, provided that the Fund is compatible with the provisions of these Bylaws. In the event of the expiration of the Fund in accordance with the conditions set forth in Chapter Two of this Module, the Fund shall be considered delisted and shall be liquidated in accordance with the Bylaws and Articles of Association of the Fund.
5. The real estate Fund may be converted into a Real Estate Income-Generating Fund (Traded) according to the following conditions:
 - a. Amend the Fund's Articles of Association in accordance with the requirements and controls of investment in the Real Estate Income-Generating Fund (Traded).
 - b. The requirements of listing in the Exchange shall be met, and if the real estate Fund is a close-ended Fund, it may offer part of its Units for subscription in order to meet the listing conditions and requirements.
 - c. The Fund shall be in compliance with the conditions, controls and rules of the Real Estate Income-Generating Fund (Traded) provided for in this Attachment.

6. The Authority may grant the real estate Fund a period to meet the requirements for conversion to a Real Estate Income-Generating Fund (Traded). The Authority may extend this period whenever it deems it necessary.
7. Once the Real Estate Fund is converted into a Real Estate Income-Generating Fund (Traded) it becomes subject to the provisions of this Attachment and the Exchange rules.

Fifth: Valuation

1. The Fund Manager shall undertake a valuation of the Fund's real estate assets once every six months at a minimum, taking the lower valuation price, in accordance with the conditions set forth in Article (2-24) of this Module. The Fund Manager shall exercise the Care of a Prudent Person to serve the interest of the Fund and the Unit holders.
2. The Fund Manager shall adopt the following equation to evaluate the cash generated from operations.
$$\text{Operating income} = \text{net income} + (\text{amortization and depreciation} + \text{loss from sale of fund assets}) - (\text{profit from sale of fund assets} + \text{interest} / \text{profit deposits}) - \text{provisions for maintenance, property development and evacuation.}$$
3. The Fund Manager shall determine a reasonable provision for maintenance, real estate development and evacuation at a reasonable rate, with clarifications if the provision exceeds 10% of the total operating income of the Fund.

Annex 3

Appendix 11

Detailed Subscription Statement

Model Contents of Detailed Subscription Statement

This model is to be used when offering an increase in the capital of a listed Fund for subscription. The Fund Manager shall ensure that this document includes the necessary information to help investors make an informed and well-considered decision regarding the proposed investment. The following data shall be included at a minimum as per the sequence provided in this model:

First: Cover Page:

1. Name of Fund.
2. Name of Fund Manager.
3. Subscription Period.
4. A prominent legible warning written in bold font and framed as follows:

With regard to the contents of this document, we advise investors to read and understand this document. If in doubt, please seek the advice of a Person licensed in accordance with the Law who specializes in giving advice on making an investment decision to participate in the Fund.

Second: First Page after the Cover Page

The first page which comes after the cover page shall include the following:

1. A prominent legible disclaimer written in bold font and framed as follows:

The Capital Market Authority has approved the incorporation of the Fund and offering of its Units. The Authority shall not bear any liability for the contents of this document. It does not give any confirmation of the accuracy or completion of its contents. It shall not bear any liability whatsoever for any loss resulting from this document or from relying on any part thereof. The Capital Market Authority does not give any recommendation whether it is a good investment or not.

2. In case of Funds that operate in accordance with the provisions of Islamic Sharia, a statement shall be added as follows:

The [name of Fund) has been approved as a Fund licensed to operate in accordance with the provisions of the Islamic Sharia by an External Sharia Auditing Office appointed by the Fund.

3. A statement regarding “Fund Manager’s duties” on the inner cover page is framed as follows:

This document was prepared by the Fund Manager who is fully liable for the truth and accuracy of the information provided for therein. The Fund Manager confirms that it does not contain any untrue or misleading information nor inadvertently omits other facts that would render any statement in the document false or misleading.

4. A statement on the Authority’s approval on the detailed subscription statement as follows:
This detailed subscription statement is accepted by the Capital Markets Authority on ___/___/___.

Third: Preamble

A statement indicating that the detailed subscription statement has been prepared as per the Law of the Capital Markets Authority and these Bylaws and has been approved by the Capital Markets Authority.

Fourth: Definitions

In case there are terms that require clarification, the Fund Manager shall add a special section for the clarifying definitions.

Fifth: Overview of the Fund (including at minimum the data below)

1. Name of the Fund.
2. Incorporation date.
3. Type of the Fund: Determine the type of Fund as per the nature of its business.
4. Objective of the Fund.
5. Capital and the payment method of the Fund.
6. Name and profile of the Fund Manager, including a statement that the Fund Manager is licensed by the Capital Markets Authority, its address and any website containing information on either the Fund or its manager.
7. Names of the Fund's administrative board members.

8. Name of the Custodian and a statement that the Custodian is licensed by the Capital Markets Authority.
9. Name of the Investment Controller and a statement that the Investment Controller is licensed by the Capital Markets Authority.
10. Name of the External Auditor and a statement that the External Auditor is registered at the Capital Markets Authority.
11. Name of the External Sharia Auditing Office and a statement that the Office is registered with the Capital Markets Authority (if applicable).
12. Name of the real estate managing company (if applicable).
13. Name of Investment Advisor and a statement that the Investment Advisor is licensed by the Capital Markets Authority (if applicable).
14. Any other contracted parties and information about them (if applicable).
15. A table detailing all fees, expenses, and charges, associated with the Fund's operations, including the method of calculation and payment for service providers' fees, whether payable by the Unitholders, from the Fund's Assets, or by the Fund Manager.

Sixth: Financial Summary and Historical Financial Statements of the Fund

- a. Summary of the current investments of the Fund.
- b. Summary of the financial statements of the Fund, including comparative figures for the last three financial years. The audited annual financial statements for the last three financial years shall also be attached. If the Fund's term is less than three financial years, the summary shall be provided for the elapsed financial years of the Fund.
- c. Summary of distributions, and in case there are no distributions made by the Fund, a statement to that effect.
- d. Summary of historical closing prices and trading values in the Exchange.

Seventh: Investment Risks in the Fund, including:

- a. The main risks associated with investing in the Fund, including risks that the Fund may face and any circumstances reasonably likely to affect the Fund's net asset value and returns.
- b. A prominent statement informing investors of the following:
 - The potential risk of losing money when investing in the Fund.
 - That investing in the Fund is not equivalent to a bank deposit guaranteed by a bank or involves the bank in any manner.

Eighth: Capital Increase

- a. Purpose of the capital increase.
- b. Details of the investment opportunity, if predetermined.
- c. If the investment opportunity involves real estate, the real estate shall be specified, as well as its valuations and purchase or right to the usufruct (Intifa'a) price.

Ninth: Procedures of Subscription, Allotment, and Pre-Emptive Rights, including, at a minimum:

1. Name and address of the entity responsible for receiving the subscription payments and the mechanism for paying subscription amounts (cash payments to the fund are not allowed).
2. Subscription fees or share premium (if any).
3. The period of exercising Pre-Emptive Rights and the associated timeline.
4. Procedures and period of waiver of the Pre-Emptive Rights and the associated timeline.
5. Subscription period, indicating the opening and closing date of subscription.
6. A statement that sums paid by subscribers, along with any returns, will be refunded in the event that the minimum capital increase is not covered, within a period not exceeding 10 Business Days from the end of the subscription period.
7. Allotment procedures and the refund of amounts not allocated to Units, ensuring the following:
 - a. In case the subscription exceeds the targeted Fund's increased capital, the Units shall be distributed amongst the subscribers on a pro rata basis after distributing the minimum subscription to all subscribers.
 - b. The date for allocating the Units shall not be more than 10 Business Days from the date of closing the subscription.
 - c. The payments exceeding the amount of subscriber's allotment shall be refunded within 10 Business Days as of the date of allotment. No interest on the same shall be payable.
8. Any other data with respect to subscription, allotment, and Pre-Emptive Rights.

Tenth: Other information

Any other information reasonably known or shall be known by the Fund Manager, that may be – reasonably – requested by the current or potential Unitholders or their advisors, or that are likely to be included in the detailed subscription statement upon which the investment decision will be taken.