

Administrative Resolution No. (4) of 2012
Concerning the Amendment of Some Articles of Chapter Eight of the
Executive Bylaw and Adding Two New Articles Thereto

Having Perused:

- Law No. 7 of 2010 concerning the establishment of the Capital Authority and Regulating Securities Activity; and
- Law No. 1 of 2011 passed in the meeting of the Board of Commissioners No. 4 of 2011 concerning the issuance of the Executive Bylaw of the Capital Markets Authority on 3/3/2011; and
- The Resolution of the Board of Commissioners passed in its meeting No. 14 of 2011 held on 18/7/2011 concerning the extension of the time limit for settlement of the current investment funds' situations; and
- The Resolution passed in the meeting of the Board of Commissioners No. 4 of 2012 held on 12/2/2012, concerning “Amendment of some Articles of chapter eight of the Executive Bylaw and adding two new Articles thereto”; and
- Based on the requirements of business interest;

We Resolved the Following

Chapter Eight

Investment Funds

Article (294)

The investment fund shall take one of the following two forms:

- 1- Open investment fund, which is a fund with a changing capital. The capital of this fund increases by the issuance of new investment units, or decreases via the redemption of some of its units during the period specified in its Articles of Association.
- 2- Closed investment fund, is a fund with a fixed capital. None of its units can be redeemed but at the end of the fund term. Its capital can be increased pursuant to the provisions of its Articles of Association, and its units can be listed in the Stock Exchange.

A fund, pursuant to its nature, may follow any of the following types:

- A) Equity Fund
- B) Real estate Investment Fund
- C) Money Market Fund
- D) Debt Instrument Fund
- E) Private Equity Fund
- F) Fund of Funds

Or any other type that may be approved by the Capital Markets Authority.

Article (295)

The capital of the investment fund shall be divided into units of equal values. The liabilities of investors in the fund are limited to the value of their shares. The value of the units shall be paid upon underwriting therein, except for the real estate investment funds and private equity funds, where it is possible to license them to pay the underwriting value in installments in accordance with the Articles of Association of the fund.

The capital of the fund may not be less than five million Kuwaiti Dinars or its equivalent in other currencies.

Article (300)

- 1- Capital Markets Authority shall study the application of establishing the investment fund and issue its decision thereupon within thirty days as of the date of completing all the required documents and data. The Capital Markets Authority may include in the issued resolution of approval any conditions or restrictions it may deem necessary.
- 2- The percentage of the fund manager participation shall not be less than 5%, and the fund manager may not dispose this underwritten percentage as long as the fund exists. Certificates of this percentage shall be kept by the custodian.

Article (301)

Applicant for the establishment of the investment fund shall complete the minimum limit of the fund capital, and issue the ownership units within three months of issuing the license. If such period ended without covering the minimum limit, the fund manager may request Capital Markets Authority an extension of a similar period. The Authority shall study the request and give its feedback within ten business days.

Article (306)

The Articles of Association of the investment fund shall include the main information that assists the investors to take a sound and thoughtful decision concerning the proposed investment, and to include the following details as a minimum:

- 1- Fund form and type.
- 2- Name of the fund.
- 3- Fund manager name and address.
- 4- Investment controller and fund custodian.
- 5- Fund term.
- 6- Fund capital and method of payment.
- 7- Fund currency.

- 8- Provisions of the assembly of unit holders.
- 9- Formation and rules of the fund Board of Directors.
- 10- Investment objectives of the fund.
- 11- Method of transferring, issuing, and redemption of fund units.
- 12- Periods of redemption (if any).
- 13- Cases of fund dissolution and liquidation.
- 14- Fiscal year commencement and end dates for the fund.
- 15- Sharia supervisory office for funds licensed to work pursuant to the provisions of the Islamic Sharia.
- 16- Investment mechanism and risks.
- 17- Methodology of calculating unit net value.
- 18- Statement stipulating that the fund manager is licensed by the Authority.
- 19- Any other details requested by the Authority.

The Articles of Association of the fund shall be written in Arabic, and shall be available for free upon request.

Article (308)

The prospectus of the fund shall include all the information necessary to enable the investor to evaluate the investment fund, its management and its anticipated opportunities. It shall include a brief about the fund manager, its controller, its custodian, the sales commission percentage, and enough information about any obligations, rights or privileges, all of which pursuant to the form approved by the Capital Markets Authority.

Article (311)

Capital Markets Authority may cancel the permission of marketing an investment fund founded outside the State of Kuwait in any of the following conditions:

- 1- If it is found out that it did not fulfill any of the requirements of getting the permission.
- 2- If this procedure is in favor of protecting local investors.
- 3- If the fund manager, investment controller or custodian violated any of the provisions of Law No. 7/2010, this Bylaw, or presented wrong, inaccurate or misleading information to the Capital Markets Authority.

Article (312)

The manager of the investment fund shall abide by the following:

- 1- Manage the assets of the fund in a manner that achieves its investment objectives as stipulated in its Articles of Association.
- 2- Taking all investment decisions and other decisions for the favor of the investment interests of the fund and unit holders.
- 3- Registering purchase and sales operations that take place for the favor of the investment fund in an accurate manner, and pursuant to their timely sequence.
- 4- Representing the investment fund in its relation with third parties and with judiciary, and shall have the right to sign on behalf of the fund.
- 5- Providing an accounting system to account for following up the financial transactions of the fund, and assuring the existence of an auditing system that is sufficient and efficient for handling the transactions entered into the accounting system.
- 6- Assuring the existence of an sufficient system to settle transactions entered into the accounting system with the cash accounts and securities opened in the name of the fund with the custodian.
- 7- Providing enough cash for the fund fulfillment of any liabilities that may arise.
- 8- Not to expose the investment fund to any unnecessary investment risks in view of the Articles of Association of the fund.
- 9- Providing all necessary information about the fund for all the members of the fund's Board of Directors to enable them to perform their duties efficiently.

- 10- Informing the Capital Markets Authority immediately of any development in the fund business that may expose unit holders' interests to any risk.

Article (320)

The investment controller shall abide by the following:

- 1- Assuring that the management and investment of the fund's assets are pursuant to the provisions of Law No. 7 of 2010 and its Executive Bylaw, and the laws, regulations, and directives of the Capital Markets Authority regulating the same, and be invested within the limits of the mechanisms and policies stipulated in the Articles of Association of the fund, and the resolutions and directive of the fund's Board of Directors.
- 2- Informing the Authority and the fund's Board of Directors of any violations committed by the fund manager.
- 3- To evaluate the investment shares or units in the method and in the times specified for the same in the Articles of Association of the fund.

Article (339) Repeated

The custodian shall observe the following:

1. Keep the funds and assets of the fund in accounts that are independent and separate from its own accounts or other accounts of others. It shall exercise the degree of care expected from a prudent person.
2. Receive, keep and deposit the dividends and any other distributions arising from the activities of the fund.
3. Notify the fund manager of any offers or rights accruing in respect of the fund's assets and forward any notices it receives, within the period prescribed therefor.
4. Implement the instructions of the fund manager related to the custodian's scope of work.

Article (346)

The investment fund shall invest at least 75% of the net value of its assets in achieving its basic investment objectives.

Article (347)

The Authority shall lay down the investment controls for each type of funds by resolution issued by the Board of Commissioners.

Article (348)

The Authority shall lay down the controls and limits of loaning for each type of funds.

Article (350)

The Investment Fund Manager shall present the audited annual financial statements of the fund to the Authority and the public within a period not exceeding 30 business days from the end of the fund fiscal year.

Article (356)

The fund manager, the investment controller, and the custodian shall provide the Authority with all the information, documents and data requested by the Authority within the period it determines. The Authority may examine and review the fund's accounts and records, and take the necessary data and information to conduct the process of audit and inspection.

Article (360)

The Authority shall notify the fund manager, investment controller, or custodian in writing of its intention to revoke the fund's license and the reasons which caused it to do so, and the fund manager, investment controller, or custodian shall, within fifteen days of such notice, submit undertakings satisfactory to the Authority in order to avoid the revocation of the fund's license.

Saleh Mubarak Al-Falah

Chairman, CMA Board of Commissioners

The Executive Manager

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