



# **OFFERING OF SECURITIES MODULE**



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## OFS-2.3 Public Offering

**OFS-2.3.1** All public offering applications must meet the eligibility criteria under Section OFS-1.5 and the eligibility criteria related to the type of security or issuer and follow the requirements outlined in Appendix OFS-1.

### *Corporate Governance*

**OFS-2.3.2** Issuers of securities in a public offering must confirm to the CBB before the registration of the offering document that it is able to comply with the CBB Law, rules and regulations, as well as with all other applicable laws, rules and regulations.

**OFS-2.3.3** A public offer may only be approved by the CBB where: The issuer must meet the following requirements in order for a public offer to be approved by the CBB:

- (a) The issuer is a duly incorporated entity under the laws of the Kingdom of Bahrain, or in case of an overseas issuer, under the laws of its place of incorporation;
- (b) The issuer operates in conformity with its Memorandum and Articles of Association or equivalent constitutional documents;
- (c) The securities are freely transferable and free from any encumbrances;
- (d) The offered securities are to be listed on a licensed exchange in the Kingdom of Bahrain, and there are adequate assurances (including a signed listing agreement) between the issuer and the licensed exchange that they will be admitted to such a platform;
- (e) The necessary custodial and/or central depository arrangements have been made including the deposit of securities with an entity eligible to provide depository services under Article 94 of the CBB Law;
- (f) The necessary clearing and settlement arrangements have been made that give effect to Article 108 of the CBB Law;
- (g) The issuer has made the appointment of the eligible advisors, as per this Module including the appointment of a listing agent to liaise with the licensed exchange and the CBB where the CBB deems necessary; and
- (h) The issuer meets such other requirement as determined by the CBB from time to time.

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## OFS-2.3 Public Offering (continued)

**OFS-2.3.4** The issuer must appoint a lead manager for any public offer.

**OFS-2.3.5** Initial public offers of equity securities will only be approved by the CBB if the issue is underwritten, unless an exception is made by the CBB, in accordance with Paragraph OFS-2.3.6. **An issuer in an initial public offering of equity securities must ensure that the issue is underwritten, unless an exception is made by the CBB, in accordance with Paragraph OFS-2.3.6.**

### *Underwriting*

OFS-2.3.6 The CBB may approve an issue without an underwriter where:

- More than one institution who are not related parties provide the proposed offering price; or
- The lead manager has established the issue price through a book building mechanism; and
- The lead manager has signed a declaration of due diligence and has submitted a declaration confirming to the issuer and the CBB that the issue will be fully subscribed, which declaration must be included in the offering document.

**OFS-2.3.7** Where the issue is to be underwritten, full details of the underwriter and the underwriting arrangement must be disclosed in the prospectus and the full underwriting agreement as signed by the parties must be made available for inspection by the subscribers.

OFS-2.3.8 Where the issue is not to be underwritten, the CBB retains its right to impose full or partial underwriting based upon pricing of the securities to be issued and market conditions.

**OFS-2.3.9** Where the issue is underwritten the:

- Underwriter must not be a related party; and
- Lead manager and/or underwriter must directly or through an authorised market maker, establish a price stabilisation mechanism for the securities for a period of at least six months starting from the first day of trading on a licensed exchange. The CBB may require a longer period of price stabilisation where it considers it necessary.

**OFS-2.3.10** Details of underwriting agreements must be disclosed in the offering document and the agreement must be capable of being enforced under any circumstance.

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### OFS-2.3 Public Offering (continued)

**OFS-2.3.11** In respect of public offers of debt securities, where the issue is to be underwritten or sold through primary dealer arrangements, full details of the underwriter, primary dealer, the underwriting arrangement and/or primary dealer arrangements must be disclosed in the prospectus and the underwriting agreement must be made available for inspection by the subscribers.

#### *Book Building*

**OFS-2.3.12** The preliminary/red herring prospectus containing all the information except the information regarding the price at which the securities are offered, must be filed with the CBB prior to it being used in any manner by the issuer or its advisors.

**OFS-2.3.13** The lead manager **and/or the underwriter** to the issue must be nominated by the issuer as a book runner and his name must be disclosed in the prospectus.

OFS-2.3.14 The preliminary/red herring prospectus to be circulated may indicate the price band within which the securities are being offered for subscription.

**OFS-2.3.15** The book runner, on receipt of the offers must maintain a record of the names and number of securities ordered and the price at which the investors are willing to subscribe to securities under the placement portion.

**OFS-2.3.16** On receipt of the information, the book runner and the issuer must determine the price at which the securities are to be offered to the public.

**OFS-2.3.17** The book runner and other appointed advisors associated with the book building process must maintain records of the book building process and the CBB has the right to inspect and obtain a copy of such records.

**OFS-2.3.18** **Details of the outcome of the book building process must be disclosed in the prospectus or offer document and must include information such as the general range of the prices at which the institutional investors are willing to subscribe to under the placement portion, the total number of securities ordered and the total number of institutions involved. The CBB shall have the right to require the disclosure of any other additional information if it deems necessary.**

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### OFS-2.3 Public Offering (continued)

OFS-2.3.19 The issuer, lead manager and/or underwriter must consider the outcome of the book building process and/or any other processes or arrangements employed, when establishing the final offer price at which the securities are to be offered to the public. A statement to the effect must be duly disclosed in the prospectus.



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## OFS-2.6 Employee Stock Option Plan

**OFS-2.6.7** All listed companies' securities held on behalf of the employees under an employee stock option plan or employee share benefit plan, must be held in trust by a trustee subject to the prior written approval of the CBB. The securities account opened and maintained at a licensed central depository for this purpose must be clearly identified as a trust account for the employee stock option plan or employee share benefit plan accordingly. Where employees are eligible to trade in the securities of the issuer held on their behalf in an employee stock option plan, the directors, executive management and any other key persons must not be eligible to hold the position of trustee of such plan.

### *Transitional Arrangement*

**OFS-2.6.7A** Listed companies that have already established other vehicles (e.g. Single Person Company) to hold its relevant securities on behalf of the employees under their employee stock option plan or employee share benefit plan must comply with the requirements of Paragraph OFS-2.6.7 by no later than 31<sup>st</sup> March 2018.

**OFS-2.6.8** Unless the securities subject to the same plan are identical with other securities, they must be separately designated.

OFS-2.6.9 The plan may provide for an adjustment of the subscription or option price, or the number or amount of securities subject that such variation provides a participant the same portion of the equity capital as that to which he was previously entitled.

OFS-2.6.10 The issue of securities as consideration for an acquisition will not be regarded as a circumstance requiring adjustment.

**OFS-2.6.11** An adjustment other than on a capitalisation issue must be confirmed in writing by the company's auditor and in its opinion be fair and reasonable.

**OFS-2.6.12** The plan must provide, or the circular must state, that the provision relating to the matters contained in Rule OFS-2.6.4 cannot be altered to the advantage of participants, without the shareholders' prior approval at a General Assembly.

**OFS-2.6.13** The plan and any other subsequent renewal or amendments to the terms of the plan are subject to the prior approval of the CBB.



OFS-2.6.14 The holders or the owners of securities issued or subsequently issued under any employee share benefit plan, whether the issuer or the directors of the issuer are trustee of the plan or not, are subject to the provisions related to prohibition of abuse of inside information and insider trading laws including but not limited to those set out in Module MAM of CBB Rulebook Volume 6.

<b>MODULE</b>	<b>OFS: Offering of Securities</b>
<b>CHAPTER</b>	<b>OFS-3: Capital Market Advisory Services Provider</b>

## **OFS-3.1 Capital Market Advisory Services Provider**

OFS-3.1.1 For the purpose of this Module, a Capital Market Advisory Services Provider (appointed advisor) means any person who provides or involves himself with any activity or services stipulated under Article 80 of the CBB Law.

### ***Definition of Advisors***

OFS-3.1.2 For the purpose of this Module, in addition to any other designation by the CBB, a Capital Market Advisory Services Provider may be classified as follows:

- (a) ~~Auditors/Financial Advisors;~~
- (aa) **Financial Advisors;**
- (b) Custodian;
- (c) Independent Reporting Accountant;
- (d) Independent Valuer;
- (e) Issue Agent;
- (f) Lead Manager;
- (g) Legal Advisor;
- (h) Paying Agent;
- (i) Receiving Bank;
- (j) Securities Depositor and ownership transfer agent;
- (k) Trustee;
- (l) Shari'a Advisor;
- (m) Promoter;
- (n) Listing Agent;
- (o) Underwriter; or
- (p) Any other person designated as a Capital Market Advisory Service Provider by the CBB from time to time.

<b>MODULE</b>	<b>OFS: Offering of Securities</b>
<b>CHAPTER</b>	<b>OFS-3: Capital Market Advisory Services Provider</b>

## OFS-3.2 General Eligibility

### *Incorporation, Licensing and Acceptance*

**OFS-3.2.1** The appointed advisor must be either incorporated in the Kingdom of Bahrain and licensed by the CBB or authorised to provide this service by the CBB.

**OFS-3.2.2** The Memorandum and Articles of Association and/or the by-laws of the advisor must allow it to provide such service.

**OFS-3.2.3** Where applicable, the appointed advisor must be incorporated in, be a member, associate or registered with the relevant local, and/or international professional body of a jurisdiction which is a signatory to the IOSCO MMoU.

### *Ability to Provide the Service*

OFS-3.2.4 In addition to incorporation and licensing, the CBB will review the ability of the advisor to provide the service. The CBB will consider the following in such determination:

- (a) Historical records and prior performance;
- (b) Maintenance of systems and controls set-up by the advisor; and
- (c) Number of suitably experienced and qualified employees.

Moreover, advisors' fees and charges should be fixed reasonably in order to ensure that the costs associated with raising capital or initial public offerings are competitive.

<b>MODULE</b>	<b>OFS: Offering of Securities</b>
<b>CHAPTER</b>	<b>OFS-3: Capital Market Advisory Services Provider</b>

## OFS-3.6 Role and Responsibilities of the Underwriter

### *Eligibility*

**OFS-3.6.1** Any person acting as an underwriter to any offering, must be licensed or otherwise authorised by the CBB to undertake such activity.

OFS-3.6.2 For the purpose of this Module, the definition, role and requirements related to the underwriter also apply to co-underwriters.

OFS-3.6.3 The CBB may investigate the financial suitability of a proposed underwriter and may reject the appointment of the underwriter and/or the application for offering if it is not satisfied as to the underwriter's ability to meet its commitment under the proposed underwriting agreement and its potential impact in its capital adequacy.

### *Firm Commitment Underwriting*

**OFS-3.6.4** Where an underwriter has been appointed and the securities are not fully subscribed during the offering period, the underwriter must purchase the balance of the securities through a firm commitment underwriting arrangement.

**OFS-3.6.5** The firm commitment underwriting arrangement must be detailed in an underwriting agreement, which must be submitted to the CBB as part of the offering of securities application.

**OFS-3.6.6** For the purpose of this Module, the total of all the underwriting undertakings of the underwriter, the company that controls it, its subsidiary, a subsidiary of the company that controls it and a company affiliated with it, are calculated as one underwriting undertaking.

OFS-3.6.7 The underwriter may appoint or form an underwriting group for any underwritten issue.

**OFS-3.6.8** The underwriter must comply with the CBB Law, rules and regulations, including Volume 6 of the CBB Rulebook, and the issuer's Memorandum and Articles of Association, particularly in respect of the eligibility of the expected subscribers to acquire the issuer's securities and related disclosure requirements.

**OFS-3.6.9** After the approval of the offering documents (including the underwriting agreement) neither the issuer nor any advisor or person acting on its behalf, nor the underwriter or any person acting on its behalf, has the right to change any provision or commitments stipulated in the underwriting agreement.

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CHAPTER	OFS-3:	Capital Market Advisory Services Provider

## OFS-3.6 Role and Responsibilities of the Underwriter (continued)

**OFS-3.6.17** The underwriter is required to provide sufficient and adequate information to the CBB and disclose the same in the prospectus or offering documents as to the method, bases, mechanism, assumptions, and all other related information used to reach the offering price.

**OFS-3.6.18** In cases where the offering price is determined by the underwriter jointly with any other advisor or third party, the name and role of such advisor or person must be provided to the CBB and disclosed in the prospectus or offering document.

**OFS-3.6.19** The underwriting agreement must be provided as a document available for inspection to the subscriber.

**OFS-3.6.20** For purposes of Paragraph OFS-3.6.17 and item 25.1(b) under Section 17 of Appendix OFS-1, relating to the pricing of securities and bases or methods for determining the issue or offer price and for prospectus disclosure purposes, the bases used for determining the pricing of securities must be elaborated on and general statements must be avoided.

**OFS-3.6.21** For purposes of Paragraph OFS-3.6.20, factors that are commonly cited in pricing determination which should be elaborated may include, but are not limited to, prevailing market performance and condition (e.g. price earnings ratio, dividend yield, etc.), financial and operating performance (e.g. earnings per share, etc.), consolidated net tangible assets per share and/or net assets per share (or liabilities as to the case may be), earnings potential, assessment of management, market valuation of companies in related businesses, intellectual property and technology, etc. Where appropriate, cross-references should be made to the relevant and specific sections of the prospectus.

<b>MODULE</b>	<b>OFS:</b>	<b>Offering of Securities</b>
<b>CHAPTER</b>	<b>OFS-5:</b>	<b>Offering Documents</b>

## OFS-5.1 Prospectus Requirements

**OFS-5.1.1** A prospectus must be drawn up for every offer of securities. The prospectus must contain the minimum information requirements set out in Sections OFS-5.2 to OFS-5.10 and in this Module and must be submitted to the CBB for approval.

**OFS-5.1.2** Issuers of securities, depending on the industry that the issuer is involved in engaged in specialised industries (i.e. e.g. banking, insurance, mining, telecommunications and oil and gas companies as well as any other specialised industries), may be are required to provide additional information as directed by the CBB.

### *Material Information*

**OFS-5.1.3** The issuer must disclose any information that would be material to an investor's investment decision.

**OFS-5.1.4** In addition to the information prescribed under this Module, a prospectus must include all such information within the knowledge of those preparing the prospectus so that investors may make an informed assessment.

OFS-5.1.5 It is the responsibility of each issuer and lead manager to determine the material information:

- (a) According to the particular nature of its own affairs and the nature and type of securities for which an offering or listing is sought;
- (b) Necessary to enable a person who invests or seeks to invest in securities to make an informed assessment of the activities, assets, liabilities, financial position, management and prospects of the issuer, and of its profits and losses and the rights attached to such securities; and
- (c) The implicit risk associated with such investment.

OFS-5.1.6 For the purpose of Paragraph OFS-5.1.5, material information consists of both material facts and material changes related to the business and affairs of the issuer, taking into account qualitative and quantitative facts, developments and events capable of influencing the offering or market price or value of issued securities.

### *Omission of Information*

**OFS-5.1.7** If a disclosure requirement is not applicable to an issuer's sphere of activity or legal form, no information need be provided in response to that requirement, although equivalent information must be given.

MODULE	OFS:	Offering of Securities
CHAPTER	OFS-7:	Distribution and Subscription

## OFS-7.1 Prior Request for Announcement and Invitation for Subscription (continued)

### *Listings*

#### OFS-7.1.6

Where the securities are to be listed on a licensed exchange, this must be disclosed in the offer and must provide the following information:

- (a) Location and name of the exchange;
- (b) Listing agent, if any;
- (c) Planned listing timeline;
- (d) The percentage of the total issued and outstanding securities to be made available for public subscription and trading on a licensed exchange;
- (e) Any market making or price stabilisation arrangements;
- (f) Any anticipated buy back agreement or related intention of the issuer;
- (g) Any lock up period of major or other class of securities holders;
- (h) The necessary clearing, settlement, central depository and securities transfer ownership arrangements; and
- (i) Any intention or agreement for a secondary (cross) listing.

#### OFS-7.1.7

Where the offering document states that the offer will be listed on issue, the CBB may prevent allotment from taking place where the issuer has not obtained the authority to list from the licensed exchange at the time of issue, and order that the issuer refund any monies paid by subscribers in respect of such issue.

#### OFS-7.1.8

The issuer, lead manager and/or any other appointed advisor must ensure that the requisite listing agreement is signed within a maximum of 10 calendar days from the closing date of the offering period, and that the date for commencement of trading on a licensed exchange is within a maximum of 15 calendar days from the closing date of the offering period. Immediately upon the signing of the listing agreement with the licensed exchange, the lead manager must notify the CBB confirming the signing of the listing agreement and inform the CBB of the date for the commencement of trading.

#### OFS-7.1.9

As the listing authority under Article 86 of the CBB Law, the CBB shall retain the right to determine and decide on the final date of listing and/or date of commencement of trading of securities on a licensed exchange.



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CHAPTER	OFS-7:	Distribution and Subscription

## OFS-7.4 Subscription Results and Allotment

### *Announcement of Subscription*

OFS-7.4.1 Subscription monies received in respect of a public offer must be held in a separate bank account with an approved receiving bank, until the final allotment of such securities has been approved by the CBB.

OFS-7.4.2 The issuer, lead manager or other principal advisor must publish the results of the subscription of a public offer in at least two local newspapers, one in Arabic and the other in English, stating all facts related to the outcome of the subscription in at least a 26 cm x 31.5 cm format. The announcement must be published within a maximum period of two business calendar days from the closing date of the offering period and must include the final allotment basis. The declared allotment basis must not be subject to any change thereafter.

OFS-7.4.3 The issuer must allot or allocate securities within **76** calendar days of the closing date of the offer in accordance with the allotment basis stipulated in the offering document or otherwise approved by the CBB upon the subscription results and publication referred to in Paragraph OFS-7.4.2.

### *Under-subscription*

OFS-7.4.4 The offering document must provide full information about the possibility of an under-subscription event, particularly regarding the treatment of unsubscribed shares for those issues which are not fully underwritten.

OFS-7.4.5 In the event that the issue is not underwritten no allotment may be made of any securities unless the subscription received is, at least equal to the minimum subscription amount set out in the offering document.

OFS-7.4.6 If a public offering of equity securities has not been fully subscribed and the offer is underwritten, the underwriter must purchase the unsubscribed shares and after obtaining the CBB approval, may then re-offer or resell the unsubscribed shares. **For the avoidance of doubt, any unsubscribed shares that might be re-offered or re-sold to a related company of the underwriter such as the company that controls it, its subsidiary, a subsidiary of the company that controls it and a company affiliated with it, shall be subject to the same underwriting commitment of the underwriter.**

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CHAPTER	OFS-7: Distribution and Subscription

#### OFS-7.4 Subscription Results and Allotment (continued)

- (e) The total securities allotted must in any case not exceed the total securities offered and approved by the General Assembly and the issuer, lead manager and any other appointed advisor must establish the allotment basis to avoid such possibility;
- (f) Allotment of securities must avoid allocation of any securities fraction, and therefore the issuer must provide provisions related to the possibility of fractions of securities remaining after final allotment; and
- (g) For any rights issue, the pro-rata allotment basis must be applied, or otherwise the General Assembly of securities holders must have approved such other allotment basis.

##### *Over-allotments*

OFS-7.4.13 The “over-allotment option” may only be exercised if such an option is disclosed and provided for in the offering document.

OFS-7.4.14 While exercising the over-allotment option, the issuer, lead manager or any other appointed advisor must fully adhere to general guidelines under Paragraph OFS-7.4.12.

OFS-7.4.15 The CBB may allow the extension of the allotment period of up to 76 calendar days to exercise the over-allotment option upon the request of the issuer, lead manager or any other appointed advisor on application, which contains the reasons and justifications for such extension.

OFS-7.4.16 In the event of the over-allotment option, the issuer, lead manager or any other appointed advisor is not allowed to exercise any discrimination, whether in cash or in kind among the subscribers or allottees.

##### *Trading of Underwritten Securities Subscribed by the Underwriter*

OFS-7.4.17 Where the underwriter has subscribed for, or purchased securities under an underwriting or sub-underwriting agreement following the under-subscription of the offering of securities, any intention to sell those securities in the ordinary course of trading on a licensed exchange shall, in the interest of maintaining market integrity, not be sold against any price stabilisation fund or the designated market maker as the buying counterparty.

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CHAPTER	OFS-7:	Distribution and Subscription

## OFS-7.5 Refunding and Dispatching

OFS-7.5.1 The issuer, lead manager or any other appointed advisor must refund the excess subscription money and dispatch securities within a maximum of **79** calendar days ~~of the date of allotment~~ from the closing date of the offering period.

OFS-7.5.2 A record for such refunding and dispatching must be maintained for further reference and CBB inspection requirements.

OFS-7.5.3 If the issuer fails to meet the refunding and dispatching date under Rule OFS-7.5.1, an interest at one month BIBOR is payable to the subscriber with respect to the subscription amounts received for the period from the required refunding and dispatching date to the actual refunding or dispatching date.

### *Dematerialised Securities*

OFS-7.5.4 As per Paragraph OFS-1.5.5, securities issued to the public after the effective date of this Module must have an allocated ISIN and be in dematerialised form and the issuer is required to designate the clearing house, or depository facility in which such securities will be deposited.

OFS-7.5.5 For the purposes of Article 178 of the CBB Law and Volume 6, dematerialised securities shall mean securities issued and entered in the registry in an electronic format and dematerialisation means the conversion of a security certificate from a physical form to an electronic form for securities that have already been issued before the effective date of this Module.

OFS-7.5.6 For the purposes of dematerialisation, each subscriber or shareholder will have to open an account with a licensed clearing house or a licensed central depository, acceptable to the CBB, and then request for dematerialisation of his certificates through the depository.

OFS-7.5.7 The dispatching of the dematerialised securities must be done in accordance with the CSD Module and SROs business rules.

OFS-7.5.8 The ownership and entitlement of allotted securities for each subscriber or allottee is established by book entry in the register maintained by the licensed clearing house and or licensed central depository, rather than through the issuing of a physical share certificate.

MODULE	OFS:	Offering of Securities
CHAPTER	OFS-7:	Distribution and Subscription

## OFS-7.5 Refunding and Dispatching (continued)

### *Physical Securities*

#### OFS-7.5.9

Subject to the requirements of the CSD Module, unless the security is required to be in dematerialised form, the subscriber may request a certificate as evidence of his shareholding, which certificate must contain or be in the following form:

- (a) The serial number;
- (b) The par value and class of the security;
- (c) The name of the issuer and the authority under which it was incorporated;
- (d) The address of the registered office of the issuer;
- (e) The name and address of the clearing house, central depository institution, and/or securities ownership transfer agent, if it is different from the registered office of the issuer;
- (f) Where a rubber seal is imprinted, original signatures must support it;
- (g) Where an embossed seal is used, it may, subject to the Articles of Association of the issuer, be supported by facsimile signatures only;
- (h) Where only the seal is used without supporting signatures, the method or system of control by the issuer on the application of the seal must be approved by the auditor of the issuer, and a copy of such approval forwarded to the CBB;
- (i) The certificate security must be designed so that the paper quality and watermark forgery and/or alterations are easily detectable;
- (j) The printing of securities certificates must only be entrusted to recognised securities printers; and
- (k) The size of the certificate is prescribed by the clearing house and/or central depository, which is used by the issuers.

#### OFS-7.5.10

[This Paragraph was deleted in September 2017]

