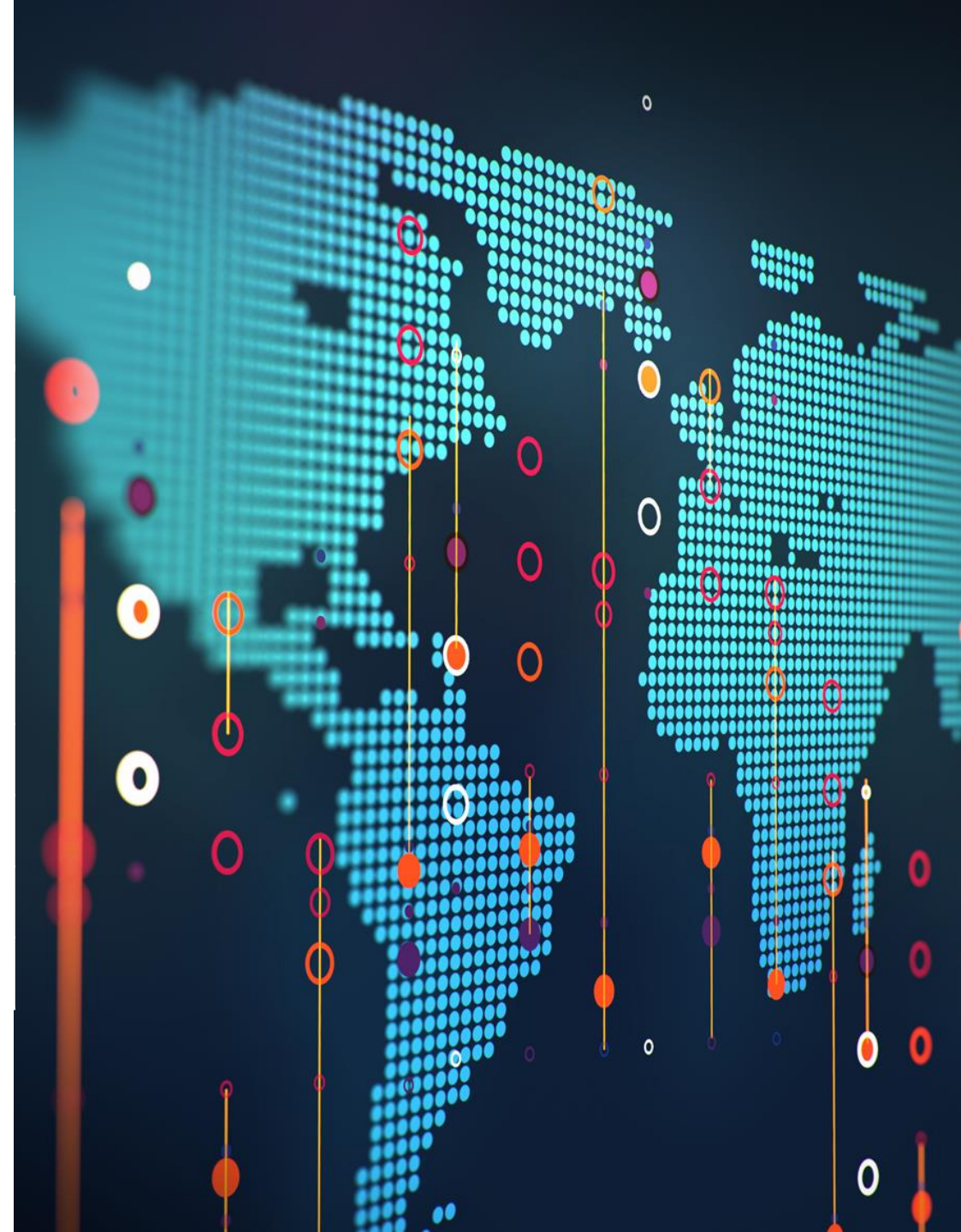


Guide to Marketing Foreign Funds in the Middle East

An aerial view of a modern city skyline at sunset. The sky is filled with soft, golden light and scattered clouds. The sun is low on the horizon, creating a lens flare effect. The city is dominated by numerous skyscrapers of varying heights and architectural styles. A prominent, very tall tower is visible on the right side of the frame. The foreground shows a complex network of roads and highways, with some construction cranes visible. The overall atmosphere is one of a bustling, modern metropolis.

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Introduction

We are pleased to provide this guide to marketing foreign funds in the Middle East, meaning the countries within the Gulf Cooperation Council (GCC).

The guide is aimed at providing a summary of the regulations, which apply to marketing the funds as of June 2021.

Our Charles Russell Speechlys funds team - based in the GCC region, the UK and Luxembourg - monitor these regulations and you are welcome to contact us for more details in the context of you and your colleagues looking to market specific funds to investors in the region.

We plan to update this guide periodically.

The information contained in this guide is for general purposes only and does not purport to constitute legal or professional advice from Charles Russell Speechlys and as a consequence may not be relied upon.



1. United Arab Emirates (UAE)

The Securities and Commodities Authority of the United Arab Emirates (SCA) has issued fund regulations that set out the provisions for the promotion of foreign funds, namely:

- The fund must be registered with and approved by the SCA, and
- Promoted or distributed by an SCA- licensed intermediary.

No promotion, marketing or distribution of foreign funds or making introductions in the UAE is permitted until the above conditions are satisfied. Foreign funds include mutual funds established outside the UAE or funds established in a free zone inside the UAE including the Abu Dhabi Global Market and Dubai International Financial Centre.



The following exemptions from the requirement to be registered and approved by the SCA and use an SCA-licensed intermediary may be useful for foreign funds:

- **Reverse solicitation**
Providing the investor initiates the marketing of their own accord and not due to marketing by the foreign funds or its placement agents, then this exemption may be applicable.
- **Private Placement Exemption**
Where there is a private placement in the UAE by an SCA-licensed intermediary to Professional Investors (regulated firms such as federal and local governments, international organisations and entities licensed by the SCA to conduct investment business, private investment vehicles and natural persons with a net worth of more than AED 4 million (c. \$1.1 million) or those with sufficient experience and understanding of the relevant investments) for a minimum of AED 500,000 (or AED 1,000,000 if the foreign fund is incorporated in a free zone), then this exemption may apply. Financial Free Zone or foreign financial institutions that wish to rely on this exemption will need to undertake a client classification of a UAE-resident client prior to making a promotion in order to properly assess whether the client meets the definition of a Professional Investor as defined in the SCA's 2021 Rulebook.
- Financial products listed in the UAE or listed in any other market.
- Introductions by financial advisors or analysts and legal advisors.
- Promoting or introducing group and related entities.

The registration process for foreign funds with the SCA is as follows:

- Set up an account with SCA's eServices portal.
- Complete application and prepare supporting documents for submission (i.e. Form 10004 and delegation letter, notarisation, Arabic translation).
- Pay registration fees (online payment using credit card or electronic transfer), and
- Submit application and supporting documents through eServices account.
- Applications for renewal for a further 12 months must be made at least one month before expiry of registration. Each renewal is valid for 12 months.
- Registration application fee per fund (or sub-fund) AED 35,000.
- Annual registration renewal fee per fund (or sub-fund) AED 7,500.
- All fees are non-refundable.



2. Abu Dhabi Global Market (ADGM)

Abu Dhabi Global Market (ADGM) is another free zone recognised for its international financial centre. It adopts similar robust regulatory regimes as other free zones and has gained popularity from firms setting up and/or marketing their domestic or foreign funds. ADGM provides competitive advantages to investors and fund managers.



The ADGM Financial Services Regulatory Authority (FSRA) regulates foreign funds wishing to promote in the ADGM and requires such funds to do so via an authorised ADGM firm that holds a licence for advising on investments and arranging investments in respect of units in a collective investment fund. Units in foreign funds can then only be promoted in or from the ADGM provided that:

- It notifies the FSRA within 30 days of the commencement of the marketing activity.
- It does not sell units of the foreign fund to a retail client unless it is permitted to do so, and the foreign fund is permitted to be sold to retail clients in its home jurisdiction.
- Distribution activities must comply with the legislation in the jurisdiction the activities are being marketed in.
- Certain prospectus requirements for the foreign fund are met, and
- If sold from ADGM, all applicable local regulatory requirements are adhered to.

The fees for foreign funds in the ADGM are as follows:

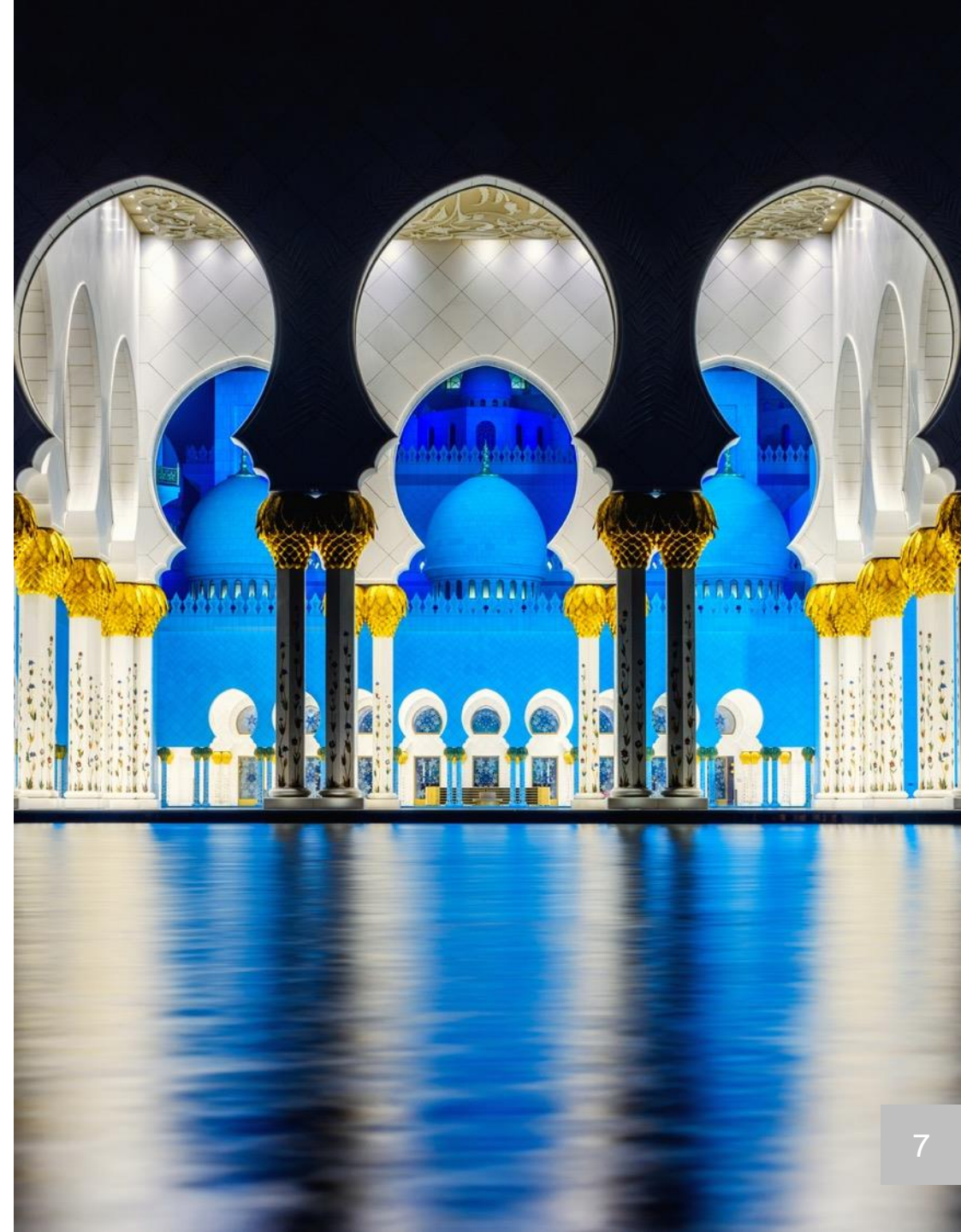
- Notification fee of USD 1,000.
- An authorisation fee for each regulated activity of USD 5,000.
- An annual supervision fee for each regulated activity of USD 5,000.
- Appointment of an approved individual USD 500.

There is no explicit ban on reverse solicitation and firms are advised to contact us and the FSRA for clarity and exercise caution.

Domestic ADGM funds are funds which are established and domiciled in ADGM. The FSRA allows the ADGM fund manager to either be ADGM-based or foreign.

Similar to the DIFC, there are three types of recognised ADGM funds:

- Public funds,
- Exempt funds, and
- Qualified Investor funds



3. Dubai International Financial Centre (DIFC)

The regulator in the DIFC is the Dubai Financial Services Authority (DFSA) and the marketing of foreign funds is subject to disclosure requirements, which must be detailed in the fund's prospectus

Foreign funds wishing to market in, or from, the DIFC must do so via a DFSA-licensed firm authorised to carry out the financial service activities or either:

- Advising on financial products or credit, or
- Arranging creditor deals in investment.

These firms can then only market the foreign fund providing:

- The foreign fund is a regulated fund in a jurisdiction included in the DFSA's recognised jurisdictions list or meets the equivalent regulations prescribed by the DFSA, or
- The firm makes a suitability recommendation of the investment in units of the foreign fund to the particular investor, whilst considering the investor's investment objectives and circumstances, or
- The foreign fund is open to 100 or fewer investors who meet the professional client test. The minimum subscription for each investor is USD 50,000 and fund units are not offered to investors via a public offer, or
- The fund's custodian and investment manager meets the required criteria.

Property funds cannot be marketed unless they meet the following specific criteria:

- 60% or more of the assets are invested in property,
- The fund is closed ended, and
- The units are either listed or traded in a jurisdiction recognised by the DFSA or are offered only by means of private placement.

Separately, representative offices can also market foreign funds in the DIFC within the limits allowed for marketing foreign funds set out in the DFSA Representative Office Module Rulebook.

As an alternative, the fund could choose to be domiciled in the DIFC or managed from the DIFC by a DFSA-licensed fund manager or external fund manager. The DFSA allows regulated foreign fund managers to domicile funds in the DIFC without having to establish a place of business in the DIFC. For further information concerning the process of domiciling in the DIFC, please contact us.

With regard to exemptions, there is no explicit ban on reverse solicitation so foreign funds wishing to use this exemption should seek clarity from us and the DFSA and exercise caution.

4. Kingdom of Bahrain

The establishment and operation of investment funds are regulated by the Central Bank of Bahrain (CBB). Bahrain has issued robust but flexible rules to encourage the marketing of local and overseas domiciled funds whilst protecting the rights of investors.

The CBB allows the promotion or distribution of foreign undertakings to investors in the Kingdom of Bahrain by way of a placement agent only. The placement agent must be a regulated CBB licensee. To be classified as an overseas domiciled Collective Investment Undertaking (CIU), the CIU must be established and regulated by:

A recognised jurisdiction listed under Chapter ARR-6 of the Module, or

- Other jurisdictions acceptable to the CBB.

Where an overseas operator wishes to promote an overseas domiciled CIU, then the overseas domiciled CIU must be authorised by or registered or filed with the CBB, as required with the CBB (and dependent on the type of fund). Otherwise, no person may offer CIU interests to investors in Bahrain. Offering or promoting CIU interests includes but is not limited to the following: soliciting investors to purchase interests through advertisements, telephone, internet, face-to-face, or other media.



Classification of overseas domiciled CIUs

The CBB categorises overseas domiciled CIUs into three types, namely:

- Retail,
- Expert, and
- Exempt.

Depending on the category, the CBB may impose a higher minimum investment amount than that prescribed in the offering memorandum.

Overseas retail CIUs and expert CIUs domiciled in a recognised jurisdiction are required to be registered with the CBB prior to being offered to investors in Bahrain.

Overseas retail CIUs and expert CIUs not domiciled in a recognised jurisdiction must be authorised by the CBB before they are promoted to investors in Bahrain.



Authorisation/Registration of overseas domiciled CIUs

For overseas domiciled CIUs, the application for authorisation/registration may only be made by a CBB licensee who will distribute the CIU within Bahrain.

The CBB will generally acknowledge the application within five business days of it being submitted and provide formal feedback on the application within 15 business days of receipt of all required documents. The feedback will disclose whether further information and/or documents are required. The CBB will take a final decision within 10 business days of the CBB's confirmation that the application is complete.



Satisfying eligibility of the operator

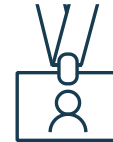
The CBB expects the CBB licensee applying for authorisation or registration of an overseas domiciled CIU to satisfy itself that the CIU's operator is a licensed and/or authorised entity which is able to carry out the operation of the CIU. The CBB can at any time, seek further information pertaining to the operator's regulatory status, including requesting a copy of its licence and/or authorisation.



Decision to refuse authorisation, registration or filing

The CBB may refuse to authorise, register or acknowledge filing of an overseas domiciled CIU, if in its opinion:

- The conditions in the relevant rules (as appropriate) are not met,
- False or misleading information has been provided to the CBB or significant information which should have been provided to the CBB was not included, or
- The CBB believes it necessary in order to safeguard the interests of potential investors.



Distribution requirements

The placement agent of an overseas domiciled expert and exempt CIU must be able to demonstrate that each of its investors fall within the definition of an 'expert investor' or 'accredited investor' as applicable.

The promotion of overseas domiciled exempt CIUs is limited to accredited investors and no public offering or mass marketing is allowed.



Reporting requirements

Overseas domiciled CIUs must publish and distribute to their CIU participants in Bahrain at least one report for each financial year. They should also circulate any other reports (such as valuation reports) mentioned in the prospectus and do so in the format and timescale required by the home regulator.

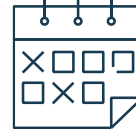
The agent must also notify the CBB in a timely manner of any intention to merge, transfer, wind up or suspend dealings in the CIU.



Fees

Each application for authorisation must be accompanied by a non-refundable BHD 100 processing fee at the time of submission to the CBB.

Separately, all fees and charges payable by CIU participants are those stipulated in the terms and conditions of the prospectus provided to the participants.



Voluntary de-registration or withdrawal of filing

The placement agent of an overseas domiciled CIU must give at least one month's written notice to CIU participants and to the CBB of its intention to de-register or withdraw the filing of the CIU.

The notification must be submitted with reasons for de-registering or withdrawing the filing of the CIU, and include a confirmation that no obligations are outstanding to any CIU participants.



Listing requirements for overseas domiciled CIUs

If desired to be listed, overseas domiciled CIUs may only be listed on a licensed exchange and such intention must be stated in the prospectus. Once an overseas domiciled CIU receives CBB's authorisation to be listed, it must then notify the CIU participants of such intention. Thereafter, the agent of the CIU must obtain the following:

- CBB's non-objection to be listed,
- The required approvals from the licensed exchange, and
- Notify the CBB of the effective date of listing.

There is no explicit ban on reverse solicitation in the CBB's rules and regulations or the Module. However, investors and foreign financial institutions wishing to rely on this 'defence' should be cautious. Firms are advised to contact us and the CBB for clarification of the rules and regulations on a case-by-case basis.



5. Kingdom of Saudi Arabia (KSA)

The regime for locally domiciled investment funds in the Kingdom of Saudi Arabia (KSA) is well-developed. The Capital Markets Authority (CMA) is seen as a practical regulator and is driving to open up the capital markets and fund industry in KSA to local and foreign investors, as highlighted by the relatively new investor-friendly Investment Funds Regulations, which took effect from November 2016 (the Regulations).

The market is still relatively small compared to its western counterparts. However, private equity funds focused on healthcare, education or real estate sectors have done well in recent years.

One of the restrictions is the small number of fund managers with a robust record.

Also, due to increasing scrutiny by the authorities in recent years of blind-pool investment funds and real estate development funds, there has been a recent shift by investors towards single asset funds.

A foreign fund manager cannot directly promote a foreign fund to KSA investors except via a distributor who is authorised by the CMA to conduct dealings as an agent.

A foreign fund requires the following:

- A KSA distributor licensed by the CMA to carry out the activity of dealing as an agent,
- The offer to investors is by a private placement only, and
- The foreign fund manager must be authorised in a jurisdiction that employs regulatory standards at least equivalent to the CMA.



Before promoting the foreign fund, the CMA must have approved the foreign fund. Foreign funds marketed in the KSA may only be offered to sophisticated investors or investors who subscribe a minimum investment amount per investor of not less than SAR 1,000,000 (USD 266,620).

A private fund must be marketed by way of 'private placement', which requires an offer of units exclusively to either:

- Sophisticated investors (see below), or
- Subject to a minimum investment amount per investor of not less than SAR 1,000,000 (USD 266,620).

A 'sophisticated investor' includes any CMA-licensed entities acting on their own account, the government of KSA, any supranational authority recognised by the CMA and institutions with assets of not less than SAR 50,000,000 (USD 13,331,000).

Other requirements include:

- The distributor must provide an undertaking to the CMA that the offering documents are true, accurate and not misleading.
- The distributor must submit a report to the CMA of all KSA investors that have subscribed for units in the fund.
- The CMA may prohibit an offer where the CMA determines that the marketing of the foreign fund may not be commensurate with the distributor's capability.

The current position with regard to reverse solicitation is unclear and it is advisable to continue exercising caution if seeking to rely on the reverse solicitation route.



6. Kuwait

Kuwait has proven to be an attractive source of investment for GCC and foreign investors. Accordingly, there is a market opportunity open for foreign investors to market their offshore/foreign funds into Kuwait. Those interested in marketing units of funds either in or outside Kuwait should be cautious of the robust regulatory regime which rigorously controls this area.

The Capital Markets Authority (CMA) is the regulator overseeing and regulating all aspects and matters relating to investment funds in Kuwait, whether local or foreign funds. This includes the marketing of funds and the offering and selling of units.

Anyone wishing to market foreign funds in Kuwait will require the prior approval of the CMA and all foreign funds must meet the requirements applicable to domestic funds, unless the CMA provides an exception.

Those interested in marketing foreign funds must satisfy the following conditions and requirements:

- Submit an application for marketing a fund incorporated outside of Kuwait enclosing the necessary documents and information and must be translated into Arabic when provided to the authority.
- The fund must be licensed by a foreign regulatory body in accordance with similar standards set by the CMA.
- Units of the fund should be privately subscribed for in Kuwait and such private subscription must be offered to a professional client.

- Securities or promotional material related to a fund incorporated outside of Kuwait should be advertised in accordance with Chapter 7 of Module 8 (Conduct of Business) of the CMA's bylaws and it must only be directed to persons for private subscription and advertisements available to the public should not be used.
- The units in a collective fund must be offered in Kuwait through a local agent licensed by the CMA.
- Any other requirements the CMA sees fit.

The CMA has authority to revoke permissions granted for foreign funds to market in Kuwait if they fail any of the relevant tests.

The marketing fee for foreign investment funds in Kuwait is KWD 50,000, payable upon application and upon annual licence renewal.

There is no explicit ban on reverse solicitation in the CMA law or the bylaws. However, investors and fund managers wishing to rely on this 'defence' should be cautious. The CMA may on a case by case basis determine that solicitation was made in violation of its regulations.

7. Oman

Similar to other GCC countries, Oman has utilised investment funds as an avenue to increase liquidity and this structure has proved popular. Investment funds may exist either inside or outside Oman.

All investment funds are regulated by the Omani Capital Markets Authority (OCMA).

Foreign funds can also be marketed locally to Omani and non-Omani residents. Nevertheless, units to be placed on offer must obtain OCMA's prior approval. Those wishing to market foreign funds locally are encouraged to contact OCMA in advance to discuss their proposal. Under Omani law, marketing of units of foreign funds takes place via an OCMA licensed and approved distributor duly appointed by the fund to carry out such activities it deems necessary on its behalf.



8. Qatar

The Qatar Financial Centre (QFC) is a financial and business centre recognised globally for its legal and business infrastructure.

The QFC allows Authorised Firms to conduct various activities in respect of Collective Investment Schemes providing investors and firms greater flexibility in its aim to position itself as an asset management hub.

A non-QFC scheme is a collective investment scheme that is not established in the QFC.

The QFC permits the marketing of non- QFC (foreign) funds from the QFC.

Only an Authorised Firm with the requisite licences from the QFCRA may seek authorisation from the QFCRA to operate non-QFC schemes, although this is at the discretion of the QFCRA. Operators are subject to the requirements of the jurisdiction in which they are seeking to establish and manage the non-QFC fund. Non-QFC schemes largely fall outside the scope of the COLL and PRIV rules.

The QFCRA takes the same approach in considering applications from Authorised Firms to operate non-QFC schemes as it does in consideration of Authorised Firms to operate QFC funds. This approach is tailored to provide for two different scenarios:

- Operating a regulated non-QFC scheme, whether a retail scheme or a qualified investor scheme (QIS), and
- Operating an exempt or unregulated non-QFC scheme (e.g. a hedge fund).

The requirements and criteria placed on an Authorised Firm under the authorisation process reflect the specific risks and regulatory treatment of these two different categories of schemes. The most rigorous process is applied to the category of regulated schemes (whether retail schemes or QIS).

The QFCRA will take the following into account when assessing non- QFC applications:

- Details about the scheme.
- An assessment confirming that the activities relate to a retail scheme or a QIS in a jurisdiction with an equivalent regulatory environment to that provided by the QFC regime.
- Information regarding the jurisdiction where the fund is based.
- Details of the firm's authorisation to carry out the relevant activities.
- Details of the fund's registration/authorisation in its home jurisdiction, and
- Whether the prospectus has been approved by any overseas regulator.

An application to operate a non-QFC scheme does not include approval or vetting of the prospectus by the QFCRA.

Firms are advised to contact the QFCRA for clarifications of the rules and regulations in respect of reverse solicitation on a case-by-case basis.

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