

**17- THE REGULATIONS ORGANIZING THE MANAGEMENT  
OF THIRD PARTIES PORTFOLIOS WITH ISLAMIC BANKS**

**A) Instructions No. (2/IBS/181/2005) Concerning the Regulations Governing  
the Management of Third Parties Portfolios with Islamic Banks.**

**GOVERNOR**

*Ramadhan 20, 1426 H  
October 23, 2005*

**THE CHAIRMAN,**

**Circular to All Local Banks  
and Investment Companies**

With reference to Central Bank of Kuwait's instructions No. (2/BS/IS/3/97)\* issued on 8/3/1997 concerning the Regulations Organizing the Management of Third Parties Portfolios.

We would like to advise you that the Central Bank of Kuwait has coordinated with the management of Kuwait Stock Exchange the issue of assigning to the Stock Exchange management the function of supervising the trading transactions of local securities and other securities listed on the Stock Exchange, conducted through third parties portfolios managed by banks and investment companies. In the light of amendment made to the decree concerning the organization of Kuwait Stock Exchange, as per decree No. (158) of the year 2005 issued on 13/7/2005 and according to which the functions of organizing and monitoring the financial market were assigned to Kuwait Stock Exchange, this is to advise you that necessary actions have been taken to transfer, to Kuwait Stock Exchange, the responsibility for monitoring and supervising local securities portfolios managed by the banking and financial system units to the account of third parties.

In this context, the Central Bank of Kuwait Board of Directors agreed, at its meeting on 2/10/2005, to issue revised instructions to local banks and investment companies concerning the regulations organizing the management of third parties portfolios, whereby the role of the Central Bank of Kuwait has been limited to monitoring foreign securities portfolios and deals in other investment instruments managed by banks and investment companies to the account of third parties.

(\*) Issued Instructions for Islamic Bank's No. (2/IBS/102/2003) issued on 15/6/2003.

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The effective date of those revised instructions shall be concurrent with the effective date of the Kuwait Stock Exchange Committee's resolution on the controls for managing third party portfolios, which will be in effect from 9/11/2005.

Attached is a copy of the revised instructions to banks and investment companies regarding the regulations organizing the management of third parties portfolios.

With my best wishes,

***SALEM ABDUL AZIZ AL SABAH***

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## **Revised Instructions No. (2/IBS/181/2005), Concerning The Regulations Governing Management of The Third Parties Portfolios\***

The banking and financial institutions activity in the area of managing third parties portfolios, attracts the attention of all transacting parties likewise. Such an area countries which have an active and advanced is of greater significance in some stock exchange that copes with the latest international developments, as the case is in Kuwait. This is why the Central Bank of Kuwait issued its instructions on 20/6/1987 to banking and financial institutions subject to its supervision, including the rules for organizing their relationship with their customers who assign to them the management of investment portfolios on their account, and determining the method for exercising such an activity, without interfering in the rules that organize purchasing and selling transactions of securities and their trading at Kuwait Stock Exchange, or in the manner such transactions are concluded within Kuwait Stock Exchange.

In the light of the qualitative developments seen in the local and international securities markets, the Central Bank of Kuwait issued on 9/3/1997 new instructions under No. (2/BS/IS/3/1997)\*\* , which include additional rules and regulations ensuring better organization of this activity.

Since Kuwait Stock Exchange, pursuant to the rules of Decree No. (158) of the year 2005, has assumed the function of organizing and monitoring the financial market, whereby the responsibility for controlling and supervising local securities portfolios managed by the units of the banking and financial system to the account of third parties, has been shifted to Kuwait Stock Exchange, and whereas the role of the Central Bank of Kuwait has been limited to supervising foreign securities portfolios and deals in other investment instruments conducted by the banks and investment companies within this context, the Central Bank of Kuwait Board of Directors has resolved to introduce amendments to instructions No. (2/BS/IS/3/1997)\*\* , to read as follows:

\* These instructions were issued to replace instructions No. (2/IBS/102/2003) previously passed in this regard.

\*\* Corresponding instructions for Islamic banks are instructions No. (2/IBS/102/2003) issued on 15/6/2003.

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**Item One**

These instructions apply to portfolios managed by banks and investment companies to the account of third parties and invested in the areas of foreign securities and other financial instruments. Transactions in local securities and other securities listed on Kuwait Stock Exchange shall be subject to the rules and procedures established by the management of Kuwait Stock Exchange.

**Item two**

***(Bases For Management of The Third Parties Portfolios)***

The managing party shall be committed to observe the following rules in managing third parties portfolios:

- 1- Segregate the Portfolios managed to the account of third parties and invested in local securities, from those portfolios invested in foreign securities and other investment instruments.
- 2- Adopt a clear investment policy which relies upon sound criteria in various forms of funds management, in such a way which would help develop the methods and quality of the transactions pertaining to the components of the investment portfolios managed by them to third parties account. The managing party which exercises the brokerage functions by itself, or through one of its affiliates, should not exaggerate in selling and purchasing transactions carried out on behalf of their customers for the purpose of earning commissions in consideration for such transactions.
- 3- Utilize the customer's funds for the purposes mentioned in the contract agreement concluded with the customer and within the scope of the authorization granted by the customer.
- 4- Advise the customer of name of the employee / staff designated to manage the customer's investment portfolio. The managing party shall be responsible towards the customer for mistakes committed by designated employee / staff and for their failure to execute the written instructions issued by the customer within the limits of the contract.

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- 5- Keep the funds of the customers of portfolios invested in local shares, and the funds of the customers of portfolios invested in foreign securities and other investment instruments, in two separate accounts, each in the name of the managing party and to the favor of those customers. Deposit into and withdrawals from these two accounts shall be in accordance with rules of the contract signed with each customer, and within the limits of the authorization delegated from the customer to the managing party. The managing party shall keep a special independent record for each customer apart.
- 6- The bank account opened to the favor of customers must be entirely independent from the remaining accounts of the managing party, and this must be documented, so that this account is segregated from the accounts of the managing party in case of any claims on the latter or judicial attachment over its own accounts.

The managing party must also notify Kuwait Clearing Company in writing of the independence of the account opened with it for carrying out selling and buying transactions of Kuwait Stock Exchange listed shares to the favour of the managing party's customers, in order to avoid any confusion in financial position.

- 7- Safeguard the ownership evidencing documents, in the name of the customer or in the name of the managing party / for the customer's account, or in the name of the custodian of the documents / for the customer's account. The managing party shall be responsible for the safety of such documents.
- 8- In the event the managing party purchases other companies shares for the purpose of investing them for the account of such customers, the managing party shall maintain a special register comprising names of the customers who are the real owners of the shares, and showing number of shares held by each customer.
- 9- Advise the customer of any deal in which the managing party has a direct interest, or upon investing the customer's funds in investments owned by the managing party or in its shares or the shares of its affiliates or subsidiaries. The managing party is prohibited from concluding such deals without obtaining a prior written consent from the customer to this effect.

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- 10- Advise the customer of each deal promptly upon its conclusion, by sending advices showing all details of such deals, unless the customer's instructions provide to the contrary. Such advices must be signed by the designated staff and one of the officers authorized to sign by the managing party.
- 11- Maintain separate accounting records for the transactions arising from management of the third parties portfolios, comprising each customer's cash accounts and investment accounts, movement in each account by date and currency in which the deals are concluded, and a statement of profits and loss resulting from such transactions.
- 12- Maintain the documents supporting all accounting entries made to the customer's account within the scope of its management of the third parties portfolios. The customer shall have the right to inspect such documents related to his investment portfolio and to request a copy thereof.
- 13- The managing party may not use the investment portfolios and their components managed for its customers account, as collaterals for obtaining credit facilities from third parties.
- 14- It is prohibited for the managing parties, who manage portfolios for their customers account, to utilize third parties funds in granting finance of any form to others (Third party finance transactions)\*

### **Item Three**

#### ***(The Professional Staff managing Third Parties Portfolios)***

The managing party should provide for its management of the third parties portfolios, a specialized professional team equipped with all advanced technological facilities , and consisting of highly competent and experienced investment advisors.

\* This paragraph was amended pursuant to circular No. (2/IBS/176/2005) issued on 14/2/2005 to all Islamic banks.

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**Item four**

***(Rules Regulating Third Parties Portfolios Management Agreements)***

The managing party shall conclude agreements with its customers, which rules shall organize the relation between the two parties. The contracts shall include the following rules:

- 1- The authorization limits granted in relation to management of the customer's investment portfolio.
- 2- The investment policy which shall be adopted in the management of the portfolio, the types of such investment and the investment instruments used in this regard.
- 3- The method of the portfolio's management, and the manner in which the deals shall be concluded, whether pursuant to prior instructions from the customer, or by agreement not to refer to him.
- 4- The manner of disposing of the customer's funds and safekeeping the ownership evidencing documents.
- 5- Acknowledgment of the independence of the customers funds from those of the managing party.
- 6- The method of communicating with the customer and manner of receiving instructions from him and notifying him of the deals concluded for his account.
- 7- The manner of submitting the periodical reports which are to be regularly provided to the customer, including a detailed evaluation of the customer's investment portfolio and all other data which help the customer follow-up the developments of this portfolio, throughout his contractual period with the managing party.
- 8- The manner of computing the commission charged by the managing party in consideration for managing the customer's investment portfolio.

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- 9- The method of termination of the agreement, and the notice period which shall be observed by the two parties in the event either of them desires to terminate the agreement or to not renew it.
- 10- The rules of this agreement are subject to the relevant Kuwaiti Laws and to any other resolutions, regulations and instructions passed by the competent authorities in this regard.

**Item Five**

These instructions shall be in effect from 9/11/2005, and shall supersede any previous instructions to the contrary. The managing parties are required to adjust the existing conditions of the investment portfolios managed by them in order to be consistent with contents of these instructions. In the event the managing parties request a grace period for adjusting the state of affairs of their investment portfolios, the managing parties are required to contact the Central Bank of Kuwait to obtain its consent in this regard, and to explain the reasons and justifications of this request.

2/10/2005

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