

Banking Law

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Banking Regulations in Bahrain

- Applicable Laws include CBB Law, Commercial Companies Law, Law of Commerce & Civil Code (& BSE Law for BSE member licensees)
- CBB Rulebook Vol. 1- conventional banks.
- It contains prudential requirements aimed at ensuring the safety and soundness of CBB-licensed conventional banks and providing an appropriate level of protection to the clients of such banks (see UG-A.1.4).

CBB Rulebook

- The contents of the Rulebook have the formal status either of Rules or Guidance (UG-1.2.1)
- Rules are in bold, font size 12, have binding effect the breach of which entails CBB enforcement action or even criminal proceedings (UG-1.2.2 & 4). Its breach = breach of CBB Law (UG-1.2.8)

CBB Rulebook

- The contents of the Rulebook have the formal status either of Rules or Guidance (UG-1.2.1)
- Guidance is in normal type, font size 11 and not binding. It is material that helps inform particular Rule or ser of Rules or provided other general information. Compliance to it = compliance to Rules; failure to comply with it tends to suggest breach of a Rule. (UG-1.2.2 & 4)

CBB Rulebook Volume I

Part A

- High Level Standards
- Business Standards
- Reporting Requirements
- Enforcement & Redress

Part B

- Forms, Quarterly Updates, Ad-hoc Communications

CBB Rulebook Volume I – Part A

- High Level Standards:
 - PB – Principles of Business
 - HC – High-level Controls
 - AU - Auditors and Accounting Standards
 - GR - General Requirements

CBB Rulebook Volume I – Part A

PB Principles of Business

- Ten principles of business apply to all CBB conventional bank licensees (see: Lecture Notes, Banking Law Part - 2 at pages 14-18)

CBB Rulebook Volume I – Part A

HC High-level Controls

- HC-A Introduction
- HC-B General Guidance and Best Practice
- HC-1 Corporate Governance
- HC-2 Approved Persons
- HC-3 Compliance Officer/Manager

HC-A: Introduction

- HC sets out the requirements that have to be met by conventional bank licensees with respect to the role and composition of their boards and board committees and related high level controls and policies; notification and approval of individuals undertaking controlled functions; and the use of Special Purpose Vehicles (SPVs)

HC-A: Introduction

- The Chairman of the Board should preferably be non-executive and independent. The role of Chairman and Chief Executive may not be exercised by the same person (HC-A.2.1)
- The Board must approve a code of conduct for itself, senior management and employees, and define the responsibilities of itself and senior management. This should include procedures for dealing with conflicts of interest, and a prohibition on insider trading (HC-A.2.2)

HC-A: Introduction

- The Board should meet at least four times per year (HC-A.2.3)
- Boards must have an adequate number of members that are 'independent' and 'non-executive' to serve the interests of minority shareholders and other stakeholders (HC-A.2.4)

HC-A: Introduction

- The Board should consider the setting up of committees to assist it in fulfilling its responsibilities. The setting up of an Audit Committee is mandatory (HC-A.2.5)
- Conventional bank licensees are required to notify the CBB, in writing, of all major changes proposed to the strategy and/or corporate plan of the bank prior to implementation, as well as of any SPV they intend to establish as a subsidiary, or with respect to which they intend to act as sponsor or manager (HC-A.2.6)

HC-A: Introduction

- Conventional bank licensees are required to secure prior CBB approval for those persons wishing to undertake a controlled function. Such persons are assessed against CBB's 'fit & proper' requirements. Conventional bank licensees must also notify the CBB of any changes in their approved persons (HC-A.2.7)
- Conventional bank licensees must appoint a senior member of staff with responsibility for compliance. The Compliance Officer is a controlled function (HC-A.2.8)

HC-B General Guidance & Best Practice

- HC-B.1 Guidance provided by other international bodies
 - The CBB draws banks' attention to the Basel papers as benchmarks of best practice for corporate governance standards and high-level controls to be followed by banks operating in the Kingdom of Bahrain (HC-B.1.3)
- HC-B.2 Enforceability
 - The requirements of Sections HC-1.1–HC-1.4 are binding, the banks & their Boards should follow on an 'apply or explain (and document in their minutes)' basis. The remaining Chapters are binding except where shown as guidance (HC-B.2.1)

HC-1: Corporate Governance

- HC-1 Corporate Governance:
 - HC-1.1 Scope
 - HC-1.2 The Board of Directors – Its Functions & Responsibilities
 - HC-1.3 Board Composition & The Role of Committees
 - HC-1.4 Transparency and Disclosure
 - HC-1.5 Notification, reporting and approval requirements for changes to activities, personnel and ownership, strategy, Board meetings and SPVs

HC-1: Corporate Governance

- HC-1.3.5:
 - Where there is the potential for conflict of interest, or there is a need for impartiality, the Board must assign a sufficient number of independent non-executive Board members capable of exercising independent judgment.
 - The Board should outline its criteria and materiality thresholds in the annual report for the definition of "independence".

HC-1: Corporate Governance

- HC-1.3.5:
- The Directors should be identified in the annual report as executive, non-executive, and independent non-executive.
 - a) Executive Director (or "Managing Director" under CCL) is a person who is involved in the day-to-day management and/or is in full-time employment of the bank and/or any of its affiliates or subsidiaries or parent companies. An executive Director may not occupy the post of "Chairman"

HC-1: Corporate Governance

- HC-1.3.5:
 - b) Non-Executive Director is a person who is not involved in the day-to-day management and/or is not a full-time salaried employee of the bank and/or any of its affiliates, or subsidiaries or parent companies

HC-1: Corporate Governance

- HC-1.3.5:

c) Independent Non-Executive Director is a non-executive Director who also:

- is not a "controller" of the bank (see Section HC-2.1).
- is not an Associate (see paragraph HC-2.1.4 (g)) of a Director or a member of senior management of the bank.
- is not a professional advisor to the bank or group (A partner or member of senior management of an accountancy or law firm that provides services to the bank would not be perceived by the Agency as an independent non-executive Director).

HC-1: Corporate Governance

- HC-1.3.5:

c) Independent Non-Executive Director is a non-executive Director who also:

- is not a large depositor with, or large borrower from the bank (i.e. whose deposits or credit facilities exceed 10% of the capital base of the bank).
- has no significant contractual or business relationship with the bank or group which could be seen to materially interfere with the person's capacity to act in an independent manner.

HC-1: Corporate Governance

- HC-1.3.6:
- Independent non-executive Directors should be permitted to meet periodically (for example at separate meetings from the main Board) without executive management present.

HC-1: Corporate Governance

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HC-1: Corporate Governance

- HC-1.2 The Board of Directors – Its Functions and Responsibilities
- HC-1.3 Board Composition and The Role of Committees
- HC-1.4 Transparency and Disclosure
- HC-1.5 Notification, reporting, and approval requirements for changes to activities, personnel and ownership, strategy, Board meetings and SPVs

HC-1: Corporate Governance

- The Board must oversee the process of disclosure and communications with internal & external stakeholders. The Board must ensure that disclosures made by the bank are fair, transparent, comprehensive and timely and reflect the character of the bank and the nature, complexity and risks inherent in the bank's business activities. Disclosure policies must be reviewed for compliance with the Central Bank's disclosure requirements (HC-1.4.1)

HC-2 Approved Persons

- **HC-2 Approved Persons**
- All persons wishing to undertake a controlled function in a conventional bank licensee must be approved by the CBB prior to their appointment (HC-2.1.1) except for Financial Instruments Trader, for which only notification is required, once the person concerned has accepted to undertake that function (HC-2.1.3)

HC-2 Approved Persons

- HC-2.1.2 controlled functions:
 - (a) Director
 - (b) Chief Executive/General Manager
 - (c) Senior Manager
 - (d) Compliance Officer
 - (e) Money Laundering Reporting Officer
 - (f) Financial Instruments Trader
- Controlled functions (d) & (e) may be combined (HC-2.1.3)

HC-2 Approved Persons

- Director is any person who occupies the position of a Director, as defined in Article 173 of the CCL (HC-2.1.5)
- The CEO or GM means a person who is responsible for the conduct of the licensee (regardless of actual title). He must be resident in Bahrain. This person is responsible, alone or jointly, for the conduct of the licensee (HC-2.1.7)

HC-2 Approved Persons

- Senior Manager means a person who, under the immediate authority of a Director or the CEO/GM , exercises major managerial responsibilities, is responsible for a significant business or operating unit, or has major managerial responsibility for maintaining accounts or other records of the licensee (HC-2.1.8)
- Financial Instruments Trader means a person who is engaged in buying or selling financial instruments (HC-2.1.10)

HC-2 Approved Persons

- Approval is only granted by the CBB, if it is satisfied that the person is fit and proper to hold the particular position in the licensee concerned. 'Fit and proper' is determined by the CBB on a case-by-case basis (HC-2.1.4)
- For the definition of 'fit and proper' and associated guidance is provided in Sections HC-2.2 and HC-2.3 respectively.
- If in doubt (whether a function is considered a controlled function) - discuss the case with CBB (HC-2.1.11)

HC-2 Approved Persons

- Request for approval must be made by submitting the duly completed Form 3 (HC-2.1.12)
- In case of application for license - to be marked to Director of Licensing & Policy Directorate; otherwise, the Director, Retail Banks Supervision or Wholesale Banks Supervision (as the case may be) (HC-2.1.13)
- must immediately notify CBB when an approved person ceases to hold the controlled function (HC-2.1.17)

HC-2 Approved Persons

- HC-2.2 'Fit and proper' requirement
 - HC-2.2.2: To be considered 'fit and proper', those nominated must demonstrate:
 - (a) Personal integrity, honesty and good reputation;
 - (b) Professional competence, experience and expertise, sufficient for the controlled function for which authorisation is being applied for, and given the scale, complexity and nature of the conventional bank licensee concerned; and
 - (c) Financial soundness.
- HC-2.3 Interpretative Guidance on 'Fit and Proper' Requirement

HC-3 Compliance Officer

- HC-3.1 Introduction
- HC-3.2 Requirement for and approval of a compliance officer/manager
 - The compliance function must be independent (i.e. it must not be placed in a position where its other duties or responsibilities may cause a conflict of interest with its compliance risk management responsibilities). Therefore the compliance function must be separate from the internal audit function. The compliance officer or manager may however, perform other limited related compliance roles (e.g. the MLRO or legal advisor), subject to the Central Bank's prior approval (HC-3.2.2)

AU Auditors & Accounting Standards

- AU-A Introduction
- AU-B Scope of Application
- AU-1 Auditor Requirements
- AU-2 Access
- AU-3 Auditor Reports
- AU-4 Accounting Standards

GR General Requirements

- GR-A Introduction
- GR-B Scope of Application
- GR-1 Books and Records (See Module OM)
- GR-2 Corporate and Trade Names
- GR-3 Dividends
- GR-4 Asset / Liability Transfers
- GR-5 Controllers
- GR-6 [This Chapter has been left blank.]
- GR-7 Suspension of Business
- GR-8 CBB Fees (Module LR)

GR-2 Corporate and Trade Names

- GR-2.1.1: *Conventional bank licensees* must seek prior written approval from the CBB for their corporate name and any trade names, and those of their subsidiaries located in Bahrain.
- GR-2.1.2: GR-2.1.1 applies to *overseas conventional bank licensees* only with respect to their Bahrain branch.

GR-3 Dividends

- Licensees must obtain a letter of no-objection from the CBB to any dividend proposed, before submitting a proposal for a distribution of profits to a shareholder vote (GR-3.1.1)
- CBB will grant a no-objection letter where it is satisfied that the level of dividend proposed is unlikely to leave the licensee vulnerable – for the foreseeable future – to breaching the CBB's capital requirements, taking into account (as appropriate) trends in the licensee's business volumes, expenses, overall performance and the adequacy of provisions against impaired loans or other assets (GR-3.1.2)
- To facilitate the prior approval, conventional bank should provide the CBB with a copy of the proposed agenda for the annual general meeting or other special meeting, noting the licensee's intended declared dividends for the coming year (GR-3.1.3)

GR-4 Asset/Liability Transfers

- GR-4.1.1: Conventional bank licensees must seek prior written approval from the CBB before transferring assets or liabilities of a material nature to a third party, except where such transfers are effected within the normal scope of the bank's operations.
- GR-4.1.4: In the case of a Bahraini conventional bank, Chapter GR-4 applies to its assets and liabilities booked in Bahrain & in the bank's overseas branches. In the case of an overseas conventional bank, Chapter GR-4 applies only to assets & liabilities booked in the bank's Bahrain branch.

GR-5 Controllers

- GR-5.2.1: A controller of a conventional bank licensee is a natural or legal person who either alone, or with his associates:
 - a) Holds 10% or more of the shares in the licensee ("L"), or is able to exercise (or control the exercise of) 10% or more of the voting power in L; or
 - b) Holds 10% or more of the shares in a parent undertaking ("P") of L, or is able to exercise (or control the exercise of) 10% or more of the voting power in P; or
 - c) Is able to exercise significant influence over the management of L or P.

GR-5 Controllers

- GR-5.2.2: “Associate” includes:
 - a) The spouse or child of a controller;
 - b) An undertaking of which a controller is a Director;
 - c) A person who is an employee or partner of the controller;
 - d) If the controller is a corporate entity, a Director of the controller, a subsidiary of the controller, or a Director of any subsidiary undertaking of the controller.

GR-5 Controllers

- GR-5.2.3: “Associate” also includes any other person or undertaking with which the controller has entered into an agreement or arrangement as to the acquisition, holding or disposal of shares or other interests in the conventional bank licensee, or under which they undertake to act together in exercising their voting power in relation to the conventional bank licensee

GR-5 Controllers

- GR-5.3.1:
 - All new controllers or prospective *controllers* of a Bahraini conventional bank licensee must obtain the approval of the CBB.
 - Any increases to existing *controllers'* holdings or voting control must also be approved by the CBB. Such changes in existing *controllers* or new/prospective *controllers* of a *conventional bank licensee* must satisfy the CBB of their suitability and appropriateness according to the criteria outlined in paragraphs GR-5.3.6 to GR-5.3.8.
 - The CBB will issue an approval notice or notice of refusal of a controller according to the Approval Process outlined in Section GR-5.4 and GR-5.1.6.

GR-5 Controllers

- GR-5.3.3: A natural person will not be allowed to own or control more than 15% of the voting capital of a Bahraini conventional bank licensee. Such person must satisfy the conditions in GR-5.3.6.
- GR-5.3.4: An unregulated legal person (including companies, trusts, partnerships) will not be allowed to own or control more than 20% of the voting capital of a Bahraini conventional bank licensee. All such persons must satisfy the conditions in GR-5.3.7.

GR-5 Controllers

- GR-5.3.5
 - CBB will only permit financial institutions which are subject to effective consolidated supervision under a regulatory framework consistent with the Basel Core/ IOSCO/ IAIS Principles to become *controllers* with a holding of more than 20% of the voting capital of a Bahraini conventional bank licensee.
 - Such controller must satisfy the conditions in GR-5.3.7 & GR 5.3.8
 - Approval will not be given to acquire more than 40% in a listed Bahraini conventional bank licensee

GR-5 Controllers

- GR-5.3.5
 - Up 100% may be acquired in unlisted Bahraini conventional bank licensees or to mergers which have been approved by the CBB.
 - Subject to the discretion of the CBB, regulated financial institutions may be allowed to own or control holdings of voting capital of listed banks in excess of the abovementioned 40% level.
 - Regulated financial institutions wishing to acquire more than 20% of the voting capital of a Bahraini conventional bank licensee must observe the additional conditions in GR-5.3.8

GR-5 Controllers

- GR-5.1.4 Applicants for a *conventional bank license* must provide details of their *controllers*, by submitting a duly completed Form 2
- GR-5.1.5: Bahraini *Conventional bank licensees* must obtain prior approval from the CBB for any of the following changes to their *controllers*:
 - (a) a new *controller*;
 - (b) an existing controller increasing its holding from below 20% to 20%;
 - (c) an existing controller increasing its holding from above 20% to 30%;
 - (d) an existing controller increasing its holding above 30% to 40%.

GR-5 Controllers

- GR-5.1.6
 - For approval to be granted, the CBB must be satisfied that the proposed controller or increase in control poses no undue risks to the licensee.
 - The CBB will consider or reconsider the criteria outlined in paragraphs GR-5.3.6 to GR-5.3.8.
 - The CBB may impose any restrictions that it considers necessary to be observed in case of its approval of a new controller, or any of the changes listed to existing controllers.

GR-5 Controllers

- GR-5.1.6
 - The restrictions will include the applicable maximum allowed limit of holding or control (as outlined in GR-5.3)
 - A duly completed Form 2 (Controllers) must be submitted as part of the request for a change in *controllers*.
 - An approval of controller will specify the applicable period for effecting the proposed acquisition of shares.

GR-5 Controllers

- GR-5.1.8
 - CBB may contact references and supervisory bodies in connection with any information provided to support an application for controller.
 - CBB may also ask for further information, in addition to that provided in Form 2, if required to satisfy itself as to the suitability of the applicant.

GR-5 Controllers

- GR-5.4.1
 - Within 3 months of receipt of an approval request, the CBB will issue an approval notice or a written notice of refusal.
 - The notice of refusal will specify the reasons for the objection and specify the applicant's right of appeal.
 - Where an approval notice is given, it will specify the period for which it is valid and any conditions that attach (see GR-5.1.6).
 - These conditions will include the maximum permitted limit of holding or voting control exercisable by the controller.

GR-5 Controllers

- GR-5.4.3: Pursuant to Article 56 of the CBB Law, where a person has become a *controller* by virtue of his shareholding in contravention of Paragraph GR-5.1.5, or a notice of refusal has been served to him under Paragraph GR-5.4.1 and the period of appeal has expired, the CBB may, by notice in writing served on the person concerned, direct that his shareholding shall be transferred or until further notice, no voting right shall be exercisable in respect of those shares.

GR-5 Controllers

- GR-5.1.7
- If, as a result of circumstances outside the conventional bank licensee's knowledge and/or control, one of the changes specified in Paragraph GR-5.1.5 is triggered prior to CBB approval being sought or obtained, the conventional bank licensee must notify the CBB as soon as it becomes aware of the fact.

GR-5 Controllers

- GR-5.1.8
 - to notify the CBB as soon as they become aware of events that are likely to lead to changes in their controllers.
 - CBB assesses the suitability of controllers are set out in Section GR-5.3.
 - The CBB aims to respond within 30 calendar days and is obliged to reply within 3 months

GR-5 Controllers

- GR-5.1.9
 - Conventional bank licensees must submit, within 3 months of their financial year-end, a report on their controllers.
 - This report must identify all controllers of the licensee and the extent of their shareholding interests.

GR-5 Controllers

- GR-5.1.10
 - Overseas conventional bank licensees must notify CBB of any new significant ownership in excess of 50% of its issued share capital as soon as the branch becomes aware of the new significant ownership.
 - Such branch must provide a copy of the relevant approval by the home supervisor. No other action is necessary unless the CBB makes a subsequent request for information or issues a formal direction. The CBB reserves the right to take any appropriate actions, including withdrawal of the licence.

CBB Rulebook Volume I – Part A

■ Business Standards:

- BC Business and Market Conduct
- CA Capital Adequacy
- CM Credit Risk Management
- OM Operational Risk Management
- FC Financial Crime

CBB Rulebook Volume I – Part A

■ Reporting Requirements:

- BR CBB Reporting Requirements
- PD Public Disclosure Requirements

CBB Rulebook Volume I – Part A

- Enforcement & Redress:
 - CP Compensation
 - EN Enforcement

CBB Rulebook Volume I – Part B

- Glossary of Defined Terms
- List of Circulars
- BMA Reporting Forms
- BMA Authorization Forms
- Supplementary Information

Banking Regulations in Bahrain

- **Archived Part A**

- The provisions below are no longer in force.
- Including licensing requirements
- Licensing process?
- Assumption – Part B – same forms

Wallahu'alam bisshawab