

# Banking Law

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## Banks and the Customers

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- The Banker - Customer Relationship
- The Duty of Confidentiality

## The Banker-Customer Relationship

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- Definition of Customer
- Part B of CBB Rulebook: Groups or individuals who have a business relationship with the organization — those who receive and use or are directly affected by the products and services of the organization.

## The Banker-Customer Relationship

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- When?
- When an account is opened for him, i.e. when the contract is formed (see also: *Commissioner of Taxation v. English, Scottish and Australian Bank* [1920] AC 683 and Roberts, G., *Law Relating to Financial Services*, 6th ed., at p. 6)
- CBB Rulebook: “have business relationship”

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- FC-1.1.10:

- ~ Conventional bank licensees must not commence a business relationship or undertake a transaction with a customer before completion of the relevant customer due diligence measures specified in Chapters 1, 2 and 3.

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- FC-1.1.10:

- ~ However, verification may be completed after receipt of funds in the case of non face-to-face business, or the subsequent submission of CDD documents by the customer after initial face-to face contact, providing that no disbursement of funds takes place until after the requirements of this Chapter have been fully met.

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- However, negligent action may cause liability even prior to contract (see: Arts 158-68 of the Civil Code)

## The Banker-Customer Relationship

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- The nature of relationship:
  - ~ debtor-creditor (*Foley v. Hill* (1848) 2 HL cas 28) [compare to Islamic banking]
- Consequently: unsecured creditor

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- The nature of relationship:
- Thus, the establishment of deposit protection scheme.
- In the UK, see Roberts, G.'s Law Relating to Financial Services at pp. 7-10.

## The Banker-Customer Relationship

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- In Bahrain, the deposit protection scheme was established in July 1994, following the issuance of Prime Ministerial Resolution No. (3) of 1993
- The scheme is administered by a Board, comprising of 10 members, drawn respectively from the Central Bank (2 members, including the Chairman of the Deposit Protection Scheme Board), retail banks (4 members) and Government (4 members).

See: <http://www.cbb.gov.bh/cmsrule/index.jsp?action=article&ID=37>

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- The application of the scheme: CP-2.1
- Applicable: all non-banking private sector deposits (BD or otherwise) held with the Bahrain offices of all retail banks by residents and non-residents (see CP-2.1.4).
- 'deposit' shall mean a current, call, saving and/or fixed deposit in BD and other currencies, as well as non-bearer Certificates of Deposit denominated in BD and other currencies issued by the relevant bank (CP-2.1.5).

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- CP-2.1.6: the Scheme will not apply to deposits which have, in the opinion of the Board, been illegally gained and/or relate to illicit or illegal matters.
- The Scheme will also not apply to deposits of:
  - (a) The Bahrain Government and Bahrain Government Agencies (for the purpose of this Regulation means entities in which the Bahrain Government holds 50% or more of the share capital);

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- CP-2.1.6: the Scheme will also not apply to deposits of:
  - (b) Other banks including, for the sake of clarity, the CBB;
  - (c) The parent, subsidiaries, associates or affiliates of the relevant bank;
  - (d) Directors, shareholders with more than 5% shareholding (ordinary and/or preference), or managers of the relevant bank; and/or
  - (e) Persons whose identity cannot be ascertained.

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- CP-2.2.1: Each eligible depositor should be entitled to receive a maximum of the lesser of:
  - (a) 3/4 of the combined total amount of all of his eligible deposits with the relevant bank, or
  - (b) BD 15,000,irrespective of the number, type, value & currency of eligible deposits held by such eligible depositor with the relevant bank at the time the Scheme is put into operation for such relevant bank.

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- (CP-2.2.2) The amount may be amended from time to time by the CBB. In calculating such amount the Board will be entitled to take account of various matters including, but not limited to, any set off rights to which the relevant bank was entitled against an eligible depositor or an eligible deposit at the proposed date for the making of such payment as well as any amounts paid out during the period of administration of the relevant bank by the Central Bank (if appropriate), and the amount payable hereunder shall be reduced accordingly.

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- The total amount payable in any calendar year is up to BD 25 million (regardless of the number of the relevant banks in existence in the year)
- If circumstances demand, may include any unutilized portion of the preceding year and the entitlement of the succeeding year, i.e. not more than total of BD75 million at any one time.

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- The Board may, from time to time and with the prior approval of the CBB Governor amend the figure of BD 25,000,000.
  
- See: CP-2.2.3

## The Banker-Customer Relationship

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- CP-2.2.4: In the event that the amount to be payable under the Scheme to eligible depositors of a relevant bank is greater than the maximum sum determined to be available in the Scheme for such relevant bank, the amounts determined to be payable to such eligible depositors should be made on a pro rata basis in accordance with a formula to be determined by the Board.

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- CP-2.2.5: If, in the opinion of the Board, the amount which would be payable to eligible depositors would make the Scheme inappropriate (for administrative and/or other reasons) for a relevant bank, the Scheme may not be made available for such relevant bank.

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- CP-2.2.6: If one or more eligible deposits with the relevant bank are held in the name of more than one person, each such person will be deemed to be a separate eligible depositor for an amount ascertained by dividing the total amount of such eligible deposit(s) by the number of such persons.

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- CP-2.2.7: An eligible deposit to which two or more persons are entitled as members of a partnership (whether or not in equal shares) should be treated as a single eligible deposit and the partners in such partnership should be treated as one eligible depositor.

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- CP-2.2.8: If a person establishes, to the satisfaction of the Board, that:
  - (a) He/she is a trustee for, or otherwise holds, one or more eligible deposits with the relevant bank; and
  - (b) The beneficial owner of each such eligible deposit is a person separate and distinct from the beneficial owner of any other eligible deposit with the relevant bank,
- such person should be treated as a different eligible depositor for each such eligible deposit.

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- However, in the event that the beneficial owner of one or more eligible deposits (regardless of in whose name such eligible deposits are held) is the same person, such eligible deposits should be treated as being held by one eligible depositor (see CP-2.2.8).

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- CP-2.2.9: No assignment or other transfer of the legal or beneficial ownership of an eligible deposit(s), or any part thereof, should be considered valid if, in the opinion of the Board, the purpose of such assignment or transfer is to enable any person(s) (including an eligible depositor(s)) to gain an advantage in the Scheme.

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- CP-2.3.: Procedures for making claims under the Scheme
- CP-2.4: Disclosure of Scheme's applicability
- CP2-5: Other provisions

## The Banker-Customer Relationship

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- “Following the introduction of the Central Bank of Bahrain and Financial Institutions Law 2006 ('CBB Law'), a new deposit protection scheme is now in the process of being finalized. The scheme is intended to be pre-funded, in contrast to the current scheme, which is post-funded.”

See: <http://www.cbb.gov.bh/cmsrule/index.jsp?action=article&ID=37>

## The Banker-Customer Relationship

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- The bank's duty of care
  
- For the position in English law, see pp. 13-16 of the Roberts' book.
  
- In Bahrain - it is part of a banker's principles of business.

## The Banker-Customer Relationship

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- PB-1.1 Principles
  - Principle 1 — Integrity
  - Principle 2 — Conflicts of Interest
  - Principle 3 — Due Skill, Care and Diligence
  - Principle 4 — Confidentiality
  - Principle 5 — Market Conduct
  - Principle 6 — Customer Assets
  - Principle 7 — Customer Interests
  - Principle 8 — Relations with Regulators/Supervisors
  - Principle 9 — Adequate Resources
  - Principle 10 — Management, Systems & Controls

## The Banker-Customer Relationship

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- PB-1.1.1: Conventional bank licensees and approved persons must observe high standards of integrity and fair dealing. They must be honest and straightforward in their dealings with customers, and provide full disclosure of all relevant information to customers, as required by the CBB's Regulations and Directives.

## The Banker-Customer Relationship

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- PB-1.1.2: Conventional bank licensees and approved persons must take all reasonable steps to identify, and prevent or manage, conflicts of interest that could harm the interests of a customer.
- PB-1.1.3: Conventional bank licensees and approved persons must act with due skill, care and diligence.

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- PB-1.1.4: Conventional bank licensees and approved persons must observe in full any obligations of confidentiality, including with respect to customer information. This requirement does not over-ride lawful disclosures.

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- PB-1.1.5: Conventional bank licensees and approved persons must observe proper standards of market conduct, and avoid action that would generally be viewed as improper.
- PB-1.1.6: Conventional bank licensees and approved persons must take reasonable care to safeguard the assets and deposits of customers for which they are responsible.

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- PB-1.1.7: Conventional bank licensees and approved persons must pay due regard to the legitimate interests and information needs of their customers & communicate with them in a fair & transparent manner. Conventional bank licensees and approved persons, when dealing with customers who are entitled to rely on their advice or discretionary decisions, must take reasonable care to ensure the suitability of such advice or decisions.

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- PB-1.1.8: Conventional bank licensees and approved persons must act in an open and co-operative manner with the CBB and other regulatory/supervisory bodies whose authority they come under. They must take reasonable care to ensure that their activities comply with all applicable laws and regulations.

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- PB-1.1.9: Conventional bank licensees must maintain adequate human, financial and other resources sufficient to run their business in an orderly manner.

## The Banker-Customer Relationship

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- PB-1.1.10: Conventional bank licensees must take reasonable care to ensure that their affairs are managed effectively & responsibly, with appropriate systems & controls in relation to the size and complexity of their operations. Conventional bank licensees' systems & controls, as far as is reasonably practical, must be sufficient to manage the level of risk inherent in their business & ensure compliance with the CBB Rulebook.

## The Duty of Confidentiality

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- See Part 8 of the CBB Law 2006
  
- Definition: "Confidential Information" means any information on the private affairs of any of the Licensee's customers (see: Art 116)

## The Duty of Confidentiality

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- Art. 120: Confidential Information include confidential information received prior to enactment of this law by the following institutions or persons:
  1. The Bahrain Monetary Agency or any of its officials or employees.
  2. The Ministry of Commerce or any of its officials or employees.
  3. Any auditor or expert appointed by the Bahrain Monetary Agency or by the Ministry of Commerce.

## The Duty of Confidentiality

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- Art. 120: Confidential Information include confidential information received prior to enactment of this law by the following institutions or persons:
  4. The Bahrain Stock Exchange or any of its officials or employees.
  5. Any person who obtains the confidential information directly or indirectly from any of the persons or bodies referred to in the preceding items.

## The Duty of Confidentiality

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- Article (117) Confidential Information must not be disclosed by a Licensee unless such disclosure is done:
  1. Pursuant to an unequivocal approval of the person to whom the confidential information relates.
  2. In compliance with the provisions of the law or any international agreements to which the Kingdom is a signatory.

## The Duty of Confidentiality

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- Article (117) Confidential Information must not be disclosed by a Licensee unless such disclosure is done:
  3. In the process of executing an order issued by a Competent Court.
  4. For the purpose of implementing an instruction given by the Central Bank.

## The Duty of Confidentiality

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- Art 118: The Central Bank may disclose under the following circumstances any Confidential Information received thereby directly or indirectly:
  - (1) In any of the cases stated in Article (117) of this law.
  - (2) In connection with any measures taken by the Central Bank to ensure stability and reinforce trustworthiness of banking and financial system of the Kingdom, if the said measures require such disclosure.

## The Duty of Confidentiality

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- Art 118: The Central Bank may disclose under the following circumstances any Confidential Information received thereby directly or indirectly:
  - (3) In cooperation with international financial organizations or competent administrative bodies or authorized committees.

## The Duty of Confidentiality

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- Article (119) Restriction on Disclosure of Confidential Information by Third Parties.
  - ~ No person who receives, directly or indirectly, Confidential Information may disclose such information otherwise than as specified under Article 118 of this law.

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- Article (171)

~ Without prejudice to any greater penalty prescribed under the Penal Code or any other law, a person who discloses in bad faith any Confidential Information in contravention of the provisions of Part (8), shall be liable to imprisonment and a fine not exceeding Bahrain Dinars ten thousand (10,000), or either penalty.

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- EN-10.3.4 (CBB Rulebook vol. 1)

~ Article 171 of the CBB Law provides for a term of imprisonment and/or a fine not exceeding BD10,000, if any Director, manager, official or employee discloses in bad faith any Confidential Information relating to a customer of the concerned bank.

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- Article (172)

~ Any legal person shall be liable and punished under criminal law by a fine not exceeding two hundred thousand Bahraini Dinars, if any of the crimes stated in this Decree are committed in his name or for his account or by means of any of his facilities, and this was a result of any action or gross negligence, or by the approval or under covering of any member of the board of directors or any other official of that legal person or any person who acts in such capacity.

## The Duty of Confidentiality

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- CM-1.2.5 (CBB Rulebook vol. 1)

~ All CRB members must fully abide by the agreed Code of Practice of the CRB (see Appendix CM-3), in matters such as the protection of confidential customer data and payment of enquiry fees. Any such breaches will be viewed as calling into question the "fit and proper status" of persons involved, potentially making the licensee & the person liable to enforcement action by the CBB.

## References:

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- CBB Law
- CBB Rulebook Vol. 1
- CBB Website
- Graham Roberts, Law Relating to Financial Services, 6th Edition, Les50ns Financial Publishing.