

# Banking Law

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## Principles of Banking Law

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- Banks, Banking and Bank Regulation
- Banks and Finance
- Banks and the Customers
- Payment and Payment Systems

## Banks, Banking & Bank Regulation

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- **Bank**: a person carries on the business of banking
- Common law definition as reaffirmed by the Court of Appeal in *United Dominions Trust Ltd v. Kirkwood*
- The definition has been adopted in many common law countries (eg, Malaysia, Art. 2 of the BAFIA)

## Banks, Banking & Bank Regulation

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- Article 1 of CBB Law defines Bank as:
  1. any corporate body licensed under the terms of this law to accept deposits, advance loans, manage and invest funds with or without providing any other related services.
  2. any person licensed under this law to accept, manage and invest deposits and savings according to the Islamic Shari'a Principles with or without providing other related services.
  3. any other licensee as approved by the Central Bank.

## Banks, Banking & Bank Regulation

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- **Banking:** in *United Dominion Trust Ltd v. Kirkwood* [1966] 2 QB 431: “Usual characteristics of banking at the present time are:
  - i. acceptance of money from and collection of cheques for, customer and the placing them on customers’ credit;
  - ii. the honouring of cheques on orders drawn on the bank by their customers when presented for payment and the debiting of the customers accordingly;
  - iii. the keeping of some form of current accounts for the entries of customers’ credit and debits
- + stability, soundness and probity (Lord Denning)
- + reputation and performance behind it (Harman LJ)

## Banks, Banking & Bank Regulation

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- Banking in Bahrain: consists of both conventional and Islamic banks.
- As on 29 February 2008:
  - Conventional – 23 retail; 67 wholesale; 32 representative offices
  - Islamic – 6 retail; 19 wholesale; 4 representative offices

# Banks, Banking & Bank Regulation

- Banking in Bahrain – CBB Law: Regulated Banking services
- Article 1 Regulated Services: has the meaning set out in Article 39 of this law.
- Article (39): Regulated Services
  - a) For the purposes of this law, Regulated Services shall mean the financial services provided by the financial institutions, including those governed by Islamic Shari'a principles.
  - b) The Central Bank shall issue regulations specifying the Regulated Services and organizing the provision of these services. The Central Bank shall supervise and control any licensees providing such services.

The screenshot shows the website of the Central Bank of Bahrain. The browser address bar displays the URL: [http://cbb.complinet.com/cbb/search/search.html?and\\_words=regulated&submitted=1&albox=1&sortorder=0&numresults=20&bid=1820](http://cbb.complinet.com/cbb/search/search.html?and_words=regulated&submitted=1&albox=1&sortorder=0&numresults=20&bid=1820). The website header includes the Central Bank of Bahrain logo and navigation links: About CBB, Monetary Policy, Banking Operations, Regulatory Functions, Publications & Data, Consumer Information, and The Financial Sector. A search bar is visible with the text "Search Again". Below the search bar, the search results are displayed, showing 62 results sorted by relevance. The first 10 results are listed below:

- 1 - [Regulated banking services](#) Part B >> Glossary of Defined Terms >> [ R ]
- 2 - [Regulated insurance services](#) Part B >> Glossary of Defined Terms >> [ R ]
- 3 - [Regulated Islamic banking services](#) Part B >> Glossary of Defined Terms >> [ R ]
- 4 - [\[LR-1.3\] Definition of Regulated Banking Services](#) Archived Part A >> High Level Standards >> LR Licensing Requirements >> LR-1 Requirement to Hold a License
- 5 - [LR-1.3.6](#) Archived Part A >> High Level Standards >> LR Licensing Requirements >> LR-1 Requirement to Hold a License >> LR-1.3 Definition of Regulated Banking Services
- 6 - [LR-A.1.3](#) Archived Part A >> High Level Standards >> LR Licensing Requirements >> LR-A Introduction >> LR-A.1 Purpose >> Licensing Requirement
- 7 - [LR-1.3.2](#) Archived Part A >> High Level Standards >> LR Licensing Requirements >> LR-1 Requirement to Hold a License >> LR-1.3 Definition of Regulated Banking Services
- 8 - [LR-3.2.1](#) Archived Part A >> High Level Standards >> LR Licensing Requirements >> LR-3 Information Requirements and Processes >> LR-3.2 Variations to a License
- 9 - [LR-3.2.2](#) Archived Part A >> High Level Standards >> LR Licensing Requirements >> LR-3 Information Requirements and Processes >> LR-3.2 Variations to a License
- 10 - [LR-1.1.2](#) Archived Part A >> High Level Standards >> LR Licensing Requirements >> LR-1 Requirement to Hold a License >> LR-1.1 Conventional Bank Licensees >> General Prohibitions

## Banks, Banking & Bank Regulation

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- Banking in Bahrain – CBB Rulebook: Regulated Banking services
- Central Bank of Bahrain Volume 1 - Conventional Banks >Part B > Glossary of Defined Terms > Regulated banking services: Any of the regulated activities permitted to be undertaken by a conventional bank licensee (see LR-1.3).
- Central Bank of Bahrain Volume 2 - Islamic Banks > Part B > Glossary of Defined Terms > Regulated banking services: Any of the regulated activities permitted to be undertaken by a conventional bank licensee (see Volume 1, LR-1.3)

## Banks, Banking & Bank Regulation

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- Banking in Bahrain – CBB Rulebook: Regulated Banking services ~> Central Bank of Bahrain Volume 1 - LR-1.3
- Regulated banking services are any of the following activities, carried on by way of business:
  - (a) Deposit-taking
  - (b) Providing Credit
  - (c) Accepting Shari'a money placements/deposits
  - (d) Managing Shari'a profit/loss sharing investment accounts
  - (e) Offering Shari'a Financing Contracts
  - (f) Dealing in financial instruments as principal
  - (g) Dealing in financial instruments as agent

## Banks, Banking & Bank Regulation

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- Banking in Bahrain – CBB Rulebook: Regulated Banking services ~> Central Bank of Bahrain Volume 1 - LR-1.3
- Regulated banking services are any of the following activities, carried on by way of business:
  - (h) Managing financial instruments
  - (i) Safeguarding financial instruments
  - (j) Operating a Collective Investment Undertaking
  - (k) Arranging deals in financial instruments
  - (l) Advising on financial instruments
  - (m) Providing money exchange/remittance services
  - (n) Issuing/administering means of payment.

## Banks, Banking & Bank Regulation

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- Banking in Bahrain – CBB Rulebook: Regulated Islamic Banking services
- Central Bank of Bahrain Volume 1 - Conventional Banks > Part B > Glossary of Defined Terms > Regulated Islamic banking services: are any of the activities specified in Volume 2, Section LR-1.3, carried on by way of business.
- Central Bank of Bahrain Volume 2 - Islamic Banks > Part B > Glossary of Defined Terms > Regulated Islamic banking services: Any of the regulated activities permitted to be undertaken by an Islamic bank licensee (see LR-1.3).

## Banks, Banking & Bank Regulation

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- Banking in Bahrain – CBB Rulebook: Regulated Banking services ~> Central Bank of Bahrain Volume 2 - LR-1.3
- Regulated banking services are any of the following activities, carried on by way of business:
  - (a) Accepting Shari'a money placements/deposits
  - (b) Offering Shari'a Financing Contracts
  - (c) Managing Shari'a profit sharing investment accounts
  - (d) Dealing in Shari'a compliant financial instruments as principal
  - (e) Dealing in Shari'a compliant financial instruments as agent
  - (f) Managing Shari'a compliant financial instruments

## Banks, Banking & Bank Regulation

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- Banking in Bahrain – CBB Rulebook: Regulated Banking services ~> Central Bank of Bahrain Volume 2 - LR-1.3
- Regulated banking services are any of the following activities, carried on by way of business:
  - (g) Safeguarding Shari'a compliant financial instruments
  - (h) Operating a Shari'a compliant Collective Investment Undertaking
  - (i) Arranging deals in Shari'a compliant financial instruments
  - (j) Advising on Shari'a compliant financial instruments
  - (k) Providing money exchange/remittance services
  - (l) Issuing/administering means of payment

## Banks, Banking & Bank Regulation

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### ■ **Bank Regulation**

- Laws: CBB Law of 2006; BSE Law of 1987; CCL Law of 2001; AML of 2001; Financial Trust Law of 2006
- CBB Rulebook (Volume 1 – conventional banks; Volume 2 – Islamic banks)
- CBB Capital Markets Regulations

## CBB Profile

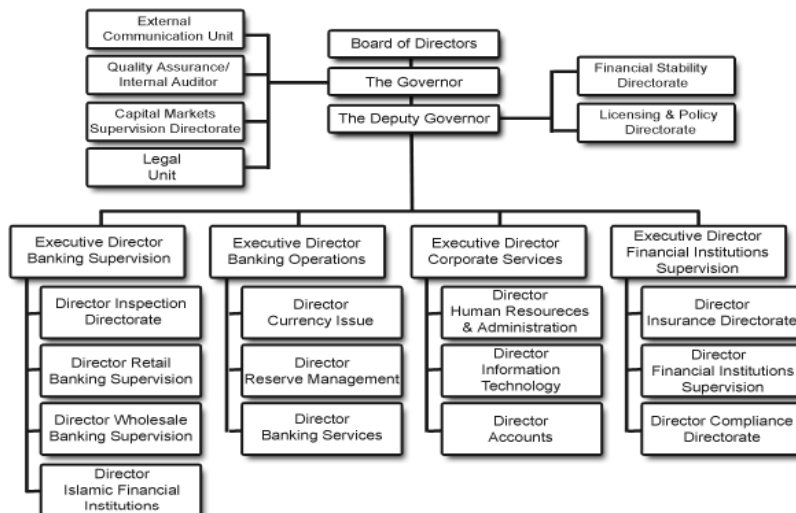
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- The Central Bank of Bahrain ('CBB') is a public corporate entity established by the Central Bank of Bahrain and Financial Institutions Law 2006. It was created on 7th September 2006.
- The CBB is responsible for maintaining monetary and financial stability in the Kingdom of Bahrain. It succeeded the Bahrain Monetary Agency, which had previously carried out central banking and regulatory functions since its establishment in 1973 (shortly after Bahrain secured full independence from Great Britain).

# CBB Profile

- The CBB inherits the BMA's 33-year track record and wide range of responsibilities. It implements the Kingdom's monetary and foreign exchange rate policies, manages the government's reserves and debt issuance, issues the national currency and oversees the country's payments and settlement systems. It is also the sole regulator of Bahrain's financial sector, covering the full range of banking, insurance, investment business and capital markets activities.
- The CBB's wide scope of responsibilities allows a consistent policy approach to be undertaken across the whole of the Kingdom's financial sector. It also provides a straightforward and efficient regulatory framework for financial services firms operating in Bahrain.

(Source: <http://www.cbb.gov.bh/cmsrule/index.jsp?action=article&ID=1>)



Source: <http://www.cbb.gov.bh/cmsrule/index.jsp?action=article&ID=4>

# Banks, Banking & Bank Regulation

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- Central Bank of Bahrain and Financial Institutions Law 2006
  - \* Chapter 1 Establishment & Administration of the Central Bank
    - o Article (2) Establishment of the Central Bank
    - o Article (3) Objectives of the Central Bank
    - o Article (4) Duties and Powers of the Central Bank
    - o Article (5) The Board of Directors
    - o Article (6) Conditions of Membership
    - o Article (7) Meetings and Proceedings of the Board
    - o Article (8) The Powers of the Board
    - o Article (9) Termination of Board Membership
    - o Article (10) Governor and Deputy Governor

# Establishment of the Central Bank

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- a) A public corporate person called the "Central Bank of Bahrain" shall be established in accordance with the provisions of this law and shall be administratively and financially independent.
- b) The Central Bank's headquarters shall be situated in the city of Manama, and it may open branches in Bahrain and abroad, establish subsidiaries and appoint agents and representatives, both inside and outside the Kingdom, in order to assist it achieve any of its objectives stated in this law.
- c) The Central Bank shall have an independent budget, to be prepared on a commercial basis, and shall conduct its business according to commercial banking principles. It shall also perform its duties without being subject to the government administrative and financial regulations. The Central Bank shall not be subject to the provisions of any other law, which imposes prior controls on its business.
- d) The role of the National Audit Court in auditing the activities and accounts of the Central Bank shall be limited to the audit of the accounts and the assets of the Central Bank, without any interference, in any form, in its activities or policies. The technical employee assigned by the National Audit court to audit the accounts of the Central Bank must be adequately qualified and specialized in the banking business.

## Objectives of the Central Bank

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- The Central Bank shall pursue the following objectives within the framework of the general economic policy of the Kingdom in a manner that enhances and develops the national economy:
  - 1) set and implement the monetary, credit and other financial sector policies for the Kingdom.
  - 2) provide effective central banking services to the Government and the financial sector of the Kingdom.
  - 3) develop the financial sector and enhance confidence therein.
  - 4) protect the interests of depositors and the customers of the financial institutions, and enhance the Kingdom's credibility as an international financial centre.

## Duties & Powers of the Central Bank

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- The Central Bank shall assume the following duties and powers:
  - 1) issue currency in accordance with the provisions of this law.
  - 2) liaise with the Ministry of Finance and other relevant official bodies for the purpose of drawing and implementing the appropriate monetary policies to achieve the Kingdom's general economic goals, maintain the stability of the Bahraini currency and the monetary system.
  - 3) take appropriate measures to counter adverse local, regional or international economic conditions.
  - 4) regulate, develop and license the Services stated in Article 39 of this law, and exercise regulatory control over institutions that provide such services.
  - 5) act as banker to the Government within the limits set out in this law

## Duties & Powers of the Central Bank

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- The Central Bank shall assume the following duties and powers:
  - 6) advise the Government on issues pertaining to financial and economic affairs.
  - 7) manage the Government's reserves of gold and foreign currency.
  - 8) to act, in coordination with the Ministry of Finance, as the financial agent for the Government at the International Monetary Fund and the International Bank for Reconstruction and Development as well as other Arab and international monetary institutions and funds, and perform all Government dealings with these organizations.
  - 9) facilitate and encourage innovation in the financial services industry.
  - 10) safeguard the legitimate interests of licensees' customers against the risks associated with the financial services industry.
  - 11) perform any other duties as stipulated in this law.

## CBB Board of Directors

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- Art 5 (a) The CBB BOD : seven members, including a representative of the Ministry of Finance. Members of the Board shall be appointed by a Royal Decree for a renewable term of four years. The Decree appointing the members shall name the Chairman and the Vice chairman of the Board.
- Article (6) Conditions of Membership
- Article (7) The Board shall meet at least four times every year by invitation from the Chairman. The Board meeting shall have a quorum of at least four members, including the Chairman or the Vice Chairman.

## CBB Board of Directors

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- Article (8) The Powers of the Board: shall supervise the affairs of the Central Bank, lay down its policies and shall exercise all powers necessary to achieve the objectives of the Central Bank as set out in the provisions of this law.
  
- Article (9) Termination of Board Membership
  - (a) Membership of the Board shall terminate automatically upon the expiry of its specified term or upon the death or resignation of a member.
  - (b) Membership may, upon recommendation of the Board, be terminated, prior to the expiry of the term thereof, if a member:
    1. has seriously neglected his duties,
    2. has violated any of the membership conditions,
    3. is no longer capable of performing his duties for any reason.
    4. failed to attend three consecutive Board meetings without a permission or an acceptable excuse.

## Governor & Deputy Governor

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- a) The Central Bank shall have a Governor, of ministerial rank, who shall be responsible for implementing its policies and assume the day-to-day management of its affairs. The Governor shall be directly accountable to the Board, who shall determine his monthly remunerations.
- b) The Central Bank shall have one or more Deputy Governors, of undersecretary rank, to assist the Governor in the management of the Central Bank's affairs and assume responsibilities on a temporary basis if the Governor is absent or if his position becomes vacant. The Board shall determine the monthly remunerations of the Deputy Governor.
- c) The Governor is appointed by a Royal Decree for a renewable 5-year term of office on the recommendation of the Board.
- d) The Deputy Governor shall be appointed by a Royal Decree upon a recommendation of the Board.
- e) The Governor shall be the legal representative of the Central Bank before the law and others, and shall have the power to sign all documents, contract and papers on its behalf. He shall be responsible for the implementation of this law, the Central Bank's regulations and the Board's resolutions.

## CBB Capital

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- a) The authorized capital of the Central Bank shall be Bahraini Dinars Five hundred million (BD 500,000,000).
- b) The paid up capital of the Central Bank shall be Bahraini Dinars Two hundred million (BD 200,000,000).
- c) The authorized capital and the paid up capital may be increased by a royal decree.
- d) The Government shall pay the capital of the Central Bank in full and shall be the sole owner thereof.

## General Reserve

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- a) The Central Bank shall maintain on its books an account designated as the "General Reserve" which shall be credited with percentages of its net profits at the end of each financial year in the following order:
  - 1. 100% of the Bank's net profit until the amount of the general reserve reaches 25% of the authorized capital of the Central Bank.
  - 2. 50% of the net profit until the amount of the general reserve is equal to the authorized capital of the Central Bank.
  - 3. 25% of the net profit until the amount of the general reserve is double the amount of the authorized capital of the Central Bank.
- b) Any net profit remaining after such allocation in accordance with the preceding paragraph and Article 21 of this law (contingency reserve), shall be transferred to the Kingdom's general account within three months of the date of approval of the Bank's final accounts.

# Regulations

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- Chapter 8 Regulations, Resolutions, Directives and Notices
  - Article (37) Regulations and Resolutions
- a) The Board shall issue Regulations to organize the Central Bank's bids and purchases. Such regulations shall ensure transparency, safeguard the Central Bank's money, enhance honesty and competition based on equal opportunities, and encourage participation in bids and purchases of the Central Bank. In this regard the Central Bank shall not be subject to the law organizing government bids and purchases.
  - b) The Governor shall issue the necessary regulations and resolutions for the implementation of this law, except such regulations and resolutions, which the law clearly states that they are the responsibility of the Board.

# Regulations

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- Chapter 8 Regulations, Resolutions, Directives and Notices
  - Article (37) Regulations and Resolutions
- c) Such regulations and resolutions shall only be valid after they are published in the Official Gazette and may also be published through any other media, including electronic means, to ensure proper circulation.
  - d) Drafts regulations and resolutions shall be publicized through any suitable means to ensure that the addressees are aware of such regulations and are able to comment on them. Such circulars shall include reasonable deadlines for receiving such comments.  
Regulations and resolutions issued under necessity conditions, as determined by the Central Bank, are excluded.
  - e) Before issuing any proposed regulations & resolutions, the Central Bank must review and consider any comments made on them.

# Directives

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- Article (38) Directives
  - a) The Governor shall issue the necessary directives to ensure the implementation of this Law, any regulations issued in accordance to this Law and the achievement of the objectives of the Central Bank. Such directives shall be legally supported and the intended addressees shall be identified.
  - b) The Governor may issue directives that aim to facilitate the understanding and implementation of this law and any regulations thereof. He may also issue directives regarding other matters, as he deems appropriate to serve the objectives of the Central Bank.
  - c) The directives shall be circulated through the means approved by the Governor. Once circulated to the intended addressees, the directives become binding.

# Part 7 - Information Gathering, Inspection Visits & Judicial Investigation

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- Chapter 1 Power of the Central Bank to Obtain Information
  - o Article (111) Obtaining Information from Licensees
  - o Article (112) Information from Others
  - o Article (113) Request of Reports from Related Parties
- Chapter 2 Inspection
  - o Article (114) Inspection
  - o Article (115) Judicial Investigation

## Obtaining Information from Licensees

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- The Central Bank may demand, by written notice given to a licensee, any information, documents, statistics, yearly reports or any other periodical reports that the Central Bank requires according to this law.
- The Licensee shall provide the required information within the specified period and shall immediately notify the Central Bank of any major changes in such reports.

## Information from Others

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- Without prejudice to Article (111) of this law, the Central Bank may require, by a written notice, any Listed company or any person who has issued debt instruments in the Kingdom to provide such information in relation to its financial affairs as the Central Bank deems necessary for discharging its duties and responsibilities under this law.

## Request of Reports from Related Parties

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- a) The Central Bank may request in writing from any Licensee's partner any reports that may be necessary under this law.
  
- b) The person who prepares such reports referred to in the previous paragraph must be:
  - 1. nominated, appointed or approved by the Central Bank.
  
  - 2. duly qualified to prepare such reports.

## Inspection

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- a) The Governor may assign some of the Central Bank officials or others (the "Inspectors"), to inspect the Licensees' or the listed companies businesses pursuant to the principles and procedures stated in the Regulations issued by the Central Bank. The Inspectors are authorised to investigate whether the Licensees or the listed companies are complying with the provisions of this Decree and the Regulations and resolutions issued in connection with implementing thereof. To achieve this objective the Inspectors are authorised to enter the premises and offices of the Licensees and the listed companies, to have access to the books, documents and correspondences and to question any persons as they deem necessary. They are also authorised to contact banks and other relative institutions in connection with the subject matter of the investigation or the institutions in which the Licensee has investments.

## Inspection

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- b) The term documents, to which the Inspectors shall have the right by virtue of the above paragraph to review, means the data written or recorded by any means including data recorded in electronic format

The Licensees and the listed companies must provide, upon request, the Central Bank or the Inspectors with a legible copy of any data recorded in an illegible format

- c) No person shall interrupt or prevent any authorised Inspectors from carrying out the duties and responsibilities required of them under this Decree.

## Judicial Investigation

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- The officers of the Central Bank who are appointed by a resolution issued by the Minister of Justice in agreement with the Governor, shall have the capacity of Judicial Investigation Officers with respect to criminal offences that fall under their jurisdiction and relevant to the duties assigned to them. The verbal process of such crimes prepared by the said officials should be referred to the public prosecution pursuant to a resolution to be issued by the Governor or any person he may authorised.

## Part 8 - Confidential Information and Disclosure Thereof

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- Article (116) Definition of Confidential Information
- Article (117) Restriction on Disclosure of Confidential Information by Licensees
- Article (118) Disclosure of Confidential Information by the Central Bank
- Article (119) Restriction on Disclosure of Confidential Information by Third Parties
- Article (120) Confidential Information Obtained Prior to Enactment of this Law

## Part 9 - Investigations and Administrative Proceedings

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- Chapter 1 Investigation
  - Article (121) Appointment of Investigators
  - Article (122) Assistance in Investigations by Overseas Authorities
  - Article (123) Request of Information and Documents in Possession of a Third Party
  - Article (124) Enabling the Central Bank to Practice Its Duties
- Chapter 2 Procedures to be Taken Before Penalties or Administrative Proceedings are Applied
  - Article (125) Warning Notice
  - Article (126) Right of Objection
  - Article (127) Decision Notice

## Part 9 - Investigations and Administrative Proceedings

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- Chapter 3 Penalties and Administrative Proceedings
  - Article (128) Imposing Restrictions
  - Article (129) Imposing Administrative Fines
  - Article (130) Administrative Proceedings
  - Article (131) Suspension of the Licensee from Providing the Service
  - Article (132) Public Censure

## Banks and Finance

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- Licensee: means any person licensed by the Central Bank to provide any of the regulated services.
- Person: any natural or corporate person.
- Financial Institutions: Banks, insurance companies, companies dealing in securities, portfolios and investment funds, financing companies, money exchange companies, money brokers and mediators, insurance brokers, mediators of the securities market, consultancy firms dealing in the financial service industry, credit rating firms, Bahrain Securities Market, capital markets, and precious metals and strategic commodities markets, financial sector support institutions, including institutions licensed to provide financial services according to Islamic Shari'a principles.

See: Article 1 of CBB Law

# The Financial Industry

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- Chapter 1 Regulation of the Industry
- Chapter 2 Procedure for Licensing, Amendment and Termination of Licenses
- Chapter 3 Control
- Chapter 4 Accounts and Financial Statements
- Chapter 5 Licensee's Staff
- Chapter 6 Control of Business Transfers

# Chapter I - Regulation of the Industry

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- Article (39) Regulated Services
- Article (40) Carrying Out of Regulated Services
- Article (41) Restriction on the Use of Certain Names and Expressions
- Article (42) Marketing & Investment
- Article (43) Invalid Agreements

## Carrying Out of Regulated Services

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- Article (39) Regulated Services.
- Article (40) Carrying Out of Regulated Services
  - a) No person shall carry out a Regulated Service in the Kingdom unless licensed by the Central Bank.
  - b) With due regard to the provisions of the Commercial Companies Law, no financial institution shall be established in the Kingdom without the approval of the Central Bank.

## Restriction on the Use of Certain Names and Expressions

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- No person other than a financial institution licensed for the provision of banking services shall use, in any language, the term 'bank' or any synonym thereof, or an expression, address, invoice, notices or headed papers, which may be understood to mean that such person provides banking services.
- No person other than a financial institution licensed for the provision of insurance or reinsurance services shall use, in any language, any term or expression, which may be understood to mean that such a person, is a provider of any such service. Also, no person other than those registered in the register stated in Article (74) of this law shall use, in any language, any term or expression that may be understood to mean that such person is providing any expert service in the area of insurance business, brokerage, that he is a representative of an insurance company or engaging in any other activity related to insurance.

## Marketing & Investment

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- The Central Bank may issue regulations to prohibit or restrict the marketing of or investing in the Regulated Services by any unlicensed person.

## Invalid Agreements

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- No person may enter into any agreement in breach of the provisions of Articles 40 (carrying out regulated services) and 42 (marketing and investment) of this law or the Regulations and Directives issued pursuant to the implementation of these provisions. Any such agreement or act shall be void and invalid.

## Chapter 2 - Procedure for Licensing, Amendment & Termination of Licences

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- Article (44) Application for a Licence
- Article (45) The Granting of a Licence
- Article (46) Rejection of Application
- Article (47) Publication of the Decision to Grant a Licence
- Article (48) Amendment and Revocation of Licence
- Article (49) Publication of the Decision to Cancel or Amend a Licence
- Article (50) Case of Carrying on Business
- Article (51) Place of Business

## Application for a Licence

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- a) Any person who wishes to provide a Regulated Service must apply for a license from the Central Bank.
- b) An application must contain such particulars and information and accompanied by such documents as specified by the Central Bank.
- c) Subject to the Commercial Companies Law, the Central Bank shall issue regulations specifying the requirements for offering a licence to provide Regulated Services. Such requirements may include the legal form of the applicant, the location of its head office, the minimum capital and reserve requirements and the limits of capital adequacy requirements.

## Application for a Licence

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- d) The Central Bank shall verify the application for a license to ensure that it satisfies all the conditions required, and it may ask for amendments or any additional information that it requires to assist with reaching its decision regarding the application. Such request shall be made within thirty days from the date of submission.
- e) The Central Bank shall decide on the application within sixty days from the date of receiving the application complete with all the required information and documents.
- f) The applicant may, at any time before a decision has been made about the application, withdraw his application or make amendments to any errors therein or in the supporting documents in accordance with the Regulations issued by the Central Bank in this respect.

## The Granting of a Licence

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- a) The Central Bank shall grant a licence to the applicant if he satisfies all the conditions set out in this law and any Regulations issued pursuant thereto.
- b) The Central Bank may specify in the license the place at which the licensed Regulated Services to be provided and impose such terms and conditions on the Licensee as it deems necessary for a proper performance of the Regulated Services.
- c) The Central Bank shall keep a register entitled the "Register of Licensed Financial Institutions" on which all applications and supporting documents for licenses and any actions taken on them shall be recorded.

## Rejection of Application

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- a) The Central Bank shall issue a decision with the reason for rejecting an application for a licence if it does not satisfy the conditions provided for in this law or its regulations. In such case, the Central Bank shall notify the applicant in writing of the following:
1. The refusal to grant the licence and the reasons for such refusal.
  2. The period of time during which the applicant may appeal to the Central Bank, which shall not be less than thirty days from the date of the notice.

## Rejection of Application

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- b) The Central Bank shall decide on the appeal made by the applicant and notify him of its decision within thirty days from the date of submission of the appeal. Where an appeal has been refused, the applicant may re-appeal to the Board within thirty days from the date on which he was notified of the refusal, or upon the expiry of the deadline on which he was supposed to receive a decision on his appeal. The decision of the Board shall be final and binding. The applicant shall be notified by the Board's decision during a period not exceeding 90 days from date of his appeal to the Board.
- c) The applicant whose appeal has been rejected may appeal to a competent court in the Kingdom within sixty days from the date of notification of such decision or the expiry of the deadline specified for the decision and no notification was received.

## Publication of the Decision to Grant a Licence

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- a) The Central Bank shall publish its decision to grant a licence in the Official Gazette and in two local newspapers, one published in Arabic and the other in English.
- b) The Licencee must at all times keep an approved copy of the licence displayed in a visible place on the Licencee's premises in the Kingdom.

## Amendment and Revocation of Licence

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- a) The Central Bank may, upon a request by a Licensee, amend the conditions of a licence in any of the following cases:
  - 1. Adding a Regulated Service to other licensed services.
  - 2. Amending or canceling of one or more of the terms and conditions of the licence under Article 45 (b) of this law.
  - 3. Removing a licensed Regulated Service from those for which a person is licensed
- b) The Central Bank may not amend the licence conditions in accordance with the provisions of (2) and (3) above unless it is satisfied that the Licensee is able to meet the obligations imposed on him under the amended terms of the licence.

## Amendment and Revocation of Licence

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- c) The Central Bank may amend or revoke a licence under paragraph (a) above in any of the following cases:
1. If the licensee fails to satisfy any of the license conditions.
  2. If the licensee violates the terms of this law or the regulations or any of the license rules.
  3. If the licensee fails to start business within six months from the date of the licence.
  4. If the licensee ceases to carry out the licensed activity in the Kingdom.
  5. If the legitimate interests of the customers or creditors of a licensee required such amendment or cancellation.

## Amendment and Revocation of Licence

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- d) The Central Bank shall, prior to the cancellation or amendment of a licence according to the provisions of the preceding paragraph, notify the licensee in writing stating the reasons for such cancellation or amendment, date of validity and the deadline for appealing which shall not be less than thirty days from the date of notification.
- e) The Central Bank shall decide on any appeal made in accordance with the previous paragraph and notify the appellant of the decision taken in that respect within sixty days from the date on which the appeal was made.
- f) The decision to cancel or amend a licence takes immediate effect from the date stated in the notice.

## Amendment and Revocation of Licence

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- g) The Central Bank may, in exceptional cases that require no delay, cancel or amend a licence without following the procedures set forth in paragraph (d) of this Article. This shall not affect the right of the licensee to appeal within thirty days of notification of such decision. The Central Bank shall decide on the appeal and notify the appellant of its decision within sixty days of submission.
- h) An appeal against a decision to cancel or amend a licence may be made to a competent court within sixty days from the date of notifying the licensee of such decision, or upon the expiry of the period specified in the preceding paragraph, for a decision on the appeal, without receiving a notification.

## Publication of the Decision to Cancel or Amend a Licence

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- a) The Central Bank shall publish its decision to cancel or amend a licence in the Official Gazette as well as in two local daily newspapers, one published in Arabic and the other in English.
- b) The Central Bank may publish its decision on such cancellation or amendment using any other means it considers appropriate, including electronic means.

## Case of Carrying on Business

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- a) A licensee shall not cease to provide any or all of the licenced regulated services, completely or at any of its branches, without obtaining a written approval from the Central Bank.
- b) The Central Bank may restrict its approval referred to in the preceding paragraph upon such conditions, as it deems necessary.
- c) The licensee shall publish a notice of its intention to cease to provide any regulated service completely or at any of its branches, in two daily newspapers one in Arabic and the other in English, published in the Kingdom. Such notice shall be given, after receiving the approval of the Central Bank, not less than thirty days before the actual cessation is to take effect, and shall include such information as the Central Bank may specify.

## Place of Business

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- a) No licensee may, without a prior written approval of the Central Bank:
  - 1. Open a new place of business in the Kingdom.
  - 2. Close or change an existing place of business in the Kingdom.
  - 3. Open a new place of business abroad if the licensee is incorporated in the Kingdom.
- b) The Central Bank may restrict its approval stipulated in the preceding paragraph, to any other conditions, as it may deem necessary.

## Chapter 3 - Control

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- Article (52) Notification of Control
- Article (53) Control Procedures
- Article (54) Period of Control
- Article (55) Refusal of Control
- Article (56) Effect of Acquiring Shares in Breach of Control Provisions
- Article (57) Restrictions on Activities
- Article (58) Reporting of Matters Influencing the Licensee's Financial Position

## Notification of Control

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- a) The Central Bank shall issue a regulation specifying the nature and limits of "control" and the regulations applicable in case of approving a control over a licensee or a listed company.
- b) The Central Bank must be notified in any of the following cases:
  1. If effective Control over a licensee takes place indirectly whether by way of inheritance or otherwise.
  2. Gaining control directly as a result of any action leading to it.
  3. The intention to take any of the actions that would lead to control.

The controller or the person intending to take control over the licensee, as the case may be and by the licensee itself if it is aware of such case, shall in any of the above-mentioned cases, make notification.

## Notification of Control

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- c) Notice of Control shall contain a request for the Central Bank's approval for taking control over a licensee or taking any action that may lead to control, and shall also contain such particulars and information and be accompanied by such documents as the Central Bank may specify. In the cases referred to in items 1 and 2 of the preceding paragraph, the notice shall be made within fifteen days from the date of control. In the case referred to in item 3 of the preceding paragraph, the notice shall be made before taking any of the actions that would lead to control.

## Control Procedures

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- a) The Central Bank must, within three months from the date of receipt of the notice referred to in Article 52, notify the controller or the person intending to take control over a Licensee, as the case may be, of its approval of control, any of the actions which would lead to a control, or the refusal thereof as the Central Bank may determine at its own discretion.
- b) The Central Bank may impose any restrictions that it considers necessary to be observed in case of its approval of a control or any of the actions that would lead to a control.
- c) If the period specified in paragraph (a) of this Article lapses without a decision being taken on the application seeking approval of a control or any intended actions that would lead to a control, the application shall be considered as accepted.

## Control Procedures

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- d) The controller or the person intending to take control over a licensee may, within thirty days of the notification, appeal against the Central Bank's decision to refuse the control or any conditions imposed in respect of such control.

The Central Bank shall decide on the appeal and notify the licensee of its decision within thirty days from the date of submitting the appeal.

- e) An appeal against a decision on control may be submitted within thirty days from the date when the concerned person was aware of such decision.

## Period of Control

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- An approval of a control shall be temporary and shall take effect from any of the following periods:

(1) The period specified in the notice sent by the Central Bank to the controller regarding the approval of control.

(2) A period of one year, commencing from the date of notice sent to the controller in approval of control unless the said notice includes specific a period for the control.

(3) A period of one year, commencing from the date of the implicit approval to control, or the intended action which would lead to a control, in accordance with the provisions of paragraph (c) of Article (53) of this law.

## Refusal of Control

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- The Central Bank may refuse to give approval to a control if it will affect the legitimate interests of the customers or if it is detrimental to the relevant sector, or if the Central Bank decides, according to its own discretion, that it would be inappropriate to control a licensee according to the criteria set by the Central Bank.

## Effect of Acquiring Shares in Breach of Control Provisions

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- a) Any person who acquires shares in breach of the provisions of this chapter shall carry out any instructions issued to him by the Central Bank to transfer such shares or refrain from exercising voting rights in respect of such shares according to the procedures prescribed in such instructions.
- b) The Central Bank may seek a court order to take appropriate precautionary measures or sell such shares if the licensee fails to carry out the order referred to in the preceding paragraph. The value of the shares sold shall be paid to the party who has rights therein after the deduction of expenses.

## Restrictions on Activities

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- a) A licensee incorporated in the Kingdom shall not practice any of the following without a prior written approval of the Central Bank:
  1. Merge, amalgamate or enter into a partnership with any person outside the Kingdom, except in the ordinary course of business.
  2. Transfer all or a major part of its assets or liabilities inside or outside the Kingdom, without prejudice to the provisions of Chapter 6 of this law.
  3. Make any modification to its issued or paid-up share capital.
  4. Modify its Memorandum or Articles of Association.
  5. Engage in major acquisition or investment operations as determined by the Central Bank.

## Restrictions on Activities

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- b) The Central Bank, in granting any approval under the preceding paragraph, may impose such conditions as it considers appropriate.
- c) The Council shall set out rules and procedures regulating the acquisition of licenced national entities by others in accordance with the provisions of this Law

## Reporting of Matters Influencing the Licensee's Financial Position

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- The licensee shall notify the Central Bank immediately of any matter that may affect its financial position, currently or in the future, or limit its ability to meet its obligations.

## Chapter 4 - Accounts and Financial Statements

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- Article (59) Accounting Records
- Article (60) Record Keeping
- Article (61) Auditing of the Licensee's Accounts
- Article (62) Final Accounts
- Article (63) Additional Tasks for the Auditors
- Article (64) Rules Governing Auditing

## Chapter 5 - Licensee's Staff

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- A licensee must obtain a prior approval from the Central Bank for any nominees to the membership of the board or for any executive post. The Governor shall issue the terms and conditions for obtaining such approval.
- The Central Bank may determine the standard levels of qualifications, experience and training of licensee's officers and employees.
- If it becomes evident to the Central Bank that a licensee is employing any official, as a board member or in an executive position, who is not qualified or unsuitable for the assigned job, the licensee shall promptly, after due notification, stop such official from assuming the responsibilities of such a job.

## Chapter 6 - Control of Business Transfers

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- Article (66) Application to Transfer Business
- Article (67) Decision on Application for Business Transfer
- Article (68) Transfer of Other Business

## Application to Transfer Business

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- a) A Licencee shall not transfer any banking or insurance business to others before an approval from the Central Bank.
- b) A Licencee who desires to transfer all or any part of its business referred to in the preceding paragraph, shall make an application to the Central Bank in the form prepared by the Central Bank for such purpose.
- c) A Transfer of Business application shall be published by the Central Bank in the Official Gazette and also in two daily newspapers published in the Kingdom one in Arabic and one in English. The publication should include a call to the concerned parties to submit any objections to the Central Bank within three months from the date of publication.
- d) The Central Bank shall consider the objections referred to in the preceding paragraph before taking any action on the application for transfer.

## Decision on Application for Business Transfer

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- a) The Central Bank shall determine the procedure of processing applications for business transfer.
- b) The following shall apply in order to approve a business transfer:
  - 1. The business, subject of transfer, shall not be prohibited by the Central Bank.
  - 2. The Transfer of Business shall not cause damages to the interests of the licensee's customers or creditors.
  - 3. The transferee must be licensed to carry out the business in the place to which it is to be transferred.
  - 4. The Central Bank must be satisfied that the Transfer of Business is appropriate under relevant regulations issued in this respect.

## Decision on Application for Business Transfer

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- c) The Central Bank shall give its approval to a Transfer of Business if the application satisfies the requirements set in the preceding paragraph. Such approval may be given subject to any conditions deemed appropriate by the Central Bank.
- d) The decision of the Central Bank on a Transfer of Business shall be published in the Official Gazette as well as in Arabic and English language daily newspapers published locally. The decision shall be effective from the date set therein.
- e) An applicant whose application has been turned down or who faces restrictions regarding the transfer of his business may appeal to a competent court within thirty days from the date of publishing of such decision in the official gazette

## Transfer of Other Business

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- The provisions of this section of the law shall apply to the transfer of any other regulated services offered by a licensee, other than banking and insurance services, as the Central Bank may decide in order to protect the interests of the licensee's customers and creditors

## References:

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- Unless cited otherwise, all statutory reference is to the CBB law
- *United Dominion Trust Ltd v. Kirkwood* [1966] 2 QB 431
- Respective pages of CBB website