



# **ENFORCEMENT MODULE**



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MODULE	<b>EN: Enforcement</b>
CHAPTER	<b>EN-A: Introduction</b>

## **EN-A.1 Application**

EN-A.1.1 This Module sets out the Central Bank's approach to enforcement, and the mechanisms used by the Central Bank to address failures by licensees to comply with its regulatory requirements. The purpose of such measures is to encourage a high standard of compliance by the Central Bank licensees, thus reducing risk to their customers and the rest of the financial system.

EN-A.1.2 This Module provides support for all other Modules in the Rulebook.

### ***Legal Basis***

**EN-A.1.3** This Module contains the CBB's Directive relating to enforcement and penalties and administrative provisions under Articles 125 to 132 of the Central Bank of Bahrain and Financial Institutions Law 2006 ('CBB Law'). It is issued under the powers available to the CBB under Article 38 of the CBB Law. The Directive in this Module is applicable as follows. Chapters EN-1 to EN-4 and EN-6 to EN-9 inclusive apply to all conventional bank licensees. Chapters EN-2 to EN-5 and EN-10 apply to the Directors and employees of all conventional bank licensees.

EN-A.1.4 For an explanation of the CBB's rule-making powers and different regulatory instruments, see Section UG-1.1.



MODULE	<b>EN: Enforcement</b>
CHAPTER	<b>EN-A: Introduction</b>

## **EN-A.2 Module History**

EN-A.2.1 This Module was first issued in July 2004 as part of the conventional principles volume. All regulations in this volume have been effective since this date. All subsequent changes are dated with the month and year at the base of the relevant page and in the Table of Contents. Chapter 3 of Module UG provides further details on Rulebook maintenance and control.

EN-A.2.2 A list of the most recent changes made to this Module are detailed in the table below:

### ***Summary of changes***

Module Ref.	Change Date	Description of Changes
EN-7	01/07/06	Addition of procedures for “Appointed Experts” (relocated from AU-4.)
EN A	01/10/07	New references to the CBB Law and new rule categorising this Module as a Directive
EN-1, 3, 4, 6-10	01/10/07	Administrative changes to sections as a result of the new CBB Law.
EN-7.1 and 7.2	01/01/09	Minor amendments due to new Role of Reporting Accountants chapter in Module AU

### ***Evolution of the Module***

EN-A.2.3 The Module incorporates the requirements set out under Circular No. ODG/249/2004 dated 22 July 2004 relating to the Central Bank’s approach to enforcement.

### ***Effective date***

**EN-A.2.4** The contents in this Module are effective from 1<sup>st</sup> September 2004 or from the date given at the footer of the page where changes to Enforcement have occurred as a result of the issuance of the Central Bank of Bahrain and Financial Institutions Law (Decree No. 64 of 2006). However, the contents of other Modules referred to herein are effective from the dates specified in those respective Modules.

MODULE	<b>EN: Enforcement</b>
CHAPTER	<b>EN-1: General procedures</b>

## **EN-1.1 The Central Bank’s approach to enforcement**

- EN-1.1.1** The Central Bank favours an open, pragmatic and collaborative relationship with its licensees, within the boundaries set by the law and CBB regulations. Whilst the Central Bank wishes to avoid a legalistic and confrontational style of supervision, it believes that effective supervision requires effective enforcement of its requirements. Should licensees fail to cooperate, then the Central Bank will use the means described in this Module to achieve compliance.
- EN-1.1.2** In the Central Bank’s view, it is generally neither practical nor effective to prescribe in detail the exact regulatory response for each and every potential contravention. There are a large number of potential contraventions. Moreover, individual circumstances are unlikely to be identical in all cases, and may warrant different responses.
- EN-1.1.3** In deciding any given regulatory response, the Central Bank will nonetheless consistently assess the individual circumstance of each contravention against the principles described in this Module. The Central Bank’s overall approach is to take into account:
- (a) the seriousness of the contravention concerned (including the risks posed to the licensee’s customers and other market participants);
  - (b) the compliance track record of the licensee concerned (including the extent to which the contravention reflects systemic weaknesses or reckless behaviour); and
  - (c) which measures are most likely to achieve the desired result of remedying the contravention.
- EN-1.1.4** Such an approach reduces the risk of inappropriate enforcement actions, by allowing regulatory measures to be tailored to individual circumstances. By taking into account a licensee’s compliance record and attitude, it also creates positive incentives and encourages an open and collaborative approach. By assessing individual cases against the same broad principles, the Central Bank also aims to achieve an overall consistency in its regulatory actions.
- EN-1.1.5** Underlying the Central Bank’s approach outlined in **Paragraph EN-1.1.3** is the fundamental principle of proportionality. The enforcement measures contained in this Module are of varying severity, and will be used accordingly in keeping with the Central Bank’s assessment of the contravention. Thus, the Central Bank will reserve its most serious enforcement measures – such as cancellation of license or withdrawal of “fit and proper” status – for the most serious contraventions.



MODULE	<b>EN: Enforcement</b>
CHAPTER	<b>EN-1: General procedures</b>

## **EN-1.1 The Central Bank's approach to enforcement**

- EN-1.1.6** In keeping with the proportionality principle, and to the extent consistent with the Central Bank's enforcement approach in Paragraph EN-1.1.3, the Central Bank will usually opt for the least severe of appropriate enforcement measures. In most cases, the Central Bank expects to use a Formal Notice before resorting to more severe measures; the need for further measures will then usually be dependent on the response of the licensee or individual concerned.
- EN-1.1.7** Where a significant element of judgment is required to assess compliance with a requirement, then the Central Bank will usually discuss the matter with the licensee or individual concerned, before using one of this Module's enforcement mechanisms. This is likely to be the case, for example, with respect to requirements for adequate systems and controls. Conversely, where there are clear-cut contraventions of the Central Bank requirements, then the Central Bank will usually move immediately to one or more of the enforcement mechanisms outlined in this Module. This is more likely to occur in cases where quantitative requirements - such as those relating to capital and/or large exposures - are concerned. In most such cases, though, the Central Bank also expects to continue an active dialogue with the licensee or individual concerned, aimed at remedying the contravention.
- EN-1.1.8** Except in the limited circumstances outlined below, the Central Bank will usually only apply an enforcement measure after the licensee or person concerned has been given a suitable opportunity to make representations. In the case of measures described in Chapters EN-7 to EN-10, certain procedures are set out in the Central Bank of Bahrain and Financial Institutions Law (Decree No. 64 of 2006).



MODULE	<b>EN: Enforcement</b>
CHAPTER	<b>EN-1: General procedures</b>

## **EN-1.2 Prohibition on insurance**

- EN-1.2.1 To help the Central Bank achieve the purpose of this Module, licensees may not enter into or make a claim under a contract of insurance that is intended to, or has the effect of, indemnifying them from the fines provided for in this Module.

MODULE	<b>EN: Enforcement</b>
CHAPTER	<b>EN-1: General procedures</b>

### **EN-1.3 Publicity**

- EN-1.3.1** The Central Bank will not as a matter of general policy publicise individual cases when it uses the measures set out in **Chapters EN-2 to EN-7**. However, in such cases the Central Bank may inform the licensee's external auditors and – in the case of licensees with overseas operations – relevant overseas regulators.
- EN-1.3.2** In exceptional circumstances, **as allowed by Article 132 of the CBB Law**, the Central Bank may decide to publicise individual cases when the measures set out in **Chapters EN-2 to EN-7** are used, where there is a strong case that doing so would help achieve the Central Bank's supervisory objectives. In such instances, the Central Bank will usually allow the licensee or individual concerned the opportunity to make representations to the Central Bank before a public statement is issued.
- EN-1.3.3** With respect to the financial penalties provided for in **Chapter EN-6**, licensees are required to disclose in their annual reports the amount of any such penalties paid to the Central Bank, together with a factual description of the reason(s) given by the Central Bank for the penalty.
- EN-1.3.4** Without prejudice to the above policy, the Central Bank may from time to time publish aggregate information on its use of measures set out in **Chapters EN-2 to EN-7**, without identifying the licensees or individuals concerned, unless their identities have previously been disclosed as provided for in **Paragraphs EN-1.3.2 or EN-1.3.3**.
- EN-1.3.5** By their nature, the penalties in **Chapters EN-8 to EN-10** inclusive are public acts, once applied. The Central Bank will in these instances generally issue a public statement explaining the circumstances of the case.



MODULE	<b>EN: Enforcement</b>
CHAPTER	<b>EN-2: Formal warnings</b>

## **EN-2.1 CBB policy**

- EN-2.1.1** Formal Warnings are clearly identified as such and represent the Central Bank's first level formal enforcement measure. They are intended to clearly set out the Central Bank's concerns to a licensee or an individual regarding an issue, and should be viewed by the recipient with the appropriate degree of seriousness.
- EN-2.1.2** As indicated in **Section EN-1.1**, the Central Bank will usually discuss concerns prior to resorting to a formal enforcement measure, especially where a significant element of judgment is required in assessing compliance with a regulatory requirement.
- EN-2.1.3** Where such discussions fail to resolve matters to the Central Bank's satisfaction, then it may issue a Formal Warning. Failure to respond adequately to a Formal Warning will lead the Central Bank to consider more severe enforcement measures. However, more severe measures may not require the prior issuance of a Formal Warning – depending on its assessment of the circumstances, the Central Bank may decide to have immediate recourse to other measures. Similarly, there may be circumstances where the Central Bank issues a Formal Warning without prior discussion with the licensee or person concerned: this would usually be the case where a clear-cut compliance failing has occurred.
- EN-2.1.4** When considering whether to issue a Formal Warning, the criteria taken into consideration by the Central Bank therefore include the following:
- (a) the seriousness of the actual or potential contravention, in relation to the requirement(s) concerned and the risks posed to the licensee's customers, market participants and other stakeholders;
  - (b) in the case of an actual contravention, its duration and/or frequency of the contravention; the extent to which it reflects more widespread weaknesses in controls and/or management; and the extent to which it was attributable to deliberate or reckless behaviour; and
  - (c) the extent to which the Central Bank's supervisory objectives would be better served by issuance of a Formal Warning as opposed to another type of regulatory action.

MODULE	<b>EN: Enforcement</b>
CHAPTER	<b>EN-2: Formal warnings</b>

## **EN-2.2 Procedure for issuing Formal Warnings**

**EN-2.2.1** Proposals to issue Formal Warnings are carefully considered against the criteria listed in **Section EN-2.1**. They require the approval of a Director or more senior CBB official, and include the statement “This is a Formal Warning as defined in Chapter EN-2 of the CBB Rulebook”.

**EN-2.2.2** Depending on the issue in question, recipients of a Formal Warning may be required to respond to the contents of the Warning. In any case, recipients have the right to object to or challenge a formal warning as specified under Articles 125(c) and 126 of the Central Bank of Bahrain and Financial Institutions Law (Decree No. 64 of 2006).

MODULE	<b>EN: Enforcement</b>
CHAPTER	<b>EN-3: Directions</b>

### **EN-3.1 CBB policy**

- EN-3.1.1** The Central Bank may issue Directions to licensees or individuals under supervisory powers granted to it by the Central Bank of Bahrain and Financial Institutions Law (Decree No. 64 of 2006) (“CBB Law”). These powers are broad in nature, and effectively allow the Central Bank to issue whatever Directions it reasonably believes are required to achieve its statutory objectives.
- EN-3.1.2** The types of Directions that the Central Bank may issue in practice vary and will depend on the individual circumstances of a case. Generally, however, Directions require a licensee or individual to undertake specific actions in order to address or mitigate certain perceived risks. They may also include restrictions on a licensee’s activities until those risks have been addressed – for instance, a ban on the acceptance of new customers.
- EN-3.1.3** The Central Bank is conscious of the powerful nature of a Direction and, in the case of a licensee, the fact that it subordinates the role of its Board and management on a specific issue. The Central Bank will carefully consider the need for a Direction, and whether alternative measures may not achieve the same end. Where feasible, the Central Bank will try to achieve the desired outcome through persuasion, rather than recourse to a Direction.
- EN-3.1.4** In considering whether to issue a Direction, the criteria taken into consideration by the Central Bank include the following:
- (a) the seriousness of the actual or potential contravention, in relation to the requirement(s) concerned and the risks posed to the licensee’s customers, market participants and other stakeholders ;
  - (b) in the case of an actual contravention, its duration and/or frequency of the contravention; the extent to which it reflects more widespread weaknesses in controls and/or management; and the extent to which it was attributable to deliberate or reckless behaviour; and
  - (c) the extent to which the Central Bank’s supervisory objectives would be better served by issuance of a Direction as opposed to another type of regulatory action.

MODULE	<b>EN: Enforcement</b>
CHAPTER	<b>EN-3: Directions</b>

## **EN-3.2 Procedure for issuing Directions**

- EN-3.2.1** Proposals to issue Directions are carefully considered against the criteria listed in **Section EN-3.1**. They require the approval of an Executive Director or more senior official of the Central Bank, and include the statement “This is a formal Direction as defined in Chapter EN-3 of the CBB Rulebook”.
- EN-3.2.2** The subject of the Direction will normally be given 30 days from the Direction’s date of issuance in which to make objections to the Central Bank concerning the actions required. This must be done in writing, and addressed to the issuer of the original notification. Should an objection be made, the Central Bank will make a final determination, within 30 days of the date of the objection, as specified in Articles 125(c) and 126 of the Central Bank of Bahrain and Financial Institutions Law (Decree No. 64 of 2006).
- EN-3.2.3** In extreme circumstances, where the Central Bank believes that immediate action is required to prevent real damage to Bahrain’s financial markets, its users or to customers of the licensee concerned, it may cancel or amend a license, as specified in Article 48(g) of the CBB Law, or place a licensee under administration according to Article 130(2) of the CBB Law, or suspend a license according to Article 131 of the pre-mentioned Law. These measures may be used in conjunction with directions.

MODULE	<b>EN: Enforcement</b>
CHAPTER	<b>EN-4: Formal requests for information</b>

## **EN-4.1 Procedure**

- EN-4.1.1** As part of its on-going supervision, under Articles 111, 113, 114, and 123 of the Central Bank of Bahrain and Financial Institutions Law (Decree No. 64 of 2006), the Central Bank may specifically request information or temporary reporting from a licensee or individual. Recipients of such requests are bound to respond to such requests under the terms of their license. Such requests are in effect a type of Direction.
- EN-4.1.2** Henceforward, to clearly identify such requests, they will always be made in writing, under signature of a Director or more senior official of the Central Bank; will include the statement “This is a formal request for information as defined in Chapter EN 4 of the CBB Rulebook”; and will state the deadline by which the information is to be communicated to the Central Bank.
- EN-4.1.3** Failure to respond to such formal requests within the deadline set will be viewed as a significant breach of regulatory requirements and will incur a Formal Warning or other enforcement measure, specified under Articles 163 and 170 of the Central Bank of Bahrain and Financial Institutions Law (Decree No. 64 of 2006), as decided by the Central Bank depending on the circumstances of the case.
- EN-4.1.4** The deadline set in the request will vary depending on individual circumstances, but will in all cases be reasonable. A recipient may submit a case for an extension to the deadline, providing the request is made before the original deadline has passed. The Central Bank will respond before the original deadline has passed; if it fails to do so, then the requested extension will apply. Whilst waiting for a reply, the recipient must assume that the original deadline will apply.
- EN-4.1.5** The above procedures do not prevent individual Central Bank supervisors making oral requests for information as part of their day-to-day interaction with licensees. The Central Bank expects licensees to maintain their cooperative response to such requests; however, in the interests of clarity, the Central Bank will not view failures to respond to oral requests as a breach of regulatory requirements.

MODULE	<b>EN: Enforcement</b>
CHAPTER	<b>EN-5: Adverse “fit and proper” findings</b>

## **EN-5.1 Requirements for individuals**

**EN-5.1.1** Article 65 of the CBB Law, allows the CBB to determine the level of qualifications, experience, and training of a bank’s board members, officers or employees.

**EN-5.1.2** In addition, **Chapter HC-2** specifies that all persons wishing to hold or holding the position of Director, Chief Executive/General Manager or Manager in a licensee must be assessed by the Central Bank as “fit and proper” to hold such a position. The Chapter specifies various factors that the Central Bank takes into account when reaching such a decision.

**EN-5.1.3** **Any Director, manager or official responsible for the direction or management of a licensee, is to be considered removed from office should he be convicted by a court for a crime affecting his honesty; is declared bankrupt by a court; or if a court rules that his legal capacity is totally or partially impaired.**

**EN-5.1.4** In interpreting the term “manager”, the Central Bank uses the definition given in Chapter HC-2. The same definition applies when the term “manager” is used in other Modules, unless a different definition is explicitly provided for in the Module concerned.

MODULE	<b>EN: Enforcement</b>
CHAPTER	<b>EN-5: Adverse “fit and proper” findings</b>

## **EN-5.2 CBB policy**

**EN-5.2.1** The Central Bank is conscious of the impact that assessing someone as not “fit and proper” may have on an individual. Such assessments are carefully reviewed in the light of all relevant facts. The criteria used in reaching a decision include the following:

- (a) the extent to which the factors set out in Chapter HC-2 have not been met;
- (b) the extent to which the person has deliberately or recklessly breached requirements of the CBB Law or CBB regulations;
- (c) the person’s past compliance record and conduct following any such contravention;
- (d) the length of time since factors indicating a lack of fitness or propriety occurred; and
- (e) the risk the person poses to licensees and their customers.

**EN-5.2.2** In assessing evidence, the Central Bank applies a lower threshold than is applied in a criminal court of law, reflecting the administrative nature of the sanction. The Central Bank may also take into account the cumulative effect of factors which, when considered individually, may not in themselves be sufficient to justify an adverse “fit and proper” finding.

**EN-5.2.3** The Central Bank may also take into account the particular function being undertaken in the licensee by the individual concerned, and the size and nature of the licensee itself, particularly when assessing the suitability of a person’s experience or qualifications. Thus, the fact that a person was deemed “fit and proper” for a particular position in a particular firm does not necessarily mean he would be suitable in a different position or in a different firm.

MODULE	EN: <b>Enforcement</b>
CHAPTER	EN-5: <b>Adverse “fit and proper” findings</b>

### **EN-5.3 Procedure for issuing an adverse finding**

- EN-5.3.1** All proposals for issuing an adverse “fit and proper” finding are subject to a thorough review by the Central Bank of all relevant facts, assessed against the criteria outlined in **Section EN-5.2**. In some instances, it may be appropriate for the Central Bank to request the licensee or person concerned to provide further information, in order to help reach a decision.
- EN-5.3.2** All adverse findings have to be approved by an Executive Director of the Central Bank. A notice of intent is issued to the person concerned, and copied to the Board/senior management of the licensee as appropriate, setting out the circumstances and the basis for the Central Bank’s proposed adverse finding. The person has 30 calendar days from the date of the notice in which to make written representations, addressed to the Executive Director concerned, failing which a final notice is issued by the Central Bank.
- EN-5.3.3** If representations are made, then the Central Bank has 30 calendar days from the date of the representation in which to consider any mitigating evidence submitted and make a final determination.



MODULE	<b>EN: Enforcement</b>
CHAPTER	<b>EN-6: Financial penalties</b>

## **EN-6.1 CBB Policy**

**EN-6.1.1** Under Chapters 2 & 3 of Part 9 of the Central Bank of Bahrain and Financial Institutions Law (Decree No. 64 of 2006), the Central Bank may impose financial penalties on licensees. Their use is generally limited to situations where major breaches of regulatory requirements have taken place and a licensee has failed to respond in an acceptable manner to the concerns expressed by the Central Bank. Financial penalties are thus normally preceded by the issuance of a written Formal Notice and/or Direction.

**EN-6.1.2** The level of financial penalty applied is determined by the nature of the contravention and the amount of additional supervisory attention and resources taken up by a licensee's behaviour and by limits set in the CBB Law. The Central Bank intends that the impact of a penalty should derive more from its signaling effect than from the actual amount of money involved.

**EN-6.1.3** As indicated in **Section EN-1.3**, the Central Bank requires disclosure by licensees in their annual reports of any financial penalties served on them, together with a factual description of the reasons given by the Central Bank for applying the penalty. In addition, the Central Bank may publicise the issuance of a financial penalty notice, where there is a strong case that doing so would help achieve the Central Bank's supervisory objectives, as mentioned in Article 132 of the pre-mentioned Law.

**EN-6.1.4** Examples of the types of compliance failings that may lead to the serving of a financial penalty notice are outlined in Part 11 of the CBB Law and may include (but are not limited to):

- (a) Failures to address persistent delays and/or significant inaccuracies in regulatory reporting to the Central Bank;
- (b) Repeated failures to respond to formal requests for information from the Central Bank, within the deadlines set;
- (c) The submission of information to the Central Bank known to be false or misleading; and
- (d) Major failures in maintaining adequate systems and controls in accordance with the Central Bank's requirements, subjecting depositors and other customers to significant risk of financial loss.

MODULE	<b>EN: Enforcement</b>
CHAPTER	<b>EN-6: Financial penalties</b>

- EN-6.1.5** In assessing whether to serve a financial written penalty notice, the Central Bank takes into account the following criteria:
- (a) the seriousness of the contravention, in relation to the requirement(s) concerned;
  - (b) the duration and/or frequency of the contravention, and the extent to which it reflects more widespread weaknesses in controls and/or management; the extent to which the contravention was deliberate or reckless;
  - (c) the licensee's past compliance record and conduct following the contravention; and
  - (d) the scope of any other action taken by the CBB or other regulators against the licensee, in response to the compliance failures in question.
- EN-6.1.6** The imposition of a financial penalty does not preclude the CBB from also using other enforcement measures to remedy the same violation (for instance, a Direction).
- EN-6.1.7** A written notice of a financial penalty must be issued before imposing any financial penalty. The written notice must contain the following information:
- (a) the violations committed by the Licensee with respect to CBB Law; or the prudential Rulebook; or any Directions, Warnings or Formal Requests for Information; or violations of the terms and conditions of the License issued to the Licensee;
  - (b) evidence or proof to support the above;
  - (c) the level of financial penalty to be imposed;
  - (d) the grace period to be allowed to the Licensee for challenging the intended penalty (which will not be less than 30 days).
- EN-6.1.8** The Licensee may either pay the penalty or object within the above period. The Central Bank will consider any objection and make a formal resolution within 30 days of receiving the objection. Thereafter, the formal resolution and any accompanying penalties are final and must be paid within 30 days.



MODULE	<b>EN: Enforcement</b>
CHAPTER	<b>EN-6: Financial penalties</b>

## **EN-6.2 Money laundering regulation**

- EN-6.2.1 In addition to the circumstances set out in **Section EN-6.1**, a financial penalty of up to BD 20,000 may be applied by the Central Bank in cases where a licensee fails to comply with any of the requirements in **Module FC**.
- EN-6.2.2 The same criteria set out in **Section EN-6.1** will be taken into account by the Central Bank when considering imposing a financial penalty. Financial penalties applied under this Section are also subject to the same disclosure requirements as described in **Section EN-6.1**.
- EN-6.2.3 A failure to comply with the requirements in **Module FC** that warrants a financial penalty would not trigger also a financial penalty under **Section EN-6.1**.
- EN-6.2.4 Any financial penalties applied by the Central Bank as regards the implementation of its regulations set out under **Module FC**, are without prejudice to the criminal sanctions available to the Bahraini courts under the Decree – Law No. 4 of 2001, with respect to the prevention and prohibition of the laundering of money. As with other financial penalties, the imposition of a financial penalty with regards to breaches of the regulation in **Module FC** does not prevent the Central Bank from also using other enforcement measures to remedy the same violation (for instance, a Direction).

MODULE	<b>EN: Enforcement</b>
CHAPTER	<b>EN-6: Financial penalties</b>

### **EN-6.3 Procedures for financial penalties**

- EN-6.3.1** A written financial penalty notice will be addressed to the Chief Executive Officer or General Manager of the licensee concerned. This written notification will describe the contravention concerned, the Central Bank's evidence supporting a financial penalty, and the factors justifying the level of penalty proposed. Only an Executive Director or more senior member of the Central Bank's management may sign the notification.
- EN-6.3.2** The licensee has 30 days from the notification's date of issuance to submit any objections it wishes to make to the Central Bank, in writing and addressed to the issuer of the original notification. If the licensee decides not to submit objections, it has 30 calendar days from the notification's date of issuance in which to pay the penalty.
- EN-6.3.3** Should the licensee make representations challenging the proposed penalty, the Central Bank has 30 days from the issuance of those representations in which to re-examine the facts of the case and its conclusions. If the Central Bank confirms application of a penalty, payment is required within 30 calendar days of a final notice being issued.
- EN-6.3.4** Failure to pay a penalty within the required deadlines will be considered a breach of the Central Bank's regulatory requirements, and will also result in other measures being considered, as described elsewhere in this Module.



MODULE	<b>EN: Enforcement</b>
CHAPTER	<b>EN-6: Financial penalties</b>

#### **EN-6.4 Remedying a compliance failure**

- EN-6.4.1 Payment of a financial penalty does not by itself absolve a licensee from remedying the compliance failure concerned. The Central Bank will expect the licensee to address the contravention within a reasonable timescale, to be agreed on a case-by-case basis. Failure to do so will result in other measures being considered.



MODULE	<b>EN: Enforcement</b>
CHAPTER	<b>EN-7: Investigations</b>

## **EN-7.1 Legal source**

- EN-7.1.1** Articles 121 to 123 of the Central Bank of Bahrain and Financial Institutions Law (Decree No. 64 of 2006) (“CBB Law”) empower the Central Bank to order investigations of licensees, in order to help it assess a licensee’s compliance with the provisions of the CBB Law. Such investigations may be carried out either by its own officials or others appointed for such a purpose by the Central Bank. Articles 111 and 124 require licensees to make available to the Central Bank’s inspectors their books and other records, and to provide all relevant information within the time limits deemed reasonable by the inspectors.
- EN-7.1.2** Articles 163 and 170 of the CBB Law provide for criminal sanctions where false or misleading statements are made to the Central Bank, or an investigation by the Central Bank is otherwise obstructed (see [Section EN-10.3](#)).



MODULE	<b>EN: Enforcement</b>
CHAPTER	<b>EN-7: Investigations</b>

## **EN-7.2 CBB Policy**

**EN-7.2.1** The CBB uses its own inspectors to undertake on-site examinations of licensees as an integral part of its regular supervisory efforts. In addition, the CBB may commission special investigations of licensees in order to help it assess their compliance with CBB requirements, as contained in Article 121 of the CBB Law. Such investigations may be carried out either by the CBB's own officials, by duly qualified experts appointed for the purpose by the CBB ("Investigators"), or a combination of the two.

**EN-7.2.2** Failure by licensees to cooperate fully with the CBB's inspectors or investigators, or to respond to their examination reports within the time limits specified, will be treated as demonstrating a material lack of cooperation with the Central Bank which will result in other enforcement measures being considered, as described elsewhere in this Module. This rule is supported by Article 124(a) of the CBB Law.

**EN-7.2.3** The CBB may appoint an individual or a firm as an Investigator. Examples of Investigators are lawyers, audit firms and expert witnesses. The appointment of Investigators is not necessarily indicative of a contravention of CBB requirements or suspicion of such a contravention. For instance, an Investigator may be commissioned to provide an expert opinion on a technical matter.

**EN-7.2.4** Investigators report in a form and within a scope defined by the CBB, and are solely responsible to the CBB for the work they undertake in relation to the investigation concerned. The report produced by the Investigators is the property of the CBB (but is usually shared by the CBB with the firm concerned). The cost of the Investigators' work must be borne by the licensee concerned.

**EN-7.2.5** In selecting an Investigator, the CBB will take into account the level of fees proposed and aim to limit these to the lowest level consistent with an adequate review of the matters at hand, given the qualifications, track record and independence of the persons concerned. Because the cost of such investigations are met by the licensee, the CBB makes only selective use of Investigators, when essential to supplement CBB's other supervisory tools and resources.

**EN-7.2.6** The CBB will not, as a matter of general policy, publicise the appointment of Investigators, although it reserves the right to do so where this would help achieve its supervisory objectives. Both the Investigators and the CBB are bound to confidentiality provisions restricting the disclosure of confidential information with regards to any such information obtained in the course of the investigation.

MODULE	EN: <b>Enforcement</b>
CHAPTER	<b>EN-7:       Investigations</b>

## **EN-7.2       CBB Policy (continued)**

**EN-7.2.7**       Unless the Central Bank otherwise permits, Investigators may not be the same firm appointed as external auditors of the bank.

**EN-7.2.8**       Compliance by Investigators with the contents of this Chapter will not, of itself, constitute a breach of any other duty owed by them to a particular bank (i.e. create a conflict of interest).

**EN-7.2.9**       The Central Bank may commission reports, which require Investigators to review information from another company within the reporting bank's group even where that other company is not itself subject to any Central Bank requirements.

**EN-7.2.10**       Banks must provide all relevant information and assistance to Investigators on demand. This rule is base on Article 123 of the CBB Law.

**EN-7.2.11**       The Central Bank may appoint one or more of its officials to work on the Investigators' team for a particular bank.





MODULE	EN: Enforcement
CHAPTER	EN-7: Investigations

### EN-7.3 The required report

**EN-7.3.1** The scope of the required report will be determined and detailed by the Central Bank in the appointment letter. Commissioned Investigators will normally be required to report on one or more of the following aspects of a bank's business:

- a) accounting and other records ;
- b) internal control systems;
- c) returns of information provided to the Central Bank;
- d) operations of certain departments; and/or
- e) other matters specified by the Central Bank.

**EN-7.3.2** Investigators will be required to form an opinion on whether, during the period examined, the bank is in compliance with the relevant provisions of the CBB Law and the Central Bank's relevant requirements, as well as other requirements of Bahrain Law and, where relevant, industry best practice locally and/or internationally.

EN-7.3.3 The Investigators report should follow the format set out in Appendix EN-1.

**EN-7.3.4** Unless otherwise directed by the Central Bank or unless the circumstances described in **Section EN-7.3** apply, the report should be discussed with the Board of Directors and/or senior management in advance of it being sent to the Central Bank.

**EN-7.3.5** Where the report is qualified by exception, the report must clearly set out the risks which the bank runs by not correcting the weakness, with an indication of the severity of the weakness should it not be corrected. Investigators will be expected to report on the type, nature and extent of any weaknesses found during their work, as well as the implications of a failure to address and resolve such weaknesses.

**EN-7.3.6** If the Investigators conclude, after discussing the matter with the bank, that they will give a negative opinion (as opposed to one qualified by exception) or that the issue of the report will be delayed, they must immediately inform the Central Bank in writing giving an explanation in this regard.



MODULE	<b>EN: Enforcement</b>
CHAPTER	<b>EN-7: Investigations</b>

### **EN-7.3 The Required Report (continued)**

#### **EN-7.3.7**

The report must be completed, dated and submitted, together with any comments by Directors or management (including any proposed timeframe within which the bank has committed to resolving any issues highlighted by the report), to the Central Bank within the timeframe applicable.



MODULE	EN: Enforcement
CHAPTER	EN-7: The Required Report

#### EN-7.4 Other notifications to the Central Bank

##### EN-7.4.1

Investigators must communicate to the Central Bank, during the conduct of their duties, any reasonable belief or concern they may have that any of the requirements of the Central Bank, including the criteria for licensing a bank (see Module LR), are not or have not been fulfilled, or that there has been a material loss or there exists a significant risk of material loss in the concerned bank, or that the interests of customers are at risk because of adverse changes in the financial position or in the management or other resources of a bank. Notwithstanding the above, it is primarily the bank's responsibility to report such matters to the Central Bank.

##### EN-7.4.2

The Central Bank recognises that Investigators cannot be expected to be aware of all circumstances which, had they known of them, would have led them to make a communication to the Central Bank as outlined above. It is only when Investigators, in carrying out their duties, become aware of such a circumstance that they should make detailed inquiries with the above specific duty in mind.

##### EN-7.4.3

If Investigators decide to communicate directly with the Central Bank in the circumstances set out in Paragraph EN-7.4.1 above, they may wish to consider whether the matter should be reported at an appropriate senior level in the bank at the same time and whether an appropriate senior representative of the bank should be invited to attend the meeting with the Central Bank.



MODULE	<b>EN: Enforcement</b>
CHAPTER	<b>EN-8: Administration</b>

**EN-8.1: Legal source**

EN-8.1.1 Article 136 of the Central Bank of Bahrain and Financial Institutions Law (Decree No. 64 of 2006) (“CBB Law”) empowers (but does not oblige) the Central Bank to assume the administration of a licensee in certain circumstances. These circumstances are outlined in the above Article and may include the following:

- (a) the licensee has become insolvent;
- (b) its solvency is in jeopardy;
- (c) its continued activity is detrimental to the financial services industry in the Kingdom; or
- (d) its license has been cancelled.

EN-8.1.2 Article 139 of the CBB Law provides that where the Central Bank assumes the administration of a licensee, the licensee concerned may appeal within 10 days to the CBB and, subsequently, the courts, in order to challenge its administration by the Central Bank.

EN-8.1.3 Articles 135 to 143 of the CBB Law set down the operating parameters of an administration.

MODULE	<b>EN: Enforcement</b>
CHAPTER	<b>EN-8: Administration</b>

## **EN-8.2 CBB Policy**

EN-8.2.1 The Central Bank views the administration of a licensee as a very powerful sanction, and will generally only pursue this option if less severe measures are unlikely to achieve its supervisory objectives.

EN-8.2.2 Although Article 136 of the CBB Law specifies the circumstances in which the Central Bank may pursue an administration, it does not oblige the Central Bank to administer a licensee. Faced with the circumstances described, the Central Bank may pursue other courses of action such as suspension of a license (under Article 131 of the CBB Law), if it considers that these are more likely to achieve the supervisory outcomes sought. Because an administration is likely to send a negative signal to the markets about the status of a licensee, other supervisory actions may in fact be preferable in terms of protecting the interests of those with a claim on the licensee.

EN-8.2.3 The criteria used by the Central Bank in deciding whether to seek an administration of a licensee include the following:

- a) the extent to which the interests of the market, its users and those who have a claim on the licensee would be best served by the administration of the license, for instance because of the potential impact on asset values arising from an administration;
- b) the extent to which other regulatory actions could reasonably be expected to achieve the Central Bank's desired supervisory objectives (such as restrictions on the licensee's operations, including limitations on new business and asset disposals);
- c) the extent to which the liquidity or solvency of the licensee is in jeopardy; and
- d) the extent to which the licensee has contravened the conditions of the CBB Law, including the extent to which the contraventions reflect more widespread or systemic weaknesses in controls and/or management.



MODULE	<b>EN: Enforcement</b>
CHAPTER	<b>EN-8: Administration</b>

### **EN-8.3 Procedure for implementing an administration**

- EN-8.3.1 All proposals for assuming the administration of a licensee are subject to a thorough review by the Central Bank of all relevant facts, assessed against the criteria outlined in **Section EN-8.1**.
- EN-8.3.2 A formal notice of administration is issued to the licensee concerned and copies posted in every place of business of the licensee. As soon as practicable thereafter, the notice is also published in the Official Gazette and in one Arabic and one English newspapers in the Kingdom. The term “in administration” should be clearly marked in all the bank’s correspondence and on its website, next to the bank’s name.
- EN-8.3.3 Article 136 of the CBB Law allows a licensee 10 days following the administration taking effect in which to appeal to the CBB. If the CBB refuses the appeal, the licensee has a further 30 calendar days from the date of the refusal in which to lodge an appeal at the courts. So as to reduce the potential damage of an administration order being applied and then withdrawn on appeal, where feasible the Central Bank will give advance notice to a licensee’s Board of its intention to seek an administration, and allow the Board the right of appeal prior to an administration notice being formally served.



MODULE	<b>EN: Enforcement</b>
CHAPTER	<b>EN-9 Cancellation or amendment of license</b>

## **EN-9.1 Legal source**

EN-9.1.1 Article 48 of the Central Bank of Bahrain and Financial Institutions Law (Decree No. 64 of 2006) (“CBB Law”) CBB empowers the Central Bank to cancel or amend a license under certain circumstances. These include cases where a licensee has:

- (a) failed to satisfy its license conditions;
- (b) violated the terms of the CBB Law or CBB regulations or Rulebook; or
- (c) failed to start business within six months from the date of the license;
- (d) ceased to carry out the licensed activities permitted;
- (e) not acted in the legitimate interest of its customers or creditors.

EN-9.1.2 Article 48(d) of the CBB Law also requires the Central Bank to give the licensee concerned reasonable time to object to any proposed cancellation or amendment of its license.

MODULE	<b>EN: Enforcement</b>
CHAPTER	<b>EN-9: Cancellation or amendment of license</b>

## **EN-9.2 CBB policy**

EN-9.2.1 The Central Bank generally views canceling a license as appropriate only in extreme circumstances, when faced with the gravest of contraventions or when left with no other reasonable means of successfully addressing the regulatory failings in question. Cancellation or amendment of a license, however, may also be required in circumstances outside of an enforcement context, for instance because of a change in the business profile of a licensee.

EN-9.2.2 The criteria used by the Central Bank in assessing whether to seek cancellation or amendment of a license include:

- (a) the extent to which the interests of the market, its users and those who have a claim on the licensee would be best served by the cancellation or amendment of the license;
- (b) the extent to which other regulatory penalties could reasonably be expected to achieve the Central Bank's desired supervisory objectives;
- (c) the extent to which the licensee has contravened the conditions of its license and/or the CBB Law, including the seriousness, duration and/or frequency of the contravention(s) concerned, and the extent to which the contraventions reflect more widespread or systemic weaknesses in controls and/or management;
- (d) the extent to which the licensee has been involved in financial crime or other criminal conduct; and
- (e) the licensee's past compliance record and conduct following the contravention(s).

EN-9.2.3 When the CBB issues a notice of cancellation or amendment as an enforcement tool, it will only implement the actual change once it is satisfied that there are no longer any regulated activities for which it is necessary to keep the current authorisation in force. Until such time as these activities have been run off or moved to another licensee, the CBB will control these activities through other means (such as taking the licensee into administration or through issuing Directions).



MODULE	<b>EN: Enforcement</b>
CHAPTER	<b>EN-9: Cancellation or amendment of license</b>

### **EN-9.3 Procedure for amendment or cancellation of license**

- EN-9.3.1 All proposals for canceling or amending a license are subject to a thorough review by the Central Bank of all relevant facts, assessed against cases and the criteria outlined in Sections EN-9.1 and EN-9.2. After being assessed at Executive Director level, proposals are submitted to H.E. The Governor for approval.
- EN-9.3.2 Once approved within the CBB, a formal notice of cancellation or amendment is issued to the licensee concerned. The notice of cancellation or amendment will describe the factual circumstances of the contraventions concerned, and the Central Bank's rationale for the proposed cancellation or amendment, as measured against the criteria outlined in **Sections EN-9.1 and EN-9.2.**
- EN-9.3.3 The licensee has 30 calendar days from the date of the notice in which to lodge an appeal. The appeal should be addressed to the Board of the CBB, and copied to H.E. the Governor of the CBB.
- EN-9.3.4 If an appeal is lodged, the Board of the CBB will make a final ruling within 60 calendar days of its date of issuance.
- EN-9.3.5 A Licensee may appeal to a competent court within 60 calendar days of the above final ruling for a decision. The court's decision will then be final.



MODULE	<b>EN: Enforcement</b>
CHAPTER	<b>EN-10: Criminal sanctions</b>

## **EN-10.1 Overview**

- EN-10.1.1 The Central Bank of Bahrain and Financial Institutions Law (Decree No. 64 of 2006) (“CBB Law”) provides for a number of criminal sanctions in cases where certain of its provisions are contravened. This Section provides a summary of those sanctions most relevant to licensees, their Directors and employees. What follows is not a complete list of all sanctions provided for in the CBB Law, nor is it a substitute for reading the Law and being fully aware of its provisions.
- EN-10.1.2 Licensees, their Directors and employees should also be aware of the criminal sanctions provided for under other relevant Bahraini laws, such as the Decree – Law No. 4 of 2001, with respect to the prevention and prohibition of the laundering of money.
- EN-10.1.3 In all cases to do with criminal sanctions, the Central Bank can only refer the matter to the Office of Public Prosecutor. The Central Bank has no authority to apply such sanctions directly without recourse to the courts.



MODULE	<b>EN: Enforcement</b>
CHAPTER	<b>EN-10: Criminal sanctions</b>

## **EN-10.2 CBB policy**

- EN-10.2.1 Because of their criminal status, and their provision for custodial sentences, the sanctions provided for under the CBB Law are viewed by the Central Bank as very powerful measures, to be pursued sparingly. In most situations, the Central Bank will seek to address regulatory failures through administrative sanctions, as outlined in preceding Sections, rather than by pursuing the criminal sanctions outlined here.
- EN-10.2.2 Where, however, the nature of the offence is such that there is strong evidence of a reckless or intentional breach of the CBB Law relevant to the following Articles, then the Central Bank will usually refer the matter to the Office of Public Prosecutor.

MODULE	EN: <b>Enforcement</b>
CHAPTER	<b>EN-10: Criminal sanctions</b>

### **EN-10.3 Articles of CBB Law**

#### ***Article 163***

EN-10.3.1 Article 163 of the CBB Law provides for a term of imprisonment and/or a fine of up to BD 20,000, without prejudice to any other penalty prescribed in any other law, in case of conviction of a Director, manager, official, agent or representative of any licensee who:

- (a) conceals any records, information or documents requested by the CBB (or any person appointed by the CBB to conduct an investigation or inspection);
- (b) provides statements or information in bad faith which do not reflect the actual financial position of the Licensee;
- (c) conceals from an external auditor any records, information or documents necessary for auditing the accounts of the Licensee ; and
- (d) provides in bad faith any misleading or inaccurate statements to an external auditor which do not reflect the actual financial position of the Licensee.

#### ***Article 169***

EN-10.3.2 Article 169 provides for a term of imprisonment, and/or a fine of up to BD 20,000 for any Director, manager, official or employee, who acts or permits an act in violation of Article 134 of the CBB Law where he knows (or should have known) that the Licensee is insolvent.

#### ***Article 170***

EN-10.3.3 Part 2 of Article 170 of the CBB Law provides for term of imprisonment and/or a fine not exceeding BD3,000 if any Director, manger, official or employee intentionally obstructs an investigation by the CBB or an investigator appointed by the CBB.

#### ***Article 171***

EN-10.3.4 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.