



# **ENFORCEMENT MODULE**



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

## **EN-A.1 Purpose**

### *Executive Summary*

EN-A.1.1 This Module sets out the Central Bank of Bahrain's ('CBB') approach to enforcement, and the measures used by the CBB to address failures by authorised persons to comply with its regulatory requirements (whether they be specialised licensees or approved persons). The purpose of such measures is to encourage a high standard of compliance by all those authorised by the CBB, thus reducing risk to customers and the financial system.

### *Legal Basis*

#### **EN-A.1.2**

This Module contains the CBB's Directive (as amended from time to time) relating to enforcement and penalties and administrative provisions under Articles 125 to 132 of Central Bank of Bahrain and Financial institutions Law 2006 ('CBB Law') is issued under the powers available to the CBB under Article 38 of the Central Bank of Bahrain and Financial Institutions Law 2006 ('CBB Law'). The Directive in this Module is applicable to all specialised licensees (including their approved persons).

EN-A.1.3 For an explanation of the CBB's rule-making powers and different regulatory instruments, see Section UG-1.1.

EN-A.1.4 Specialised licensees who are also members of the Bahrain Stock Exchange ('BSE') are reminded that the BSE is also empowered to exercise its own enforcement powers by virtue of the Bahrain Stock Exchange Decree – Law No. 4 of 1987 (the 'BSE Law'). Article 14 of the BSE Law lays down a number of penalties which the disciplinary Board of the BSE may impose on persons who violate the BSE Law and/or the regulations made thereunder. In appropriate circumstances, the CBB may ask the BSE to consider the exercise of its powers under Article 14 in support of the enforcement objectives of the CBB.



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## **EN-A.2      Module History**

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

EN-A.2.1      This Module was first issued in October 2010. Any material changes that are subsequently made to this Module are annotated with the calendar quarter date in which the change is made; Chapter UG-3 provides further details on Rulebook maintenance and version control.

EN-A.2.2      A list of recent changes made to this Module is provided below:

Module Ref.	Change Date	Description of Changes
EN-A.1.2	01/2011	Clarified legal basis.

### ***Superseded Requirements***

EN-A.2.4      This Module replaces CBB Circular No. ODG/249/2004 (the “Enforcement Circular”), issued on 22 July 2004.



<b>MODULE</b>	<b>EN:</b>	<b>Enforcement</b>
<b>CHAPTER</b>	<b>EN-B:</b>	<b>Scope of Application</b>

## **EN-B.1 Scope**

EN-B.1.1 The contents of this Module mostly consist of Guidance material, explaining the different measures that the CBB can employ to ensure compliance with Volume 5 (Specialised Licensees). Certain Rules, applicable to specialised licensees, are however contained in Paragraphs EN-B.3.1, EN-B.4.5, EN-2.2.4, EN-2.2.10, EN-5.2.2 and EN-8.2.4 and Sections EN-2.4 and EN-2.5.

EN-B.1.2 Chapters EN-1 to EN-9 of this Module are generally relevant to specialised licensees. In the case of overseas specialised licensees, the CBB's enforcement powers apply only to the branch operating in the Kingdom of Bahrain.

EN-B.1.3 In addition, Chapters EN-8 and EN-9 of this Module are relevant to approved persons.



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## **EN-B.2 The CBB's Approach**

EN-B.2.1 The CBB favours an open, pragmatic and collaborative relationship with authorised persons, within the boundaries set by the CBB Law and Rulebook. Whilst the CBB wishes to avoid a legalistic and confrontational style of supervision, it believes that effective supervision requires effective and timely enforcement of its requirements. Should authorised persons fail to cooperate, then the CBB will use the means described in this Module to achieve compliance.

EN-B.2.2 In the CBB'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-B.2.3 In deciding any given supervisory response, the CBB will nonetheless consistently assess the individual circumstance of each contravention against the principles described in this Module. The CBB's overall approach is to take into account:

- (a) The seriousness of the contravention concerned (including the risks posed to customers and other market participants);
- (b) The compliance track record of the authorised person 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-B.2.4 Such an approach reduces the risk of inappropriate enforcement actions, by allowing regulatory measures to be tailored to individual circumstances. By taking into account an authorised person'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 CBB also aims to achieve an overall consistency in its regulatory actions.

EN-B.2.5 Underlying the CBB's approach outlined in Paragraph EN-B.2.3 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 CBB's assessment of the contravention. Thus, the CBB will reserve its most serious enforcement measures – such as cancellation of license or withdrawal of “fit and proper” status – for the most serious contraventions.

EN-B.2.6 In keeping with the proportionality principle, and to the extent consistent with the CBB's enforcement approach in Paragraph EN-B.2.3, the CBB will usually opt for the least severe of appropriate enforcement measures. In most cases, the CBB expects to use a Formal Warning before resorting to more severe measures; the need for further measures will then usually be dependent on the response of the authorised person concerned.



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## **EN-B.2 The CBB's Approach (continued)**

EN-B.2.7 Where a significant element of judgement is required to assess compliance with a requirement, the CBB will usually discuss the matter with the authorised person 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 CBB requirements, then the CBB 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 CBB also expects to continue an active dialogue with the authorised person concerned, aimed at remedying the contravention.

EN-B.2.8 Except in the limited circumstances outlined below, the CBB will usually only apply an enforcement measure after the authorised person concerned has been given a suitable opportunity to make representations. In the case of measures described in Chapters EN-6 and EN-7, certain procedures are set out in the CBB Law.



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## **EN-B.3      Prohibition on Insurance**

### **EN-B.3.1**

To help the CBB achieve the purpose of this Module, specialised 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 financial penalties provided for in this Module.



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## **EN-B.4      Publicity**

EN-B.4.1      The CBB will not as a matter of general policy publicise individual cases when it uses the measures described in Chapters EN-2 to EN-5, and EN-8. However, in such cases the CBB may inform (where relevant) an authorised person's external auditor and – in the case of licensees with overseas operations – relevant overseas regulators.

EN-B.4.2      In exceptional circumstances, as allowed by Article 132 of the CBB Law, the CBB may decide to publicise individual cases when the measures set out in Chapters EN-2 to EN-5 and EN-8 are used, where there is a strong case that doing so would help achieve the CBB's supervisory objectives. In such instances, the CBB will usually allow the licensee or person concerned the opportunity to make representations to the CBB before a public statement is issued.

EN-B.4.3      Without prejudice to the above policy, the CBB may from time to time publish aggregate information on its use of enforcement measures, without identifying the licensees or persons concerned, unless their identities have previously been disclosed as provided for in Paragraphs EN-B.4.1 or EN-B.4.2.

EN-B.4.4      By their nature, the penalties in Chapters EN-6, EN-7 and EN-9 are public acts, once applied. The CBB will in these instances generally issue a public statement explaining the circumstances of the case.

EN-B.4.5      If a financial penalty is imposed on a specialised licensee under the provision of Chapter EN-5, and it is subject to the requirements of Module PD (Public Disclosure), then the specialised licensee must disclose in the manner prescribed by Module PD the amount of any financial penalties imposed by the CBB, together with a financial description of the reasons given by the CCB for the penalty.

**EN-B.4.6**      Specialised licensees subject to a CBB enforcement measure (with the exception of formal requests for information) must inform their external auditor of the fact.



<b>MODULE</b>	<b>EN:</b>	<b>Enforcement</b>
<b>CHAPTER</b>	<b>EN-1:</b>	<b>Formal Requests for Information</b>

## **EN-1.1 Legal Source**

EN-1.1.1 As part of its on-going supervision, under Articles 111 and 123 of the CBB Law, the CBB 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.



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<b>CHAPTER</b>	<b>EN-1:</b>	<b>Formal Requests for Information</b>

## **EN-1.2      Procedure**

EN-1.2.1      To clearly identify formal information requests, these will always be made in writing, under signature of a Director or more senior official of the CBB. They will include the statement, “This is a formal request for information as defined in Chapter 1 of Module EN of Volume 5 of the CBB Rulebook”; and will state the deadline by which the information is to be communicated to the CBB.

EN-1.2.2      Failure to respond to such formal requests within the deadline set will be viewed as a significant breach of regulatory requirements and may result in a formal warning or other enforcement measure, specified under Articles 163 and 170 of the CBB Law, as decided by the CBB depending on the circumstances of the case.

EN-1.2.3      The deadline set in the request will vary depending on individual circumstances. A recipient may submit a case for an extension to the deadline; it should do so as soon as possible if it believes that an extension will be required, and in any event prior to the passing of the original deadline. Unless otherwise directed by the CBB, the original deadline remains valid pending consideration by the CBB of a request for an extension. The CBB 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-1.2.4      The above procedures do not prevent individual CBB supervisors from making oral requests for information as part of their day-to-day interaction with authorised persons. The CBB expects authorised persons to maintain their cooperative response to such requests; however, in the interests of clarity, the CBB will not view failures to respond to oral requests as a breach of regulatory requirements.



<b>MODULE</b>	<b>EN:</b>	<b>Enforcement</b>
<b>CHAPTER</b>	<b>EN-2:</b>	<b>Investigations</b>

## **EN-2.1 Legal Source**

EN-2.1.1 Articles 114 and 121 to 123 of the CBB Law empowers the CBB 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 CBB Appointed Experts. Articles 111, 114, and 124 require licensees to make available to the CBB's inspectors their books and other records, and to provide all relevant information within the time limits deemed reasonable by the inspectors.

EN-2.1.2 Articles 163 and 170 of the CBB Law provide for criminal sanctions where false or misleading statements are made to the CBB, or an investigation by the CBB is otherwise obstructed (see Section EN-9.3).



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## **EN-2.2 CBB Policy**

EN-2.2.1 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 ('Appointed Experts'), or a combination of the two.

EN-2.2.2 Failure by licensees to cooperate fully with the CBB's inspectors, or its Appointed Experts or to respond to their examination reports within the time limits specified, will be treated as demonstrating a material lack of cooperation with the CBB which will result in other enforcement measures being considered, as described elsewhere in this Module. This guidance is supported by Article 114(a) of the CBB Law.

EN-2.2.3 The CBB may appoint an individual or a firm as an Appointed Expert. Examples of Appointed Experts are reporting accountants, lawyers and expert witnesses. The appointment of Appointed Experts is not necessarily indicative of a contravention of CBB requirements or suspicion of such a contravention. For instance, an Appointed Expert may typically be commissioned to provide an expert opinion on a technical matter.

**EN-2.2.4** Appointed Experts 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 Appointed Experts is the property of the CBB (but is usually shared by the CBB with the firm concerned). The cost of the Appointed Experts' work must be borne by the licensee concerned.

EN-2.2.5 In selecting an Appointed Expert, 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 costs of such investigations are met by the licensee, the CBB makes only selective use of Appointed Experts, when essential to supplement CBB's other supervisory tools and resources.

EN-2.2.6 The CBB will not, as a matter of general policy, publicise the appointment of Appointed Experts, although it reserves the right to do so where this would help achieve its supervisory objectives. Both the Appointed Experts 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.



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<b>CHAPTER</b>	<b>EN-2:</b>	<b>Investigations</b>

## **EN-2.2 CBB Policy (continued)**

EN-2.2.7 Unless the CBB otherwise permits, Appointed Experts may not be the same firm appointed as external auditor of the specialised licensee.

EN-2.2.8 Compliance by Appointed Experts with the contents of this Chapter will not, of itself, constitute a breach of any other duty owed by them to a particular specialised licensee (i.e. create a conflict of interest).

EN-2.2.9 The CBB may commission reports, which require Appointed Experts to review information from another company within the reporting specialised licensee's group even when that other entity is not subject to any CBB requirements.

**EN-2.2.10** In accordance with Articles 114 and 123 of the CBB Law, specialised licensees must provide all relevant information and assistance to Appointed Experts on demand.

EN-2.2.11 The CBB may appoint one or more of its officials to work with the Appointed Expert's team for a particular specialised licensee.



<b>MODULE</b>	<b>EN:</b>	<b>Enforcement</b>
<b>CHAPTER</b>	<b>EN-2:</b>	<b>Investigations</b>

## **EN-2.3      Procedure**

EN-2.3.1      All proposals for Appointed Experts require approval by an Executive Director or more senior official of the CBB. The appointment will be made in writing, and made directly with the experts concerned. A separate letter is sent to the licensee, notifying them of the appointment. At the CBB's discretion, a trilateral meeting may be held at any point, involving the CBB and representatives of the licensee and the Appointed Experts, to discuss any aspect of the investigation.

EN-2.3.2      Following the completion of the investigation, the CBB will normally provide feedback on the findings of the investigation to the specialised licensee concerned.



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<b>CHAPTER</b>	<b>EN-2:</b>	<b>Investigations</b>

## **EN-2.4**

### **The Required Report**

#### **EN-2.4.1**

The scope of the required report will be determined and detailed by the CBB in the appointment letter. Commissioned Appointed Experts will normally be required to report on one or more of the following aspects of a licensee's business:

- a) Accounting and other records;
- b) Internal control systems;
- c) Returns of information provided to the CBB;
- d) Operations of certain departments; and/or
- e) Other matters specified by the CBB.

#### **EN-2.4.2**

Appointed Experts will be required to form an opinion on whether, during the period examined, the licensee is in compliance with the relevant provisions of the CBB Law and the CBB's relevant requirements, as well as other requirements of Bahrain Law and, where relevant, industry best practice locally and/or internationally.

#### **EN-2.4.3**

The Appointed Experts report should follow the format set out in Appendix EN-1 in Part B of Rulebook Volume 4.

#### **EN-2.4.4**

Unless otherwise directed by the CBB, the report must be discussed with the Board of Directors and/or senior management in advance of it being sent to the CBB.

#### **EN-2.4.5**

Where the report is qualified by exception, the report must clearly set out the risks which the licensee runs by not correcting the weakness, with an indication of the severity of the weakness, should it not be corrected. Appointed Experts 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-2.4.6**

If the Appointed Experts conclude, after discussing the matter with the licensee, 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 CBB in writing giving an explanation in this regard.

#### **EN-2.4.7**

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



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<b>CHAPTER</b>	<b>EN-2:</b>	<b>Investigations</b>

## **EN-2.5      Other Notifications to the CBB**

### **EN-2.5.1**

Appointed Experts must communicate to the CBB, during the conduct of their duties, any reasonable belief or concern they may have that any of the requirements of the CBB, including the criteria for licensing a licensee (see Module AU), 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 licensee, or that the interests of clients are at risk because of adverse changes in the financial position or in the management or other resources of a licensee. Notwithstanding the above, it is primarily the licensee's responsibility to report such matters to the CBB.

EN-2.5.2      The CBB recognises that Appointed Experts 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 CBB as outlined above. It is only when Appointed Experts, 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-2.5.3      If Appointed Experts decide to communicate directly with the CBB in the circumstances set out in Paragraph EN-2.5.1 above, they may wish to consider whether the matter should be reported at an appropriate senior level in the licensee at the same time and whether an appropriate senior representative of the licensee should be invited to attend the meeting with the CBB.



<b>MODULE</b>	<b>EN:</b>	<b>Enforcement</b>
<b>CHAPTER</b>	<b>EN-3:</b>	<b>Formal Warnings</b>

## **EN-3.1 CBB Legal Source**

EN-3.1.1 Article 38 of the CBB Law empowers the CBB to issue formal warnings to specialised licensees or authorised persons. The CBB will issue such warnings where it reasonably believes that these are required to achieve its statutory objectives.



<b>MODULE</b>	<b>EN:</b>	<b>Enforcement</b>
<b>CHAPTER</b>	<b>EN-3:</b>	<b>Formal Warnings</b>

## **EN-3.2 CBB Policy**

EN-3.2.1 Formal warnings are clearly identified as such and represent the CBB's first level formal enforcement measure. They are intended to clearly set out the CBB's concerns to a licensee or individual regarding an issue, and should be viewed by the recipient with the appropriate degree of seriousness.

EN-3.2.2 As indicated in Paragraph EN-B.2.7, the CBB will usually discuss concerns it may have prior to resorting to a formal enforcement measure, especially where a significant element of judgement is required in assessing compliance with a regulatory requirement.

EN-3.2.3 Where such discussions fail to resolve matters to the CBB's satisfaction, then it may issue a formal warning. Failure to respond adequately to a formal warning will lead the CBB to consider more severe enforcement measures. However, more severe measures do not require the prior issuance of a formal warning – depending on its assessment of the circumstances, the CBB may decide to have immediate recourse to other measures. Similarly, there may be circumstances where the CBB issues a formal warning without prior discussion with the licensee or individual concerned: this would usually be the case where a clear-cut compliance failing has occurred.

EN-3.2.4 When considering whether to issue a formal warning, the criteria taken into consideration by the CBB 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 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 CBB's supervisory objectives would be better served by issuance of a formal warning as opposed to another type of regulatory action.



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<b>CHAPTER</b>	<b>EN-3:</b>	<b>Formal Warnings</b>

### **EN-3.3      Procedure for Issuing Formal Warnings**

EN-3.3.1      Proposals to issue formal warnings are carefully considered against the criteria listed in Paragraph EN-3.2.4. They require approval of a Director or more senior CBB official, and include the statement “This is a formal warning as defined in Chapter EN-3 of Volume 5 of the CBB Rulebook”.

EN-3.3.2      Depending on the issue in question, recipients of a formal warning may be required to respond to the contents of the warning. Where a formal warning is served prior to imposing any penalties or administrative proceedings, Articles 125(c) and 126 of the CBB Law provide the recipients the right to object or challenge the formal warning.



<b>MODULE</b>	<b>EN:</b>	<b>Enforcement</b>
<b>CHAPTER</b>	<b>EN-4:</b>	<b>Directions</b>

## **EN-4.1 Legal Source**

EN-4.1.1 Article 38 of the CBB Law empowers the CBB to issue Directions to specialised licensees or individuals. The powers conveyed allow the CBB to issue whatever Directions, it reasonable believes, are required to achieve its statutory objectives.



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<b>CHAPTER</b>	<b>EN-4:</b>	<b>Directions</b>

## **EN-4.2 CBB Policy**

EN-4.2.1 The types of Directions that the CBB may issue in practice vary and will depend on the individual circumstances of a case. Generally, however, Directions require a licensee or individual either to undertake or to stop 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-4.2.2 The CBB 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 CBB will carefully consider the need for a Direction, and whether alternative measures may not achieve the same end. Where feasible, the CBB will try to achieve the desired outcome through persuasion, rather than recourse to a Direction.

EN-4.2.3 In considering whether to issue a Direction, the criteria taken into consideration by the CBB include the following:

- (a) The seriousness of the actual or potential contravention, in relation to the requirement(s) concerned and the risks posed to 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 CBB's supervisory objectives would be better served by issuance of a Direction as opposed to another type of regulatory action.



<b>MODULE</b>	<b>EN:</b>	<b>Enforcement</b>
<b>CHAPTER</b>	<b>EN-4:</b>	<b>Directions</b>

## **EN-4.3      Procedure**

EN-4.3.1      Proposals to issue Directions are carefully considered against the criteria listed in Paragraph EN-4.2.3. They require approval of an Executive Director or more senior official of the CBB, and include the statement “This is a formal Direction as defined in Chapter EN-4 of Volume 5 of the CBB Rulebook”.

EN-4.3.2      The subject of the Direction will normally be given 30 calendar days from the Direction’s date of issuance in which to make representations to the CBB concerning the actions required. This must be done in writing, and addressed to the issuer of the original Direction. Should a representation be made, the CBB will make a final determination within 30 calendar days of the date of the representation, as specified in Articles 125(c) and 126 of the CBB Law.

EN-4.3.3      In extreme circumstances, where the CBB 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, place a licensee under administration, or suspend a license (cf. Articles 48(g), 130(b) and 131 of the CBB Law). These measures may be used in conjunction with Directions.



<b>MODULE</b>	<b>EN:</b>	<b>Enforcement</b>
<b>CHAPTER</b>	<b>EN-5:</b>	<b>Financial Penalties</b>

## **EN-5.1 Legal Source**

EN-5.1.1 Article 129 of the CBB Law, provides the CBB the power to 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 CBB. Financial penalties are thus normally preceded by the issuance of a written formal warning and/or Direction.



<b>MODULE</b>	<b>EN:</b>	<b>Enforcement</b>
<b>CHAPTER</b>	<b>EN-5:</b>	<b>Financial Penalties</b>

## **EN-5.2 CBB Policy**

EN-5.2.1 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 CBB intends that the impact of a penalty should derive more from its signalling effect than from the actual amount of money involved.

**EN-5.2.2** As indicated in Paragraph EN-B.4.5, the CBB requires disclosure by licensees in accordance with Module PD of any financial penalties served on them, together with a factual description of the reasons given by the CBB for applying the penalty. In addition, the CBB may publicise the issuance of a financial penalty notice, where there is a strong case that doing so would help achieve the CBB's supervisory objectives, as mentioned in Article 132 of the CBB Law.

EN-5.2.3 In assessing whether to serve a financial written penalty notice, the CBB 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;
- (c) The extent to which the contravention was deliberate or reckless;
- (d) The licensee's past compliance record and conduct following the contravention; and
- (e) 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-5.2.4 Part 11 of the CBB Law outlines instances where financial penalties may be imposed. Examples of the types of compliance failings that may lead to the serving of a financial penalty notice include (but are not limited to):

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



<b>MODULE</b>	<b>EN:</b>	<b>Enforcement</b>
<b>CHAPTER</b>	<b>EN-5:</b>	<b>Financial Penalties</b>

## **EN-5.2 CBB Policy (continued)**

EN-5.2.5 In accordance with Article 125 of the CBB Law, 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 the CBB Law; the CBB Rulebook; 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; and
- (d) The grace period to be allowed to the licensee for challenging the intended penalty (which will not be less than 30 calendar days).

EN-5.2.6 The licensee may either pay the penalty or, pursuant to Article 126 of the CBB Law, may object within the period noted in Subparagraph EN-5.2.5(d). In accordance with Article 127 of the CBB Law, the CBB will consider any objection and make a formal resolution within 30 calendar days of receiving the objection. Thereafter, the resolution and any accompanying penalties are final and must be paid within 30 calendar days.

EN-5.2.7 The licensee may either pay the penalty or object within the above period. The CBB will consider any objection and make a formal resolution within 30 calendar days of receiving the objection. Thereafter, the formal resolution and any accompanying penalties are final and must be paid within 30 calendar days.

EN-5.2.8 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).



<b>MODULE</b>	<b>EN:</b>	<b>Enforcement</b>
<b>CHAPTER</b>	<b>EN-5:</b>	<b>Financial Penalties</b>

### **EN-5.3      Module FC (Financial Crime)**

EN-5.3.1      In addition to the general circumstances set out in Section EN-5.2, a financial penalty of up to BD 20,000 may be applied by the CBB in cases where a licensee fails to comply with any of the requirements in Module FC (Financial Crime).

EN-5.3.2      As with the imposition of financial penalties in response to breaches of other regulatory requirements, the CBB will apply financial penalties with respect to Module FC, based on the criteria set out in paragraph EN-5.2.3.

EN-5.3.3      A failure to comply with Module FC (Financial Crime) that warrants a financial penalty would not trigger also a financial penalty under Section EN-5.2.

EN-5.3.4      Any financial penalties applied by the CBB as regards the implementation of 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 Module FC does not prevent the CBB from also using other enforcement measures to remedy the same violation (for instance, a Direction).



<b>MODULE</b>	<b>EN:</b>	<b>Enforcement</b>
<b>CHAPTER</b>	<b>EN-5:</b>	<b>Financial Penalties</b>

## **EN-5.4      Procedure for Financial Penalties**

EN-5.4.1      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 CBB'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 CBB's management may sign the notification.

EN-5.4.2      The licensee has 30 calendar days from the notification's date of issuance to submit any representations it wishes to make to the CBB, in writing and addressed to the issuer of the original notification. If the licensee decides not to submit representations, it has 30 calendar days from the notification's date of issuance in which to pay the penalty.

EN-5.4.3      Should the licensee make representations challenging the proposed penalty, the CBB has 30 calendar days from the issuance of those representations in which to re-examine the facts of the case and its conclusions. If the CBB confirms application of a penalty, payment is required within 30 calendar days of a final notice being issued.

EN-5.4.4      Failure to pay a penalty within the required deadlines will be considered a breach of CBB's regulatory requirements, and will also result in other measures being considered, as described elsewhere in this Module.



<b>MODULE</b>	<b>EN:</b>	<b>Enforcement</b>
<b>CHAPTER</b>	<b>EN-5:</b>	<b>Financial Penalties</b>

## **EN-5.5 Addressing a Compliance Failure**

EN-5.5.1 Payment of a financial penalty does not by itself absolve a licensee from remedying the compliance failure concerned. The CBB 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.



<b>MODULE</b>	<b>EN:</b>	<b>Enforcement</b>
<b>CHAPTER</b>	<b>EN-6:</b>	<b>Administration</b>

## **EN-6.1 Legal Source**

EN-6.1.1 Article 136 of the CBB Law empowers (but does not oblige) the CBB 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-6.1.2 Article 139 of the CBB Law provides that where the CBB assumes the administration of a licensee, the licensee concerned may appeal within 10 calendar days to the CBB and, subsequently, the courts, in order to challenge its administration by the CBB.

EN-6.1.3 Articles 136 to 143 of the CBB Law set down the operating parameters of an administration.



<b>MODULE</b>	<b>EN:</b>	<b>Enforcement</b>
<b>CHAPTER</b>	<b>EN-6:</b>	<b>Administration</b>

## **EN-6.2 CBB Policy**

EN-6.2.1 The CBB 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-6.2.2 Although Article 136 of the CBB Law specifies the circumstances in which the CBB may pursue an administration, it does not oblige the CBB to administer a licensee. Faced with the circumstances described, the CBB 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-6.2.3 The criteria used by the CBB 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 licensee, 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 CBB'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.



<b>MODULE</b>	<b>EN:</b>	<b>Enforcement</b>
<b>CHAPTER</b>	<b>EN-6:</b>	<b>Administration</b>

## **EN-6.3      Procedure for Implementing an Administration**

EN-6.3.1      All proposals for assuming the administration of a licensee are subject to a thorough review by the CBB of all relevant facts, assessed against the criteria outlined in Paragraph EN-6.2.3.

EN-6.3.2      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 licensee’s correspondence and on its website, next to its name.

EN-6.3.3      Article 139 of the CBB Law allows a licensee 10 calendar 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 CBB 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.



<b>MODULE</b>	<b>EN:</b>	<b>Enforcement</b>
<b>CHAPTER</b>	<b>EN-7:</b>	<b>Cancellation or Amendment of License</b>

## **EN-7.1 Legal Source**

EN-7.1.1 Article 48 of the CBB Law empowers the CBB 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, Regulations or Rulebook;
- (c) Failed to start business within six months from the date of the license being issued;
- (d) Ceased to carry out the licensed activities permitted; or
- (e) Not acted in the legitimate interest of its customers or creditors.

EN-7.1.2 Article 48(d) of the CBB Law requires the CBB to give the licensee concerned at least 30 calendar days in which to appeal any proposed cancellation or amendment of its license.



<b>MODULE</b>	<b>EN:</b>	<b>Enforcement</b>
<b>CHAPTER</b>	<b>EN-7:</b>	<b>Cancellation or Amendment of License</b>

## **EN-7.2 CBB Policy**

EN-7.2.1 When used as an enforcement tool, the CBB views cancelling a license as appropriate only in the most serious of 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-7.2.2 When used as an enforcement tool, the criteria used by the CBB in assessing whether to seek the 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 supervisory penalties could reasonably be expected to achieve the CBB'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-7.2.3 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).



<b>MODULE</b>	<b>EN:</b>	<b>Enforcement</b>
<b>CHAPTER</b>	<b>EN-7:</b>	<b>Cancellation or Amendment of License</b>

## **EN-7.3 Procedure for Amendment or Cancellation of License**

EN-7.3.1 All proposals for cancelling or amending a license as an enforcement tool are subject to a thorough review by the CBB of all relevant facts, assessed against the criteria outlined in Paragraphs EN-7.2.1 and EN-7.2.2. After being assessed at the Executive Director level, proposals are submitted to H.E. the Governor for approval.

EN-7.3.2 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 CBB's rationale for the proposed cancellation or amendment, as measured against the criteria outlined in Paragraphs EN-7.2.1 and EN-7.2.2.

EN-7.3.3 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-7.3.4 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-7.3.5 A licensee may appeal to a competent court within 60 days of the above final ruling for a decision. The court's decision will then be final.



<b>MODULE</b>	<b>EN:</b>	<b>Enforcement</b>
<b>CHAPTER</b>	<b>EN-8:</b>	<b>Cancellation of 'Fit and Proper' Approval</b>

## **EN-8.1 Legal Source**

EN-8.1.1 Article 65 of the CBB Law allows the CBB to determine the level of qualifications, experience and training of a licensee's officers or employees. Article 65(c) of the CBB Law empowers the CBB the right to remove any official, being a Board member or in an executive position, that is unqualified or unsuitable for the assigned position.



<b>MODULE</b>	<b>EN:</b>	<b>Enforcement Measures</b>
<b>CHAPTER</b>	<b>EN-8:</b>	<b>Cancellation of 'Fit and Proper' Approval</b>

## **EN-8.2 CBB Policy**

EN-8.2.1 Chapter AU-3 of Module AU (Authorisation), specifies that approved persons must be assessed by the CBB as 'fit and proper' to hold such a position. The Chapter specifies various factors that the CBB takes into account when reaching such a decision.

EN-8.2.2 The CBB is conscious of the impact that assessing someone as not 'fit and proper' may have on an individual approved person. 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 AU-3 have not been met;
- (b) The extent to which the person has deliberately or recklessly breached requirements of the CBB Law or Volume 5 (Specialised Licensees);
- (c) The person's past compliance record and conduct following any such breaches;
- (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-8.2.3 Amongst other matters, the CBB will normally consider as grounds for the revocation of approved person status the following events affecting the approved person:

- (a) The conviction by a court, whether in Bahrain or elsewhere, for a crime affecting honesty;
- (b) A declaration of bankruptcy by a court of law;
- (c) A court ruling that the approved person's legal capacity is totally or partially impaired; or
- (d) The sanction by a professional body of a fine, suspension, expulsion or censure.

**EN-8.2.4** Specialised licensees must inform the CBB immediately they become aware of any of the events listed in Paragraph EN-8.2.3, affecting one of their approved persons.

EN-8.2.5 If the CBB has grounds for considering that an individual is no longer fit and proper to continue to hold their existing controlled function(s), it will revoke the approved person status granted to that individual. The individual will then be required to resign from each of the controlled functions to which this revocation applies. This revocation does not automatically preclude them from applying to hold other controlled functions in the future, but will be taken into account in considering new requests from specialised licensees that pertain to that individual.



<b>MODULE</b>	<b>EN:</b>	<b>Enforcement Measures</b>
<b>CHAPTER</b>	<b>EN-8:</b>	<b>Cancellation of 'Fit and Proper' Approval</b>

## **EN-8.2 CBB Policy (continued)**

EN-8.2.6 Depending on the seriousness of the situation, the CBB may impose further measures, which may include disqualification from:

- (a) Holding any controlled function;
- (b) Performing any function in relation to any regulated activity carried out by a licensed firm; or
- (c) Being a controller of any licensed firm.

EN-8.2.7 In assessing evidence, the CBB applies a lower threshold than is applied in a criminal court of law, reflecting the administrative nature of the sanction. The CBB 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-8.2.8 The CBB 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.



<b>MODULE</b>	<b>EN:</b>	<b>Enforcement Measures</b>
<b>CHAPTER</b>	<b>EN-8:</b>	<b>Cancellation of 'Fit and Proper' Approval</b>

## **EN-8.3      Procedure for Issuing an Adverse Finding**

EN-8.3.1      All proposals for issuing an adverse 'fit and proper' finding are subject to a thorough review by the CBB of all relevant facts, assessed against the criteria outlined in Paragraph EN-8.2.2. In some instances, it may be appropriate for the CBB to request the licensee or person concerned to provide further information, in order to help reach a decision.

EN-8.3.2      All adverse findings have to be approved by an Executive Director of the CBB. Once approved, a notice of intent is issued to the person concerned and copied to the Board/senior management of the licensee, setting out the circumstances and the basis for the CBB'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 CBB.



<b>MODULE</b>	<b>EN:</b>	<b>Enforcement</b>
<b>CHAPTER</b>	<b>EN-9:</b>	<b>Criminal Sanctions</b>

## **EN-9.1      Overview**

EN-9.1.1      The 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-9.1.2      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-9.1.3      In all cases to do with criminal sanctions, the CBB can only refer the matter to the Office of the Public Prosecutor. The CBB has no authority to apply such sanctions without recourse to the courts.



<b>MODULE</b>	<b>EN:</b>	<b>Enforcement</b>
<b>CHAPTER</b>	<b>EN-9:</b>	<b>Criminal Sanctions</b>

## **EN-9.2      CBB Policy**

EN-9.2.1      Because of their criminal status, and their provision for custodial sentences, the sanctions provided for under the CBB Law are viewed by the CBB as very powerful measures, to be pursued sparingly. In most situations, the CBB will seek to address regulatory failures through administrative sanctions, as outlined in the preceding Chapters, rather than by pursuing the criminal sanctions outlined here.

EN-9.2.2      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 CBB will refer the matter to the Office of the Public Prosecutor.



<b>MODULE</b>	<b>EN:</b>	<b>Enforcement</b>
<b>CHAPTER</b>	<b>EN-9:</b>	<b>Criminal Sanctions</b>

## **EN-9.3 Articles of CBB Law**

### ***Article 163***

EN-9.3.1 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; or
- (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-9.3.2 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-9.3.3 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, manager, official or employee intentionally obstructs an investigation by the CBB or an Appointed Expert.

### ***Article 171***

EN-9.3.4 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 licensee.