



EDFIS/C/018/2016
14th March 2016

Chief Executive Officer
All Ancillary Service Providers
Manama
Kingdom of Bahrain

Dear Sir,

CBB Volume 5 Rulebook (Specialised Licensees) Amendment to Module EN

Pursuant to Legislative Decree No. (34) of 2015 amending some provisions of the Central Bank of Bahrain and Financial Institutions Law No. (64) of 2006, Module EN has been amended to be in line with the amended CBB Law.

The updated PDF version of Module EN is included as an attachment to this letter and the changes will be incorporated in the HTML version as part of the April update for Volume 5 (Specialised Licensees). All changes are currently in effect.

Yours sincerely,

Abdul Rahman Al Baker

MODULE	EN:	Enforcement
CHAPTER	EN-A:	Introduction

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') (and its amendments) is issued under the powers available to the CBB under Article 38 of **the 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.
EN-2	04/2012	Chapter has been streamlined and repetitive information has been eliminated and reference is now made to Section BR-3.5 for money changers and administrators or Module GR for representative offices.
EN-B.4.5	10/2012	Guidance changed to Rule.
EN-4.1.1	10/2012	Corrected typo.
EN-5.1.1	10/2012	Amended guidance.
EN-5.3A	10/2012	New Section added on financial penalties for date sensitive requirements.
EN-8.2.4	10/2012	Inserted missing word.
EN-9.3.1A	01/2013	Paragraph added to refer to Article 161 of the CBB Law.
EN-5.2.7	01/2016	Paragraph deleted and replaced as it is a repetition of EN-5.2.6.
EN-A.1.2	04/2016	Reference added to amendments for CBB Law.
EN-B.1.4	04/2016	New guidance Paragraph added to broaden the scope of the application of financial penalties to persons referred to in paragraph (b) of Article (68 bis 1) of the CBB Law and its amendments.
EN-5	04/2016	Amended to be in line with amendments to Article 129 of the CBB Law.

Superseded Requirements

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

MODULE	EN:	Enforcement
CHAPTER	EN-B:	Scope of Application

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.
- EN-B.1.4 Section EN-5 dealing with financial penalties is applicable to specialised licensees as well as to persons referred to in paragraph (b) of Article (68 bis 1) of the CBB Law and its amendments.

MODULE	EN:	Enforcement
CHAPTER	EN-5:	Financial Penalties

EN-5.1 Legal Source

EN-5.1.1 Article 129 of the CBB Law and its amendments, provide the CBB the power to impose financial penalties on licensees or persons referred to in paragraph (b) of Article (68 bis 1) of the CBB Law and its amendments.



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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 or persons' referred to in paragraph (b) of Article (68 bis 1) of the CBB Law and its amendments 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:

- The seriousness of the contravention, in relation to the requirement(s) concerned;
- 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;
- The licensee's past compliance record and conduct following the contravention; and
- 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):

- Failures to address persistent delays and/or significant inaccuracies in regulatory reporting to the CBB;
- Repeated failures to respond to formal requests for information from the CBB, within the deadlines set;
- The submission of information to the CBB known to be false or misleading; and
- 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.



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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 100,000 may be applied by the CBB in cases where a licensee fails to comply with any of the requirements in Module FC (Financial Crime). The fine shall be multiplied by the number of violations.
- 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).



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EN-5.3A Financial Penalties for Date Sensitive Requirements

EN-5.3A.1 Modules AU, FC, BR and PD contain specific requirements where specialised licensees must comply with, by a precise date. Where a specific due date is involved, the CBB's financial penalties are based on a per diem basis.

EN-5.3A.2 This Section applies to date sensitive requirements for:

- Reporting requirements included in Module BR;
- Public disclosure requirements included in Module PD;
- The report of the external auditor or approved consultancy firm required as per Paragraph FC-4.3.1 (d); and
- Annual licensing fees required as per Module AU.

EN-5.3A.3

Financial penalties related to late filing or other date sensitive requirements are calculated as per the following per diem basis:

- Where the financing company licensee's total consolidated assets are less than or equal to BD 50 million, the financial penalty for late filing is BD 50 per day;
- Where the financing company licensee's total consolidated assets are greater than BD 50 million but less than or equal to BD 250 million, the financial penalty for late filing is BD 100 per day;
- Where the financing company licensee's total consolidated assets are greater than BD 250 million, the financial penalty is BD 200 per day;
- For new financing company licensees who have yet to provide audited financial statements, the financial penalty is BD 50 per day;
- For all Volume 5 specialised licensees, other than financing company licensees, the financial penalty under this Section is BD 20 per day.

EN-5.3A.4 In accordance with Article 129 of the CBB Law, the maximum financial penalty levied for failing to comply with date sensitive requirements is BD 100,000. The fine shall be multiplied by the number of violations. The CBB may opt to limit the amount of the financial penalty and use other enforcement measures as outlined in Module EN (Enforcement), such as imposing restrictions on a specialised license limiting the scope of operations.

EN-5.3A.5 The various deadlines for submission of reports and annual fees referred to in Modules BR, FC, PD and AU are defined:

- In terms of a specified number of days or months following a given date, such as the last date of a calendar quarter;
- A specified number of days or months after the occurrence of a specific event; or
- A specific date.



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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 or persons referred to in paragraph (b) of Article (68 bis 1) of the CBB Law and its amendments 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 or persons referred to in paragraph (b) of Article (68 bis 1) of the CBB Law and its amendments 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 or persons referred to in paragraph (b) of Article (68 bis 1) of the CBB Law and its amendments 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 or persons referred to in paragraph (b) of Article (68 bis 1) of the CBB Law and its amendments 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.



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EN-5.5 Addressing a Compliance Failure

EN-5.5.1 Payment of a financial penalty does not by itself absolve a licensee or persons referred to in paragraph (b) of Article (68 bis 1) of the CBB Law and its amendments from remedying the compliance failure concerned. The CBB will expect the licensee or persons referred to in paragraph (b) of Article (68 bis 1) of the CBB Law and its amendments 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.