

RESOLUTION NO.(31) OF 2008 WITH RESPECT TO PROMULGATING THE REGULATIONS GOVERNING BANK CONTROL ACCORDING TO THE PROVISIONS OF THE CENTRAL BANK OF BAHRAIN AND FINANCIAL INSTITUTIONS LAW PROMULGATED BY LAW NO.(64) OF 2006

The Governor of the Central Bank of Bahrain,

Having reviewed the Law of the Central Bank of Bahrain and Financial Institutions promulgated by Law No.(64) of 2006,

And upon the submission of the Chairman of the CBB's Control Policies Committee,

HEREBY ORDERS:

Article 1

The provisions of the attached Regulations governing Bank Control according to the provisions of the Central Bank of Bahrain and Financial Institutions Law promulgated by Law No.(64) of 2006, shall come into effect.

Article 2

The concerned Directorates of the Central Bank of Bahrain shall implement this Resolution which shall come into effect from the day following the date of its publication in the Official Gazette.

Signed: Rasheed Mohamed Al Mearaj,
Governor of the Central Bank of Bahrain.

Issued on: 30th Jumada Awwal, 1429 Hijra,
Corresponding to: 4th June, 2008 A.D.

REGULATIONS GOVERNING BANK CONTROL

DEFINITIONS

Article 1

In the application of the provisions of this Resolution, the following terms and expressions shall have the meanings assigned against each unless the context otherwise requires:

Kingdom: Kingdom of Bahrain.

Law: Central Bank of Bahrain and Financial Institutions Law promulgated by Law No.(64) of 2006.

Bank: Central Bank of Bahrain.

Entity: Any natural or corporate person.

Regulated Person: A corporate person providing one of the financial services subject to the CBB's control and is indicated in the Law.

Bank: A bank licensed in accordance with the provisions of the Law.

Foreign Bank: A branch of a foreign bank licensed to provide financial services in the Kingdom.

Guidelines Manual: The Guidelines volume published by the CBB.

Controlling Person:

1. A person who individually or with an associate acquires 10% or more of a capital of a licensed Bank or a holding company affiliated to the Bank.
2. A person having the ability, either personally or with an associate, to undertake the voting right prescribed for those holding 10% or more of the voting right required to run a bank or a holding company affiliated to the Bank.
3. A person through whom a controlling person has a fundamental influence over a bank's management or a holding company to which the bank is affiliated.

Associate:

1. Spouse of children of the Controlling Person.
2. An employee, a partner or board member with the Controlling Person or one of its affiliated companies.
3. A person through whom a Controlling Person concludes an agreement or arrangement concerning the possession, ownership or disposal of shares or any other interest with the bank or exercise voting right in the concerned bank.

Current Controlling Person: A person who is issued with the CBB's approval to control prior to the effective date of these Regulations.

GENERAL PROVISIONS

Article 2

The provisions of these Regulations shall not be applicable to a current Controlling Person and its provisions shall be applicable to any increase that may affect on his equity after the effective date of these Regulations.

Article 3

The provisions of these Regulations shall be applicable to banks and Controlling Persons who should observe the provisions of the CBB control requirements upon capital markets concerning changes related to acquiring shares of enlisted companies and the provisions of Article (7) of these Regulations shall be applicable to foreign banks.

Article 4

The guidelines provided for in these Regulations shall be subject to any legal changes in shares acquisition legality by Controlling Persons with banks or scope of voting rights the Controlling Persons enjoy in banks. Failure to observe such measures shall result in inflicting the penalties indicated in the guidelines volume and adopt other administrative measures against the Controlling Person in accordance with the provisions of the law including preventing him from exercising voting right or share transfer.

CONTROLLING APPROVAL APPLICATION

Article 5

1. A Controlling Person applicant shall obtain acquire a previous approval from the CBB concerning any of the following changes of the Controlling Persons:
 - a) A new Controlling Person.
 - b) A current Controlling Person intends to increase his shareholding from 10% to 20% of the capital.
 - c) A current Controlling Person intends to increase his shareholding from 20% to 30% of the capital.
 - d) A current Controlling Person intends to increase his shareholding from 30% to 40% of the capital.
 - e) A current Controlling Person intends to increase his shareholding over 40% in case a bank is not listed in a stock exchange provided the Controlling person should be subject to control.
2. Banks should forward to the CBB within three months from the end of the financial year a report about their controlling persons indicating the controlling persons and shareholding percentage of their equity in the bank.

Article 6

Upon submitting a bank licence application, detailed information about ownership of equity and controlling persons should be indicated in the form prescribed for this purpose.

Article 7

A foreign bank should give notice to the CBB in the event where a person acquires a percentage that exceeds 50% of its capital and such notice shall be accompanied by a copy of the foreign authority's approval then, the CBB shall adopt the necessary decision.

Article 8

The CBB shall have the right to refer to the regulatory authorities for any information being supplied therewith to support a control application approval.

Article 9

The CBB shall prior to deciding upon a natural Bahraini's application concerning acquisition or controlling over 10% or more of any licensed Bahraini bank's capital or has the intention of increasing his control, observe the following:

1. A direct and indirect control percentage of a natural person shall not exceed 15% of the capital with voting right in the concerned bank.
2. Extent of damage to be suffered by a bank, a financial or banking sector, or the national interest.
3. Legitimate interests of depositors, creditors and small shareholders in the bank to be controlled.
4. If a previous conviction judgement has been passed against an applicant in any crime with the exception of traffic offences.
5. A conviction judgement passed in a crime related to fraud, abuse of authority or misconduct of an applicant related to the formation of an organisation or a company's board of directors.
6. An applicant's submission to any administrative penalty or measure by any government authority, regulatory authority, a professional or trade union authority.
7. To violate any legislation or regulations related to financial services.
8. Whether an applicant was previously denied a licence, authorization or registration.
9. Whether he was previously dismissed or tendered his resignation from any employment or service.
10. Whether he was previously convicted for his disqualification as a board member or a company manager.
11. Whether at the time of his membership as a board member, manager or a partner of a company was previously liquidated, placed under administrative receivership, bankruptcy of a partner or more.
12. An applicant's credibility and frankness of an applicant with the control authorities.

13. Whether an applicant was previously convicted of bankruptcy, inability to repay a debt determined by virtue of a judgement, default in paying a debt or concluding an agreement with his debtors indicating his inability to repay his debt.
14. An applicant's personal record as a controlling person or investor in a financial institution.
15. An applicant's financial resources, stable ownership of shares intended to be acquired.
16. Participation in a board of directors or more of a financial institution in the Kingdom or ownership of more than 20% of a financial institution or more and extent of conflict on interest in this case.
17. An applicant's ability to constructively deal with shareholders and board members.

Article 10

Prior to deciding upon an application of a corporate person, who is not subject to control, concerning ownership, control or by controlling 10% or more of its capital of any Bahraini licensed bank or intended to increase the percentage of his control, the CBB shall observe the following guidelines:

1. A direct and indirect control of an unregulated corporate person control shall not exceed 20% of the voting capital in the concerned bank.
2. Extent of the damage extent to be inflicted upon a bank, financial or banking sector or the Kingdom's national interests.
3. Legitimate interest of depositors, debtors and shareholders of a bank to be controlled.
4. Creditworthiness' of an applicant and his affiliated companies and ownership stability of ownership of shares to be acquired.
5. If a bankruptcy judgement has been passed against an applicant or any of his affiliated companies, inability to pay back their debts according to a judgement, failure to repay a debt or confirmation of their inability to settle their debt.
6. An applicant's country of origin, head office address, related groups and parties structure as determined in the guidelines manual, CBB's supervisory effect on the licensee and possible conflict of interest in case controlling a bank.
7. Extent of his control and other members in his group in view of the general business behaviour principles, extent of his violation of the laws, rules and regulations of financial services, inflicting penalties or administrative measures by a government authority, regulatory authority or professional authority.
8. Whether a conviction judgement has been passed against an applicant in a crime related to fraud, abuse of authority or any other behaviour.
9. If any criminal penal measure was previously taken against an applicant or his affiliated partners' even it did not lead to passing a conviction judgement.

10. Credibility and candidness of an applicant or one of his affiliate with the regulatory authority.
11. Whether he or one of his affiliate companies has been denied a licence, authorization or registration.
12. Applicant's personal record as a controlling person or investor in a financial institution.
13. Ability to constructively deal with the bank's current shareholders or members of the board of directors.
14. Membership of a board of directors or more of a financial institution in the Kingdom, any other country or ownership of more than 20% of the capital of an institution in the Kingdom or in another country and possible conflict of interest in this case.

Article 11

Prior to deciding upon a regulated corporate person's application with respect to acquiring or controlling 10% or more of the voting capital of a licensed Bahraini bank or has the intention of increasing his controlling percentage, the CBB must observe the regulations provided for in Clauses (2) to (14) of Article (10) of these Regulations in addition to the following: terms and conditions:

1. A direct and indirect controlling percentage of a regulated corporate person shall not exceed 40% of the voting capital in a licensed bank enlisted on any stock exchange in the Kingdom. This limit shall not be applicable to licensed banks not being enlisted on such exchanges or in case of a merger or complete acquisition approved by the CBB.
2. A corporate person shall be subject to a standard control by a regulatory authority to effectively apply the basic principles of effective banking control issued by Basel Committee, principles of (IOSCO) or the principles of the International Society of Insurance Controllers in addition to the recommendations of the Financial Anti Terrorism Task Force (FATF).
3. A corporate person should in advance obtain an official written approval for the proposed ownership percentage from the regulatory authority to whom it is subject.
4. The Principal Regulatory Authority of the corporate person should stress that this person should consolidated the business activities of the licensed Bahraini bank for accounting organisational purposes whenever a need arises.
5. The Principal Regulatory Authority of the corporate person should officially approve exchange of information of customers between the corporate person and the bank to be controlled for combating money laundering and terrorism finance together with regulating the major concentration of risks.
6. To conclude a memorandum of understanding between the principal regulating authority and the CBB concerning supervision responsibilities and exchange of information, visits and inspections.

7. A corporate person should submit a letter of guarantee approved by the CBB concerning its obligation to support the bank to be controlled.
8. A licensed bank shall be subject to all the provisions indicated in the guidelines manual with respect to dealings with controlling persons.

DECIDING UPON AN APPLICATION

Article 12

The CBB should issue, within thirty days from the date of receiving an application, its decision concerning the approval to control with the possibility to extend this period for no less than three months from the date of receipt and the applicant shall be notified in writing of this decision.

Article 13

An approval decision issued by the CBB shall indicate the effective date of the approval and the CBB shall limit its approval to any conditions it may deem fit to achieve the public interest including placing a maximum limit upon the permitted capital control or voting right.

Article 14

The CBB may reject, as the case may be, a control approval application owing to failure to fulfil any of the conditions provided for in Articles (9), (10) or (11) of these Regulations. A rejection decision issued by the CBB shall be substantiated and an applicant shall be notified thereof by a letter approved by the CBB Executive Director of Banking Control or whoever acts on his behalf.

Article 15

1. A complaint may be filed against the decision issued rejecting the control or the restrictions imposed within thirty days from the date of notification by the notice provided such complaint shall be substantiated and backed by the supporting documents.
2. The CBB shall decide upon a complaint and inform a complainant of the decision issued within thirty days from the date of submission.

Article 16

Without prejudice to the provisions of Article (56) of the Law, the CBB may order whoever acquires shares in violation of the provisions of Control in Article (5) or was informed of the rejection in accordance with Article (14) of these Regulations to transfer the ownership of such shares or until a subsequent notification to cease the right to vote in respect thereof by virtue of a written notice to the concerned person. In case of refusal to carry out the aforesaid order, the CBB may request the concerned law court to take any suitable precautionary action or sale of the aforesaid shares.