



# **ENFORCEMENT MODULE**



**MODULE:**

**EN (Enforcement)**

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## EN-A.1 Application

### *Executive Summary*

EN-A.1.1 This Module sets out the Central Bank of Bahrain's ('CBB') approach to enforcement, and the mechanisms used by the CBB 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 CBB 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 of the Rulebook.

### *Legal Basis*

#### EN-A.1.3

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 the Central Bank of Bahrain and Financial Institutions Law 2006 and its amendments ('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 Islamic bank licensees. Chapters EN-2 to EN-5 and EN-10 apply to the Directors and employees of all Islamic bank licensees. Chapter EN-6 is applicable to Islamic bank licensees and as well as to persons referred to in paragraph (b) or Article (68 bis 1) of the CBB law.

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



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

## EN-A.2 Module History

EN-A.2.1 This Module was first issued on 1st January 2005 as part of the Islamic 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:

Module Ref.	Change Date	Description of Changes
EN-7	07/2006	Addition of procedures for “Appointed Experts” (relocated from AU 4).
EN-A	10/2007	New references to the CBB Law and new Rule categorising this Module as a Directive.
EN-1, 3, 4, 6-10.	10/2007	Administrative changes to sections as a result of the new CBB Law
EN-7.1 and 7.2	01/2009	Minor amendments due to new Role of Reporting Accountants chapter in Module AU
EN	10/2010	Various minor amendments to ensure consistency in CBB Rulebook.
EN-A.1.3 and EN-A.2.4	10/2010	Correction of typo(s)
EN-6.2A	10/2010	Added new Section on financial penalties for date sensitive requirements
EN-A.1.3	01/2011	Clarified legal basis.
EN-6.2A.7	04/2011	Clarified guidance on payment of annual fees.
EN-6.2A.7(a)	07/2011	Clarified due date when a weekend is involved.
EN-7	10/2011	Chapter has been streamlined and repetitive information has been eliminated and reference is now made to Section BR-6.5. The term ‘appointed experts’ has been substituted for the previously used ‘investigators’.
EN-10.3.1A	01/2013	Paragraph added to refer to Article 161 of the CBB Law.
EN-6.2A.2(c)	10/2013	Corrected cross reference.
EN-A.1.3	04/2016	Reference added to amendments to the CBB Law and to the broader scope of financial penalties also applicable to persons referred to in paragraph (b) of Article (68 bis 1) of the CBB Law.
EN-6	04/2016	Amended to be in line with amendments to Article 129 of the CBB Law.
EN-6.3.5	04/2016	Added Rule regarding anticipated late submission of date sensitive requirements.
EN-6.2A.3	04/2017	Adjustment of financial penalties for Date of Sensitive Requirements.
EN-6.2A.1 and 6.2A.2	07/2017	Added the requirement of HC-7.2 as part of date sensitive requirements.
EN-4.1	07/2018	Amended Section title.
EN-5.2.2	07/2018	Amended Paragraph.
EN-5.2.4	07/2018	Added new Paragraph on re-assessment tests.
EN-6.1.1	07/2018	Amended Paragraph
EN-6.1.2	07/2018	Amended Paragraph
EN-6.1.2A	07/2018	Added new Paragraph on maximum financial penalty.
EN-6.1.5	07/2018	Added reference to new Appendix A.
EN-6.2.1	07/2018	Deleted Paragraph.
EN-6.2.2	07/2018	Deleted Paragraph.
EN-6.2.3	07/2018	Deleted Paragraph.
EN-6.2A.5	07/2018	Deleted Paragraph.
EN-6.3.4	07/2018	Amended Paragraph
Appendix A	07/2018	Added new Appendix.
EN-3.2.3	04/2019	Moved guideline to Section EN-1.1.
EN-8	04/2019	Deleted Chapter.
EN-6.1.3	10/2019	Amended Paragraph to refer to Bahraini banks.
EN-6.1.3A	10/2019	Added a new Paragraph on disclosure of financial penalties of branches of foreign banks.



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

## EN-A.2 Module History Contd.

EN-A.2.2 continued.

Module Ref.	Change Date	Description of Changes
EN-6.2A.4	04/2020	Amended Paragraph.
EN-6.2B	04/2021	Added a new Section on 'Financial Penalties for Non-compliance with Blocking/Unblocking Requirements'.

### *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 CBB's approach to enforcement.

### *Effective Date*

EN-A.2.4

The contents in this Module are effective from 1<sup>st</sup> January 2005 or from the date given at the footer of the page where changes to Enforcement have occurred as a result of the issuance of 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.



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

## **EN-1.1 The CBB’s Approach to Enforcement**

EN-1.1.1 The CBB favours an open, pragmatic and collaborative relationship with its licensees, 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 enforcement of its requirements. Should licensees fail to cooperate, then the CBB will use the means described in this Module to achieve compliance.

EN-1.1.2 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-1.1.3 In deciding any given regulatory 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 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 CBB also aims to achieve an overall consistency in its regulatory actions.

EN-1.1.5 Underlying the CBB’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 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.



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

## **EN-1.1 The CBB's Approach to Enforcement (continued)**

- EN-1.1.6 In keeping with the proportionality principle, and to the extent consistent with the CBB's enforcement approach in Paragraph EN-1.1.3, the CBB will usually opt for the least severe of appropriate enforcement measures. In most cases, the CBB 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 CBB 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 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 licensee or individual concerned, aimed at remedying the contravention.
- EN-1.1.8 Except in the limited circumstances outlined below, the CBB 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-8 to EN-10, certain procedures are set out in the Central Bank of Bahrain and Financial Institutions Law (Decree No. 64 of 2006).
- EN-1.1.9 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, 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.





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

## **EN-1.2 Prohibition on Insurance**

EN-1.2.1 To help the CBB 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.



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

### **EN-1.3 Publicity**

- EN-1.3.1 The CBB 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 CBB may inform the licensee's external auditor 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 CBB 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 CBB's supervisory objectives. In such instances, the CBB will usually allow the licensee or individual concerned the opportunity to make representations to the CBB 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 report the amount of any such penalties paid to the CBB, together with a factual description of the reason(s) given by the CBB for the penalty.
- EN-1.3.4 Without prejudice to the above policy, the CBB 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 CBB will in these instances generally issue a public statement explaining the circumstances of the case.



<b>MODULE</b>	<b>EN: Enforcement</b>
<b>CHAPTER</b>	<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 CBB's first level formal enforcement measure. They are intended to clearly set out the CBB'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 CBB 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 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 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 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 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 CBB's supervisory objectives would be better served by issuance of a formal warning as opposed to another type of regulatory action.



<b>MODULE</b>	<b>EN:</b>	<b>Enforcement</b>
<b>CHAPTER</b>	<b>EN-2:</b>	<b>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 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, recipient have the right to object to or challenge a formal warning as specified under Articles 125(c) and 126 of the CBB Law.



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

## **EN-3.1 CBB Policy**

- EN-3.1.1 The CBB may issue Directions to licensees or individuals under supervisory powers granted to it by the CBB Law. These powers are broad in nature, and effectively allow the CBB to issue whatever Directions it reasonably believes are required to achieve its statutory objectives.
- EN-3.1.2 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 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 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-3.1.4 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 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 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-3:</b>	<b>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 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-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 CBB 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 CBB will make a final determination, within 30 days of the date of the objection, as specified in Articles 125(c) and 126 of the CBB Law.

EN-3.2.3 [This Paragraph was moved to Section EN-1.1 in April 2019].



<b>MODULE</b>	<b>EN: Enforcement</b>
<b>CHAPTER</b>	<b>EN-4: Formal Requests for Information</b>

## **EN-4.1 Procedure for requests of information**

- EN-4.1.1 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. 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 CBB; 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 CBB.
- 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 CBB Law, as decided by the CBB 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 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-4.1.5 The above procedures do not prevent individual CBB supervisors making oral requests for information as part of their day-to-day interaction with licensees. The CBB expects licensees 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.



MODULE	EN: Enforcement
CHAPTER	EN-5: Adverse “Fit and Proper” Findings

## 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, officers or employees.

EN-5.1.2 In addition, Chapter LR-1A 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 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-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 CBB uses the definition given in Chapter LR-1A. 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.





<b>MODULE</b>	<b>EN: Enforcement</b>
<b>CHAPTER</b>	<b>EN-5: Adverse “Fit and Proper” Findings</b>

## **EN-5.2 CBB Policy**

- EN-5.2.1 The CBB 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 LR-1A have not been met;
  - (b) The extent to which the person has deliberately or recklessly breached requirements of the CBB Law or Volume 2 (Islamic Banks);
  - (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
  - (f) The risk the person poses to licensees and their customers.
- EN-5.2.2 In assessing evidence, the CBB applies a lower threshold than is applied in a criminal court of law, reflecting generally, 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-5.2.3 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.
- EN-5.2.4 The CBB may carry out re-assessment tests in case of individuals deemed to be responsible for serious or repeated violations. See Appendix A.



<b>MODULE</b>	<b>EN: Enforcement</b>
<b>CHAPTER</b>	<b>EN-5: 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 CBB of all relevant facts, assessed against the criteria outlined in Section EN-5.2. 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-5.3.2 All adverse findings have to be approved by an Executive Director of the CBB. 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 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.

EN-5.3.3 If representations are made, then the CBB has 30 calendar days from the date of the representation in which to consider any mitigating evidence submitted and make a final determination.



MODULE	EN: Enforcement
CHAPTER	EN-6: Financial Penalties

## EN-6.1 CBB Policy

EN-6.1.1 Under Chapter 2 “Procedures to be taken before penalties or administrative proceedings are applied” and Chapter 3 “Penalties and administrative proceedings” of Part 9 of the CBB Law, the CBB may impose financial penalties on licensees or persons referred to in paragraph (b) of Article (68 bis 1) of the CBB Law and its amendments (in particular Article 129). The CBB shall use judgement and will take into account relevant facts in determining the need to impose financial penalties. 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 or persons’ referred to in paragraph (b) of Article (68 bis 1) of the CBB Law behaviour and by limits set in the CBB Law. The CBB will apply the methodology set out in Appendix A to determine the size of the penalty. The CBB intends that the impact of a penalty should derive more from its signaling effect than from the actual amount of money involved.

EN-6.1.2A In accordance with Article 129 of the amendment to the CBB Law, the maximum financial penalty levied for failing to comply with CBB Law, Regulations, Directives and other requirements is BD 100,000 per violation. The CBB may opt to limit the amount of the financial penalty and use other enforcement measures as outlined in this Module, such as imposing restrictions on an Islamic bank licensee limiting the scope of operations.

**EN-6.1.3** As indicated in Paragraph EN-1.3.3, the CBB requires disclosure by Bahraini Islamic bank licensees in their annual report 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 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 pre-mentioned Law.

**EN-6.1.3A** As indicated in Paragraph EN-1.3.3, the CBB requires disclosure by branches of foreign bank licensees in their annual audited financial statements 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 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 pre-mentioned Law.



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

## **EN-6.1 CBB Policy (continued)**

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 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 the CBB's requirements, subjecting depositors and other customers to significant risk of financial loss.

EN-6.1.5 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; 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.

Additional criteria are set out in Appendix A.

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 CBB 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.



<b>MODULE</b>	<b>EN: Enforcement</b>
<b>CHAPTER</b>	<b>EN 6: Financial Penalties</b>

## **EN-6.2 Module FC (Financial Crime)**

EN-6.2.1 [This Paragraph was deleted in July 2018].

EN-6.2.2 [This Paragraph was deleted in July 2018].

EN-6.2.3 [This Paragraph was deleted in July 2018].

EN-6.2.4 Any financial penalties applied by the CBB as regards the implementation of its requirements 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 requirements in 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: Enforcement</b>
<b>CHAPTER</b>	<b>EN-6: Financial Penalties</b>

## EN-6.2A Financial Penalties for Date Sensitive Requirements

EN-6.2A.1 Modules LR, FC, BR, HC and PD contain specific requirements where Islamic bank 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-6.2A.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 a consultancy firm approved by the CBB required as per Paragraph FC-4.3.1B (d);
- Annual licensing fees required as per Section LR-4.2, and
- Conduct of Shareholders' Meetings requirements included in Section HC-7.2.

### EN-6.2A.3

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

- Where the Islamic bank licensee's total consolidated assets are less than or equal to BD 50 million, the financial penalty for late filing is BD 100 per day;
- Where the Islamic bank licensee's total consolidated assets are greater than BD 50 million but less than BD 250 million, the financial penalty for late filing is BD 200 per day;
- Where the Islamic bank licensee's total consolidated assets are greater than BD 250 million but less than or equal to BD 5 billion, the financial penalty is BD 400 per day;
- Where the Islamic bank licensee's total consolidated assets are greater than BD 5 billion, the financial penalty is BD 800 per day; and
- For new licensees who have yet to provide audited financial statements, the financial penalty is BD 100 per day.

### EN-6.2A.4

For branches of foreign bank licensees, only those assets reported as part of the filing for their Bahraini operations, shall be considered in determining the per diem financial penalty.

EN-6.2A.5 [This Paragraph was deleted in July 2018].

EN-6.2A.6 The various deadlines for submission of reports and annual fees referred to in Modules BR, FC, PD and LR 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.



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

## **EN-6.2A Financial Penalties for Date Sensitive Requirements (continued)**

- EN-6.2A.7 In imposing financial penalties for date sensitive requirements, the following criteria apply:
- (a) Where the due date falls on a weekend or a holiday as designated by the CBB, the first business day following the weekend or holiday will be considered as being the due date;
  - (b) Where a due date is not complied with by the end of the day on which it is due, holidays and weekend days are included in the number of days the item is considered late;
  - (c) For returns and other filings, the date received is the date recorded by the CBB's systems in case of returns filed electronically;
  - (d) In the case of returns filed in hard copy, the CBB stamp is the date received;
  - (e) All returns are to be sent to the respective Supervision Directorate and the annual fees to the Accounts Directorate, on or before the due date, to be considered filed on time;
  - (f) A day ends at midnight in the case of returns that must be filed electronically, or at the close of CBB business day, in the case returns are filed in hard copy; and
  - (g) An incomplete return, where completeness is determined in relation to the requirements of the relevant instructions and Module BR, is considered 'not filed' until the CBB receives all necessary elements of the return.
- EN-6.2A.8 The CBB does not require any particular method of delivery for returns and filings that are filed in hard copy. The use of the Bahrain postal services, private courier services or other methods of delivery is entirely at the discretion and risk of the licensee. For the payment of annual fees, licensees must follow the requirements of Form ALF, included under Part B of Volume 2.
- EN-6.2A.9 A decision to impose a financial penalty for date sensitive requirements is unrelated to whether the CBB issues a reminder; it is the licensee's responsibility to file and disclose on time as per the requirements of Volume 2 (Islamic Banks) Rulebook.



MODULE	EN: Enforcement
CHAPTER	EN-6: Financial Penalties

## EN-6.2B Financial Penalties for Non-compliance with Blocking/Unblocking Requirements

### EN-6.2B.1

The financial penalty for late execution of blocking/unblocking orders issued by the Court/Public Prosecution is BD 100 per day per customer account. Such financial penalties will be deducted directly from the Islamic bank licensee's clearing account at the CBB or charged through billing on a weekly basis.





<b>MODULE</b>	<b>EN:</b>	<b>Enforcement</b>
<b>CHAPTER</b>	<b>EN-6:</b>	<b>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 or persons referred to in paragraph (b) of Article (68 bis 1) of the CBB Law 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-6.3.2 The licensee or persons referred to in paragraph (b) of Article (68 bis 1) of the CBB Law has 30 days from the notification's date of issuance to submit any objections 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 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 or persons referred to in paragraph (b) of Article (68 bis 1) of the CBB Law make representations challenging the proposed penalty, the CBB has 30 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-6.3.4 Failure to pay penalties within the required deadlines will be considered a breach of the CBB's regulatory requirements, and will also result in other measures being considered, as described elsewhere in this Module.

**EN-6.3.5** In instances where a bank anticipates that it will be unable to meet any date sensitive requirements prescribed by the Rulebook, it must provide a written notification to the CBB at least one week prior to the prescribed due date outlining the date sensitive requirements which it will be unable to comply with, along with a well justified reason for the non-compliance.



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

## **EN-6.4 Remediating a Compliance Failure**

EN-6.4.1 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 from remediating 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 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	EN:	Enforcement
CHAPTER	EN-7:	Investigations

## EN-7.1 Legal Source

EN-7.1.1. Articles 121 to 123 of the CBB Law empower 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 by appointed experts. Articles 111 and 124 require licensees to make available to the CBB's inspectors and appointed experts their books and other records, and to provide all relevant information within the time limits deemed reasonable by the inspectors and/or appointed experts.

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 CBB, or an investigation by the CBB is otherwise obstructed (see Section EN-10.3).



MODULE	EN: Enforcement
CHAPTER	EN-7: Investigations

## 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 (appointed experts); or a combination of the two.

### EN-7.2.2

**Failure by licensees to cooperate fully with the CBB's inspectors or 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 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 appointed expert. Examples of appointed experts are lawyers, audit firms 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 be commissioned to provide an expert opinion on a technical matter.

### EN-7.2.4

**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-7.2.5 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 cost 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.



MODULE	EN:	Enforcement
CHAPTER	EN-7:	Investigations

## EN-7.2 CBB Policy (continued)

EN-7.2.6 The CBB may commission reports, which require appointed experts to review information from another company within the reporting bank's group even where that other company is not itself subject to any CBB requirements.

**EN-7.2.7 Banks must provide all relevant information and assistance to appointed experts on demand. This rule is based on Article 123 of the CBB Law.**

EN-7.2.8 Further details on the required report and other aspects related to the role of the appointed expert are contained in Section BR-6.5.

EN-7.2.11 [This Paragraph was moved to Section BR-6.5 in October 2011].



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

### **EN-7.3 The Required Report**

[The Rules and Guidance in this Section were moved to Section BR-6.5 in October 2011].



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

#### **EN-7.4 Other Notifications to the CBB**

[The Rules and Guidance in this Section were moved to Section BR-6.5 in October 2011].



<b>MODULE</b>	<b>EN: Enforcement</b>
<b>CHAPTER</b>	<b>EN-8: Administration [This Chapter was deleted in April 2019].</b>

**EN-8.1** [This Section was deleted in April 2019].

EN-8.1.1 [This Paragraph was deleted in April 2019].

EN-8.1.2 [This Paragraph was deleted in April 2019].

EN-8.1.3 [This Paragraph was deleted in April 2019].





<b>MODULE</b>	<b>EN:</b>	<b>Enforcement</b>
<b>CHAPTER</b>	<b>EN-8:</b>	<b>Administration</b> [This Chapter was deleted in April 2019].

**EN-8.2** [This Section was deleted in April 2019].

EN-8.2.1 [This Paragraph was deleted in April 2019].

EN-8.2.2 [This Paragraph was deleted in April 2019].

EN-8.2.3 [This Paragraph was deleted in April 2019].



<b>MODULE</b>	<b>EN:</b>	<b>Enforcement</b>
<b>CHAPTER</b>	<b>EN-8:</b>	<b>Administration</b> [This Chapter was deleted in April 2019].

**EN-8.3** [This Section was deleted in April 2019].

EN-8.3.1 [This Paragraph was deleted in April 2019].

EN-8.3.2 [This Paragraph was deleted in April 2019].

EN-8.3.3 [This Paragraph was deleted in April 2019].



<b>MODULE</b>	<b>EN: Enforcement</b>
<b>CHAPTER</b>	<b>EN-9: Cancellation or Amendment of License</b>

## **EN-9.1 Legal Source**

EN-9.1.1 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, CBB Regulations or Volume 2 (Islamic Banks) 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; or
- (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 CBB to give the licensee concerned reasonable time to object to any proposed cancellation or amendment of its license.



<b>MODULE</b>	<b>EN: Enforcement</b>
<b>CHAPTER</b>	<b>EN 9: Cancellation or Amendment of License</b>

## **EN-9.2 CBB Policy**

EN-9.2.1 The CBB 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 CBB 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 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-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).



<b>MODULE</b>	<b>EN: Enforcement</b>
<b>CHAPTER</b>	<b>EN-9: Cancellation or Amendment of License</b>

### **EN-9.3 Procedure for Cancellation or Amendment of License**

- EN-9.3.1 All proposals for canceling or amending a license are subject to a thorough review by the CBB of all relevant facts, assessed against cases and the criteria outlined in Sections EN-9.1 and EN-9.2. After being assessed at the 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 CBB's rationale for the proposed cancellation, 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.



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

## **EN-10.1 Overview**

- EN-10.1.1 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-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 CBB can only refer the matter to the Office of Public Prosecutor. The CBB has no authority to apply such sanctions directly without recourse to the courts.



<b>MODULE</b>	<b>EN:</b>	<b>Enforcement</b>
<b>CHAPTER</b>	<b>EN-10:</b>	<b>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 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 preceding Chapters, 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 CBB will usually refer the matter to the Office of Public Prosecutor.



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

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

#### ***Article 161***

EN-10.3.1A Article 161 of the CBB Law provides for a penalty of up to BD 1 million, without prejudice to any other penalty prescribed in any other law, in case of any person who breaches the provisions of Resolution No.(16) for the year 2012 issued pursuant to Article 42 of the CBB Law. The Court may also confiscate the proceeds resulting from breaching the Resolution.

#### **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, manager, 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.





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

EN-10.4 [This Section was deleted on October 06]



<b>MODULE</b>	<b>EN: Enforcement</b>
<b>CHAPTER</b>	<b>Appendix A: Methodology for calculating financial penalties</b>

## **Appendix A Methodology for calculating financial penalties**

### **I. Introduction**

This appendix sets out the Central Bank of Bahrain’s (“CBB”) approach on assessing and calculating/determining financial penalties.

The purpose of the financial penalties is to encourage a high standard of conduct and compliance by CBB licensees, thereby reducing risk to their customers and the rest of the financial sector.

The imposition of a financial penalty does not preclude the CBB from also using other enforcement measures to remedy the same violation.

### **II. The Scope of application**

In assessing whether to serve a financial penalty upon a licensee the CBB shall consider the following additional criteria:

- (a) The assessment of gain/benefit made or cost avoided and/or the level of risks posed to customers, financial position of the licensee, shareholders, stability of the financial sector and/or the reputation of the Kingdom.
- (b) If the licensee made any gain/benefit or avoided any costs by violating the CBB rules then the gain/benefit and/or the cost avoided will be used as a benchmark for calculating the fine amount subject to BD 100,000 cap for each violation. In addition, the customers impacted must be compensated in full. The scope of this section does not cover penalties for non-compliance with date sensitive requirements of Section EN-6.2A.
- (c) Fit and proper reassessment tests would take place for the approved persons deemed to be responsible for serious or repeated violations at the discretion and judgment of the CBB. The relevant approved person/(s) will be identified based on a review of relevant information including but not limited to the bank’s records before the final decision is made.
- (d) Each incident of breaching a rule (CBB Law, regulations, resolutions, and Rulebook directives) will be considered a stand-alone violation. For e.g. if a large exposure limit of 15% is breached by a licensee multiple times for a single customer each of these breaches will be considered a separate violation.
- (e) If the CBB discovers that one or more breaches had been committed by the licensee in the past and had gone un-detected, then the CBB has the right, at the point of detection, to impose penalties for each of these past breaches.
- (f) If the gain/benefit made and/or cost avoided cannot be quantified then the table below will be used to determine the penalty amount based on the seriousness of violations as determined by the CBB.
- (g) The factors used to determine the seriousness of the violation include, but are not limited to, the level of risks posed to the licensee’s customers, financial position of the licensee, shareholders, stability of the financial sector and/or the reputation of the Kingdom. The CBB may consider other factors or circumstances as well.



<b>MODULE</b>	<b>EN: Enforcement</b>
<b>CHAPTER</b>	<b>Appendix A: Methodology for calculating financial penalties</b>

## **Appendix A Methodology for calculating financial penalties**

Table 1: Risk Rating of Violation and Related Penalty

	Risk Rating	Fine Amount (BD)
1	Low	1,000 to 10,000
2	Moderate	10,001 to 50,000
3	Serious	50,001 to 100,000

### ***III. Internal Assessment by the CBB***

In deciding which level of risk is most appropriate (which will then determine the size of the penalty amount in relation to the violation), various factors will undergo comprehensive assessment including but not limited to the following:

- 1) Impact of the violation;
- 2) Nature of the violation;
- 3) Factors showing whether the violation was deliberate; and
- 4) Mitigating and aggravating factors.

#### ***1) Impact of the violation***

Factors relating to assessment of the impact of a violation licensee include:

- (a) The level of benefit gained or loss avoided, or intended to be gained or avoided, by the licensee as a result of the violation, either directly or indirectly;
- (b) The loss or risk of loss, as a whole, caused to customers, investors or other market users in general;
- (c) The loss or risk of loss caused to individual customers, investors or other market users;
- (d) Whether the violation had an effect on particularly vulnerable people, whether intentionally or otherwise;
- (e) The inconvenience or distress caused to customers; and
- (f) Whether the violation had an adverse effect on the financial sector and, if so, how serious that effect was. This may include its impact on the confidence in or damage caused to the financial sector. A violation is generally more serious when it causes or may cause extensive financial damage, or when it is likely to be particularly detrimental to investor or customer confidence.



<b>MODULE</b>	<b>EN: Enforcement</b>
<b>CHAPTER</b>	<b>Appendix A: Methodology for calculating financial penalties</b>

## **Appendix A Methodology for calculating financial penalties**

### **2) Nature of the violation**

Factors relating to assessment of the nature of the violation include:

- (a) Whether the violation revealed serious or systemic weaknesses in the licensee's procedures or in the management systems or internal controls relating to all or part of the licensee's business;
- (b) Whether the licensee's senior management was aware of the violation;
- (c) The nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the violation;
- (d) The scope for any potential financial crime to be facilitated, occasioned or otherwise occurred as a result of the violation;
- (e) Whether the licensee failed to conduct its business with integrity; and
- (f) Whether the licensee, in committing the violation, took any steps to comply with CBB Law, regulations, resolutions, Rulebook directives, and the adequacy of such steps.

### **3) Factors showing whether the violation was deliberate**

Factors relating to assessment of whether the violation was deliberate include:

- (a) The violation was intentional, in that the licensee's approved person(s), intended or foresaw that the likely or actual consequences of their actions or inaction would result in a violation and they failed to adequately mitigate that risk;
- (b) The licensee's approved person(s) knew that their actions were not in accordance with the licensee's internal policies and procedures;
- (c) The licensee's approved person(s) sought to conceal their misconduct;
- (d) The licensee's approved person(s) committed the violation in such a way as to avoid or reduce the risk that the violation would be discovered;
- (e) The licensee's approved person(s) were influenced to commit the violation by the belief that it would be difficult to detect;
- (f) The violation was repeated; and
- (g) In the context of a contravention of any rule or requirement imposed by or under CBB law, regulations, resolutions, Rulebook directives, the licensee obtained reasonable professional advice before the contravention occurred and failed to follow that advice. Obtaining professional advice does not remove a person's responsibility for compliance with applicable rules and requirements.



<b>MODULE</b>	<b>EN: Enforcement</b>
<b>CHAPTER</b>	<b>Appendix A: Methodology for calculating financial penalties</b>

## **Appendix A Methodology for calculating financial penalties**

### ***4) Mitigating and aggravating factors***

Mitigation and aggravating factors include:

- (a) the conduct of the licensee in bringing (or failing to bring) quickly, effectively and completely the violation to the CBB's attention;
- (b) the degree of cooperation the licensee showed during the investigation of the violation. Correspondingly, if the licensee takes a passive stance towards the matter or avoids investigating the matter properly with the CBB, it is likely to increase the penalty payment and/or imposing other enforcement measures.
- (c) where the licensee's approved person(s) were aware of the violation or of the potential for a violation, whether they took any steps to stop the violation, and when these steps were taken;
- (d) any remedial steps taken by the licensee prior to the discovering of such violation by the CBB; for example, identifying whether customers or investors or other market users suffered loss and compensating them where they have; correcting any misleading statement or impression; taking disciplinary action against staff involved (if appropriate); and taking steps to ensure that similar problems do not arise in the future;
- (e) whether the licensee had previously been told about the CBB's concerns in relation to the issue, either by means of a written formal warning/notice and/or Direction;
- (f) whether the licensee had previously undertaken not to perform a particular act or engage in a particular behavior;
- (g) the previous disciplinary record and general compliance history of the licensee;
- (h) action taken against the licensee by other domestic or international regulatory authorities that is relevant to the violation in question.