



# **ENFORCEMENT MODULE**



<b>MODULE:</b>	<b>EN (Enforcement)</b>
<b>Table of Contents</b>	

		<b>Date Last Changed</b>
<b>EN-A</b>	<b>Introduction</b>	
EN-A.1	Purpose	04/2016
EN-A.2	Module History	04/2016
<b>EN-B</b>	<b>Scope of Application</b>	
EN -B.1	Enforcement on Relevant Persons – CBB Licensees	04/2012
EN -B.2	Enforcement on Relevant Persons – Non-CBB Licensees	04/2012
EN -B.3	Prohibition on Insurance	04/2012
<b>EN-1</b>	<b>Legal Sources</b>	
EN-1.1	References to CBB Law	04/2016
<b>EN-2</b>	<b>Revocation of Authorisation/Registration</b>	
EN-2.1	Revocation of Authorisation/Registration of Bahrain Domiciled CIUs	04/2012
EN-2.2	Revocation of Authorisation/Registration of Overseas Domiciled CIUs	04/2012



MODULE	EN: Enforcement
CHAPTER	EN-A: Introduction

## EN-A.1 Purpose

### *Executive Summary*

EN-A.1.1 This Module sets out the CBB's approach to enforcement, and the measures used by the CBB to address failures by the CIU and its relevant persons to comply with its regulatory requirements. The purpose of such measures is to encourage a high standard of compliance by all those authorised by the CBB, thus reducing risk to investors 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 is issued under the powers available to the CBB under Article 38 of the Central Bank of Bahrain and Financial Institutions Law 2006 **and its amendments** ('CBB Law').

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



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

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

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

EN-A.2.1 This Module was first issued in April 2007, as part of the initial release of the contents of Volume 6 (Capital Markets); it was given an effective date of 1 June 2007, with a one-year transition for existing CIUs.

EN-A.2.2 The Module was subsequently revised in April 2012, by the addition of several sections catering for the role and responsibilities of relevant persons, the registration and authorisation requirements, corporate governance, and other relevant Chapters and has been reissued as Volume 7.

EN-A.2.3 A list of recent changes made to this Module subsequent to the April 2012 revision is provided below:

Module Ref.	Change Date	Description of Changes
<u>EN-A.1.2</u>	<u>04/2016</u>	Reference added to amendments to the CBB Law.
<u>EN-1.1.8</u>	<u>04/2016</u>	Amended to be in line with amendments to Article 129 of the CBB Law.

EN-A.2.4 Further guidance on the implementation and transition to Volume 7 (Collective Investment Undertakings) is given in Module ES (Executive Summary).



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

## **EN-B.1 Enforcement on Relevant Persons - CBB Licensees**

EN-B.1.1 CBB licensees that are relevant persons of Bahrain domiciled CIUs and overseas domiciled CIUs are subject to the enforcement provisions laid out in the CBB Law and in the Enforcement Modules within the respective Volumes of the CBB Rulebook, Volume 1 (Conventional Banking), Volume 2 (Islamic Banking), Volume 4 (Investment Business) or Volume 5 (Specialised Licensees).



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

## **EN-B.2 Enforcement on Relevant Persons – Non-CBB Licensees**

**EN-B.2.1** Non-CBB licensees who are relevant persons of a Bahrain domiciled CIU are required to submit themselves to the enforcement regime laid down in the CBB Law and this Module.

EN-B.2.2 The CBB shall require evidence that the non-CBB licensee has submitted itself in the manner required above and this shall ordinarily be done by way of entry into an undertaking with the CBB (substantially in the form set out by the CBB).

EN-B.2.3 Exceptionally, the CBB may, at its discretion, accept other means satisfying its requirement for non-CBB licensees to be subject to an enforcement regime and/or for CBB redress in the event of regulatory non-compliance.

EN-B.2.4 The CBB reserves all legal powers and rights necessary to enforce the undertaking (referred to above) and/or take such other measures as are necessary to enforce compliance with this Module (and/or any other prior arrangement entered into with the agreement of the CBB).

EN-B.2.5 In appropriate circumstances, the CBB will communicate non-compliance/enforcement issues to a non-CBB licensees' home state regulator with a request that they take such enforcement action as is deemed suitable.



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

### EN-B.3 Prohibition on Insurance

EN-B.3.1	To help the CBB achieve the purpose of this Module, a <u>Bahrain domiciled CIU</u> may not enter into or make a claim under a contract of insurance that is intended to, or has the effect of, indemnifying the <u>CIU</u> from the financial penalties imposed on <u>relevant persons</u> and provided for in the relevant Enforcement Modules of CBB Rulebook.
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<b>MODULE</b>	<b>EN: Enforcement</b>
<b>CHAPTER</b>	<b>EN-1: Legal Sources</b>

## EN-1.1 References to CBB Law

EN-1.1.1 The CBB has numerous legal powers at its disposal. As well as contractual and other private law rights, the following Paragraphs outline the public law powers available to it under the CBB Law.

### *Obtaining Information from Licensees*

EN-1.1.2 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.

### *Inspection*

EN-1.1.3 Articles 114 and 121 to 123 of the CBB Law empowers the CBB to order inspections/investigations of licensees, in order to help it assess a licensee's compliance with the provisions of the CBB Law. Such inspections or 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/investigators.

EN-1.1.4 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.

EN-1.1.5 In accordance with Articles 114 and 123 of the CBB Law, licensees must provide all relevant information and assistance to appointed experts on demand.

### *Formal Warnings*

EN-1.1.6 The CBB may issue formal warnings to licensees or individuals. The CBB will issue such warnings where it reasonably believes that these are required to achieve its statutory objectives.





<b>MODULE</b>	<b>EN: Enforcement</b>
<b>CHAPTER</b>	<b>EN-1: Legal Sources</b>

## **EN-1.1 References to CBB Law (continued)**

### ***Directions***

- EN-1.1.7 Article 38 of the CBB Law empowers the CBB to issue Directions to licensees or individuals. The powers conveyed allow the CBB to issue whatever Directions, it reasonable believes, are required to achieve its statutory objectives.

### ***Financial Penalties***

- EN-1.1.8 Article 129 of the CBB Law, provides 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. 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.

### ***Administration***

- EN-1.1.9 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.

### ***Cancellation of License***

- EN-1.1.10 Article 48 of the CBB 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.



MODULE	EN: Enforcement
CHAPTER	EN-1: Legal Sources

## EN-1.1 References to CBB Law (continued)

### *Cancellation of “Fit and Proper” Status*

- EN-1.1.11 Article 65 of the CBB Law allows the CBB to determine the level of qualifications, experience and training of 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.

### *Criminal Sanctions*

- EN-1.1.12 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-1.1.13 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-1.1.14 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.
- EN-1.1.15 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:
- Conceals any records, information or documents requested by the CBB (or any person appointed by the CBB to conduct an investigation or inspection);
  - Provides statements or information in bad faith which do not reflect the actual financial position of the licensee;
  - Conceals from an external auditor any records, information or documents necessary for auditing the accounts of the licensee; or
  - Provides in bad faith any misleading or inaccurate statements to an external auditor which do not reflect the actual financial position of the licensee.



<b>MODULE</b>	<b>EN: Enforcement</b>
<b>CHAPTER</b>	<b>EN-1: Legal Sources</b>

## EN-1.1 References to CBB Law (continued)

- EN-1.1.16 Part 9 of the CBB Law provides the CBB with various investigative and administrative powers to help discharge its regulatory and supervisory functions. These include the right to appoint investigators (Article 121), to assist overseas authorities (Article 122), to demand information (Article 123), and to compel access to premises or information (Article 124).
- EN-1.1.17 The CBB aims to achieve an open, constructive and cooperative relationship with those persons it regulates, but will resort to more formal enforcement powers where cooperation is not forthcoming.
- EN-1.1.18 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, dealing with the effects of insolvency, where he knows (or should have known) that the licensee is insolvent.
- EN-1.1.19 Article 170(2) of the CBB Law provides for terms of imprisonment and/or a fine not exceeding BD 3,000 if any director, manager, official or employee intentionally obstructs an investigation by the CBB or an appointed expert.
- EN-1.1.20 Article 171 of the CBB Law provides for a term of imprisonment and/or a fine not exceeding BD 10,000, if any director, manager, official or employee discloses in bad faith any confidential information relating to a customer of a licensee.

<b>MODULE</b>	<b>EN: Enforcement</b>
<b>CHAPTER</b>	<b>EN-2: Revocation of Authorisation/Registration</b>

## EN-2.1 Revocation of Authorisation/Registration of Bahrain Domiciled CIUs

- EN-2.1.1 The CBB may revoke authorisation/registration of a Bahrain domiciled CIU in the following cases:
- (a) If the CIU is not in operation within 6 months from the date of its authorisation/registration (also refer to Module ARR);
  - (b) If any of the applicable requirements contained in Volume 7 are not met;
  - (c) If false or misleading information has been provided to the CBB, or significant information which should have been provided to the CBB has not been so provided; or
  - (d) If the CBB believes it necessary in order to safeguard the interests of potential investors or the CIU's participants.
- EN-2.1.2 An authorisation/registration may be revoked by the CBB upon a bankruptcy and/or insolvency and/or liquidation event arising at the CIU or any relevant person.

<b>MODULE</b>	<b>EN: Enforcement</b>
<b>CHAPTER</b>	<b>EN-2: Revocation of Authorisation/Registration</b>

## **EN-2.2 Revocation of Authorisation/Registration of Overseas Domiciled CIUs**

EN-2.2.1 The CBB may cancel the registration/authorisation of an overseas domiciled CIU if in its opinion it believes it necessary in order to safeguard the interests of potential investors or the CIU participants.