

Proposed Changes to Module PCD Chapter 4 concerning Special Purpose Vehicles and Shari'a Compliance For Islamic Wholesale Banks

Industry Comments and Feedback

Volume 2

February 2014

Specific Comments:			
Reference to the draft Directive:	Comments	REF	CBB's Response
<p>PCD-4.1.3 The CBB requires any locally incorporated bank associated with an SPV to confirm the following points in any request for approval under Paragraph PCD 4.1.2:</p> <p>(a) The purpose of the SPV;</p> <p>(b) The nature of the relationship between the bank and the SPV (e.g. originator, sponsor, manager, investor, controller etc.); (c) The bank management's proposed consolidation/accounting treatment of the SPV in relation to the concerned bank both for PIR and audited financial statements' purposes and the bank should agree the treatment of the SPV with its external auditor and confirm the same to the CBB;</p> <p>(d) The availability of financial and other information relevant to</p>	<p>A bank noted that Paragraph 4.1.2 described SPVs only, while subsidiaries or other forms of the legal entities are not required to have SSB approval as per CBB guidelines. They would recommend linking 4.1.3 with 4.1.1 beside 4.1.2.</p> <p>The paragraph would be read as follows:</p> <p>PCD-4.1.3 The CBB requires any locally incorporated bank associated with an SPV to confirm the following points in any request for approval under Paragraph PCD 4.1.1 & 4.1.2:</p> <p>Paragraph 4.1.2 described SPVs only , while subsidiaries or other forms of the legal entities are not required to have SSB approval as per CBB guidelines. I would recommend linking 4.1.3 with 4.1.1 beside 4.1.2.</p> <p>Under item (f), a bank noted that it is not practical to acquire the SSB approval on the Structure & the use of the SPV and overlook the later practices or changes in the SPV. Some changes might have Sharia implications. They recommend updating</p>	<p>SP1</p>	<p>Agree with the bank's point. PCD-4 has been restructured to deal specifically with SPVs, while other requirements related to subsidiaries are covered under BR-5.2</p> <p>Agree with the bank's point. Shari'a compliance is an ongoing task. Any significant changes need to be approved by the SSB and then the CBB needs to be informed about such approval.</p>

Proposed Changes to Module PCD Chapter 4 concerning Special Purpose Vehicles and Shari'a Compliance For Islamic Wholesale Banks

Industry Comments and Feedback

Volume 2

February 2014

<p>the SPV and access to its business premises and records; and (e) Whether the bank is providing any guarantees, warranties or financial/liquidity support of any kind to the SPV. (f) That the Shari'a Supervisory Board of the Bank has approved the whole investment structure involving the use of the concerned SPV(s) and a written copy of such SSB approval must be submitted with the notification.</p>	<p>the SSB approval on any changes that request CBB approval.</p> <p>The suggested text is as follows:</p> <p>(f) That the Shari'a Supervisory Board of the Bank has approved the requested subject of approval under Paragraph PCD-4.1.2 and a written copy of such SSB approval must be submitted with the notification.</p> <p>Suggested to delete " Whole investment structure involving the use of the concerned SPV(s)" , replace it with " " requested subject of approval under paragraph 4.1.2"</p> <ol style="list-style-type: none"> 1- Current wording doesn't cover activities mentioned on 4.1.2 2- By default the whole investment must be approved by SSB , no need to mention that , however , we need to assure the Sharia compliance of the activities mentioned on 4.1.2 3- Clause 4.1.3 is linked to clause 4.1.2 , which makes it stronger , and that would give a better exposure for the SSB over the SPVs or subsidiaries. 4- It is not practical to acquire the SSB approval on the Structure & the use of the SPV and overlook the later practices or changes in the SPV , as some changes might have Sharia implications. The recommended rectification 	<p>Suggested new wording that should be used:</p> <p>(f) A copy of the Bahraini Islamic bank licensee's Shari'a Supervisory Board approval of the initial investment or financing structure involving the use of the concerned SPV(s)..</p>
---	---	---

Proposed Changes to Module PCD Chapter 4 concerning Special Purpose Vehicles and Shari'a Compliance For Islamic Wholesale Banks

Industry Comments and Feedback

Volume 2

February 2014

	<p>will condition acquiring the SSB approval on any changes that request CBB approval.</p>		
<p>PCD-4.1.3A In addition to the points noted in PCD-4.1.3 above, banks which are involved with SPVs in any of the relationships described in PCD-4.1.2 must not allow such SPVs to obtain any conventional financing to fund themselves or any transactions that they enter into. Shari'a compliance must be written into the memorandum and articles of association of such SPVs so that entry into structures or transactions that are not Shari'a compliant is ultra vires.</p>	<p>A bank noted that with reference to the proposed rule no. PCD 4.1.3A they expect that:</p> <ol style="list-style-type: none"> 1. The legacy cases (existing SPVs), will not be impacted with such a requirement/restriction; also, 2. For new cases, SPVs to be allowed to obtain the conventional financing facilities by obtaining an SSB approval (or also the CBB approval). 	<p>SP2</p>	<p>This is now covered under guidance PCD-4.1.3AA</p> <ol style="list-style-type: none"> 1. In case of existing investments (i.e. legacy cases) before the date of issuance of these rules, where conventional borrowing exists, it should be replaced by Islamic financing asap and in no case later than 12 months from the date of issuance of these rules. <p>This is extendable subject to SSB approval.</p> <p>SSB opinion must be sought on how to convert conventional financing to Islamic, if possible.</p> <ol style="list-style-type: none"> 2. In case of new acquisition or investment after the date of issuance of these rules, when conventional borrowing exists, it should be replaced by Islamic financing asap and in no case later than 12 months from the date of investment. This is

Proposed Changes to Module PCD Chapter 4 concerning Special Purpose Vehicles and Shari'a Compliance For Islamic Wholesale Banks

Industry Comments and Feedback

Volume 2

February 2014

			extendable subject to SSB approval. SSB opinion and Shari'a solution must be considered.
PCD-4.1.3C The Shari'a Supervisory Board of the Bank must monitor on an ongoing basis the Shari'a compliance of the SPVs and must oversee the conduct of the annual Shari'a compliance review of transactions, assets, liabilities and other commitments and relationships entered into by all SPVs with which the concerned bank is involved (by way of the relationships described in PCD 4.1.2 above). The Shari'a compliance function of the bank would be required to perform such reviews.	A bank noted that the clause is putting heavy responsibility & Trust on the SSB , Such responsibility on the SSB and the Sharia function must be parallel to a sufficient power of & proper reporting system. This is why we recommend : 1- Accepting the proposed changes to paragraph 4.1.3(f) to update SSB on major changes. 2- A proper internal reporting system between the business unit and the Sharia Compliance must be placed , It is difficult to cope with business unit with a timely reporting , we would be out of date.	SP3	Noted.
PCD-4.1.4 Where the SPV is consolidated into the accounts of a locally incorporated bank, the bank must provide	A bank suggested the below wording: PCD-4.1.4 Where the SPV is consolidated into the accounts of a locally incorporated bank, the	SP4	Noted but the main responsibility for the financial statements rests with the bank.

Proposed Changes to Module PCD Chapter 4 concerning Special Purpose Vehicles and Shari'a Compliance For Islamic Wholesale Banks

Industry Comments and Feedback

Volume 2

February 2014

<p>separate accounting information on the SPV to the CBB on a quarterly basis. Furthermore, the annual audited financial statements of all consolidated SPVs must be submitted to the CBB within 3 months of the year end of the concerned SPV.</p>	<p>bank must provide separate accounting information on the SPV to the CBB on a quarterly basis. Furthermore, the Sharia Supervisory Board on the annual audited financial statements of all consolidated SPVs must be submitted to the CBB within 3 months of the year end of the concerned SPV.</p> <p>They noted that it would provide a better Sharia Compliance and monitoring for the activities of the SPVs & help to achieving the requirements of clause PCD 4.1.3 (c) as well.</p>		
---	--	--	--