

## Feedback Statement-Regulation on the Conditions of granting a license for the provision of Regulated Services-August 2011

Industry Comments	Reference No.	CBB response
<b>General Comments:</b>		
<p><b>A licensee</b> noted some general comments as follows:</p> <ol style="list-style-type: none"> <li>1. While the draft of this new regulation would be relevant to entities or individuals who intend to obtain the license from the CBB (either because they don't have any yet or because they intend to undertake a regulated activity that does not fall within the purview of their license), it is not clear if this will be additional requirements or a replacement for the licensing rules which have been embodied in Module LR of the respective CBB rulebook;</li>   <li>2. the draft should be more organised by placing the provisions that deal solely on the licensing requirements and process at the beginning and shifting the provisions that deal with amendment and revocation of license to the later part either immediately before or after the provision that reserves the CBB's power to declare the license as null or void</li>   <li>3. There is no sufficient information in the draft article if the applicant is a person; and</li> <li>4. In case documentation are obtained from outside Bahrain, the requirements for authentication/ verification (by an appropriate authority) should apply.</li> </ol> <p><b>A licensee is</b> uncertain about the additional value this Consultation Paper would provide to the existing regulations as most of the Articles proposed by this consultation paper are already incorporated as a part of CBB Rulebook specifically Module LR (Licensing Requirements).</p>		<p>Yes it would be incorporated as part of the LR Module; However, it would be applicable for new applications only. Moreover, some of the licensing conditions must be maintained on an on going basis</p> <p>Disagree- the current structure is clear</p> <p>A person is defined in the CBB Law as “natural or legal Person”.</p> <p>The CBB Law states that this Regulation must be issued, furthermore there are additional requirements</p>

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			such the minimum ownership required in article 8 of this Regulation.
<b>Specific comments:</b>			
Article	Bank's comments	Reference No.	CBB Initiative
<p><b>Article 3</b>  <i>The CBB should be satisfied that the business of the applicant is currently (and will continue to be if so authorised) carried on with integrity, prudence and with the appropriate degree of professional competence, in a manner which is not detrimental or likely to be detrimental to the interests of customers or potential customers, in order for the licensee not to lose its license.</i></p>	<p><b>A licensee</b> required additional information on the methodology by which CBB will assess what is detrimental to the interests of the customers or potential customers.</p> <p><b>A licensee</b> noted that the wording needs to be amended to take into account a new application, i.e. the applicant has not undertaken any business yet. It might also want to look beyond the applicants by checking the integrity of the proposed shareholders.</p>		<p>This article is applied for both new applicant and existing licensees as well. Checking the integrity of shareholders is part of the overall verification of the applicant's integrity. All proposed shareholders will be assessed and are required to fill the Application for Authorisation of Controller Form</p>
<p><b>Article 4</b>  <i>An applicant may obtain a license for the provision of Regulated Services in the Kingdom of Bahrain, at the CBB's complete discretion, and if the following conditions are met and complied</i></p>	<p><b>A licensee</b> noted that as the draft is specifically meant for license application, the wording should be kept within such context. i.e. the expression such as proposed, will, etc that indicates future arrangement/plan.</p>		<p>It is very clear as the word "applicant" is defined under article 1 of this regulation as "<i>any natural or legal person applying to obtain a license from the CBB for the provision of</i></p>

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<p><i>with at all times:</i></p> <ol style="list-style-type: none"> <li>1. <i>The applicant must submit the documents referred to in Article 6 below.</i></li> <li>2. <i>The legal status of the applicant must be in accordance with CBB requirements for proposed license-type.</i></li> <li>3. <i>The licensee must have and maintain a local management presence and premises in the Kingdom of Bahrain.</i></li> <li>4. <i>Controllers of the licensee must adhere to any applicable CBB Controllers Regulation and Directives then in force.</i></li> <li>5. <i>The qualifications and experiences of members of the applicant's board of directors and holders of managerial positions shall be proportionate to their functional positions and the CBB's requirements in this regard.</i></li> <li>6. <i>The licensee must maintain a level of capital required by the CBB and/or determined to be adequate by the CBB for the business proposed.</i></li> </ol>	<p>The 'maintain' aspect and all other aspects that would be more relevant to the context of maintaining the license should be set out as part of Article 5 or as separate rules deal specifically with the relevant CBB supervision powers.</p> <p><b>A licensee</b> noted that Article 4 lists a number of conditions that must be met and complied with by the applicant to be granted the license; nevertheless point 9 states that “The licensee must appoint an external auditor approved <b>annually</b> by the CBB as having competency and expertise to audit its accounts on annual basis”. As licensees do not usually change their external auditors on annual basis as they normally only re-appoint them based on AGM approval, it is felt that notification to CBB in the condition of re-appointment may be sufficient. CBB should be approached for approval in case of a new appointment or change in the external auditors.</p> <p><b>A licensee</b> assumed in point (3) that the CEO or General Manager comes under the definition of “local management”.</p> <p>Under point (5), clarification is required about the specific requirements on qualification and experience applicable to holders of managerial positions or Directors of <b>existing licensees</b>. In</p>	<p><i>regulated services”.</i></p> <p>Disagree- some of the conditions should be complied with all time and this fact should be clearly reflected in this article for such conditions.</p> <p>This requirement is not new, Licensees have this item on their agenda for their annual AGM and reappointment is subject to CBB approval.</p> <p>Yes, they should be on the top of the list</p> <p>Minimum Requirements</p>
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<p>7. <i>The licensee must maintain systems and controls that are, in the opinion of the CBB, adequate for the scale and complexity of their activities.</i></p> <p>8. <i>The licensee must maintain at its premises books of accounts and any other records the CBB may specify.</i></p> <p>9. <i>The licensee must appoint an external auditor approved annually by the CBB as having competency and expertise to audit its accounts on an annual basis.</i></p> <p>10. <i>All other conditions/ requirements specified by the CBB in its complete discretion including, but not limited to, any particular requirements set out in the Licensing or Authorisation Modules of the CBB Rulebook.</i></p>	<p>addition, the time frame granted, if any, to secure the relevant qualifications or experience prescribed in the CBB rule book.</p> <p>Under point (8), inquired if it is allowed to outsource the accounting function under a Service Level Agreement (SLA) approved by CBB.</p>		<p>on the qualification &amp; experience of approved persons will be developed as part of a separate Module “Training &amp; Competency Module” Please refer to the rules on outsourcing in the RM Module (RM-2)-Licensees cannot outsource their core function.</p>
<p><b>Article 6</b>  <i>Applications for a licence must include the following documents:</i>  1. <i>Form 1 (“Application for a Licence”) available on the CBB web site;</i>  2. <i>A certified letter by an officer or authorised representative of</i></p>	<p><b>A licensee</b> noted that:</p> <ul style="list-style-type: none"> <li>• sub-article (8) first line “business plan” should be replaced with “feasibility study”</li> <li>• sub-article (12) 3rd line the word “written” should be inserted</li> </ul>		<p>Disagree-The term Business plan is more appropriate.</p> <p>Agree, the word “written” will be added.</p>

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<p><i>the applicant marked for the attention of the Director of Licensing &amp; Policy at the CBB that includes a brief description of the founders/shareholders and activities that the applicant wishes to undertake;</i></p> <p><i>3. Form 2 (“Application for Authorisation of Controllers”) available on the CBB website;</i></p> <p><i>4. Form 3 (“Application for Approved Person status”) available on the CBB website;</i></p> <p><i>5. If the applicant is a legal person, a certified copy of the applicant’s current commercial registration certificate or equivalent documentation or dully certified license granted by the respective authorities to undertake financial services. A copy of the Memorandum and Articles of Association;</i></p> <p><i>6. Where the applicant is a legal person, a certified copy of a board resolution of the applicant along with minutes of the concerned meeting, confirming the board’s decision to seek a licence from the CBB (in case of establishing a locally</i></p>	<p>between “prior” and “approval”.</p> <ul style="list-style-type: none"> <li>• sub-article (13) 1st line “All” should be replaced with “Any”.</li> </ul> <p><b>A licensee</b> noted that for clarity reason it is recommended to divide Article 6 to 3 sections, 1st section shall specify the general requirements that apply to all applicants, be it natural or legal person. The 2<sup>nd</sup> section deals specifically with the requirements applicable to a natural person applicant; the 3<sup>rd</sup> section sets out the requirements applicable to an applicant which is a legal entity. The draft should be more specific on whether any of these requirements are applicable to each of the purported shareholders of the applicant.</p> <p><b>A licensee</b> noted that under point 8, the business plan should cover initial <u>5 years</u> instead of 3 years as proposed.</p>		<p>Agree the word “all” to be replaced with “any”.</p> <p>It is preferable to keep the regulation more general. Such details can be added when amending the Licensing /Authorisation Module.</p> <p>Disagree-3 years is considered satisfactory as minimum, however applicants can provide 5 years if they wish.</p>
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<p><i>incorporated institution or opening a branch);</i></p> <p><i>7. If the applicant is a legal person and part of a regulated group, a certified letter of no objection to the proposed licence application from the applicant's home-state regulator; together with confirmation that the group is in good standing and is in compliance with applicable supervisory requirements, including those relating to capital adequacy and solvency;</i></p> <p><i>8. A business plan (for the proposed locally incorporated institution or branch), which should cover the initial three years of the proposed business, clearly illustrating the applicant's management structure, proposed corporate governance policies and the proposed types of activities to be undertaken. It should also include reasons for choosing the Kingdom of Bahrain as a location to operate;</i></p> <p><i>9. A draft copy of the applicant's Memorandum and Articles of Association of the proposed financial institution;</i></p>			
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<p>10. If the applicant is a legal person applying to establish a locally incorporated institution, copies of the audited financial statements of the applicant's major shareholders and/or group (as directed by the CBB), for the past three years prior to the date of application;</p> <p>11. If the applicant is a legal person seeking to open a branch in the Kingdom of Bahrain, copies of the audited financial statements of the applicant's head office for the past three years prior to the date of application;</p> <p>12. A copy of any relevant private placement memorandum or public offering documents if the initial capital is to be raised by subscription, for CBB's prior approval; and</p> <p>13. All other documents or information that are requested by the CBB in its complete discretion.</p>			
<p><b>Article 7</b> The CBB, in its complete discretion may ask for a guarantee from the applicant's controlling or major shareholders</p>	<p><b>A licensee</b> noted that their comments are underlined as follows: The CBB, in its complete discretion may ask for a guarantee / <u>Letter of Comfort</u> from the applicant's (Add the option of Letter of Comfort as well).</p>		<p><b>The CBB only accepts letters of guarantee for the purpose of this Article due to the greater legal enforceability of</b></p>

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<p><i>on a case by case basis as it deems appropriate/necessary as part of the required documents to be submitted as mentioned in Article 6 above.</i></p>			<p><b>such document.</b></p>
<p><b>Article 8</b>  <i>In case of an application for a banking license, the applicant must have at least one shareholder which is a regulated financial institution holding at least 20% of the applicant's shares. The CBB may, on a case-by-case basis, and at its sole discretion, apply the above requirement on applicants for a non-bank financial institution.</i></p>	<p><b>A licensee</b> noted that the Article should specify whether this requirement is in addition to the requirements in LR module or whether the draft shall replace the LR Module.</p> <p><b>A licensee</b> noted that the requirements mentioned in Article 8 appear to be in conflict with Section GR-5.3.5 of the CBB Rulebook. In addition, this rule is too restrictive and imposes on the ownership structure of potential licensees.</p>		<p>The LR Module will be updated to reflect the regulation.</p> <p>There is no conflict between this article and the GR module. The Article states that for an application of a bank to be accepted, at least 1 of its founding shareholders should be a regulated financial institution and should own at least own 20% of the bank to be established. GR5.3.5 states that “<i>A regulated financial institution will not be approved as a controller of a listed Bahraini conventional bank licensee if it wishes to acquire more than 40% of the voting capital. This above 40% limit does not apply to unlisted Bahraini</i></p>



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	<p><b>A licensee</b> noted that as per the proposal, applicant for Banking License must have at least one shareholder (Financial Institution) holding at least 20% of the applicant share. This may also be applicable to Non-Banking Financial Institutions at CBB’s discretion. It is suggested that the existing pattern of shareholding for banking and non banking financial institutions may be continued for all companies licensed up to the date of notification of revised regulation. The new pattern of shareholding (20% of applicant share) may be made applicable to new licensees only.</p>		<p><i>conventional bank licensees (where up to 100% of the voting capital may be acquired).</i></p> <p>Agree- this article is applicable to new applications only. Existing licensees will be grandfathered. The text will be amended to clarify this matter.</p>
<p><b>Article 9</b>  <i>Before the final approval is granted to an Applicant:</i>  <i>1. Confirmation must be submitted to the CBB from the receiving retail bank in the Kingdom of Bahrain addressed to the CBB that the licensee's capital, as specified in the business plan, has been paid.</i>  <i>2. Payment of the annual license fee for the first year of operation as required under Resolution No (1) of the year 2007 with respect</i></p>	<p><b>A licensee</b> noted that:</p> <ul style="list-style-type: none"> <li>• Article (9) needs to be reworded as follows:-  “Before the final approval is drafted to an Applicant the Applicant shall:-  1- Submit a confirmation to the CBB ....etc.  2- Pay the annual license ..... etc.</li> <li>• Article (9) sub-article (1) 3rd line:-  “business plan” should be replaced with “feasibility study”</li> </ul>		<p>Disagree- the word “granted” is more appropriate than “drafted”.</p> <p>Disagree-The term Business plan is more appropriate.</p>

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<i>to Determining Fees Categories Due for Licenses and Services Provided by the Central Bank of Bahrain and its amendments.</i>			
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تعليق المصرف	التعديلات المقترحة من قبل المرخص لهم:-	المادة
يمكن تعديل المادة 3 وذلك باستبدال (مناسبة للمصرف) ب (بدرجة مرضية للمصرف)	احد المرخص لهم يرجى استبدال تعبير (مناسبة للمصرف) بتعبير (بدرجة مرضية للمصرف).	مادة (3) على طالب الترخيص في جميع الأوقات الحرص على مزاولة أعماله بنزاهة وكفاءة مهنية مناسبة للمصرف دون المساس بمصالح العملاء الحاليين أو المحتملين حتى لا يفقد الترخيص الممنوح له .
لا داعي للتغيير حيث أن الصياغة الحالية للمادة تعكس نفس المعنى .	احد المرخص لهم يرجى إعادة صياغة هذه الفقرة لتقرأ كالاتي " دراسة جدوى اقتصادية للمؤسسة المزمع تأسيسها أو الفرع المزمع إنشاؤه تغطي الثلاث سنوات الأولية ، تبين بوضوح الهيكل الإداري لطالب الترخيص وسياسة الحوكمة المقترحة والأنشطة والأعمال المقترح مزاولتها. كما يجب أن تشمل الدراسة أسباب اختيار مملكة البحرين كمقر للعمل فيها".	مادة (6) يجب أن يشمل طلب الترخيص الوثائق التالية: 8-دراسة جدوى اقتصادية تتعلق بالأعمال المتوقعة للمؤسسة المزمع تأسيسها أو إنشاؤها أو الفرع المزمع افتتاحه تبين بوضوح الهيكل التنظيمي، والأنشطة والأعمال التي سيزاولها، وأسباب اختيار مملكة البحرين للعمل فيها، وبيان حساب الأرباح والخسائر وميزانية الأصول والخصوم، والميزانيات المرتقبة والتدفق النقدي التقديري للثلاث سنوات المقبلة، مع توضيح الافتراضات التي بنيت عليها تلك الحسابات
لا يوجد داعي لإضافة تعبير " من قبل شخصية اعتبارية" حيث أن نص المادة يذكر "لدى الشخص الاعتباري طالب الترخيص أو المجموعة للسنوات الثلاث الأخير" .	احد المرخص لهم يرجى إضافة تعبير " من قبل شخصية اعتبارية" بين "شركة محلية" و "نسخة من التقارير السنوية".	مادة (6) يجب أن يشمل طلب الترخيص الوثائق التالية: 10) في حالة طلب تأسيس شركة محلية، نسخة من التقارير السنوية المدققة عن أعمال المساهمين

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		<p>الرئيسيين لدى الشخص الاعتباري طالب الترخيص أو المجموعة للسنوات الثلاث الأخيرة؛</p>
<p>لا يوجد داعي لإضافة تعبير " من قبل شخصية اعتبارية" حيث أن نص المادة يذكر "لدى الشخص الاعتباري طالب الترخيص أو المجموعة للسنوات الثلاث الأخير".</p>	<p><b>احد المرخص لهم</b> يرجى إضافة تعبير " من قبل شخصية اعتبارية" بين " مملكة البحرين" و " نسخة من التقارير السنوية".</p>	<p>مادة (6) يجب أن يشمل طلب الترخيص الوثائق التالية: في حالة طلب فتح فرع في مملكة البحرين، نسخة من التقارير السنوية المدققة عن أعمال الشخص الاعتباري طالب الترخيص (المكتب الرئيسي) للسنوات الثلاث الأخيرة؛</p>