

Consultation: Volume 6 - Proposed amendments to Module MIE
Industry Comments and Feedback
March 2021

Specific Comments:			
Reference to the draft Directive:	Comments	REF	CBB Response
<p>MIE-3.1.12B</p> <p>The CBB will not as a matter of general policy publicise individual cases when it uses enforcement measures. However, in such cases the CBB may inform the licensee’s or listed company’s external auditor and – in the case of overseas operations – relevant overseas regulators</p>	<p>A Listed Company</p> <p>The company needs to be notified that the external auditors and the overseas regulators have been informed.</p>	SP1	<p>No Change</p> <p>Whether the CBB shall keep the licensee or the listed company, against whom enforcement measures have been initiated, informed while communicating with the external auditor of the licensee and/or the relevant overseas regulator, shall depend on the nature and severity of the violation. If the CBB is of the opinion that informing the licensee or the listed company shall not be in the best interest of the domestic or overseas market, then it may decide to share information with the external auditor and the relevant overseas regulator without keeping the licensee or listed company informed about the same.</p>
<p>MIE-3.1.12D</p> <p>With respect to the financial penalties provided Chapter MIE-4, licensees and listed companies 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.</p>	<p>A Listed Company</p> <p>Penalties that fall under the ‘Serious’ category can be reported. Low and moderate penalties should not require distinct categorization and publication in the annual report.</p>	SP2	<p>No Change</p> <p>Where a financial penalty is levied, regardless of category, licensees and listed companies 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.</p>

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<p>MIE-3.1.12F</p> <p>By their nature, penalties relating to placing licensees under administration and/or amending or cancelling of a license, are public acts, once applied. The CBB will in these instances generally issue a public statement explaining the circumstances of the case.</p>	<p>A Listed Company</p> <p>The company should have an opportunity to make a statement as well.</p>	SP3	<p>Enforcement measures such as placing a licensee under administration, amending or cancelling a license are specifically meant for Financial Institutions licensed by the CBB. As such, the provision is not applicable to non licensed listed companies.</p> <p>Where an entity is a CBB licensee and the CBB decides on such enforcement measures, the licensee shall not issue any public statement with regards to the enforcement measure as the enforcement decision is taken after providing adequate opportunity to the licensee to address and satisfy the regulatory concerns raised by the CBB.</p>
<p>MIE-4.1.3</p> <p>In accordance with Article 129 of the amendment to of 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 a</p>	<p>A Listed Company</p> <p>Reference needs to be made to the scale in violation penalty based on the risk rating rather than a flat BD100,000.</p>	SP4	<p>No Change</p> <p>Article 129 of the CBB Law authorizes the CBB to levy an administrative fine not exceeding one hundred thousand (100,000) Bahraini Dinars in case of breaches of any of the provisions of this Law or the regulations, resolutions or directives issued under the Law, among other things.</p> <p>As such this provision is indicating the general penalty cap available to the CBB pursuant to the CBB Law rather than a flat penalty amount.</p>

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licensee or listed company or limiting the scope of operations.			<p>The risk rating of violations and related penalty amounts is detailed in Appendix A of the MIE Module: Methodology of Calculating Financial Penalties as follows:</p> <table border="1"> <thead> <tr> <th colspan="2">Risk Rating</th> <th>Fine Amount (BD)</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Low</td> <td>1,000 to 10,000</td> </tr> <tr> <td>2</td> <td>Moderate</td> <td>10,001 to 50,000</td> </tr> <tr> <td>3</td> <td>Serious</td> <td>50,001 to 100,000</td> </tr> </tbody> </table> <p>As such, in calculating the financial penalty to be levied upon a licensee or listed company, the CBB undertakes a thorough assessment of numerous factors and criteria to determine the level of risk associated with the contravention and ultimately the penalty amount in relation to the violation.</p>	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
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1	Low	1,000 to 10,000													
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<p>MIE-4.1.4</p> <p>As indicated in Paragraph MIE-3.1.12D, the CBB requires disclosure by licensees and listed companies in their annual report of any financial</p>	<p>A Listed Company</p> <p>This shouldn't be a requirement. Is there a legal basis for the company to make such a disclosure in the annual report.</p>	SP5	<p>No Change</p> <p>Article (38) of the CBB Law empowers the CBB to frame rules and regulations to regulate the financial markets in Bahrain. Pursuant to Article (38) of the aforementioned Law, the CBB has</p>												

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penalties served on them, together with a factual description of the reasons given by the CBB 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.			framed rules including MIE-4.1.4 in order to maintain market integrity and protect investors.
MIE-4.1.7 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).	A Listed Company Where multiple enforcement measures will be applied, the CBB should provide reasonable justification for doing so.	SP6	No Change The CBB will seek to exercise its enforcement powers in a manner that is transparent, proportionate, responsive to the issue and consistent with its publicly stated policies. As such, in its imposition of any enforcement measures, whether for deterrent or remedial purposes, the CBB will clearly provide the company in question with a factual description of the reason(s) for such enforcement actions, including the violations committed with respect to the CBB law, the resolutions and bylaws issued in enforcing thereof, among other things.

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<p>Appendix A: Methodology of Calculating Financial Penalties</p> <p>Sub-section: III. Internal Assessment by the CMSD</p> <p>In deciding which level of risk is most appropriate (which will then determine the penalty amount in relation to the violation), various factors will undergo comprehensive assessment including but not limited to the following:</p> <ol style="list-style-type: none"> 1) Impact of the violation; 2) Nature of the violation; 3) Factors showing whether the violation was deliberate; and 4) Mitigating and aggravating factors. 	<p>A Listed Company</p> <p>For determining a fine we suggest some additional factors that the CBB can include: 1. A proportionality test to determine whether the fine is proportionate to the breach in question, i.e. if a lower fine might produce the same results. 2. Whether the fine could jeopardize the economic viability of the infringing licensee and if so the CBB may consider lowering the fine(s) appropriately or seek imposing other enforcement measures that will have the same result.</p>	SP7	<p>Each of the CBB’s enforcement actions involves a careful balancing of a number of complex issues, these issues vary from case-to-case. As outlined in Appendix A of the MIE Module, the internal assessment undertaken in deciding on the level of risk associated with each violation comprises of numerous factors <u>that are not only limited to</u> impact and nature of the violation, factors showing whether the violation was deliberate; and mitigating and aggravating factors.</p> <p>The CBB’s approach is not to prescribe in detail the exact regulatory response for each and every contravention, as individual circumstances are unlikely to be identical in all cases, and may warrant different assessments and responses.</p> <p>For one and among other things, the CBB is guided by the fundamental principle of proportionality of regulation and enforcement. In accordance with MIE-3.1.10, the enforcement measures available to the CBB are of varying severity, and will be used accordingly in keeping with the CBB’s assessment of the contravention.</p>

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			Thus, the CBB will reserve its most serious enforcement measures for the most serious contraventions.