Qatar’s New Central Bank: Key Developments in banking regulation

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The Government of Qatar recently issued the new Central Bank Law, Law No. 13 of 2012 (the “QCB Law”), which came into force in January 2013.

This new piece of legislation is a comprehensive overhaul of the legislation that existed previously, Law No. 33 of 2006 (the “Old QCB Law”). The Qatar Central Bank (the “QCB”) is the primary regulator of financial institutions operating in Qatar, and the QCB Law has now expanded its supervisory powers to cover the insurance sector and the Qatar Financial Centre. The QCB Law addresses many issues for the first time, including Islamic banking, mergers and acquisitions of financial institutions, credit rating agencies, insurance, treating customers fairly and resolution of failing banks. This article sets out some of the key changes and developments that have been introduced in the QCB Law.

Scope of the QCB – Extended to Regulate QFC Entities, Insurance and Reinsurance and Credit Rating Agencies

The QCB Law sets out the types of activities that fall within its scope. In addition to conventional and Islamic banking, investment banking and the exchange house business that traditionally fell within the QCB’s mandate, insurance and reinsurance and credit bureaus also now fall within its scope. Most significantly, the QCB now has powers to regulate the activities of the Qatar Financial Centre (“QFC”) and by extension the financial institutions that operate in the QFC.

At this juncture it is unclear as to how the QCB and the Qatar Financial Centre Regulatory Authority (the “QFCRA”) will coordinate their overlapping roles. It is expected that the QCB and the QFCRA will work together and the QCB will provide guidance and strategic advice to the QFCRA. For the purposes of entities operating in the QFC, the QFCRA will continue as their regulator.

Cross Border Marketing of Financial Products

The definition of the term “Financial Services,” under the QCB Law is wider than that of the Old QCB Law. In addition to the scope of activities under the Old QCB Law, it also covers insurance (conventional and Islamic), reinsurance business and Islamic finance.

The significant difference between the Old QCB Law and the QCB Law from a cross-border perspective is that Article 205 of the QCB Law imposes a specific penalty for providing financial services without being duly licensed by the QCB. Article 205 provides that any entity providing financial services without a license from the QCB is liable to be imprisoned for not more than three years and fined for not more than QAR 5,000,000. Under the Old QCB Law a specific penalty did not exist for providing financial services in Qatar without a license. Any breach under the Old Law would result in a fine of QAR 5,000 per day.

Therefore, it is clear that the QCB has taken note of cross-border activities. If the QCB views such activities as being provided in or from the State of Qatar, it now has the power to impose the penalties under Article 205 of the QCB Law. The QCB Law has come into force only in January 2013, and thus far, we are not aware of any instances wherein the penalties under Article 205 of the New QCB Law have been imposed.

Islamic Banking

The QCB Law seeks to define the scope of Islamic banking as including (a) non-interest based banking with the aim of generating profit; (b) developing innovative Sharia'a compliant savings and investment products; (c) providing financial services with the aim of benefiting the society at large and based on the concept of mutual benefit; and (d) deepening the financial institutions understanding of Shaia'a compliant banking and contributing to the existing body of knowledge in this area.

The QCB Law clarifies that an Islamic financial institution may acquire title to assets and lease both land and movable assets in order to achieve its objectives. Each Islamic financial institution is required to have a Sharia'a Supervisory Authority (consisting of at least three members) appointed by the general body of shareholders of that financial institution. These members can be from various fields, including experts in law, Sharia'a law, financial services and business. The Sharia'a Supervisory Authority is required to supervise all aspects of the business of the financial institution to ensure that all such activities are conducted in accordance with the Sharia'a Principles. It is also required to issue opinions on whether the products, services and agreements provided and entered into by the financial institution are consistent with Sharia'a principles.

Credit Rating Agencies

The QCB Law defines credit information as information relating to the credit worthiness and reputation of a person. The activity of providing credit information services requires a license from the QCB. The QCB is expected to issue regulations relating to the requirements for establishing a credit rating agency in Qatar.

Insurance and Reinsurance

The QCB Law makes it clear that insurance and reinsurance companies operating in Qatar are regulated by the QCB. The QCB Law provides that local insurance providers are to be established as Joint Stock Companies (incorporated in Qatar). Foreign insurance providers may either establish a branch or a representative office in Qatar. Significantly, Article 95 of the QCB Law provides that money and property located in Qatar may not be insured in another country. In other words, any asset located in Qatar must be insured by either a local insurance provider in Qatar or by a branch of a foreign insurance provider having a license granted by the QCB. Further, the broker providing brokerage services in connection with insurance coverage of a local asset must also be duly registered in Qatar.

Article 103 of the QCB Law provides that insurance and reinsurance companies are required to obtain the approval of the QCB on the forms of insurance policies to be issued to customers.

Mergers & Acquisition of Financial Institutions

The QCB's consent is required prior to the merger of two or more financial institutions or the acquisition of a financial institution. The QCB Law sets out the two methods by which a financial institution may merge with another or be acquired. Article 161 states that two or more financial institutions may merge into a single entity having a new independent legal personality and such new entity shall acquire the rights and obligations of the two or more entities that are subject to the merger. The other method is for a financial institution to be acquired by another entity. Following the acquisition, the merging entity ceases to exist.

The QCB requires that a detailed due diligence exercise be conducted prior to a merger being effected. Once a preliminary contract of merger is entered into by the parties, this contract along with the audited financials of the target, constitutional documents, detailed information on the organisational structure and the resolution of the extraordinary general meeting are required to be submitted to the QCB. The QCB is required to give its decision approving or rejecting the merger or acquisition within 60 days of submission of the application.

Treating Customers Fairly and Confidentiality

The QCB Law requires banks and other financial institutions to simplify their procedures and finance agreements and to be transparent in relation to their pricing and features of products and services. Specifically, each type of transaction is required to be governed by a separate contract, the contract must be self-contained and set out information relating to the product or service in simple form covering the term of the contract, the nature, advantages, prices and other terms and conditions. The contract may not refer to other texts or documents that the customer has not reviewed before signing the contract.

Article 145 of the QCB Law makes it illegal to disclose customer information, whether personal or information relating to the customer's account, to any third party except with the prior written consent of the said customer.

Resolution of Failing Banks

The QCB has the power to place a failing bank or other financial institution under the interim administration of the QCB if that entity is likely to become insolvent. Article 176 specifies the events which constitute a likelihood of insolvency: 1) if the entity ceases to pay its debts when due; 2) if the entity loses half of its issued share capital or if it has violated the capital adequacy requirements prescribed by the QCB; or 3) where the failing bank is a branch of a foreign bank, the parent is at risk of bankruptcy or insolvency. Article 177 of the QCB Law requires that any such order by the QCB to place a bank or other financial institution under interim administration must be "justifiable" and must be for a "definite period".

Once the failing bank or financial institution is placed under the administration of the QCB, the QCB, as an administrator, has wide powers to deal with its assets. Significantly, the QCB Law does not set parameters for the administrator with regard to which stakeholders interests are paramount. Should the administrator look at resolving the failing bank using the least costly approach or look to safeguard depositors and creditors. The powers of the administrator include providing financial support to the failing bank to bring it back to an acceptable position, selling its assets including part of its loan book and merging with another bank.

Dispute Resolution

The QCB Law establishes a Disputes Resolution Committee. The Disputes Resolution Committee has the power to review complaints filed against the decisions of the QCB, review fines and punishments issued by the QCB, review the decision of the QCB to appoint an administrator to take control of a failing bank of financial institution and to amicably settle disputes between financial institutions.

The Disputes Resolution Committee will consist of three judges of the Court of Appeal and two individuals nominated by the QCB's Board. Decisions of the Disputes Resolution Committee can be appealed to the Court of Appeal.