

Part I: How does Bahrain's Financial Regulatory Approach Compare with the Rest of the GCC?

Alastair Drummond
a.drummond@tamimi.com

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One body, in the form of the Central Bank of Bahrain (CBB), regulates both the conduct of financial services business in (or from within) Bahrain as well as the financial institutions that provide those services.

The CBB argues that this approach creates a consistent and coherent regulatory model that can be applied across the board and it also provides a straightforward and efficient regulatory framework for financial services firms operating in Bahrain.

However as the following summaries demonstrate, different regulatory approaches are possible. Often – leaving to one side the regulation of international financial centres – the regulation of capital markets is undertaken by a separate body on the grounds that the ongoing supervision of capital markets is generally distinct from the regulation of financial services. Indeed it could be argued that the CBB tacitly acknowledges this by virtue of the fact that the supervision of Bahrain's capital markets is undertaken by a dedicated unit within the CBB, namely the Capital Markets Supervision Directorate. Viewed in this light, one perfectly feasible conclusion is that the Bahrain's unitary approach is, in reality, not so different for the multi-agency approach taken by the other GCC countries.

Bahrain

The Central Bank of Bahrain (CBB) is a public body established by the government under the Financial Institutions Law 2006 ('the 2006 Law'). It is responsible for maintaining monetary and financial stability in Bahrain and is also the single, integrated regulator of Bahrain's financial services sector. It succeeded the Bahrain Monetary Agency, which was established in 1973 soon after independence and which had previously carried out the Kingdom's central banking and regulatory functions.

Article 40 of the 2006 Law provides that no person may undertake a 'Regulated Service' in the Kingdom of Bahrain unless licensed by the CBB. Regulated Services are defined as financial services provided by financial institutions, including those governed by Islamic Sharia principles. The 2006 Law further provides that the CBB shall issue regulations specifying the Regulated Services and organising the provision of these services and that it shall supervise and control any licensees providing them.

In its capacity as the regulatory and supervisory authority for all financial institutions in Bahrain, the CBB issues regulatory instruments with which licensees and other specified persons are legally obliged to comply. These regulatory instruments are contained in the CBB Rulebook. The CBB Rulebook is divided into seven volumes, covering different areas of financial services activity. These volumes are being progressively issued: Volumes 1 and 2, covering conventional bank licensees and Islamic bank licensees, were issued in July 2004 and January 2005; Volume 3, covering insurance licensees, was issued in April 2005; Volume 4 covering investment business was issued in April 2006. Volume 5, covering specialised licensees (i.e. those licensees that undertake regulated activities that do not fall under any other volume

of the CBB Rulebook) and Volume 6 (capital markets) are being issued progressively; and Volume 7, on collective investment undertakings, was issued in May 2012.

Breach of a Rule contained in the CBB Rulebook can lead to a variety of sanctions being taken against a licensee. These range from, at the lower end, a formal warning, through adverse “fit and proper” findings in relation to key individuals working in the licensed business to cancellation, or amendment, of a license. In extreme cases a breach of the CBB Rulebook can result in criminal proceedings, although these cannot be brought by the CBB itself but only through the Office of the Public Prosecutor.

The CBB’s wide scope of responsibilities allows a consistent regulatory approach to be applied across the whole of the Kingdom’s financial services sector. This, in turn, gives a Bahrain a key competitive advantage relative to other GCC states.

Kuwait

Two principal governing authorities dominate Kuwait’s regulatory landscape with respect to financial matters. The Central Bank of Kuwait (CBK) is entrusted with the supervision of Kuwait’s banking system. Its supervisory authority covers a vast array of banking institutions, including, conventional banks operating in Kuwait, Islamic banks, specialised banks, branches of foreign banks and a number of investment and exchange companies. Only banks licensed and regulated by the CBK are allowed to engage in the conduct of banking activities in Kuwait. The CBK’s responsibilities also include acting as lender of last resort to the banking sector and serving as banker and financial adviser to the Government. The CBK issues currency and directs relations with international institutions.

Responding to increased calls for greater regulation and transparency in the Kuwait securities market, the Kuwait Government enacted new laws and regulations relating to securities activities in Kuwait in 2010. Law No 7 of 2010 and Executive Bylaws for Law No 7 of 2010 Concerning Establishment of the Capital Markets Authority and Organisation of Securities Activity (the ‘CMA Bylaws’, together with the Law No 7, the ‘Capital Markets Law’), marked a complete reboot of the securities and capital markets laws and regulations in Kuwait.

The Capital Markets Law called for the establishment of the Capital Markets Authority (CMA) with the power and authority to regulate, develop and supervise the activities of the capital markets in the State of Kuwait with the primary objective of creating an attractive investment environment that generates investors’ trust. The CMA’s responsibilities include: regulating the marketing, offer and sale of securities in Kuwait; regulating mergers and acquisitions activity; disclosure of interest and investment fund promotion; and regulating the licensing requirements for the Kuwait Stock Exchange, including licensing of those who operate within the Kuwait Stock Exchange such as funds, asset managers and brokers.

In addition to the CMA’s role in regulating all securities activities in Kuwait, the CMA has issued a comprehensive set of corporate governance rules which cover all aspects of a CMA-regulated corporate entity, including, but not limited to, composition of the board, selection criteria of constituent members, risk management and corporate social responsibility.

Aimed at bringing Kuwait into line with the standards and policies of the international financial community, the government introduced new legislation in the form of Law No 106 of 2013 regarding the combating of money laundering and financing of terrorism (the ‘AML Law’) to protect local financial institutions from being used to launder money and finance terrorism. Pursuant to the AML Law a fully-independent Financial Intelligence Unit (FIU) was created to serve as the main investigative body with the responsibility for receiving, applying for, analysing and transferring information related the suspected proceeds of money laundering or monies used to finance terrorism.

Oman

The Oman Central Bank (OCB) and the Capital Market Authority (CMA) operate as regulators of the

financial market in Sultanate of Oman.

The OCB was established in 1974. It is the first public body to be vested with full banking status, a separate legal personality and full administrative and financial independence. This status was not granted to the Muscat Currency Authority, which was established in 1970, or to the Oman Currency Board set up in 1972.

The first piece of legislation to regulate the banking sector in Oman was in the form of a Sultani Decree number 7/74 which was subsequently repealed by Sultani Decree number 114/2000 (Law). The main objectives of the OCB are: to promote the development of banking institutions; ensure the maintenance of financial stability; empower the Central Bank to issue currency and maintain the domestic and international value of that currency; facilitate the expansion of the free-market economy of Oman through greater use of recognised banking institutions and methods; and to contribute to the fiscal and monetary development of Oman through active participation in the international monetary community and in the proceedings, negotiations and decisions of international monetary organisations in which the Sultanate shall participate.

One of the main functions of the OCB is to act as the depository bank for the Government of Oman and its institutions by accepting their deposits in whatever legal form which may include cash, cheques or transfers.

The OCB has taken a restrictive approach in controlling the licensing of the banking sector of Oman by having a broad definition of “banking business” which captures a number of activities. Pursuant to Article 52 of the Law no person shall engage in banking business in the Sultanate as either a domestic or a foreign bank, or practice any other banking activity without being granted a licence by the OCB. Banking business covers the operation of receiving monies as deposits, opening current bank accounts and credits, the unsecured loan of money or extension of credit, the loan of money on personal, collateral or real property security, the operation of a credit card business, the issuance and negotiation of letters of guarantee and letters of credit, the payment and collection of cheques, orders, payment vouchers and other negotiable instruments, etc.

The CMA also has a separate juristic personality in law with full administrative and financial independence. The CMA is empowered to organise, license and monitor the issue and trading of securities, supervise the operation of the Muscat Securities Market, supervise all companies operating in the field of securities, supervise joint stock companies, supervise insurance companies and license the credit rating companies.

The OCB and the CMA have formed number of committees to ensure that the laws and regulations regulating the financial market in Oman are harmonised and function in an integrated and comprehensive manner in line with economic developments plans of the Sultanate. This has been strengthened by the issuance of Anti-Money Laundering and Combating Terrorism Law which dictates the legal requirements that private institutions such as banks, insurance companies and law firms, must put into place to monitor their clients’ transactions by identifying the source of money and carrying out a due diligence on their respective shareholders and senior management before providing any services to them.

The Law has been recently amended in order to permit the provision of Islamic financing products. Oman is the last country in GCC to regulate Islamic financing transactions. This will lead to issuance of ancillary Sharia-compliant laws like Takaful Insurance, which is in draft form, to be issued in the near future.

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