

8 - Regulations Governing Islamic Banks Purchase of Their Own Shares

- A) Regulations governing Islamic banks purchase of their own shares and the ministerial resolutions issued in this respect.

**Instructions No. (2/IBS/101/2003)
Regarding the Islamic Banks Purchase of Their Own Shares***

SECTION ONE

**The Rules and Regulations to be Observed by Islamic
Banks For Obtaining Central Bank's Approval For
Their Purchase of Their Own Shares**

First : Maximum Limit a Bank may Purchase of it's Own Shares.

In accordance with the rules of Article No.(115-Bis) of Commercial Companies Act and the rules of Ministerial Resolution No. (10) of the year 1987 amended by Ministerial Resolution No. (11) of the year 1988 and Ministerial Resolution No. (273) of the year 1999, banks may purchase a maximum of 10% of their own shares at market value, provided that the funds utilized to finance such a purchase do not exceed the total reserves balances consisting of net profit distributions, retained profits and issue premium.

Second : Conditions Banks have to Comply with Throughout the Acquisition Period of a Portion of their Own Shares.

A certain amount of the aforesaid reserves (consisting of net profit distributions, retained profits and issue premium), equalling the cost of purchased shares, shall be frozen and treated as undistributable throughout the acquisition period of such shares. The frozen amount may be utilized only to offset any risks which may arise as a result of selling those shares – in the manner mentioned hereinafter - without affecting the capital or operating results.

Third : Funding Sources for Banks Purchase of their Own Shares :

Capital may not be utilized as a funding source for the banks purchase of their own shares. Therefore, each individual bank shall identify it's funding sources which shall be utilized for this purpose, depending on it's own circumstances, and shall notify the Central Bank of Kuwait of the proposed financing sources of such a purchase, for Central Bank's review and approval. However, a bank may not utilize these funding sources for this purchase except with the Central Bank's prior approval.

* Instructions established on 15/6/2003 by the Central Bank's board of directors, Banks should provide the external auditors with a copy of this instructions.

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Fourth : Procedures to be Followed For Obtaining Central Bank's Approval in This Respect:

In the event banks desire to purchase a portion of their own shares, an application must be submitted to the Central Bank including the following data:

- (1) Number of shares intended to be purchased.
- (2) Maximum amount utilized to finance the purchase.
- (3) Proposed funding sources and the extent of reliance on each funding source.
- (4) Justifications supporting the bank's view point as regards the proposed funding sources.

An integrated study, explaining the significance of the purchase of these shares and the effects resulting therefrom, must be submitted together with the application.

The Central Bank's approval issued for any bank in this connection, shall be valid for a maximum period of 6 months from the date the bank is notified thereof, while observing the following:

1. Acceptable justifications must be submitted if the bank has repeatedly not utilized its right to purchase a portion of its shares during the validity of the said approval, so that any new applications for extending the validity of these approvals, could be reviewed.
2. A quarterly statement detailing the number and value of the shares purchased or disposed of, must be submitted during a maximum period of one week from the end of the period for which the statement is made.
3. The banks which have utilized their right to purchase a portion of their own shares, must submit a report to the Central Bank of Kuwait at end of each financial year, detailing the justifications for continually retaining such shares. This report must be submitted during ten days from the end of the financial year for which the report is prepared.

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SECTION TWO

Accounting Treatment of Islamic Banks Purchase of Their Own Shares and Manner of Reporting and Disclosing it in the Financial Statements

The rules of the international accounting standards must be adhered in connection with the manner of treating all the transactions effected on the bank's purchased shares, as well as in relation to the manner of reporting and disclosing the same in the financial statements, as follows:

First : Disclosing Bank's Own Purchased Shares in the Financial Statements:

A. In the Balance Sheet

The cost of purchasing these shares shall be reported as an independent item within shareholders equity, to be referred to as "Bank's own purchased Shares".

B. Notes to Financial Statements

A note is to be mentioned indicating the number of purchased shares, cost of purchase and such shares percentage to total shares issued by the bank, and the market value of the share at the date of preparing the financial statements.

Second: Disclosure that an amount equivalent to the cost of purchased shares shall be frozen out of the reserves balances consisting of net profit distributions, retained profits and issue premium

A disclosure should be made in the notes to financial statements of banks, that a portion equalling the cost of the purchased shares, has been frozen out of the reserves consisting of net profit distributions, retained profits and premium, and that the said portion is undistributable throughout the acquisition period of such shares.

Third : The Share of Purchased Shares in Cash Dividends :

No cash dividend shall be distributed on the bank's own purchased shares.

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Fourth: The Share of Bank's Own Purchased Shares in Bonus Issue Distribution :

The share of the bank's own purchased shares in bonus issue shall not be reported within the income under the profit and loss account, nor shall the bonus issue amount be added to the purchase cost of these shares. The components of the bank's own purchased shares portfolio shall be amended by the number of bonus shares obtained by the bank, following which the purchase cost of each share would drop.

Fifth : Treatment of Profits and Losses Resulting from the Re-Sale of the Bank's Own Purchased shares :

- a. An account called " Profit and Loss account Resulting From the **Sale** of Bank's Own Purchased Shares" shall be established. The balance of this account shall be confined to the amount of profit realized from the sale of such shares. The balance of this account shall be reported under the group of the shareholders equity accounts in the balance sheet, and shall be deemed undistributable .
- b. Profits resulting from the sale of the purchased shares shall be reported in the "Profit and Loss account Resulting From the Sale of the Bank's Own Purchased Shares".
- c. In the event any losses are incurred in the re-sale of these shares, such losses shall be charged to the " Profit and Loss account Resulting From the Sale of the Bank's Own Purchased Shares". If the loss amount exceed the balance of this account, the excess loss amount shall be charged to the accounts of retained profits, reserves and issue premium, respectively, a part of which equal to the purchase cost of these shares had been previously frozen. However, if any profit is realized thereafter as a result of the sale of the purchased shares, a portion of such profit equal to the losses charged previously to the said account, shall be deducted so as to be re-added to such accounts (Respectively, issue premium, reserves and retained profits), and the rest of such profits shall be treated according to the item (B) above.
- d. In the event the purchased shares balance is liquidated and profit achieved, the credit balance in the "Account of Profit and Loss Resulting From the Sale of the Bank's Own Purchased Shares" shall be transferred to the general reserves (or voluntary reserves).

These instructions shall be implemented from the date of notification.

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The MINISTRY OF COMMERCE AND INDUSTRY
Ministerial Resolution No. (10) of the year 1987
Concerning the purchase of a shareholding Company of its own shares,
and the manner of using and disposing of the purchased shares .

The Minister of Commerce and Industry,

- Having reviewed Decree Law No. (15) of the year 1960 Concerning the Commercial Companies Law, and the laws amending it, and
- Law No. (32) of the year 1968 Concerning Currency, the Central Bank of Kuwait and the Organization of Banking Business, and the laws amending it, and
- Law No. (32) of the year 1970 Concerning Companies Shares Trading, and
- Law of Commerce issued under Decree Law No. (68) of the year 1980, and
- The Decree issued on 14/8/1983 Concerning the Organization of the Kuwait Stock Exchange, and
- Resolution No. (35) of the year 1983 issued by the Minister of Commerce and industry, concerning the internal regulations of the Kuwait Stock Exchange, and
- Resolution No. (1) of the year 1984 of the of Kuwait Stock Exchange Committee concerning the rules and procedures for shares trading at the Exchange.

Has resolved,

Regulations Governing Islamic Banks Purchase of their Own Shares.

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Article (1)

A company desiring to buy its own shares must be so permitted by its memorandum and articles of association. In addition, it is a condition that a resolution is adopted by the shareholder's general assembly, authorising the company's board of directors to buy its own shares in the ratio fixed by the Law. Such a resolution shall, in addition to other conditions which the general assembly may deem fit, fix the period of such authority which shall not exceed 18 months.

Article (2)

Within two weeks from the date of issuing of such a resolution by the general assembly, which authorised the board of directors to buy the company's shares, a copy of such a resolution must be deposited with the Department of Companies at the Ministry of Commerce and Industry. The resolution must be notified to Kuwait Stock Exchange in writing before the end of the working day following its issuance.

Article (3)

Subject to compliance with the other conditions and provisions specified in this resolution, companies registered in the register of banks with the Central Bank of Kuwait, as well as other companies subject to Central Bank's supervision in accordance with the Provisions of Law No. (32) of the year 1968, must obtain the prior approval of the Central Bank of Kuwait in the event they desire to buy their own shares.

Article (4)

- a) If a company wishes to purchase its shares or to sell any of its shares previously purchased, should notify Kuwait Stock Exchange to this effect in writing before a certain period from practising the purchase or the selling, as specified by the management of the stock Exchange market. Such companies must also provide the management of the stock Exchange market with any information or declarations that it requires.
- b) Buying and selling deals shall be concluded in accordance with the special rules and procedures set by the management of Kuwait Stock Exchange in this connection.

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Article (5)

The company must have, at the time of buying its own shares, retained profits or reserves available for distribution as profit, so that such purchase shall be funded thereby . A portion of these profits and reserves equivalent to the cost of acquisition of such shares or their nominal value, whichever is greater, shall be undistributable so long as these shares remain owned by the company.

Article (6)

The nominal value of the purchased shares must be fully paid.

Article (7)

- a) In the event of increasing the capital of the company through bonus shares issue against profits realised by the company, or by applying its reserves which are distributable as profits, the company shall have the same rights for its shares as those enjoyed by other shareholders, provided that the number of shares the company holds, under any circumstances, shall not exceed, 10% of the total share capital.
- b) In the event of increasing the share capital of the company through new rights issue, the company may not exercise the priority right to subscribe resulting from its ownership of the purchased shares, as this right is limited to the other shareholders. As an exception from this limitation, the general assembly of the company may approve selling its priority rights in subscribing through Kuwait Stock Exchange .

Article (8)

Distributed profits relating to the shares owned by the company shall be reported in the profit and loss account.

Article (9)

In the event of selling the shares purchased, this must be against a cash consideration. This does not preclude the possibility in any special case, that a company whose shares are listed at Kuwait Stock Exchange may exchange its shares with the shares of another listed company, subject to the approval of the management of Kuwait Stock Exchange .

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Article (10)

The company may use its holdings of its own shares for preventing speculation of adverse impact on its shares, by entering into sale and purchase deals in accordance with the rules and procedures set by the management of Kuwait Stock Exchange .

Article (11)

- a) A detailed statement should be prepared every three months showing the company's purchases and disposals of its own shares, the number of such shares and the value of each transaction. This statement should be presented to the Companies Department of the Ministry of Commerce and Industry and Kuwait Stock Exchange within fifteen days from the end of the respective period .
- b) The company's financial statement must disclose the number of its own shares it holds and their relevant value reported in the financial statements.

Article (12)

The company may sell to or grant its employees all or part of its holding of its own shares, provided that a resolution to this effect is passed by the general assembly, setting the regulations organising the sale of or the grant of such shares to the employees of the company, or otherwise authorising the board of directors to initiate such regulations.

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Article (13)

This resolution shall come into effect from the date of its publication in the official gazette.

Minister of Commerce and Industry

Jamada Al-Akhera, 1407 H
February 16, 1987

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MINISTRY OF COMMERCE AND INDUSTRY
Ministerial Resolution No. (11) of the year 1988,
Amending certain provisions of the Ministerial Resolution No. (10) of the year
1987 organizing the purchase by a shareholding company of its own shares,
and the manner in which the acquired shares are used and disposed of :

The Minister of Commerce and Industry

- Having reviewed Decree Law No. (15) of the year 1960 Concerning the Issuance of the Commercial Companies Law and the Laws amending it, and
- Law No. (32) of the year 1968 Concerning Currency, the Central Bank of Kuwait and the Organisation of Banking Business, and the Laws amending it, and
- Law No. (32) of the year 1970 Concerning Companies Shares Trading, and
- The Law of Commerce issued under Decree Law No. (68) of the year 1980, and
- The Decree issued on 14/8/1983 Concerning the Organisation of Kuwait Stock Exchange, and
- Resolution No. (35) of the year 1983 issued by Minister of Commerce and Industry concerning the internal regulations of the Kuwait Stock Exchange, and
- Resolution No. (1) of the year 1984 of the of the Kuwait Stock Exchange Committee concerning the rules and procedures of shares trading at the Exchange, and
- Ministerial Resolution No. (10) of the year 1987 concerning the organization of the purchase of shareholding companies of their shares and the manner the acquired shares are to be used or disposed of :

Has decided :

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Article One

Article (3) of Ministerial Resolution No. (10) of the year 1987 concerning the organization of the purchase of shareholding companies of their shares and the manner in which the acquired shares are used and disposed of, is hereby cancelled.

Article Two

The text of Article (5) of Ministerial Resolution No. (10) of the year 1987 shall be amended to read as follows :

The company's share capital may not be used in financing the purchase of its own shares. The company shall ensure that the funding of such transactions does not exceed its total reserves consisting of the net profit distributions, retained profits and issue premium.

Article Three

The following new article shall be added to Ministerial Resolution No. (10) of the year 1987.

Article (5) (repeated)

“Without prejudice to the rules of the above article, banks and companies subject to the supervision of the Central Bank of Kuwait, must obtain the latter's prior approval before buying their own shares, and must be committed to funding the purchase of their shares by financial sources determined by the Central Bank of Kuwait and to comply with any other regulations the Central Bank issues in this connection.”

Article (4)

This resolution shall be in effect from the date of its publication in the Official Gazette.

Minister of Commerce and Industry

25 Rajab, 1408 H

March 13, 1988

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MINISTRY OF COMMERCE AND INDUSTRY
Ministerial Resolution No. (273) of the year 1999 amending certain
Provisions The Ministerial Resolution No. (10) of the year 1987 as amended by
the Ministerial Resolution No. (11) of the year 1988, Regulating the purchase By
shareholding companies of their own Shares and the
manner of using and disposal of the purchased shares

The Minister of Commerce and Industry,

- Having perused the Law Decree No. (15) of the year 1960 concerning the Commercial companies and the laws amending the said law, and
- The Law No. (32) of the year 1968 concerning Currency, the Central Bank of Kuwait and the Organization of the Banking Business and the laws amending the said law, and
- The Law No. (32) of the year 1970 concerning the trading of companies shares, and
- The Law of Commerce issued under Decree law No. (68) of the year 1980, and
- The Law Decree of 14/8/1983 concerning organizing the Kuwait Stock Exchange, and
- The Commerce and Industry's Resolution No. (35) of the year 1983 concerning the internal regulations of the Kuwait Stock Exchange, and
- The Kuwait Stock Exchange Committee Resolution No. (1) of the year 1984 concerning the rules and regulations for shares trading at the Kuwait Stock Exchange, and
- The Ministerial Resolution No. (10) of the year 1987 as amended by the Ministerial Resolution No. (11) of the year 1988 regulating the purchase of the shareholding company of their own shares and the manner of the use and disposal of the purchased shares.

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Has decided,

Article (1)

The texts of Article (8), (11/B) of the Ministerial Resolution No. (10) of the year 1987 shall be replaced with the following text:

Article 8 :

“No cash dividends may be distributed in respect of the company’s shares.”

Article 11/B:

“The provisions of the international accounting standards shall be observed with regard to the manner of treating all transaction in the purchased shares of the company and in the manner of their reporting and disclosure within the company’s financial statements.”

Article (2)

This resolution shall be in effect from the date of the publishing hereof in the Official Gazette.

Minister of Commerce and Industry

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