

Ministry of Finance
Ministerial Resolution No. 38 of 2011
Regarding the Central Bank of Kuwait Supervision
over Financing Companies

The Minister of Finance

Having perused,

- The provisions of the Chapter Three of the Law No. 32 of 1968 regarding Currency, the Central Bank of Kuwait and Regulation of Banking, and the amendments thereto,
- The Law No. 7 of 2010 regarding the Establishment of the Capital Markets Authority and Regulating Securities Activities, and its Executive Bylaws,
- The Ministerial Resolution issued on 08 January 1987 with respect to the Central Bank of Kuwait Supervision over Investment Companies, and the amendments thereto.

And based on the Resolution of the Board of Directors of the Central Bank of Kuwait,

Resolved:

Article (1)

"Financing Company" means any shareholding company whose main objectives are to extend finance to individuals, companies and institutions for the various purposes and provide advisory services to clients with respect to credit/finance extension.

Article (2)

Financing companies may not carry out any of the following activities:

- A) Securities activities specified under the Law No. 7 of 2010 regarding the Establishment of the Capital Markets Authority and Regulating Securities Activity and its Executive Bylaws. Such activities include:
1. Management of funds on behalf of third parties.
 2. Management of collective investment schemes.
 3. Investment advisor or supervisor or trustee, or custodian.
 4. Security brokerage.
 5. Any activity deemed by the Capital Markets Authority as regulated securities activities.

- B) Banking business such as deposits of all types and purposes, opening current accounts, opening letters of credit, issuing guarantees and the other banking activities.
- C) Foreign exchange for others.

Article (3)

For the investment companies existing at the time of issuance hereof, and whose objectives include carrying out the securities activities that are subject to the supervision of Capital Markets Authority as per the provisions of the aforesaid Law No. 7 of 2010 beside the financing activities, and the investment companies whose objectives under their articles of association allow them to exercise certain banking and foreign exchange activities for others beside the securities and financing activities, supervision by the Central Bank of Kuwait shall be limited to the activities of financing, banking business and foreign exchange for others and, hence, the Capital Markets Authority shall be responsible for the financial positions of such companies in accordance with the provisions of the aforesaid Law No. 7 of 2010 and its Executive Bylaws.

Article (4)

Financing companies may not represent foreign banking institutions in the State of Kuwait, or to carry out banking activities for the account/on behalf of such institutions.

Article (5)

No financing company may carry out any business unless it is registered in the Register of Financing Companies with the Central Bank of Kuwait.

Article (6)

Applications for the incorporation of financing companies should be submitted to the Ministry of Commerce & Industry accompanied by the following:

- A) A feasibility study prepared by a specialized firm for incorporation of the company setting out the basis and standards of the study, projections of the company's activities over five years from the incorporation date, vision, SWOT analysis, an accurate technical study of the target sectors for the company's services and expectations of the company's financial position over the aforesaid period, provided that it should, particularly, include compliance with the stipulated regulatory standards of the financing companies and any other requirements by the Central Bank of Kuwait with respect thereto.

- B) The company's draft memorandum and articles of association shall include the following:
1. Name of the company and its head office.
 2. The company's objectives.
 3. Names of the founding shareholders and their nationalities.
 4. Capital of company, number of its shares and a statement of each noncash share and its terms, name of its holder, rights of mortgage and the privileges arising from this share. The company's paid-up capital should not be less than fifteen million Kuwaiti Dinars. The Central Bank of Kuwait may increase this limit whenever deemed appropriate.
 5. The declaration by the founders of the percentages of their shares in the company's capital.
 6. The benefits approved for the founders and the reasons for such benefits.
 7. An approximate statement of the expenses, costs and remunerations, which are to be paid by the company, or which the company is liable to pay, due to its incorporation.

Article (7)

1. The Ministry of Commerce & Industry shall send the application for the incorporation of a financing company to the Central Bank of Kuwait for initial approval or rejection thereof.
2. In considering the application of incorporation, Central Bank of Kuwait verifies the market need for the incorporation of the company, adequacy of the company's capital to realize its objectives and compliance of its objectives with the laws, bylaws and the related ministerial resolutions.
3. In case the application for incorporation is approved, the Central Bank of Kuwait shall issue an initial approval that shall be valid for six months, a copy of which shall be sent to the applicants in order to proceed with the incorporation formalities in accordance with the provisions of Commercial Companies Law. If such period expires before the applicants initiate the incorporation formalities, the Central Bank of Kuwait may extend this period for a similar period subject to evidence of serious steps taken initiate the incorporation formalities; otherwise the application shall be discarded.

Article (8)

Within the validity of the initial approval and post completion of the incorporation formalities in accordance with the Commercial Companies Law, the financing company should submit to the Central Bank of Kuwait an application for registration in the Register of financing companies with the Central Bank of Kuwait using form designated for this purpose, accompanied by the following documents:

1. A clear business plan of the company's targets including customer service approaches and the company's business continuity and future development plan.
2. A statement of the company's manuals and procedures in all fields of operation necessary for carrying out its activities, to be approved by the company's auditors.
3. A statement of the company's organization structure, head office and branches, key positions (Executive Management) and job descriptions of those positions.
4. A statement of the Board members' names approved by the Central Bank of Kuwait as per the provisions of Article (12) hereof.
5. A statement of the names of the nominees for the executive senior positions.
6. The company's memorandum and articles of association authenticated by the concerned official bodies.
7. A copy of the license issued to the company by the Ministry of Commerce and Industry.
8. The opening budget approved by the auditors.
9. A certificate from the designated bank of the balance stated in the opening budget, which the balance should represent the remaining capital of the company, net of all incorporation expenses.
10. Any other information, statements or documents requested by the Central Bank of Kuwait.

Article (9)

A register for registration of the financing companies shall be maintained with the Central Bank of Kuwait, where the following information shall be included therein:

1. Registration number and date thereof.
2. Name of the company and its address.

3. The legal form of the company.
4. Date of incorporation.
5. Value of the company's capital.
6. Issued bonds/Sukuk.
7. Reserves.
8. Names of the board members and chief executive officer.
9. Name of the auditor(s).
10. Name of the foreign partners in case there are non-Kuwaiti partners in the company.
11. Names of the members of Shari'a Supervisory Authority for the companies carrying out business in accordance with the Islamic Shari'a.
12. All branches of the company and their addresses.
13. Any other information the Central Bank of Kuwait decides to be included in the register.
14. Any amendments to the aforesaid information.

Registration of the financing company shall be approved under a resolution by the Governor of the Central Bank of Kuwait, to be published in the official gazette, and of which the Ministry of Commerce & Industry and the concerned company shall be notified.

Article (10)

The investment companies performing securities and financing activities, as mentioned under Article (3) hereof, shall remain registered in the Register of the Investment Companies with the Central Bank of Kuwait at the time of promulgation of this resolution. The Governor of the Central Bank of Kuwait shall issue a resolution to identify the information that should always be provided in the register and the procedures for amendment thereof.

Registration entry of the investment companies whose objectives are limited to securities activities shall be eliminated from the mentioned register and a resolution by the governor of the Central Bank of Kuwait shall be issued in this respect.

Article (11)

The financing companies and investment companies mentioned in Article (3) hereof should notify the Central bank of any amendment they intend to make in their memorandum or articles of association.

In case that the Central Bank initially approved the requested amendments, the necessary procedures should be taken to finalize the same in accordance with the provisions of the Commercial Companies Law. Such amendment shall not be valid and effective unless a notation thereof in the Register of Financing/Investment Companies is made by virtue of a resolution by the governor of the Central Bank.

As for amendments to the other particulars which are to be included in the register and do not include any amendment to the memorandum or articles of association, it is sufficient to obtain the Central Bank's approval on the requested amendment. Such amendment shall not be valid and effective unless a notation thereof is made in the register by virtue of a resolution issued by the governor of the Central Bank.

Article (12)

In the light of the provisions of Article (68) of the aforesaid Law No. 32 for 1968, any nominee for membership of the board of a financing company, or the person holding a senior executive position in the company, must not have been condemned in a crime of breach of honor or honesty or declared bankrupt, and should be of a good conduct and reputation and have experience in the financial and economical fields as per the rules and regulations issued by the Board of Directors of the Central Bank of Kuwait.

Chairmen of the financing companies' boards must inform the Central Bank of Kuwait of the names of board membership nominees at least thirty days of the date scheduled for the general assembly meeting, and of names of nominees for the senior executive positions in the company for approval thereof by the Central Bank prior to appointment decision. The Board of Directors of the Central Bank of Kuwait may, within twenty one days of notifying it, object by a reasoned letter to any of those nominees for not fulfilling the required conditions.

Objection by the Central Bank shall entail excluding the nominee's name. No name of a nominee for board membership, of whom the Central Bank has not been notified, or to whom an objection has been raised, in accordance with the provisions of this article may be presented to the company's general assembly.

The Board of Directors of the Central Bank of Kuwait may require the concerned company's board of directors to exclude any of those stipulated in the first paragraph of this article, if, during his/her employment, s/he no longer meets a condition stipulated under this article, or if this action is deemed necessary by the Board of the Central Bank of Kuwait to preserve the shareholders' or the company's interests. If exclusion has not been made, the Board of Directors of the Central Bank of Kuwait may issue a reasoned resolution to exclude any of them; this action should be notated in the Register of Financing Companies. Any of those excluded or dismissed from the company may not be a nominee again for board membership or a senior executive position in another financing company.

Article (13)

The Central Bank shall lay down the rules and regulations the financing companies must comply with, in particular those relating to the company's creditworthiness, liquidity and policy for provisions that should be maintained by the financing companies to address any risk.

The Board of Directors of the Central Bank of Kuwait shall adopt a system for the provisions the investment companies must make against the nonperforming loans and the potential risks in their investment portfolios.

Article (14)

The Board of Directors of the Central Bank may set for the financing companies the maximum limit of finance to a single customer, natural person or corporate body, relative to the total capital, at the discretion of the Central Bank, and the maximum limit of finance to the various economic sectors, and set conditions for loans and financing facilities they extend.

The financing companies shall be subject to the "Center of Risk System" adopted by the Central Bank of Kuwait.

Article (15)

The Central Bank may provide the financing companies with the instructions it deems appropriate to regulate their businesses and realize the targets of the credit or cash policy adopted by the Central Bank.

Article (16)

The Central Bank shall adopt a system for inspection over the financing companies to ensure the soundness of its activity and financial positions, and correctness of the information and statements sent to the Central Bank as well as the other matters the Central Bank deems it necessary to supervise them.

Article (17)

The financing companies should submit to the Central Bank the required information, statements and statistical data.

In addition, the financing companies should provide the Central Bank within three months of the financial yearend their financial statements audited by their external auditors for approval before presenting them to the general assemblies.

Article (18)

The Central Bank may ask the auditors of the financing companies to include in their annual reports the rules and methods they adopted to ensure existence of assets and approaches of valuation thereof as well as the estimation of the company's obligations towards the others.

The auditor, based on the request of the Central Bank, should sign any mathematical statements or information sent by the company he audits its accounts to the Central Bank including a proof of correctness thereof.

The auditors should highlight in his report whether the operations audited by him include any violation of the resolutions or instructions communicated to the company by the Central Bank.

Article (19)

If any financing company encountered financial difficulties that jeopardize the soundness of its financial positions, the Board of Directors of the Central bank of Kuwait may stop the company from carrying out certain operations, or impose restrictions on the business it performs, or appoint a temporary supervisor in the company.

Article (20)

The investment companies mentioned in Article (3) hereof are subject to the rules, instructions and regulations of the Central Bank of Kuwait with respect to the financing activities carried out by such companies.

If the financing portfolio of any of those companies severely deteriorates, the Board of Directors of the Central Bank may stop the company from carrying out new financing operations, or impose restrictions on carrying out some financing operations.

Article (21)

The Central Bank may impose the proper penalties as stipulated under Article (85) of the Law No. 32 of 1968 and its amendments, on any financing company that violates the provisions of its memorandum or articles of association or the instructions/resolutions the Central Bank issued to it, did not submit the required information and statements, or submitted inaccurate statements.

Article (22)

In accordance with the provisions of Article (63) of the Law of the Central Bank of Kuwait, registration entry of any financing company may be eliminated from the Register of Financing Companies in the following cases:

1. At the company's request.
2. If the company did not initiate its business within one year from the date of notifying it of the resolution of its registration in the Register of Financing Companies.
3. If the company became bankrupt.
4. If the company is merged with another.
5. If the company ceased its activities or its financial positions are exposed to risks.

Article (23)

With observance to the provisions of the Commercial Companies Law, any financing company eliminated from the Register of Financing Companies with the Central Bank of Kuwait shall be liquidated.

Article (24)

This resolution shall be published in the Official Gazette and shall come into effect from the date of its publication. The Ministerial Resolution issued on 8 January 1987 with respect to the Central Bank of Kuwait Supervision over the Investment Companies and its amendments shall be void.

The Minister of Finance
Mustafa J. Al-Shamali

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