

**32- EXECUTIVE PROCEDURES OF THE RULES OF ITEM (2) OF
ARTICLE (57) CONCERNING THE INCREASE OF
OWNERSHIP PER PERSONE FOR 5% OF
THE BANK CAPITAL**

- A) Circular No. (2/BS/154/2004) concerning the Executive Procedures for the Rules of Item (2) of the Revised Article (57) of Law No. (32) of the year 1968.
- B) Circular No. (2/BS/171/2004) concerning the mechanism for implementing the rules of item (2) of the revised Article (57) of Law No. (32) of the year 1968 in connection with all the parties concerned with the rules of the mentioned item.

GOVERNOR

*Safar 16, 1425
April 6, 2004*

THE CHAIRMAN,

**Circular No. (2/BS/154/2004) To All Local Banks
Regarding The Executive Procedures for the Rules of Item (2)
of the Revised Article (57) of Law No. (32) of the year 1968**

We would like to advise you that, based on the rules of Item (2) of Article (57) of Law No. (32) of the year 1968 concerning Currency, Central Bank of Kuwait and the Organization of Banking Business, as revised by law No. (28) of the year 2004, the Central Bank Board of Directors passed at its meeting of 4/4/2004 a resolution on the executive procedures regulating the rules of the subject article. A copy of the said resolution is attached hereto.

As to the mechanism for following up compliance with the rules of the subject article, the Central Bank of Kuwait Board of Directors has approved the following controls:

- 1) Local banks have to supply to Central Bank of Kuwait the data on their shareholders (natural and legal persons) whose percentage of ownership – whether direct or indirect – exceeds 5% of the capital of the bank. The data is to be supplied on the attached form on a quarterly basis (March, June, September, December). The statement on the cases existing before the effective date of law No. (28) of the year 2004 (i.e. 15/3/2004) must be submitted within one week from the above date.

The following rules must be observed:

- A- The data has to be drawn from the banks shareholders registers and the records of Kuwait Clearing Company. The statement should include all data on the investors in portfolios managed by third parties and own shares in the capital of the bank. In preparing this statement, the bank has to observe the rules and regulation issued by the Central Bank

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A) Circular No. (2/BS/154/2004) concerning the Executive Procedures for the Rules of Item (2) of the Revised Article (57) of Law No. (32) of the year 1968.

in connection with defining the concept of indirect ownership. The bank has also to ascertain by all available means the cases of indirect ownership, including the procedure of obtaining declarations from every shareholder whose percentage of ownership exceeds 1%, whereby the shareholder undertakes to disclose all the parties interrelated with him (in accordance with the above mentioned rules and regulations). Banks shall be responsible for ascertaining the accuracy and correctness of the data and information disclosed by the shareholder in this regard.

- B- Banks have to notify the Central Bank of Kuwait, immediately upon occurrence, of the cases where government bodies and entities of attached and independent budgets come to own more than 5% of the capital of the bank. Such cases do not require the prior approval of the Central Bank.
- 2) As for the cases where the ownership of anyone single person exceeds 5% for any reason whatsoever (against settlement of debt, testament, inheritance, etc....) , each of the respective person and the bank must provide Central Bank of Kuwait with all information and data relevant to such acquisition immediately upon completing its procedures, using the above mentioned form. In this regard, both the respective person and the bank shall be committed to dispose of the excess over the established percentage of ownership within the period defined in the attached resolution of the Central Bank Board of Directors.
 - 3) Banks have to comply with the rules of Item (2) of the revised Article (57) of Law No. (32) of the year 1968, which provide that the owner of the shares shall not avail of the excess to the established percentage of ownership in relation to the voting rights in the general meeting and in the management of the bank, unless the Central Bank's approval of such excess has been issued.
 - 4) When submitting the nomination forms for the candidates to the board membership of any bank pursuant to the rules of Article (68) of Law No. (32) of the year 1968 and the Central Bank Board of Directors resolution in this regard, banks must ensure that Central Bank's approval has been obtained for the excess to the 5% ownership percentage for such candidates. A special item in the Board Membership Nomination Form must be allocated for the candidate to mention the percentage of his ownership (whether direct or indirect).

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Furthermore, your bank has to comply with the rules of the Central Bank of Kuwait Board of Directors resolution and the controls applied with regard to the mechanism of following up compliance with the rules of item (2) of the revised article (57) of Law No. (32) of the year 1968.

With my best wishes,

SALEM ABDUL AZIZ AL SABAHI

**The Central Bank Board of Directors Resolution Regarding
The Executive Procedures for the Rules of Item (2) of
Article (57) of Law No. (32) of the year 1968 As revised
by Law No. (28) for the year 2004**

Item (2) of Article (57) of Law No. (32) of the year 1968 concerning Currency, the Central Bank of Kuwait and the Organizational Banking Business, as revised pursuant to Law No. (28) of the year 2004, provides as follows:

“Unless by prior authorization of the Central Bank, the direct or indirect ownership by any single natural person or legal entity in a Kuwaiti bank shall not exceed five percent of the bank’s capital. Government bodies and bodies with independent or attached budgets are exempted from these provisions. Where single ownership exceeds the above percentage for any reason whatsoever, the concerned natural person or legal entity shall dispose of the excess within the period defined by the Central Bank.

Violation of this provision results in the shareholder not availing of the excess equity in regard to voting rights in the bank’s General Assembly and in directing the bank.

The Board of Directors of the Central Bank shall lay down the bases and rules defining the concept of indirect ownership. The provisions of this Article do not apply to cases existing before the application of this Law.

Based on the above, the Central Bank of Kuwait Board of Directors has resolved as follows at its meeting of 4/4/2004:

First: The basis and rules that define the concept of indirect ownership, as per the rules of item (2) of Article (57) of Law No. (32) of the year 1968 and its amendments:

For the purpose of implementing the rules of Article (57) of Law No. (32) of the year 1968 and its amendments, the concept of indirect ownership shall be defined as follows: “the ownership by parties economically or legally interrelated with the investor, whether the investor is a natural person or a legal entity, and whether such interrelation is by way of common ownership, common directorship or interrelated interests”.

32- EXECUTIVE PROCEDURES OF THE RULES OF ITEM (2) OF ARTICLE (57) CONCERNING THE INCREASE OF OWNERSHIP PER PERSON FOR 5% OF THE BANK CAPITAL

A) Circular No. (2/BS/154/2004) concerning the Executive Procedures for the Rules of Item (2) of the Revised Article (57) of Law No. (32) of the year 1968.

Common ownership or directorship means every economic or legal interrelation through ownership or directorship. The following cases are considered as common ownership and directorship:

1. The investor's ownership in the shares of a bank in his personal capacity, or as the natural guardian of his minor children.
2. The ownership of sole proprietorships owned by the investor and the companies in which the investor is a joint partner.
3. Financial companies, in which the investor owns more than 50% of the capital, or has control thereof, as control is defined in the International Accounting Standards.
4. Any other parties having economic or legal relationships with the investor, allowing him to have control, as control is defined in the International Accounting Standards.

Interrelated interests mean every interest granting a party the power to control the other party or to exercise significant influence thereon when making financial and operating decisions, or the alliance of a group of parties, such as:

- 1- The relationship between the board members of the company applying for ownership and the major owners and shareholders therein (i.e. those who own 5% or more of the capital of the investing company).
- 2- Holders of key managerial positions (the Chief Executive Officer, his deputies and assistants, executive officers and the like).
- 3- Subsidiaries in which the applicant company owns 50% of the capital, or has control thereof.
- 4- Sister companies in which the applicant company holds 20% of the capital, and exercises a significant influence thereon .
- 5- An announced or non-disclosed alliance between one party and another or among a group of parties.

32- EXECUTIVE PROCEDURES OF THE RULES OF ITEM (2) OF ARTICLE (57) CONCERNING THE INCREASE OF OWNERSHIP PER PERSONE FOR 5% OF THE BANK CAPITAL

A) Circular No. (2/BS/154/2004) concerning the Executive Procedures for the Rules of Item (2) of the Revised Article (57) of Law No. (32) of the year 1968.

Second: The requirements to be satisfied by the investor applying for Central Bank's approval of the excess of his ownership percentage to the established 5% limit of the capital of any Kuwaiti bank, as per the revised text of article (57) of Law No. (32) of the year 1968:

Any person, whether natural or legal, Kuwaiti or non-Kuwaiti (other than government bodies and entities of attached and independent budgets) who desires to acquire a percentage exceeding 5% of the capital shares of any Kuwaiti bank, has to submit to the Central Bank of Kuwait, 60 days before the acquisition transaction (this period will be calculated from the date of supplying the complete required data and information), **an application specifying therein all data relating to the acquisition transaction and the percentage of the capital shares of the bank intended to be acquired.** The following documents must be attached to the application:

- 1- The CV and personal data of the applicant (name, address, nationality, business, legal status, educational qualifications and practical experience of the natural person, etc.). and some information relevant to the other personal aspects , using a form to be designed for this purpose.
- 2- A declaration containing the names of all other parties owning capital shares in the respective bank and having interrelation with the applicant for ownership, whether such interrelation is by way of common ownership, common directorship or interrelated interests (in accordance with the basis and regulations established by the Central Bank Board of Directors for defining the concept of indirect ownership). The declaration should contain complete details on the capital shares of those parties, such as the number of shares, their ratio to the capital of the bank and the date and the method of acquisition (during incorporation stage – public subscription – purchase from secondary market – acquisition against debt – inheritance – testament, etc...). Complete details are also to be provided on the interrelated parties (name - address – nationality – business, etc...).

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The declaration must also contain a disclosure on the cases of alliance between the applicant for ownership and any other party, whether such alliance is announced or not. In case no such alliances exist, the applicant should submit a declaration to this effect. The declaration should also include an undertaking from the applicant for ownership to notify Central Bank of Kuwait of any alliances that may arise in the future between him and other parties.

- 3- With regard to the legal person, data approved by the external auditor pertaining to the financial position must be submitted for the last three financial years as approved by the regulatory body (if available).
- 4- The applicant for ownership must submit a detailed study explaining the objective behind acquisition, information on the structural (financial and administrative) changes intended to be made in the respective bank which shares are desired to be acquired, and the justifications for such changes.
- 5- Any other information requested by Central Bank of Kuwait upon studying each case apart.

Third: The period during which the investor must dispose of the excess to the established maximum limit of ownership (5%) for any single person in the capital of any Kuwaiti bank:

- 1- In cases of unintentional excess where its not possible to obtain Central Bank's prior approval, such as the cases of acquisition resulting from settlement of debt, testament or inheritance, the excess owned by a single person (directly or indirectly) in the share capital of any Kuwaiti bank in violation of the rules of item (2) of Article (57) of Law No. (32) of the year 1968 and its amendments, must be disposed within 2 years from **the acquisition date**. During the said period, the owner may apply to the Central Bank requesting its approval to exceed the 5% limit of ownership in the capital of the bank, as per the established regulations. In such case, the owner shall be committed to dispose of the amount of excess during the above mentioned period if Central Bank's approval is not granted.

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2- For other cases of excess, such as those resulting from purchase, merger or other transactions, the amount of excess to the established limit of ownership (direct or indirect) for anyone single person in the capital of any Kuwaiti bank, must be disposed of **within one year from the date of acquisition.**

In all cases of excess (whether intentional or unintentional), the owner of the shares is prohibited from availing of the amount of excess in relation to the voting rights at the General Assembly, or in the management of the bank, during the period granted for disposing of such excess.

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Statement of Shareholders With A Share Exceeding 5% of the Capital of the Bank

Bank :

Name of Investor:

No. of issued capital shares:

Investors and interrelated parties (1)	Legal status	Date of acquisition (2)	Method of acquisition (3)	No. of held shares	Ownership percentage	Date of Central Bank's approval (4)	Remarks (5)
First: Data on direct ownership :							
Second : data on indirect ownership (6) :							
a- Names of interrelated parties through common ownership and directorship:							
1-							
2-							
3-							
Total (A)							
B- Names of parties with interrelated interests							
1-							
2-							
3-							
Total (B)							
Total (A+B)							
Total direct and indirect ownership (first +second)							

- 1) The data has to be drawn from the banks shareholders registers and the records of Kuwait Clearing Company. The statement should include all data on the investors in portfolios managed by third parties and owning shares in the capital of the bank.
- 2) Date of Acquiring more than 5% of the issued capital of the bank .
- 3) Method of acquisition (during incorporation stage – public subscription – purchase from secondary market – acquisition against debt – inheritance – testament – other).
- 4) Date of approving the ownership of more than 5% of the issued capital of the bank.
- 5) The following cases shall be reported in the “Remarks” column :
 - Cases of ownership existing before the effective date of the amendment of The Law (15/3/2004) , and which are exempted from the prior approval of the Central Bank of Kuwait (ownership by government bodies or entities of attached and independent budgets). The date of notifying the Central Bank of such cases must be mentioned.
 - Cases of direct and indirect ownership of anyone single person exceeding the 5% limit, and which require disposal of the amount of excess during the period specified by the Central Bank. The remaining portion of the said period must be specified.
- 6) The bank has to observe the rules and regulation issued by the Central Bank in connection with defining the concept of indirect ownership. The bank has also to ascertain by all available means the cases of indirect ownership, including the procedure of obtaining declarations from every shareholder whose percentage of ownership exceeds 1%, whereby the shareholder undertakes to disclose all the parties interrelated with him (in accordance with the above mentioned rules and regulations). Banks shall be responsible for ascertaining the accuracy and correctness of the data and information disclosed by the shareholder in this regard.

GOVERNOR

*Thu Alqida 2, 1425H
December 14, 2004*

THE CHAIRMAN,

**Circular No. (2/BS/171/2004)
to All Local Banks**

This has reference to Central Bank of Kuwait circular of 6/4/2004 and the attached copy of Central Bank of Kuwait Board of Directors resolution passed at its meeting of 4/4/2004 regarding the executive procedures regulating the rules of item (2) / Article (57) of Law No. (32) of the year 1968 amended by law No. (28) of the year 2004, which provides that “the ownership of anyone single person in any Kuwaiti bank may not exceed 5% of the capital of the bank without the prior approval of Central Bank of Kuwait”.

The above mentioned circular included the regulations for the mechanism approved by Central Bank of Kuwait Board of Directors for following up compliance with the rules of the subject item No. (2), including banks obligation to provide Central Bank of Kuwait with the data on their shareholders whose ownership percentage exceeds 5% of the capital of the bank, the manner and periodicity of preparing these data and supplying them to Central Bank of Kuwait, and banks commitment to prevent a shareholder from availing of the amount of excess in relation to voting rights and management of the bank, if the Central Bank’s prior approval is not obtained.

Further to the above, Central Bank of Kuwait Board approved at its meeting of 12/12/2004 a mechanism for implementing the rules of item No. (2) referred to above. This mechanism divides the investors in Kuwaiti banks capitals into 3 segments :

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- First Segment: Owners of more than 5% upto less than 10%:

The investor who owned a percentage within the above range before the effective date of Law No. (28), or after its effective date with the approval of the Central Bank, is permitted to re-instate the percentage of his ownership to its previous level in case it drops within 1% of the capital, without the need for Central Bank of Kuwait approval. In case ownership drops by more than 1% of the capital, Central Bank of Kuwait approval must be obtained for reinstating ownership to its previous level.

- Second Segment: Owners of 10% upto less than 25%:

The mechanism for this segment is similar to that of the first segment, except for the permission for the investor to re-instate his ownership to its previous level, without the need for Central Bank of Kuwait approval, if the drop does not exceed 2% of the capital .

- Third Segment: Owners of 25% and above :

The mechanism for this segment is also similar to that of the first segment, except for the permission for the investor to re-instate his ownership to its previous level, without the need for Central Bank of Kuwait approval, if the drop does not exceed 3% of the capital.

Kindly take the necessary actions in observance of the above, and please advise your shareholders of the mentioned mechanism.

With my best wishes,

SALEM ABDUL AZIZ AL SABAHI