

Chapter One

Subjecting Exchange Companies to the Supervision of the Central Bank of Kuwait (CBK), and Rules and Regulations for Establishment of New Exchange Companies

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Ministerial Resolution
Subjecting the Exchange Companies to the Supervision of the Central Bank of Kuwait (CBK)

Minister of Finance

- Having reviewed Articles Nos. (55), (59) and (90) of Law No. (32) of 1968 concerning Currency, Central Bank of Kuwait and Organization of the Banking Business amended by the Law No. 130 of 1977,
- And based on the Resolution of the Central Bank of Kuwait Board of Directors

Resolved:

Article (1)

An Exchange Company is any company licensed to practice currency exchange business, e.g. buying and selling currencies, traveler cheques, drafts, trading in precious metals, cheque collection and foreign drafts.

Article (2)

Exchange Companies are not entitled to practice any of the banking profession operations such as receiving cash deposits and saving deposits, opening current accounts, accepting securities deposits, renting safe boxes, opening letters of credit/documentary letters of credit, issuing letters of guarantee, commercial paper discounts and lending.

Article (3)

Exchange Companies may not represent foreign banks or banking institutes in Kuwait, or carry out banking activity inside Kuwait for the account of such banks and institutions.

Exchange Companies may not enter into management agreements with foreign banks or banking institutes.

Article (4)

The Exchange Companies should keep regular accounts setting out their operations, activities and actual financial positions, and maintain the required books, records and documentation appropriate to the nature of their activities.

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Article (5)

Companies licensed to practice currency exchange business together with other commercial, real estate or industrial activities should take all needful measures to establish an independent company for practicing currency exchange activity, provided this must be accomplished within a period not exceeding one year from the effective date of this resolution.

Article (6)

Upon transference of any application to establish an exchange company from the Ministry of Commerce to the Central Bank of Kuwait, the latter should make sure of the financial market need to establish such a company, the company's capital is sufficient for its activity, company's objectives are confined to currency exchange business, and there is an actual need for a foreign partner in case the company to be established shall have non-Kuwaiti partners.

Article (7)

the Central Bank of Kuwait should keep a register for the exchange companies in which the following data shall be recorded:

- 1) Registration number and date.
- 2) Company's name and address.
- 3) Legal nature of the company.
- 4) Date of establishment.
- 5) Capital.
- 6) Reserves.
- 7) Names of members of the Board of Director or the persons entrusted with the management of the company.
- 8) Names of the joint partners if the company is a partnership or a limited partnership company.
- 9) Names of the foreign partners in case of the company has non-Kuwaiti partners.
- 10) Branches.
- 11) Any other information that the Central Bank of Kuwait may require addition thereof the register.

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12) Any change to the foregoing data.

Article (8)

Applicants should file their requests for registration to the Central Bank of Kuwait using the form designated for this purpose, where an official extract of the company's memorandum and articles of association together with the documentation evidencing the information mentioned in the registration application.

Article (9)

An exchange company may not initiate its business before registration thereof in the register of exchange companies with the Central Bank of Kuwait.

Exchange companies operating at time of issuing this order should submit their registration applications within the time-band determined by the Central Bank of Kuwait.

Article (10)

Exchange companies should notify the Central Bank of Kuwait of any intended amendment to memorandum/articles of association or any of the information recorded in the register. No amendment shall be valid unless it is approved by the Central Bank of Kuwait as per provisions of Article No. (61) of the Central Bank of Kuwait Law.

Article (11)

Pursuant to the provisions of Article No. (63) of the Central Bank of Kuwait Law, any exchange company may be deleted from the register of exchange companies in the following cases:

- a) Upon the company's request.
- b) If the company has not started its activity within one year following the notification of its registration in the register of the exchange companies.
- c) Bankruptcy of the company.
- d) The company's merger with another company.
- e) If the company discontinued its business or its financial position is exposed to risk.

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Article (12)

Taking into consideration the provisions of the Commercial Companies Law, any exchange company deleted from the exchange companies' register shall be liquidated.

Article (13)

Pursuant to provisions of Article (71) of the Central Bank of Kuwait Law, the Central Bank of Kuwait may provide the exchange companies with instructions deemed necessary to regulate their businesses and achieve the credit and monetary policies adopted by the Central Bank of Kuwait.

Article (14)

Pursuant to the provisions of Article (78) of its Law, the Central Bank of Kuwait may set down inspection regulations in respect of the exchange companies to ensure integrity of their activities and financial positions and accuracy of data and information submitted to the Central Bank of Kuwait, in addition to any other matters deemed necessary to be controlled.

Article (15)

Pursuant to the provisions of Article (81) of the Central Bank of Kuwait Law, exchange companies are required to file their balance sheets and the profits and losses accounts to the Central Bank of Kuwait within three months from the end date of each company's fiscal year.

Article (16)

Pursuant to the provisions of Article No. (82) of its Law, the Central Bank of Kuwait may request from the exchange companies the data, statements and statistical information deemed necessary by the Central Bank of Kuwait to discharge its responsibilities in terms of oversight over such companies.

Article (17)

the Central Bank of Kuwait is entitled to impose the penalties enumerated in Article (85) of the Central Bank of Kuwait Law on any exchange company when that company breaches the provisions of its memorandum/articles of association or the Central Bank of Kuwait instructions issued to the exchange companies, or if the

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exchange company did not submit the required data and information or submitted misleading information.

Article (18)

This order shall be published in the Official Gazette and comes into effect from date of publishing thereof.

Issued on 16 Jumada Al-Akhar 1404 A.H., corresponding to 19 March 1984

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Explanatory Note
To the Ministerial Order Subjecting the Exchange Companies to the Supervision of the Central Bank of Kuwait (CBK)

Exchange companies are engaged in business that affects the inflows and outflows. Effects on the cash flow volumes multiplies in the countries, where no control exists over the foreign transfers, such as Kuwait. As such, any monetary policy that addresses liquidity and foreign transfers must take into consideration the currency exchange business. In addition, currency exchange business is closely related to banking business because banks, beside the other activities, also carries out currency exchange. This close relation between the currency exchange business and the banking business, where the latter should be carried out solely by banks, may attract some exchange companies to carry out certain activities that should be practiced only by banks as per the law.

Therefore, the Central Bank of Kuwait oversight over the exchange companies is important to regulate and develop the currency exchange business that should not involve any activity not prescribed for it or extend to any activity practiced by banks.

In many jurisdictions, there are applicable legislation for the currency exchange business and the exchange companies are regulated by the central bank in the relevant jurisdiction. In the State of Kuwait, though the currency exchange business has been existing for a long time, there is no separate law to regulate that business. The Ministry of Commerce & Industry (MOCI), being the competent authority, issues the license necessary for practicing the currency exchange business. Sometimes, the mentioned license may cover some other commercial and real estate activities in addition to currency exchange. Recently, some commercial and industrial companies obtained licenses to open branches for practicing currency exchange activities.

the Central Bank of Kuwait's role so far is limited to review the objectives of the new exchange companies when their memoranda of association are transferred to it by MOCI. Recently, the Central Bank of Kuwait conducted its inspection on some exchange companies in accordance with Article 59 of the Central Bank of Kuwait Law to ensure that those companies have not practices any unlicensed activities. The said inspection revealed that many exchange companies have been practicing banking activities.

the Central Bank of Kuwait, for several reasons, realizes the necessity of subjecting the Exchange Companies to its supervision to obtain the data and information about

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the volume of the outward cash transfers through the Exchange Companies and the impact thereof on the local liquidity. Such supervision shall enable the Central Bank of Kuwait to permanently monitor the Exchange Companies' activities and their compliance with the limitation and scope of the exchange business, and ensure that the Exchange Companies are not involved in any banking activity. Besides, the Central Bank of Kuwait's supervision on exchange companies shall also enable it implement a monetary policy aimed at finding coordination and integration between the work of banks and investment companies, which are subjected to the supervision of the Central Bank of Kuwait, and the work of exchange companies. In addition, this may provide the Central Bank of Kuwait with the opportunity to direct instructions and guidance to exchange companies in order to develop and improve their activities.

From an objective perspective, the resolution of the Minister of Finance to subject the exchange companies to the Central Bank of Kuwait's supervision was based on the provisions of Articles 55 and 59 of the Central Bank of Kuwait Law, where the forms, substance and objectives thereof were taken into account. Article 55 authorizes the Central Bank of Kuwait's Board of Directors, subject to approval of the Minister of Finance, to subject financial companies (including exchange companies) or some thereof to all or some of the provisions of Chapter Three of the Central Bank of Kuwait Law or to any supervisory rules that are consistent with the nature of these companies' activities laid down by the Central Bank of Kuwait's Board of Directors. Article 55 also stipulates that the Central Bank of Kuwait's opinion regarding the memorandums and articles of association of financial and investment companies, or any amendments thereto, shall be taken into consideration to ensure the economic feasibility of these companies.

In addition, Article 59 of the Central Bank of Kuwait Law prohibits such institutions not listed in the register of banks (banks) from practicing the banking business or using, in their commercial address or in their publications or advertisements, the titles "bank", "banker", "owner of a bank", or any other title using of which may mislead the public about the nature of the institution. The referred Article permits the Central Bank of Kuwait, if necessary and by all ways it deems appropriate, to ensure whether any particular company or a proprietorship violates this order of his prohibition.

In application of Article 55, the resolution of the Minister of Finance subjects only the exchange companies with the forms of CBK regulated entities to the CBK's supervision but does not apply to the individual exchanger having their own proprietorships. Therefore, issuing a law to regulate the exchange business in a

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comprehensive manner, is worthy of consideration. Until such law is promulgated, coordination between the Ministry of Commerce & Industry and the Central Bank of Kuwait is imperative and necessary to achieve the supervisory principles and objectives in accordance with the resolution of the Minister of Finance concerning this Note.

Article 1 of the Minister of Finance's resolution stipulates that the regulated exchange companies are those licensed to carry out exchange activities, such as the works mentioned just to name but a few, being key exchange businesses. The door remains open to other businesses that the Central Bank of Kuwait may decide as an exchange business. Article 2 stipulates that exchange companies may not practice banking business in accordance with Article 59 of the Central Bank of Kuwait Law.

Article 3 states that exchange companies may not represent banks or foreign banking institutions in the State of Kuwait, or lead a banking activity for these banks and institutions. This is a form of codifying the policy, which prohibited exchange companies from representing foreign banks, or practicing banking activities for these banks in the State of Kuwait.

The second paragraph of Article 3 prohibits exchange companies from entering into contracts for management of banks or foreign banking institutions so that there is no room for these banks to be present in the State of Kuwait in disguise.

Article 4 stipulates that exchange companies shall maintain the books and records necessary for their activities and have regular accounts setting out their operations and activities. Article 5 addresses the issue of companies licensed to engage in exchange business, in addition to practicing other commercial, real estate or industrial activities. The same Article states that these companies should establish independent firms to carry out the exchange business so that the Central Bank of Kuwait could exercise its supervision over exchange companies that have its own independent identity, and their activities would not be mixed up with other businesses'. The concerned companies had been given one year to fulfill this requirement.

Article 6 specifies the connotation of the supervisory role undertaken by the Central Bank of Kuwait in establishing new exchange companies, ensuring the feasibility of establishing the company and appropriateness of capital, and whether a foreign partner is needed if non-Kuwaitis may contribute to company's capital. The application of this provision in a useful and effective manner requires coordination and cooperation between the Ministry of Commerce & Industry, being the entity

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receiving applications for establishing exchange companies and licenses, and the Central Bank of Kuwait as the supervising entity having the information on the conditions of these companies and the positions of the financial market.

Articles 7 and 8 address the maintenance of a register for exchange companies with the Central Bank of Kuwait, the data to be recorded therein, and the registration request submitted by the companies along with the enclosed documents.

Article 9 stipulates that any new exchange company shall not operate unless it is registered in the Register of Exchange Companies with the Central Bank of Kuwait. Companies operating at the time of issuance hereof should apply for registration within the period specified by the Central Bank of Kuwait. Registration of any exchange company in the aforesaid Register will require that its position be in line with the rules and provisions stipulated hereunder.

In accordance with Article 10 hereof, exchange companies are subjected to the provisions of Article 61 of the Central Bank of Kuwait Law, whereby these companies should notify the Central Bank of Kuwait of any amendment they intend to make in their memorandum of association, article of association or data recorded in the Register. Any amendment shall not be effective until after the approval of the Central Bank of Kuwait in order to verify the validity and legality of required adjustments.

Articles 11 and 12 stipulate the cases in which an exchange company may be removed from the Register. When the company is delisted, it shall be classified in accordance with the provisions of the Companies' law.

Article 13 specifies the Central Bank of Kuwait's authority to produce the necessary instructions for exchange companies to regulate their operations, and ensure the proper application of the credit or monetary policy adopted by the Central Bank of Kuwait.

Article 14 stipulates that the Central Bank of Kuwait, according to Article 78 of its Law, shall establish a system for inspection over exchange companies in order to ensure the integrity of their activities and financial positions, that they have not departed from their specific objectives, and accuracy of the information and data sent by these companies to the Central Bank of Kuwait.

Articles 15 and 16 specify the documents, data, statements and statistical information that the Central Bank of Kuwait shall define and request from the exchange

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companies in order to carry out its duties in terms of supervision over these companies.

Article 17 stipulates that the Central Bank of Kuwait has the authority, as provided in Article 85 of the Central Bank of Kuwait Law, to impose the appropriate penalties on any exchange company that commits any of the offenses stipulated in Article 17.

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Date: Safar 10, 1436

Corresponding to: December 2, 2014

The General Manager,

Circular to all Exchange Companies¹

With the increasing importance of the role undertaken by the exchange companies engaged in cash/fund transfers, and in line with the actions taken by the Central Bank of Kuwait (CBK) with the aim to strengthen the supervisory controls over the exchange companies' business that should fulfill a set of standards and requirements commensurate with the regulatory developments, promote the sound practices in these companies' business and improve the performance of this sector, which is considered an important pillar of the financial system in the country, the Central Bank of Kuwait's Board of Directors has approved, in its session held on 21/10/2014, a set of rules and regulations related to the establishment of the exchange companies and the supervision over their activities such as fixing the minimum capital requirements and the requirements for qualifying the key executive positions in these companies.

According to this set of rules and regulations, exchange companies currently operating and registered in the Central Bank of Kuwait's Register of Exchange Companies must meet the relevant rules and regulations within an appropriate period of time during which such companies should regulate their positions in the light of the related requirements of these rules and regulations as follows:

First: Increase of the minimum capital requirements to KD 2 million: exchange companies whose capital is less than this amount, **must provide us with their plan to increase their capital to KD 2 million.** The company can use the net annual realized profits and its voluntary reserves to reach the required threshold.

Second: Qualifying the executive positions: These regulations relate to the positions that exchange companies have to fill if such positions are vacant. Such regulations aim to strengthen the internal control systems and ensure compliance by the exchange companies with the laws, regulations and instructions governing their activities. These positions are:

¹ The circular dated 06/01/2015 included under Item No. (4) of this chapter relates to Extension of the Deadline to Provide CBK with the Time Plan for regulating Conditions of Exchange Companies.

(2) *Circular concerning Issuance of a Set of Rules and Regulations related to the Establishment of Exchange Companies and the Supervision over their activities, which is defining the Minimum Capital Requirements and Qualifying Key Executive Positions in these Companies.*

- (1) **Head of Internal Audit Unit (Internal Auditor):** should hold a university degree in any of accounting, finance, economics, administrative science or banking with an experience of not less than 3 years in internal audit.
- (2) **Compliance Officer:** should hold a university degree in any of accounting, finance, economics, administrative science or banking with an experience of not less than 3 years so that he/she would be qualified to accomplish the assigned tasks, as required by the Law of Combat of Money Laundry and Terrorism Financing, the relevant ministerial resolutions and the Central Bank of Kuwait's instructions issued in this respect.
- (3) **Deputy General Manager:** This position is optional for the company. A company that is willing to appoint a deputy general manager must take into consideration that the candidate of this position should meet the conditions that he/she should hold a university degree in any of accounting, finance, economics, administrative science or banking with an experience of not less than 7 years in the exchange business, banking, investment or finance in non-administrative banking or financial positions.

Third: A recent criminal record of applicants issued by the Ministry of Justice, Public Prosecution, Criminal Enforcement Prosecution and International Cooperation: The Company must provide us with the required criminal records of the candidates along with a copy of their Civil IDs.

Thereupon, your company should provide us, **within a maximum period of one month from the mentioned date**, with the timeframe required to regulate its conditions in accordance with the aforesaid rules and controls, taking into account the appropriate period for fulfilling these rules and regulations.

Best Regards,

Manager, On-Site Supervision Department
Waleed M. Al-Awadhi

(2) *Circular concerning Issuance of a Set of Rules and Regulations related to the Establishment of Exchange Companies and the Supervision over their activities, which is defining the Minimum Capital Requirements and Qualifying Key Executive Positions in these Companies.*

The Rules and Regulations approved by the Central Bank of Kuwait' s Board of Directors in its Meeting held on 21/10/2014, as amended on 23/12/2014, Concerning Establishment of Exchange Companies

Exchange companies are subject to the supervision of the Central Bank of Kuwait (CBK) in accordance with the provisions of the Ministerial Resolution No. 19/3/1984 Subjecting the Exchange Companies to the Supervision of the Central Bank of Kuwait based on the provisions of Article 55 of Law No. 32 of 1986 concerning Currency, the Central Bank of Kuwait, and the Organization of the Banking Business and its Amendments allowing the Central Bank of Kuwait's Board of Directors, subject to approval of the Minister of Finance, to subject financial companies (including exchange companies) to all or some of the provisions of Chapter 3 of the said law, or to any supervisory rules that are consistent with the nature of these companies' activity, as laid down by the Central Bank of Kuwait's Board of Directors. The aforementioned Article stipulates that the Central Bank of Kuwait's views on the memorandum of association and articles of association or amendments thereto, of the financial companies should be obtained to ensure the economic feasibility of establishing these companies. The following are the rules and regulations to be followed for the establishment of exchange companies, which are subject to the supervision of the Central Bank of Kuwait.

First: Applications for the establishment of exchange companies shall be submitted to the Ministry of Commerce & Industry along with:

- a) Feasibility study for establishing a new company.
- b) Draft memorandum of association and articles of association of the company, including:
 - (1) The objectives of the company.
 - (2) The required capital of the company (not less than KD 2 million, fully paid).
- c) A recent criminal record of each partner and the persons nominated to manage the company (including the board members in case the company takes the form of a shareholding company) issued by the Ministry of Justice, Criminal Enforcement Prosecution and International Cooperation, to verify that no one has been sentenced to a crime of honor and fidelity (The required criminal record should be similar to that requested in accordance with the provisions of Article (68) of Law No. 32 of 1968 and its amendments), in addition to the supporting

(3) *Regulations for the Establishment of Exchange Companies approved by the Board of Directors of CBK in its meeting held on 21/10/2014.*

documents of professional competence and experience of all or some of the partners (managers) in one of the institutions or companies with banking and financial nature such as banks, investment companies, finance companies and exchange companies.

Second: The Ministry of Commerce & Industry, having verified applications for establishment in accordance with the provisions of Chapter 1, shall forward such applications to the Central Bank of Kuwait, which, in return, shall examine the mentioned enclosures taking into consideration the market's need of a new exchange company, and ensure that the company's objectives are commensurate with the provisions of the Ministerial Resolution subjecting exchange companies to the supervision of the Central Bank of Kuwait.

Third: If the application is approved, an initial approval is issued by the Central Bank of Kuwait valid for six months from its date so that the company's partners would proceed with the establishment procedures. If the mentioned period lapsed without establishing the company, the partners must submit a new application for establishment. The company shall provide the Central Bank of Kuwait, prior to expiry (at latest) of the initial approval, with a request for registration in the Register of Exchange Companies, which means that it has completed all the necessary procedures, or the related procedures taken so far, to assess the owners' seriousness towards completing the establishment procedures, and verify whether there are procedures that had been taken and whether it is difficult to reverse or postpone such procedures due to the expiry of the initial approval period. In the latter case, if the company's owners show the seriousness to complete the procedures of establishment, they may be permitted to proceed with the procedures until completion thereof (after the expiry of the initial approval period of six months), and consequently, they may reapply for registration with the Central Bank of Kuwait within another period of at latest three months from the expiry date of the initial approval period.

Fourth: During the period of initial approval, the company shall submit to the Central Bank of Kuwait the detailed information on the leading positions and their occupants, accompanied by degrees and experiences, as follows:

- **General Manager:** should hold a university degree in any of accounting, finance, economics, administrative science or banking with an experience of not less than 10 years in the exchange business, banking, investment or finance in non-administrative banking or financial positions, or hold a university degree with an experience of not less than 15 years in the aforesaid fields.

(3) *Regulations for the Establishment of Exchange Companies approved by the Board of Directors of CBK in its meeting held on 21/10/2014.*

- **Deputy General Manager (optional for the company):** should hold a university degree in any of accounting, finance, economics, administrative science or banking with an experience of not less than 7 years in the exchange business, banking, investment or finance in non-administrative banking or financial positions, or hold a university degree with an experience of not less than 10 years in the aforesaid fields.
- **Head of Internal Audit Unit (Internal Auditor)¹:** should hold a university degree in any of accounting, finance, economics, administrative science or banking with an experience of not less than 3 years in internal auditing.
- **Compliance Officer:** should hold a university degree in any of accounting, finance, economics, administrative science or banking with an experience of not less than 3 years so that he/she would be qualified to accomplish the assigned tasks, as required by the Law of Combat of Money Laundry and Terrorism Financing, the relevant ministerial resolutions and the Central Bank of Kuwait's instructions issued in this respect.

Provided that the company submits a recent criminal record of the candidate issued by the Ministry of Justice, Criminal Enforcement Prosecution and International Cooperation.

Fifth: Once it has completed preparation of its headquarter, appointed staff, prepared its opening budget, obtained the license from the Ministry of Commerce & Industry, got its memorandum and articles of association authenticated by the Ministry of Justice, the company may apply directly for registration in the Central Bank of Kuwait's Register of Exchange Companies as per the designated form to be obtained from the Central Bank of Kuwait. The following documentation should be attached with the registration application:

- a) The memorandum and articles of association after authentication.
- b) A copy of the license granted from the Ministry of Commerce & Industry.
- c) The opening budget approved by the auditor.

¹ According to the General Guidelines for the Exchange Companies' Internal Control Systems issued with CBK's Circular for Exchange Companies on 05/09/1999, exchange companies operating through three or more branches (including the head office) must establish an Internal Audit Unit in proportion to size, nature and areas of activity.

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- d) A certificate from the bank concerned with the balance stated in the budget representing the capital, net of establishment expenses and costs of preparing the company to practice the profession.
- e) An undertaking from the partners not to withdraw any amounts from the capital in any way or at any time.
- f) An explicit undertaking from the partners to comply with legislation, instructions and ministerial resolutions related to the activity of exchange companies, in particular those relating to combat of money laundering and finance of terror.

Sixth: Consequently, a decision by the Governor of the Central Bank of Kuwait to register the company in Register of the Exchange Companies shall be issued and published in the Official Gazette. The Ministry of Commerce & Industry and the concerned company shall be notified of the registration and the permission to start the activity. Henceforth, the Central Bank of Kuwait may begin its supervision over the company's activities.

Seventh: These rules and regulations shall be effective as of 21/10/2014 and the previous rules and regulations shall be canceled.

02/12/2014

(3) *Regulations for the Establishment of Exchange Companies approved by the Board of Directors of CBK in its meeting held on 21/10/2014.*

Date: Rabi' Al-Awal 15, 1436

Corresponding to: January 6, 2015

The General Manager,

“Circular to all Exchange Companies”

Further to the Central Bank of Kuwait’s circular issued on 02/12/2014 to all the exchange companies to provide us with the time plan required to regulate their conditions as set out in the rules and regulations concerning the minimum capital requirements and the requirements for qualifying the key executive positions, we would like to inform you that it was decided to extend the deadline for providing us with the time plan required as per the circular referred to above to end of February 2015.

Best Regards,

Manager, On-Site Supervision Department

Waleed M. Al-Awadhi

(4) *Circular concerning the Extension of the Deadline to Provide CBK with the Time Plan for regulating Conditions of Exchange Companies*