

Explanatory Note to the Ministerial Resolution regarding the Central Bank of Kuwait's Supervision over Exchange Companies

The exchange companies carry out business that have impact on the volume of cash flows to and out from the country. The impact of this businesses increases on the volume of cash flows in the countries in which outward remittances are not overseen, as in the State of Kuwait. Therefore, any monetary policy that addresses liquidity and outward remittances should consider the exchange business. In addition, the exchange business is close to the banking business, as foreign exchange activity is practiced by banks beside other activities. This close relation between exchange activities and banking business, which is legally practiced by banks only may drive the exchange companies to carry out certain activities that are categorized under the banking business they are not allowed to do.

Therefore, CBK oversight over those engaged in foreign exchange business is essential to rationalize and develop the exchange business, which should be limited solely to its identified activities save for those carried out by banks.

There are legislations in many countries regulating the foreign exchange business which is regulated by the central bank in the relevant country. In Kuwait, though the foreign exchange back rooted to several decades, there is no separate law regulating it. Alternatively, the Minister of Commerce & Industry, which is the competent authority, provides the license, which sometimes add commercial and real estate activities to foreign exchange. Recently, some commercial and industrial companies have applied to, and been provided with, licenses applied to open branches to carry out foreign exchange business.

The CBK role towards the exchange companies is so far limited to review the objectives of the new companies when their memoranda of association are referred to it by the Ministry of Commerce & Industry. In addition, the CBK has recently inspected on certain exchange companies, by virtue of Article 59 of its law, to ensure that they do not carry out banking activities they are not allowed to. The findings of inspections revealed that many inspected exchange companies carry out some banking activities.

The CBK believes, for several reasons, that the exchange companies should be supervised by it, as such supervision shall provide the CBK with the information and data on the amounts of outward remittances via the exchange companies and the impact of these remittances of the domestic liquidity, and will enable the CBK to be always informed that the exchange companies abide by the limits and scope of exchange business and do not practice banking activities. In addition, the CBK

supervision over the exchange companies shall enable the CBK implement monetary policy intending to provide coordination and integration between banking and investment business, which are regulated by the CBK, and the exchange business, and provide the CBK with the opportunity to promulgate instructions and guidelines to the exchange companies to improve and develop their activities.

In an objective way, the Minister of Finance's Resolution subjecting exchange companies to the CBK supervision is based on the provisions of Articles 55 and 59 of the CBK Law, taking into consideration the form, substance and objectives of these two articles. The provisions of Article 55 allow the CBK's Board of Directors, upon approval of the Minister of Finance, may subject the financial companies (including exchange companies) to all or some of the provisions of Chapter Three, or to any rules which the CBK's Board of Directors may draw up for purposes of supervision and which are in harmony with the nature of the activities of such companies. In addition, Article (55 stated that the opinion of the CBK shall be sought in respect of the Articles of Association and Memorandums of Agreement relating to financial and investment companies, or amendments thereto, in order to ascertain the economic viability of such companies.

Article (59) of the Central Bank Law stated that no institutions other than those registered in the Register of Banks (i.e. banks) are allowed to practice banking or use in their business addresses, publications or advertisements the terms: "bank, banker, bank owner" or any other wording the usage of which may mislead the public as to the nature of the institution. The said article authorizes the CBK, where necessary, to ascertain by all means it deems fit that no particular entity or individual firm violates this prohibition.

In applying the provisions of the abovementioned Article (55), the Minister of Finance's Resolution subjects only exchange companies to the CBK supervision, and do not apply to individuals engaged in foreign exchange business through their proprietorships. Therefore, promulgation of a law regulating the foreign exchange business, as a whole, must be considered. Until this law is issued and enacted, coordination between the Ministry of Commerce & Industry and the CBK is necessary to realize the principles and objections of supervision provided for under the mentioned Minister of Finance's Resolution.

Article (1) of the Minister of Finance's Resolution states that the regulated foreign exchange companies are any company licensed to practice foreign exchange businesses including but not limited to those specified as main foreign exchange business. However, other activities the Central Bank determines as foreign exchange business may be practiced.

Article (2) states that the foreign exchange companies may not practice any of the banking business as per the Provisions of Article 59 of the Central Bank Law.

Article (3) states that the foreign exchange companies may not represent any foreign bank or banking institution in Kuwait, or carry out banking activity inside Kuwait for the account of such banks and institutions.

The second paragraph in **Article (3)** prohibits foreign exchange companies from entering into management agreements with foreign banks or banking instantiations so that such banks would not disguise their existence.

Article (4) stipulates that the foreign exchange companies shall keep regular accounts of its operations and activities, and its actual financial positions, as well as the books and records appropriate to the nature of its activity.

Article (5) addresses the companies licensed to practice foreign exchange together with other trading, real estate or industrial activities. The said articles require these companies to take all the necessary actions to establish independent companies to be engaged in foreign exchange to enable the Central Bank regulated and oversee independent exchange companies whose activities do not include any other different activities. Those companies were given one year to do the same.

Article (6) provides for the supervisory role undertaken by the Central Bank in establishing new exchange companies so that the Central Bank ensures that establishment of the company is viable and the company's capital is proportionate, and whether there is a need for a foreign partner if so allowed. Implementation of this provision in a viable and effective manner requires cooperation and coordination between the Ministry of Commerce & Industry, which is the authority mandated to receive the applications for establishing foreign exchange companies and issue the licenses, and the Central Bank, which is the supervisory body of foreign exchange companies and had the information on the positions of these companies and conditions of financial markets.

Articles (7) and (8) require maintenance of a register with the Central Bank for foreign exchange companies, specify the information to be included therein, and address the applications for registration filed by the companies along with the required documentation.

Article (9) stipulates that no exchange company may practice its business unless it has been registered in the register of exchange companies with the Central Bank, and the exchange companies operating at time of issuing this resolution should file their registration applications within the period specified by the Central Bank.

Registration of any exchange company shall entail that the conditions of that company should be in line with the rules and provisions stated herein.

As per **Article (10)** of the Resolution, exchange companies are subject to the provisions of Article (61) of the Central Bank Law, whereby these companies are required to inform the Central Bank of any intended amendment to the memorandum or articles of association, or any information included in the register. Any such amendment shall not come into force unless approved by the Central Bank so that the Central bank ensures the validity of the intended amendments.

Articles (11) and (12) provide for the cases in which any foreign exchange company would be delisted from the register. If delisted, such company shall be liquidated as per the provisions of the Companies Law.

Articles (13) addresses the Central Bank's authority to issue the instructions it deems necessary to the foreign exchange companies in order to regulate their business, and to achieve the monetary and credit policy adopted by the Central Bank.

Article (14) stipulates that the Central Bank may, pursuant to the provisions of Article (78) of its Law, set down inspection regulations in respect of the exchange companies to ensure the integrity of their activities and financial positions, and accuracy of the data and information submitted to it.

Articles (15) and (16) enumerate the documents, data, statements and statistical information the Central Bank shall request from the foreign exchange companies to carry out its duties of supervision over them.

Article (17) provides for the Central Bank's authority to impose the penalties it deems appropriate, as stated under Article (85) of the Central Bank Law, on any exchange company that commits any of the violations mentioned under Article (17).