

Ministry of Finance
**Ministerial Resolution No. 38 of 2011 regarding the Organization of Central
Bank of Kuwait Supervision of Finance Companies**

The Minister of Finance having perused,

- The provisions of the Third Chapter of Law No. 32 of 1968 regarding Currency, the Central Bank of Kuwait and Organization of Banking Business, and the amendments thereto,
- Law No. 7 of 2010 regarding the Establishment of the Capital Markets Authority and Regulating Securities Activities, and its Executive Regulations.
- The Ministerial Resolution dated the 8th of January 1987 with respect to the Organization of Central Bank Supervision of Investment Companies, and the amendments thereto.
- Based on the Resolution of the Board of Directors of the Central Bank of Kuwait.

Resolved

Article (1)

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

Article (2)

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

- (A) Securities activities specified in the Law No. 7 of 2010 regarding the Establishment of the Capital Markets Authority and Regulating Securities Activity, and its Executive Regulations.

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. Broker in securities.
 5. Any activity deemed by the Capital Markets Authority as organized 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 of this resolution, and whose objectives include carrying out the securities activities, which are subject to the supervision of Capital Markets Authority as per the provisions of the aforesaid Law No. 7 of 2010 along with financing activities, and also for the investment companies whose objectives under their articles of association allow them to exercise some banking and foreign exchange activities for others along with securities and financing activities, supervision by the Central Bank of Kuwait over such companies shall be limited to the activities of financing, banking business and foreign exchange 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 Regulations.

Article (4)

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

Article (5)

No finance company may carry out any business unless it is registered in the Central Bank Register of Finance Companies.

Article (6)

Applications for the incorporation of finance 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 finance 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 non-cash 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 finance company to the Central Bank of Kuwait for its 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 finance company should submit to the Central Bank of Kuwait an application for registration in the Register of Finance 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 finance 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 particulars the Central Bank of Kuwait decides to be included in the register.
14. Any amendments to the aforesaid information.

Registration of the finance 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)

Investment companies, which are carrying out financing activities, as mentioned in Article (3) hereof, shall remain registered in the Register of the Investment Companies with the Central Bank of Kuwait existing at the time of promulgation of this resolution. The Governor of the Central Bank of Kuwait shall issue a resolution to identify the particulars that should remain in the register and the procedures for amendment thereof.

Investment companies whose objectives are limited to securities activities shall be deleted 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 finance companies and investment companies mentioned in Article (3) hereof should notify the Central Bank of Kuwait of any amendment they intend to make to their memorandum or articles of association.

In case the Central Bank of Kuwait provides its initial approval to 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 is made in the Register of Finance/Investment Companies.

And this must take place by virtue of a resolution issued by the Governor of the Central Bank of Kuwait.

As for amendments subject to inclusion in the register, which do not include any amendment in the memorandum or articles of association, it shall be sufficient to obtain the approval of the Central Bank of Kuwait on the requested amendment. Such amendments 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 of Kuwait.

Article (12)

In the light of the provisions of Article (68) of the aforesaid Law No.32 for 1968, any board nominee of a finance company, or persons holding senior executive positions in the company, requires the fulfillment of the following conditions not to have been adjudged guilty in an offence involving honesty or breach of trust, not to have been declared bankrupt, and to be of good conduct and reputation and to have adequate experience in the financial and economic affairs in compliance with the rules and regulations issued by the Board of Directors of the Central Bank of Kuwait.

Chairmen of finance companies' board of directors shall notify the Central Bank of Kuwait of the names of the nominees to the membership of that Board, thirty days prior to the date fixed 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 of Kuwait prior to appointment decision. The Board of the Central Bank of Kuwait shall have the right, within twenty one days from the date of its notification to object to the appointment of any such nominees under a resolution showing the relevant reason, for failure to fulfill the required conditions.

Such objection shall result in the exclusion of the nominee in question from the candidacy for the Board of Directors or from occupying any such positions, as the case may be. Nominees not notified to the Central Bank or candidates objected to by the Central Bank of Kuwait according to the provisions of this Article shall not be brought before the General Assembly of the concerned company.

The Board of Directors of the Central Bank may request from the Board of Directors of the concerned finance company the removal of any of those mentioned in the first paragraph, if those occupying these posts lose- during the time of their service any of the conditions mentioned in this article, or if the Board of Directors of the Central Bank of Kuwait sees in that measure the safeguard of the shareholders interests or the finance company's general

interest. If the removal does not take place, the Board of Directors of the Central Bank shall have the right to issue a resolution showing the relevant reason for the removal of any of the above mentioned from their posts, and make a relevant entry in the Register of Finance 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 finance company.

Article (13)

The Central Bank of Kuwait shall issue the systems, rules and controls that the finance companies should comply with, in particular those relating to the company's creditworthiness, liquidity and provisioning policy that should be maintained by the finance company to address any risk.

Article (14)

The Central Bank of Kuwait may fix for the finance companies the maximum amount of financing to be extended to any single customer, whether natural or juristic, in proportion to the finance company's capital in its comprehensive definition, as determined by the Central Bank of Kuwait, and the maximum limit of financing to be extended to the various economic sectors, and set conditions for loans and financing facilities extended by the finance company.

All finance companies are subject to the centralized risk system of the Central Bank of Kuwait.

Article (15)

The Central Bank of Kuwait may issue to the finance companies instructions it deems necessary to organize their business and realize the credit of monetary policies set by the Central Bank of Kuwait.

Article (16)

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

Article (17)

The finance companies should submit to the Central Bank of Kuwait the information, statements and statistical data required from them. They also should provide the Central Bank of Kuwait within three months from the end of their financial year their financial statements audited by their external auditors for approval before presenting them to the general assembly.

Article (18)

The Central Bank of Kuwait may ask the auditors of the finance companies to include in their annual reports the rules and means relied upon in verifying the existence of assets, the methods applied in their evaluation thereof, and the process of assessing outstanding liabilities..

The auditor, based on the request of the Central Bank of Kuwait, should sign any statements or accounting data sent to the Central Bank of Kuwait by the company it audits to the Central Bank of Kuwait in confirmation of correctness of these statements and data.

The auditors should highlight in their report whether the operations audited include any violations of the resolutions or instructions communicated to the company by the Central Bank of Kuwait.

Article (19)

If any finance company encounters financial difficulties that jeopardize the soundness of its financial position, the Board of the Central Bank of Kuwait may prohibit the company from carrying out certain operations, or imposing any other limitations on its business, or appoint a temporary controller over the company.

Article (20)

The investment companies mentioned in Article (3) of this resolution are subject to the systems, 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 the Central Bank of Kuwait may prohibit the company from carrying out new financing operations, or impose restrictions on carrying out certain financing operations.

Article (21)

The Central Bank of Kuwait may impose suitable penalties stipulated in Article (85) of the Law No. 32 of 1968 and its amendments, on any finance company or any investment company mentioned in Article (3) hereof that violates the provisions of these resolutions, its memorandum or articles of association, or the instructions or resolutions issued to it by the Central Bank of Kuwait, or does not submit the information and statements required or submits inaccurate statements.

Article (22)

In accordance with the provisions of Article (63) of the Central Bank of Kuwait Law, a finance company may be deleted from the Register of Finance Companies in the following cases:

1. At the company's request.
2. If the company does not start business within one year from the date it is notified of the decision regarding its registration in the Register of Finance Companies.
3. If the company is declared bankrupt.
4. If the company merges with another company.
5. If the company ceases its operations or its financial position is endangered.

Article (23)

With observance to the provisions of the Law of Commercial Companies, any finance company deleted from the Register of Finance 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 Organization of Supervision by Central Bank of Kuwait over the Investment Companies and its amendments shall be canceled.

The Minister of Finance

Mustafa J. Al-Shamali

Issued on 14th Shawal 1432 A.H.

Corresponding to 12th September 2011