



Appendix -E

Methodology for calculating financial penalties

I. Introduction

This appendix sets out the Central Bank of Bahrain's ("CBB") approach on assessing and calculating/determining financial penalties.

The purpose of the financial penalties is to encourage a high standard of conduct and compliance by CBB licensees, thereby reducing risk to their customers and the rest of the financial sector.

The imposition of a financial penalty does not preclude the CBB from also using other enforcement measures to remedy the same violation.

II. The Scope of application

In assessing whether to serve a financial penalty upon a licensee the CBB shall consider the following additional criteria:

- (a) The assessment of gain/benefit made or cost avoided and/or the level of risks posed to customers, financial position of the licensee, shareholders, stability of the financial sector and/or the reputation of the Kingdom.
- (b) If the licensee made any gain/benefit or avoided any costs by violating the CBB Rules then the gain/benefit and/or the cost avoided will be used as a benchmark for calculating the fine amount subject to BD 100,000 cap for each violation. In addition, the customers impacted must be compensated in full. The scope of this section does not cover penalties for non-compliance with date sensitive requirements of Section SIO-14.6.11 to SIO-14.6.17.
- (c) Fit and proper reassessment tests would take place for the approved persons deemed to be responsible for serious or repeated violations at the discretion and judgment of the CBB. The relevant approved person/(s) will be identified based on a review of relevant information including but not limited to the bank's records before the final decision is made.
- (d) Each incident of breaching a Rule (CBB Law, regulations, resolutions, and Rulebook directives) will be considered a stand-alone violation.
- (e) If the CBB discovers that one or more breaches had been committed by the licensee in the past and had gone un-detected, then the CBB has the right, at the point of detection, to impose penalties for each of these past breaches.
- (f) If the gain/benefit made and/or cost avoided cannot be quantified, then the table below will be used to determine the penalty amount based on the seriousness of violations as determined by the CBB.
- (g) The factors used to determine the seriousness of the violation include, but are not limited to, the level of risks posed to the licensee's customers, financial position of the licensee, shareholders, stability of the financial sector and/or the reputation of the Kingdom. The CBB may consider other factors or circumstances as well.

Table 1: Risk Rating of Violation and Related Penalty

Risk Rating		Fine Amount (BD)
1	Low	1,000 to 10,000
2	Medium	10,001 to 50,000
3	High	50,001 to 100,000

III. Internal Assessment by the CBB

In deciding which level of risk is most appropriate (which will then determine the size of the penalty amount in relation to the violation), various factors will undergo comprehensive assessment including but not limited to the following:

- 1) Impact of the violation;
- 2) Nature of the violation;
- 3) Factors showing whether the violation was deliberate; and
- 4) Mitigating and aggravating factors.

1. Impact of the violation

Factors relating to assessment of the impact of a violation licensee include:

- (a) The level of benefit gained or loss avoided, or intended to be gained or avoided, by the licensee as a result of the violation, either directly or indirectly;
- (b) The loss or risk of loss, as a whole, caused to customers, investors or other market users in general;
- (c) The loss or risk of loss caused to individual customers, investors or other market users;
- (d) Whether the violation had an effect on particularly vulnerable people, whether intentionally or otherwise;
- (e) The inconvenience or distress caused to customers; and
- (f) Whether the violation had an adverse effect on the financial sector and, if so, how serious that effect was. This may include its impact on the confidence in or damage caused to the financial sector. A violation is generally more serious when it causes or may cause extensive financial damage, or when it is likely to be particularly detrimental to investor or customer confidence.

2. Nature of the violation

Factors relating to assessment of the nature of the violation include:

- (a) Whether the violation revealed serious or systemic weaknesses in the licensee's procedures or in the management systems or internal controls relating to all or part of the licensee's business;
- (b) Whether the licensee's senior management was aware of the violation;
- (c) The nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the violation;
- (d) The scope for any potential financial crime to be facilitated, occasioned or otherwise occurred as a result of the violation;
- (e) Whether the licensee failed to conduct its business with integrity; and
- (f) Whether the licensee, in committing the violation, took any steps to comply with CBB Law, regulations, resolutions, Rulebook directives, and the adequacy of such steps.



3. Factors showing whether the violation was deliberate

Factors relating to assessment of whether the violation was deliberate include:

- (a) The violation was intentional, in that the licensee's approved person(s), intended or foresaw that the likely or actual consequences of their actions or inaction would result in a violation and they failed to adequately mitigate that risk;
- (b) The licensee's approved person(s) knew that their actions were not in accordance with the licensee's internal policies and procedures;
- (c) The licensee's approved person(s) sought to conceal their misconduct;
- (d) The licensee's approved person(s) committed the violation in such a way as to avoid or reduce the risk that the violation would be discovered;
- (e) The licensee's approved person(s) were influenced to commit the violation by the belief that it would be difficult to detect;
- (f) The violation was repeated; and
- (g) In the context of a contravention of any Rule or requirement imposed by or under CBB law, regulations, resolutions, Rulebook directives, the licensee obtained reasonable professional advice before the contravention occurred and failed to follow that advice. Obtaining professional advice does not remove a person's responsibility for compliance with applicable Rules and requirements.

4. Mitigating and aggravating factors

Mitigation and aggravating factors include:

- (a) The conduct of the licensee in bringing (or failing to bring) quickly, effectively and completely the violation to the CBB's attention;
- (b) The degree of cooperation the licensee showed during the investigation of the violation. Correspondingly, if the licensee takes a passive stance towards the matter or avoids investigating the matter properly with the CBB, it is likely to increase the penalty payment and/or imposing other enforcement measures.
- (c) Where the licensee's approved person(s) were aware of the violation or of the potential for a violation, whether they took any steps to stop the violation, and when these steps were taken;
- (d) Any remedial steps taken by the licensee prior to the discovering of such violation by the CBB; for example, identifying whether customers or investors or other market users suffered loss and compensating them where they have; correcting any misleading statement or impression; taking disciplinary action against staff involved (if appropriate); and taking steps to ensure that similar problems do not arise in the future;
- (e) Whether the licensee had previously been told about the CBB's concerns in relation to the issue, either by means of a written formal warning/notice and/or Direction;
- (f) Whether the licensee had previously undertaken not to perform a particular act or engage in a particular behavior;
- (g) The previous disciplinary record and general compliance history of the licensee;
- (h) Action taken against the licensee by other domestic or international regulatory authorities that is relevant to the violation in question.