



**ADMINISTRATORS
HIGH-LEVEL CONTROLS
MODULE**



MODULE:	HC (High-Level Controls)
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MODULE	HC:	High-level Controls
CHAPTER	HC-A:	Introduction

HC-A.1 Purpose

Executive Summary

HC-A.1.1 This Module presents requirements that have to be met by administrators licensees with respect to:

- (a) Corporate governance principles issued by the Ministry of Industry and Commerce as The Corporate Governance Code; and
- (b) Related high-level controls and policies.

HC-A.1.2 The Principles referred to in this Module are in line with the Principles relating to the Corporate Governance Code issued by the Ministry of Industry and Commerce.

HC-A.1.3 The purpose of the Module is to establish best practice corporate principles in Bahrain, and to provide protection for investors and other company stakeholders through compliance with those principles.

HC-A.1.4 Whilst the Module follows best practice, it is nevertheless considered as the minimum standard to be applied.

Structure of this Module

HC-A.1.5 This Module follows the structure of the Corporate Governance Code and each Chapter deals with fundamental Principles of corporate governance. The numbered directives included in the Code are Rules for purposes of this Module. Recommendations under the Code have been included as guidance.

HC-A.1.6 All references in this Module to 'he' or 'his' shall, unless the context otherwise requires, be construed as also being references to 'she' and 'her'.



MODULE	HC:	High-level Controls
CHAPTER	HC-A:	Introduction

HC-A.1 Purpose (continued)

The Comply or Explain Principle

HC-A.1.7

This Module is issued as a Directive in accordance with Article 38 of the Central Bank of Bahrain and Financial Institutions Law 2006 ('CBB Law'). In common with other Rulebook Modules, this Module contains a mixture of Rules and Guidance (See Module UG-1.2 for a detailed explanation of Rules and Guidance). All Rulebook content that is categorised as a Rule must be complied with by those to whom the content is addressed. Other parts of this Module are Guidance; nonetheless, every administrator licensee to whom Module HC applies, is expected to comply with recommendations made as Guidance in Module HC or explain its noncompliance by way of an annual report to its shareholders and to the CBB.

Monitoring and Enforcement of Module HC

HC-A.1.8 Disclosure and transparency are underlying principles of Module HC. Disclosure is crucial to allow outside monitoring to function effectively. This Module looks to a combined monitoring system relying on the Board, the administrator licensee's shareholders and the CBB.

HC-A.1.9 It is the Board's responsibility to see to the accuracy and completeness of the administrator licensee's corporate governance guidelines and compliance with Module HC. Failure to comply with this Module is subject to enforcement measures as outlined in Module EN (Enforcement).

Legal Basis

HC-A.1.10

This Module contains the CBB's Directive (as amended from time to time) relating to high-level controls and is issued under the powers available to the CBB under Article 38 of the CBB Law. The Directive in this Module is applicable to administrator licensees (including their approved persons).

HC-A.1.11 For an explanation of the CBB's rule-making powers and different regulatory instruments, see Section UG-1.1.

MODULE	HC:	High-level Controls
CHAPTER	HC-A:	Introduction

HC-A.2 Module History

Evolution of the Module

HC-A.2.1 This Module was first issued in May 2011. Any material changes that have subsequently been made to this Module are annotated with the calendar quarter date in which the change was made: Chapter UG-3 provides further details on Rulebook maintenance and version control.

HC-A.2.2 A list of recent changes made to this Module is provided below:

Module Ref.	Change Date	Description of Changes
HC-2.2.1 and HC-2.4.1	01/2013	Clarified scope of application for Rules.



MODULE	HC:	High-level Controls
CHAPTER	HC-B:	Scope of Application

HC-B.1 Scope of Application

HC-B.1.1 The content of this Module applies to all administrator licensees authorised in the Kingdom of Bahrain, thereafter referred to in this Module as licensees.



MODULE	HC:	High-level Controls
CHAPTER	HC-1:	The Board

HC-1.1 Principle

HC-1.1.1 All licensees must be headed by an effective, collegial and informed Board of Directors ('the Board').



MODULE	HC: High-level Controls
CHAPTER	HC-1: The Board

HC-1.2 Role and Responsibilities

HC-1.2.1

All directors must understand the Board's role and responsibilities under the Commercial Companies Law and any other laws or regulations that may govern their responsibilities from time to time. In particular:

- (a) The Board's role as distinct from the role of the shareholders (who elect the Board and whose interests the Board serves) and the role of officers (whom the Board appoints and oversees); and
- (b) The Board's fiduciary duties of care and loyalty to the licensee and the shareholders (see HC-10.2).

HC-1.2.2

The Board's role and responsibilities include but are not limited to:

- (a) The overall business performance and strategy for the licensee;
- (b) Causing financial statements to be prepared which accurately disclose the licensee's financial position;
- (c) Monitoring management performance;
- (d) Convening and preparing the agenda for shareholder meetings; and
- (e) Monitoring conflicts of interest and preventing abusive related party transactions.

HC-1.2.3

When a new director is inducted, the chairman of the Board, assisted by company legal counsel or compliance officer, should review the Board's role and duties with that person, particularly covering legal and regulatory requirements and Module HC.

HC-1.2.4

The licensee should have a written appointment agreement with each director which recites the directors' powers and duties and other matters relating to his appointment including his term, the time commitment envisaged, the committee assignment if any, his remuneration and expense reimbursement entitlement, and his access to independent professional advice when that is needed.

HC-1.2.5

The Board should adopt a formal Board charter or other statement specifying matters which are reserved to it, which should include but need not be limited to the specific requirements and responsibilities of directors.



MODULE	HC:	High-level Controls
CHAPTER	HC-1:	The Board

HC-1.3 Composition

HC-1.3.1 The Board should have no more than 15 members, and should regularly review its size and composition to assure that it is small enough for efficient decision-making yet large enough to have members who can contribute from different specialties and viewpoints. The Board should recommend changes in Board size to the shareholders when a needed change requires amendment of the licensee's Memorandum of Association.

HC-1.3.2 Potential non-executive directors should be made aware of their duties before their nomination, particularly as to the time commitment required. The Board should regularly review the time commitment required from each non-executive director and should require each non-executive director to inform the Board before he accepts any Board appointments to another company. One person should not hold more than three directorships in public companies in Bahrain with the provision that no conflict of interest may exist, and the Board should not propose the election or reelection of any director who does.



MODULE	HC: High-level Controls
CHAPTER	HC-1: The Board

HC-1.4 Decision Making Process

HC-1.4.1 The Board should be collegial and deliberative, to gain the benefit of each individual director's judgment and experience.

HC-1.4.2 The chairman should take an active lead in promoting mutual trust, open discussion, constructive dissent and support for decisions after they have been made.

HC-1.4.3 The Board must meet frequently but in no event less than four times a year. All directors must attend the meetings whenever possible and the directors must maintain informal communication between meetings.

HC-1.4.4 Individual board members must attend at least 75% of all Board meetings in a given financial year to enable the Board to discharge its responsibilities effectively (see table below). Voting and attendance proxies for Board meetings are prohibited at all times.

Meetings per year	75% Attendance requirement
4	3
5	4
6	5
7	5

HC-1.4.5 The absence of Board members at Board and committee meetings must be noted in the meeting minutes. In addition, Board attendance percentage must be reported during any general assembly meeting when board members stand for re-election (e.g. Board member XYZ attended 95% of scheduled meetings this year).

HC-1.4.6 In the event that a Board member has not attended at least 75% of Board meetings in any given financial year, the licensee must immediately notify the CBB indicating which member has failed to satisfy this requirement, his level of attendance and any mitigating circumstances affecting his non-attendance. The CBB shall then consider the matter and determine whether disciplinary action, including disqualification of that Board member pursuant to Article 65 of the CBB Law, is appropriate. Unless there are exceptional circumstances, it is likely that the CBB will take disciplinary action.



MODULE	HC:	High-level Controls
CHAPTER	HC-1:	The Board

HC-1.4 Decision Making Process (continued)

HC-1.4.7 The chairman should ensure that all directors receive an agenda, minutes of prior meetings, and adequate background information in writing before each Board meeting and when necessary between meetings. All directors should receive the same Board information. At the same time, directors have a legal duty to inform themselves and they should ensure that they receive adequate and timely information and should study it carefully.



MODULE	HC:	High-level Controls
CHAPTER	HC-1:	The Board

HC-1.5 Directors' Communication with Management

HC-1.5.1 The Board should encourage participation by management regarding matters the Board is considering, and also by management members who by reason of responsibilities or succession, the CEO believes should have exposure to the directors.

HC-1.5.2 Non-executive directors should have free access to the licensee's management beyond that provided in Board meetings. Such access should be through the Chairman of the Audit Committee or CEO. The Board should make this policy known to management to alleviate any management concerns about a director's authority in this regard.



MODULE	HC:	High-level Controls
CHAPTER	HC-2:	Approved Persons Loyalty

HC-2.1 Principle

HC-2.1.1 The approved persons must have full loyalty to the licensee.



MODULE	HC:	High-level Controls
CHAPTER	HC-2:	Approved Persons Loyalty

HC-2.2 Personal Accountability

HC-2.2.1 Each **member of the board** should understand that under the Company Law he is personally accountable to the licensee and the shareholders if he violates his legal duty of loyalty to the licensee, and that he can be personally sued by the licensee or the shareholders for such violations.

HC-2.2.2 The duty of loyalty includes a duty not to use property of the licensee for his personal needs as though it was his own property, not to disclose confidential information of the licensee or use it for his personal profit, not to take business opportunities of the licensee for himself, not to compete in business with the licensee, and to serve the licensee's interest in any transactions with the company in which he has a personal interest.

HC-2.2.3

For purposes of Paragraph HC-2.2.2, an approved person is considered to have a “personal interest” in a transaction with the company if:

- (a) He himself;
- (b) A member of his family (i.e. spouse, father, mother, sons, daughters, brothers or sisters); or
- (c) Another company of which he is a director or controller,

is a party to the transaction or has a material financial interest in the transaction. (Transactions and interests which are de minimis in value should not be included.)



MODULE	HC:	High-level Controls
CHAPTER	HC-2:	Approved Persons Loyalty

HC-2.3 Avoidance of Conflicts of Interest

HC-2.3.1 Each approved person should make every practicable effort to arrange his personal and business affairs to avoid a conflict of interest with the licensee.



MODULE	HC:	High-level Controls
CHAPTER	HC-2:	Approved Persons Loyalty

HC-2.4 Disclosure of Conflicts of Interest

HC-2.4.1

Each approved person must inform the entire Board of conflicts of interest as they arise. **Board members must** abstain from voting on the matter in accordance with the relevant provisions of the Company Law. This disclosure must include all material facts in the case of a contract or transaction involving the approved person. The approved persons should understand that any approval of a conflict transaction is effective only if all material facts are known to the authorising persons and the conflicted person did not participate in the decision.

HC-2.4.2

The Board must establish formal procedures for:

- (a) Periodic disclosure and updating of information by each approved person on his actual and potential conflicts of interest; and
- (b) Advance approval by directors or shareholders who do not have an interest in the transactions in which a licensee's approved person has a personal interest. The Board should require such advance approval in every case.



MODULE	HC:	High-level Controls
CHAPTER	HC-3:	Financial Statement Certification

HC-3.1 Principle

HC-3.1.1. The Board must have rigorous controls for financial audit and reporting, internal control, and compliance with law.



MODULE	HC:	High-level Controls
CHAPTER	HC-3:	Financial Statement Certification

HC-3.2 CEO and CFO Certification of Financial Statements

HC-3.2.1

To encourage management accountability for the financial statements required by the directors, the licensee's CEO and chief financial officer must state in writing to the Board that the licensee's interim and annual financial statements present a true and fair view, in all material respects, of the licensee's financial condition and results of operations in accordance with applicable accounting standards.



MODULE	HC:	High-level Controls
CHAPTER	HC-4:	Appointment, Training and Evaluation of the Board

HC-4.1 Principle

HC-4.1.1. The licensee should have rigorous procedures for appointment, training and evaluation of the Board.

MODULE	HC: High-level Controls
CHAPTER	HC-4: Appointment, Training and Evaluation of the Board

HC-4.2 Induction and Training of Directors

- HC-4.2.1 The chairman of the Board should ensure that each new director receives a formal and tailored induction to ensure his contribution to the Board from the beginning of his term. The induction should include meetings with senior management, visits to company facilities, presentations regarding strategic plans, significant financial, accounting and risk management issues, compliance programs, its internal and external auditors and legal counsel.
- HC-4.2.2 All continuing directors should be invited to attend orientation meetings and all directors should continually educate themselves as to the licensee's business and corporate governance.
- HC-4.2.3 Management, in consultation with the chairman of the Board, should hold programs and presentations to directors respecting the licensee's business and industry, which may include periodic attendance at conferences and management meetings. The Board shall oversee directors' corporate governance educational activities.



MODULE	HC:	High-level Controls
CHAPTER	HC-5:	Management Structure

HC-5.1 Principle

HC-5.1.1 The Board should establish a clear and efficient management structure.



MODULE	HC:	High-level Controls
CHAPTER	HC-5:	Management Structure

HC-5.2 Establishment of Management Structure

HC-5.2.1 The Board should appoint senior management whose authority must include management and operation of current activities of the licensee, reporting to and under the direction of the Board. The senior managers should include at a minimum:

- (a) A CEO;
- (b) A chief financial officer;
- (c) A corporate secretary; and
- (d) An internal auditor.

and should also include such other approved persons as the Board considers appropriate and as a minimum must include persons occupying controlled functions as outlined in Paragraph AU-1.2.2.



MODULE	HC: High-level Controls
CHAPTER	HC-5: Management Structure

HC-5.3 Titles, Authorities, Duties and Reporting Responsibilities

HC-5.3.1 The Board should adopt by-laws prescribing each senior manager's title, authorities, duties and internal reporting responsibilities. This should be done in consultation with the CEO, to whom the other senior managers should normally report.

HC-5.3.2 These provisions should include but should not be limited to the following:

- (a) The CEO should have authority to act generally in the licensee's name, representing the licensee's interests in concluding transactions on the licensee's behalf and giving instructions to other senior managers and licensee employees;
- (b) The chief financial officer should be responsible and accountable for:
 - (i) The complete, timely, reliable and accurate preparation of the licensee's financial statements, in accordance with the accounting standards and policies of the licensee (see HC-3.2.1); and
 - (ii) Presenting the Board with a balanced and understandable assessment of the licensee's financial situation;
- (c) The corporate secretary's duties should include arranging, recording and following up on the actions, decisions and meetings of the Board and of the shareholders (both at annual and extraordinary meetings) in books to be kept for that purpose; and
- (d) The internal auditor's duties should include providing an independent and objective review of the efficiency of the licensee's operations. This would include a review of the accuracy and reliability of the licensee's accounting records and financial reports as well as a review of the adequacy and effectiveness of the licensee's risk management, control, and governance processes.

HC-5.3.3 The Board should also specify any limits which it wishes to set on the authority of the CEO or other senior managers, such as monetary maximums for transactions which they may authorise without separate Board approval.

HC-5.3.4 The corporate secretary should be given general responsibility for reviewing the licensee's procedures and advising the Board directly on such matters. Whenever practical, the corporate secretary should be a person with legal or similar professional experience and training

HC-5.3.5 At least annually the Board shall review and concur in a succession plan addressing the policies and principles for selecting a successor to the CEO, both in emergencies and in the normal course of business. The succession plan should include an assessment of the experience, performance, skills and planned career paths for possible successors to the CEO.