

BANQUE DU LIBAN

Basic Circular No 2

Addressed to Financial Institutions

Attached is a copy of Basic Decision No 7136 of 22 October 1998 (Conditions for the Establishment and Functioning of Financial Institutions).

Beirut, 22 October 1998

The Governor of Banque du Liban

Riad Toufic Salamé

BANQUE DU LIBAN

Basic Decision No 7136

Conditions for the Establishment and Functioning of Financial Institutions

**The Governor of Banque du Liban,
Pursuant to the Code of Money and Credit, notably Articles 178 to 182 thereof;
Pursuant to Law 520 of 6 June 1996, notably Article 15 thereof; and
Pursuant to the Decision of the Central Council of Banque du Liban, taken in its
meeting of 21 October 1998,**

Decides the following:

Article 1:

In order to obtain a license for the establishment of a Lebanese financial institution under the provisions of Articles 178 to 182 inclusive of the Code of Money and Credit, a request signed by the founders shall be submitted to Banque du Liban, along with an original copy and three copies of each the following documents:

- 1- A document evidencing the identities of the founders; the persons intending to participate in the subscription to, and payment of the financial institution's capital; and the persons expected to hold senior managerial positions (individual extract from the Civil Status Register/ identity card/ passport/ a copy of the registration file at the Trade Register if any founder or shareholder is a legal entity).
- 2- Statements signed by each of the above-mentioned persons, of which their curriculum vitae (degrees, experience and other material and ethical information), and an accurate assessment of their net worth.
- 3- A police record for each of the above-mentioned persons, issued within the last three months.
- 4- A statement specifying the percentage of participation of each prospective subscriber, with the classes of shares and their distribution among resident and non-resident Lebanese, Arabs, and foreigners.
- 5- An economic feasibility study on the establishment of the financial institution, that shall cover the next three years, explain clearly its financing sources and investment prospects, and show in detail:
 - a- The profit and loss projections.
 - b- The balance sheet projections.
 - c- The cash flow projections.

- 6- A statement clarifying any direct or indirect relationship, if any, between the prospective financial institution and any other specific institution or economic group(s) in Lebanon or abroad.
- 7- The draft text of the financial institution's:
 - a- By-laws.
 - b- Prospective administrative structure.
 - c- Internal control and audit rules.

Article 2:

To obtain a license for the establishment of the branch of a foreign financial institution under the provisions of Articles 178 to 182 inclusive of the Code of Money and Credit, a request signed by the Management of the concerned foreign financial institution shall be submitted to Banque du Liban, along with an original copy and three copies of each of the following documents:

- 1- A duly certified copy of the by-laws of the foreign financial institution.
- 2- The documents specified in Paragraph 7, Sub-paragraphs (b) and (c) of Article 1 above.
- 3- A duly certified copy of either the institution's registration certificate in its home country, or the license granted by the competent authorities to that institution for the purpose of undertaking financial activities.
- 4- A duly certified copy of the decision taken by the Board of Directors of the foreign financial institution, in which the Board:
 - a- Approves the opening in Lebanon of a branch that shall engage in the activities specified in Article 7 below.
 - b- Appoints the representative of that institution in Lebanon and defines his/her powers.
 - c- Undertakes to implement the applicable Lebanese laws and regulations, as well as BDL recommendations and instructions, especially the following:
 - To build up a reserve out of its annual net profits in Lebanon, in accordance with Paragraph (2) of Article 4 below.
 - To reconstitute the capital allocated to its activities in Lebanon, in accordance with Article 5 below.
 - To refrain from reducing the capital allocated to its activities in Lebanon or from recovering any portion of that capital.
 - To comply with the provisions of Articles 3, 10, 11 and 12 of this Decision.
- 5- The statements and documents prepared in accordance with Paragraphs (1) and (2) of Article 1 above, with regard to the institution's representative in Lebanon and its prospective senior managers.
- 6- A police record for each of the persons mentioned in Paragraph (5) above, issued within the last three months.
- 7- A feasibility study, as detailed in Paragraph (5) of Article 1 above.
- 8- A statement with the information specified in Paragraph (6) of Article 1 above.
- 9- The annual reports of the institution's activities during the last three years, along with the corresponding balance sheets.

Article 3:

The financial institutions which are licensed by the Central Council of Banque du Liban shall complete their establishment formalities and start their activities effectively within six months of being notified the licensing decision, under penalty of having that license revoked.

Article 4¹:

First: The minimum capital of the financial institutions which are licensed to be established after 25 January 2012 is set at seven billion five hundred million Lebanese pounds. This capital and any subsequent increase thereof shall be paid in full and in cash at Banque du Liban.

Second: The financial institutions which operate in Lebanon and are established after 25 January 2012 shall allocate, out of their Tier 1 capital, the amounts below:
a- Seven billion five hundred million Lebanese pounds, to the head office.
b- Five hundred million Lebanese pounds, to each branch.

Third²: Each financial institution operating in Lebanon, which is established before 25 January 2012 and intends to open a branch after 31 December 2016, shall comply with the stipulations of Paragraphs First and Second above.

Fourth²: Each Lebanese financial institution intending to open an overseas branch after 31 December 2016 shall have a minimum capital of seven billion five hundred million Lebanese pounds. It shall also allocate to the overseas branch the triple of the capital required to open a branch in Lebanon, in addition to the amount imposed by the concerned foreign authorities.

Fifth: Financial institutions operating in Lebanon shall build up reserves by withholding 10% of their annual net profits.

Article 5³:

Each financial institution must constantly prove that its assets exceed its liabilities towards third parties by an amount equivalent at least to its capital.

The financial institution may neither reduce its capital nor recover any portion thereof.

Whenever a financial institution incurs losses, it shall reconstitute its capital before 30 June of the fiscal year following the year in which these losses occurred.

Article 6:

The annual General Assemblies of Lebanese financial institutions called to examine the accounts of the preceding fiscal year shall convene by the end of the first half of each year.

¹ - The last amendment to this Article was made pursuant to Article 6 of Intermediate Decision 10910 of 27 January 2012 (Intermediate Circular 290).

² - The last amendment to this Paragraph was made pursuant to Article 1 of Intermediate Decision 12431 of 20 January 2017 (Intermediate Circular 449).

³ - The last amendment to this Article was made pursuant to Article 7 of Intermediate Decision 10910 of 27 January 2012 (Intermediate Circular 290).

Article 7¹:

Financial institutions shall mainly engage in lending operations, and in fiduciary operations as well, pursuant to the stipulations of applicable laws and regulations. They shall also undertake any related ancillary activities.

They may also engage secondarily in other operations, namely operations on financial instruments and products, for their own account or on behalf of their customers, provided:

- They abide by the laws and regulations governing these operations.
- These operations are submitted to the control of the relevant regulatory authorities.

Article 7 bis²: All financial institutions are prohibited from:

- 1- Engaging in money exchange operations, except when such operations are ancillary or linked to those they perform, within the limits of their objects, on behalf of their customers.
- 2- Engaging in cross-border transportation of cash, metal coins, and bullion.
- 3- Receiving any funds from their customers, except by way of checks or transfers, including those received for the purpose of constituting or covering all margins. They are, however, entitled to receive from a single customer monthly cash amounts up to the equivalent of USD 10,000, for the reimbursement of any advances granted by these institutions (including factoring operations), or for performing various ancillary services that exclude financial intermediation (property management, domiciliation of phone bills...).
- 4- ³Executing, at their customers' request and in favour of third parties in Lebanon or abroad, cross-border or domestic incoming or outgoing transfers in excess of USD 1,500.

Article 8⁴: All the shares of a Lebanese financial institution must be in registered form.

Article 9⁵:

- 1- The subscription to, and the trading of the shares of financial institutions are subject to a prior approval from BDL Central Council in the following cases:
 - a- If it leads directly or indirectly to the acquisition by the subscriber or assignee of more than 10% (ten percent) of the financial institution's total shares.
 - b- If the subscriber or assignee holds, at the time of the assignment, 10% or more of the financial institution's total shares.

¹- The last amendment to this Article was made pursuant to Article 1 of Intermediate Decision 12822 of 1st June 2018 (Intermediate Circular 494).

²- This Article was added pursuant to Article 1 of Intermediate Decision 10729 of 21 May 2011 (Intermediate Circular 266), then amended pursuant to Article 1 of Intermediate Decision 10789 of 22 August 2011 (Intermediate Circular 274).

³- The last amendment to this Paragraph was made pursuant to Intermediate Decision 11589 of 28 October 2013 (Intermediate Circular 343).

⁴- This Article was amended pursuant to Article 1 of Intermediate Decision 8616 of 7 January 2004 (Intermediate Circular 43).

⁵- The last amendment to this Article was made pursuant to Article 3 of Intermediate Decision 12194 of 29 February 2016 (Intermediate Circular 411), whose Article 9 reads as follows:

"Banks and financial institutions whose situation is inconsistent with the provisions of Articles 1, 2 and 3 of this Decision, must adjust their situation within two years from its issuance date".

- c- If the subscriber or assignor or assignee is an incumbent or elected member of the Board of Directors, regardless of the number of assigned shares.
The stake of the spouse, minor children, and any economic group, shall be computed within the 10% mentioned in Sub-paragraphs (a) and (b) above.
- 2- Articles 5 and 5 bis of the Implementation Regulations on Lebanese Banks Shares Issuing and Trading, attached to Basic Decision 7814 of 11 May 2001, shall apply to companies and mutual funds which participate in the capital of any Lebanese financial institution, provided a percentage of 10%, instead of 5%, is adopted.
- 3- Financial institutions shall notify Banque du Liban of any assignment of shares that leads to the acquisition by the assignee of 10% or less of their capital.
The concerned financial institutions shall check, on their own responsibility, that any such assignment of shares meets all the legal and regulatory conditions (shareholders' preemptive right, Board of Directors' approval...), and that the information they communicate to Banque du Liban is accurate. They shall also verify that the by-laws or Articles of Association of the assignee companies and mutual funds state explicitly that all the shares of these companies or funds are in registered form, and are fully and continuously owned, whether directly or indirectly, by natural persons or by companies whose shares are in registered form.
- 4- The Banking Control Commission shall:
 - a- Verify the implementation of the provisions of this Article and monitor the accurate calculation of the percentage of shares, participations and indirect subscriptions.
 - b- Verify, on-site, the authenticity of the documents related to the assignment of shares and the accuracy of the provided information; and promptly notify any detected violation to the Governor of Banque du Liban.
- 5- Under this Article, the transfer of shares through inheritance or will shall not be considered as an assignment.

Article 10¹:

- 1- ² Financial institutions shall comply with the obligations specified in Articles 152 (Paragraphs 3 and 4), 154 (Paragraph 1), 153, 156, 160, 161, 164 and 165 of the Code of Money and Credit.
- 2- Facilities granted by any financial institution operating in Lebanon to a non-resident person, whether a natural person or legal entity or a person belonging to an interconnected group of debtors, shall cap at five percent (5%) of the financial institution's capital, provided that total facilities do not exceed twenty-five percent (25%) of that capital.

¹ - This Article was amended pursuant to Article 1 of Intermediate Decision 8648 of 24 February 2004 (Intermediate Circular 51); Article (2) of the said Decision stipulates that:
"Financial institutions whose situation is incompatible with the provisions of Paragraph (2) of Article 1 above, are granted a one-year time limit from the issuance of this Decision to comply with the provisions of that Paragraph."

² - This Paragraph was amended pursuant to Article 9 of Intermediate Decision 10910 of 27 January 2012 (Intermediate Circular 290); and financial institutions whose situation is incompatible with the provisions of Articles 153 and 154 of the Code of Money and Credit were granted a two-year time limit from the issuance of this Decision to comply with the provisions of both Articles.

This ceiling shall be applicable to directly or indirectly granted or used facilities, whichever higher, after deducting the amount of provisions built up by the financial institution against these facilities, if any.

Article 11:

The financial institution shall clearly and publicly display, at its head office and all of its branches, the decision of Banque du Liban to include it in BDL List of Financial Institutions.

Article 12¹:

Financial institutions shall constantly comply with the regulatory texts issued by Banque du Liban.

Article 13²:

Without prejudice to the provisions of Article 4 above, financial institutions shall be governed by the Regulations attached to Basic Decision No 7147 of 5 November 1998, relating to the opening and closing of the branches of banks operating in Lebanon, and to the capital allocations required for head offices and branches.

Article 13 bis³:

First: Notwithstanding the provisions of Paragraphs First, Second, and Third of Article 4 above, financial institutions operating in Lebanon, whose objects are limited to granting microloans as defined in Basic Decision No 8779 of 13 July 2004, or whose by-laws stipulate that microloans must constantly represent at least 90% of their operations, shall allocate out of their Tier 1 capital the amounts below:

- a- Two billion Lebanese pounds, to the head office.
- b- Two hundred and fifty million Lebanese pounds, to each branch.

Second: Notwithstanding the Regulations on the Control of Financial and Banking Operations for Fighting Money Laundering and Terrorist Financing, attached to Basic Decision No. 7818 of 18 May 2001, and the provisions of Basic Decision No 11323 of 12 January 2013 (Establishment of a Compliance Department), the financial institutions specified in Paragraph First of this Article shall be governed by the following rules and provisions:

- 1- The Head of the AML/CFT Compliance Unit at the financial institution may execute the duties of both the Units forming the Compliance Department, i.e. the Legal Compliance Unit and the AML/CFT Compliance Unit. He/she may as well monitor the operations executed in each of the branches of the institution.
- 2- These institutions shall be exempted from the obligation of establishing two divisions within the AML/CFT Compliance Unit.

¹ The last amendment to this Article was made pursuant to Article 3 of Intermediate Decision 12431 of 20 January 2017 (Intermediate Circular 449).

² This Article was amended pursuant to Article 3 of Intermediate Decision 9919 of 10 June 2008 (Intermediate Circular 166).

³ This Article was added pursuant to Article 1 of Intermediate Decision 12861 of 16 August 2018 (Intermediate Circular 506).

Third: The employees of financial institutions whose objects are limited to granting microloans shall be exempted from the examinations specified in Basic Decision No 9286 of 9 March 2006, provided they attend training sessions in microfinance, with the cooperation of specialized microfinance networks, experts and specialists.

Fourth: Financial institutions specified in Paragraph First of this Article are required to:

- 1- Build up provisions against the total balances of microloans, as soon as these are classified as doubtful loans, i.e. when the repayment is above 180 days past due.
- 2- Update their internal systems to evaluate and classify microloans pursuant to Basic Decision No. 7159 of 10 November 1998 (Classification of Debt Risks), and develop as well the methods adopted to record and retrieve the established trends, based on the institution's internal expertise.

Fifth: Financial institutions specified in Paragraph First of this Article may open offices under the management and supervision of their head offices or any of their branches, on the condition that the concerned branch meets the requirements of Article 13 above. The tasks of such offices shall be limited to receiving applications for microloans; obtaining borrowers and guarantors' signatures on contracts and bonds; handing cheques to borrowers and guarantors; sending these applications and the signed documents to the head office or the concerned branch for examination and approval; preparing, registering and documenting the relevant contracts so as to consider borrowers as customers of the head office or concerned branch, provided that such offices are located at least 20 kilometers away from the head office and any branch of the institution.

Sixth: Financial institutions which open offices under the provisions of Paragraph Fifth above are required to:

- 1- Inform both the BDL Legal Department and the Banking Control Commission of the number and addresses of the operating offices affiliated to their branches, and of any change in this information, to be promptly communicated.
- 2- Abide by any objection raised by Banque du Liban regarding any of these offices, under penalty of having their license revoked.
- 3- Conduct a continuous and effective control, on their own responsibility, to ensure that the said offices do not carry out any activity infringing the applicable laws and BDL regulations, especially in terms of combating money laundering and terrorism financing.

Article 14¹:

The prospective Lebanese financial institution shall expressly state in its draft by-laws that it complies with Articles 3 to 13 of this Decision.

As for the financial institution which is governed by the provisions of Article 13 bis above, it shall expressly state in its by-laws that it complies with Articles 3 to 13 bis of this Decision.

¹- This Article was amended pursuant to Article 2 of Intermediate Decision 12861 of 16 August 2018 (Intermediate Circular 506).

Article 15:

The following regulations issued by BDL shall be repealed¹:

Circular No 1 of 3 March 1993, addressed to Financial Institutions; Decision No 5994 of 1st September 1995, addressed to Financial Institutions by Circular No 2 of 1st September 1995; and Decision No 6453 of 16 January 1997, addressed to Financial Institutions by Circular No 3 of 16 January 1997.

Article 16:

This Decision shall enter into force upon its issuance.

Article 17:

This Decision shall be published in the Official Gazette.

Beirut, 22 October 1998

The Governor of Banque du Liban

Riad Toufic Salamé

¹- Circulars numbers are as shown in the old numbering system.

ANNEX¹

¹- This Annex was repealed pursuant to Article 4 of Intermediate Decision 12431 of 20 January 2017 (Intermediate Circular 449).