

Qatar publishes revised Central Bank Law

Law No. 13 of 2012 on the Issuance of the Qatar Central Bank Law and Regulation of Financial Institutions (the **Central Bank Law**) has been enacted in Qatar.

The Central Bank Law updates Law No. 33 of 2006, the law which formally set out the role of the Qatar Central Bank, which in turn updated Law No. 15 of 1993, the law which established the framework for the regulation of financial services in Qatar.

The Qatar Central Bank

Pursuant to the Central Bank Law, the Qatar Central Bank (**QCB**) is tasked with the following objectives:

- maintaining the value of the Qatari Riyal and ensuring monetary stability of Qatar;
- acting as the "high competent authority" responsible for the licensing, supervision and regulation of all financial services, business, markets and financial activities executed in or through Qatar. To this end, the QCB must seek to apply best international standards and practices;
- establishing a financial services, business, markets and financial activities sector operated in accordance with market rules (and in accordance with principles of transparency, competitiveness, stability and good governance);
- promoting Qatar as an international hub for financial services, business, markets and financial activities and enhancing

the reputation and trust in Qatar in this regard; and

- encouraging the growth of the financial sector in accordance with the Qatar's objectives for its national economy.

The objectives of the QCB make clear the ambitions of Qatar to position itself as the regional hub for international financial services business.

A Unitary Financial Services Regulator

The QCB has been empowered to develop, implement and enforce policies related to the regulation, control and supervision of financial services activities and business conducted in Qatar. Such policies are to comply with the "national strategic vision" and be in accordance with best international standards.

The QCB is empowered under the Central Bank Law to develop and follow up on the implementation of policies in respect of:

- financial services, business and other activities undertaken in the

Qatar Financial Centre (**QFC**); and

- Qatar's financial markets.

Therefore, despite the QCB being empowered to develop policy regarding financial services activities and business for the QFC and the Qatar Exchange, it will fall to the respective regulatory authorities of each to implement and enforce such policies.

The QCB will appoint a Governor, who will have the equivalent status of a Minister, and will be responsible for the implementation of the QCB's policy. The Governor will hold key roles in respect of both the QFC Regulatory Authority and the Qatar Financial Market Authority:

- the Governor will assume the capabilities and powers conferred on the Minister of Economy and Finance by the Qatar Financial Centre Law (Law No. 7 of 2005). The Qatar Financial Centre Law provides that each of QFC Authority, the QFC Regulatory Authority, the Regulatory Tribunal

and the Civil and Commercial Court submit to the Minister regulations (or amendments, modifications to or repeal of any existing regulations) as appropriate to achieve their respective objectives. The Minister has the power to enact such regulations, amendments and modifications or repeal any regulations; and

- the Governor will supervise the Qatar Financial Markets Authority in accordance with the provisions of the Law Regulating the Authority.

It is therefore envisaged that, with the oversight of the QCB, the various regulators responsible for the regulation, control and supervision of financial services activities and business being conducted in Qatar, including through its financial and business centre the QFC, will achieve their objectives in a unified and complementary manner.

Licensing Financial Services, Businesses and Activities

As was previously the case, the Central Bank Law contains a financial services prohibition – it is prohibited for a person to undertake financial services business and activity within Qatar without obtaining a license from the QCB.

Banks and insurance and reinsurance companies (and other companies undertaking insurance activities) seeking a license are required to be in the form of joint stock companies offering their shares for public subscription. Investment and financing companies must be established as joint stock companies. The Central Bank Law also permits licenses for banking companies, financial and investment consultation

companies, foreign units and representative offices, and other financial institutions; however, the terms on which such licenses will be granted are yet to be established by the QCB.

The financial services prohibition has long been a characteristic of Qatari banking regulation. Notwithstanding this, a great number of foreign financial institutions undertake business with Qatari counterparties and customers on a cross-border basis. The Central Bank Law provides that the QCB may licence foreign financial institutions to operate branches in Qatar; however, the Central Bank Law does not make any specific reference to the regulatory treatment of cross-border financial services business and activity which does not rely on a physical branch in Qatar. There is no provision for a cross-border licence or providing an exception.

On the face of things, it would appear the position of cross-border business remains "business as usual". This must come with a warning – as with all new regulators that remain silent on the subject, it is difficult to predict how fiercely the QCB will seek to enforce its perimeter. Firms engaging in a high volume of "fly-in/fly-out" visits will be interested in the sanctions provisions of the Central Bank Law which imposes a fine not exceeding 500,000 QAR for whoever represents an unlicensed financial institution in Qatar.

The position in the QFC remains the same and regulated activities can only be conducted in or from the QFC pursuant to an appropriate approval, authorisation or license from the QFC Regulatory Authority. Consequently, the approval, licensing, supervision or regulation of any business conducted

by any person approved, authorised or licensed by the QFC Regulatory Authority will fall outside the jurisdiction of the QCB.

Mergers and Acquisitions of Financial Institutions

There has been increasing focus on financial institution mergers and acquisitions (**M&A**) in the MENA region. A variety of factors are driving this trend, including foreign financial institutions refocusing on their core business activities and GCC banks having spare cash. Within Qatar, the requirement that conventional banks divest their Islamic banking activities has also contributed to the positive financial institution M&A trend.

The Central Bank Law provides a framework for financial institution M&A in Qatar.

Subject to any applicable provisions of the Commercial Companies Law and the permission of the QCB, any financial institution is entitled to acquire another financial institutions (subject to any conditions imposed upon the proposed acquisition by the QCB).

Financial institutions may also effect a merger: either creating a new financial institution or assuming the legal personality of one of the merging entities. Financial institutions wishing to merge are required enter into a preliminary contract based on the following:

- an economic feasibility study covering the causes, objective and conditions of the merger and resultant consequences;
- a detailed study of the financial and administrative restructuring of the financial institution; and

- a determination and evaluation of the assets and liabilities to be part of the merged entity.

Financial institutions are not to merge without the prior consent of the QCB. In order to obtain the requisite approvals, merging financial institutions must submit the preliminary contract and a merger request to the QCB, along with the audited financial statements, constitutional documents of each merging entity, information related to the regulatory and operational structures of each merging entity (including the rights of employees following termination of services), financial reports and minutes of extraordinary meetings sanctioning the merger. The QCB then has 60 days within which to accept or reject the proposed merger. Where the QCB fails to provide a decision within the prescribed time period, the merger application is to have been deemed rejected.

In order to implement a proposed merger, the merging institutions are required to form a High Committee and a Technical Committee. These Committees are supervised by, and under the control of, the QCB. The role of the High Committee is to evaluate, inspect, audit and study the assets of the merging financial institutions. At this stage, the other roles of the Committees are unclear and will be clarified later by way of QCB board resolution.

Once the QCB issues its final approval of the merger, the resultant singular financial institution will legally replace the merged financial institutions in respect of all rights and liabilities of third parties. This decision is binding on all shareholders of the merging financial institutions. This process is reminiscent of the principle

of merger by universal succession – common in many civil law jurisdictions.

Financial Institutions undertaking M&A activity benefit from certain privileges under the Central Bank Law, including:

- the provision of "soft" loans by the QCB in instances where the financial institution may otherwise be facing insolvency;
- exemptions from income tax for the year following the approval of the M&A activity; and
- exemptions from registration, documentation and other fees before concerned authorities for all transactions required by the M&A activity.

Bank Resolution Regime?

Regulators world-wide continue to work on developing more effective tools for resolving failing banks and other systemically important financial institutions.

Where the QCB are of the opinion that a financial institution is faced with problems affecting its financial standing, then the QCB may issue a decision to merge that financial institution with another, stronger, financial institution. Where such a process is agreed, the QCB assumes the position of the management of the failing institution in the merger process.

The Central Bank Law also provides for temporary management of a financial institution if it is in danger of insolvency, meaning:

- it cannot pay its debts as they fall due;
- it holds an insufficient margin of solvency; or
- in the discretion of the QCB, the head office of a foreign financial

institution is in danger of insolvency.

The decision for placing a financial institution under temporary management may be appealed within 15 days of receiving notice of the decision by making an application to the newly established Disputes Settlement Committee. The Disputes Settlement Committee will be a committee of the QCB, chaired by a Court of Appeal chief judge, and comprising two Court of Appeal judges (to be nominated by the Supreme Judiciary Council) and two experts (to be nominated by the Board of the QCB). The decision of the Disputes Settlement Committee may only be challenged before the competent circuit at the Court of Appeal.

Once placed into temporary management, the power and authority of the financial institution's board of directors and shareholders are suspended. The QCB assumes the administrative powers of the management of the financial institution subject to temporary management and has the power to:

- assume all the powers of the shareholders, owners of the financial institution and the board of directors;
- take hold of the title and assets of the shareholders;
- take all necessary steps to collect debts and amounts due to the financial institution; and
- take all necessary steps to protect depositors, clients and investors, including:
 - putting the financial institution into liquidation proceedings;

- providing the financial institution with support to restore margins of solvency; the financial institution with any other financial institution;
- offering the assets, property, interests and returns of the financial institution for sale;
- selling the business as a going concern or merging
- settling the liabilities of the financial institution pursuant to a rescue plan; and
- reaching any other agreements and settlements regarding the financial and other affairs of the financial institution.

At the end of the term of temporary management, the Governor of the QCB is empowered to revoke the licence of the financial institution in question. Where this is the case, the QCB must propose a plan for the liquidation of the assets and liabilities of the financial institution and supervise its execution. Where a financial institution accepting deposits has its licence cancelled, the QCB has the power to forbid the withdrawal of deposits of any kind and may prescribe withdrawal terms, conditions and restrictions.

Clifford Chance comment

Qatar is positioning itself to become a hub for financial services business and activities in the MENA region. The Central Bank Law demonstrates an understanding that such ambition can only be realised by embracing international standards and practices. If Qatar can successfully achieve this the foundation is set for attracting international players and developing a strong and vibrant domestic financial services sector.

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