

Executive Guideline for Manner of Establishment, Activity, Supervision and Dissolution of Foreign Banks' Branches in Iran

Part I- Definitions

Article 1-

- **Iran:** The Islamic Republic of Iran *
- **Bye-law:** Executive bye-law for manner of establishment and operations of foreign banks' branches in Iran
- **Guideline:** Executive guideline laid down for manner of establishment, activity, supervision and dissolution of foreign banks branches in Iran
- **Central Bank:** The Central Bank of the Islamic Republic of Iran
- **Bank operations:** Receiving any kind of deposit from the public and its application in form of granting loan and facilities to the applicants and presenting different types of payment tools in framework of Monetary and Banking Law approved in 1972, the Law for Usury (Interest) Free Banking Operations approved in 1983 and the Law Regulating the Informal Money Market approved in 2005.
- **Foreign bank:** Legal entity, which has been registered abroad as a bank and engages in bank operations and is applicant of establishment of branch in Iran.
- **Branch:** Operating unit of a foreign bank, which proceeds to performance of bank operations in Iran in the framework of the Articles of Association and obligations inserted in this bye-law.
- **Capital endowed:** Sums, which foreign bank hands over to the branch as capital or increase in capital for engaging in activity.
- **Supervisory authority:** Organizational unit responsible for supervision on banks in the relevant country of foreign bank.
- **Agreement-in-principle:** The Agreement-in-principle of Central Bank for establishment of branch in Iran.
- **Establishment license:** Announcement of agreement of Central Bank to the Companies Registration authority concerning registration of branch in Iran.
- **Operating license:** Agreement of Central Bank through commencement of activity of the branch in Iran.

Part II-Manner of Establishment

Branch establishment requirements:

Article 2- A foreign bank, shall be free to proceed to bank operations in the form of a branch in Iran if it adheres to the provisions stipulated in Bye-law and this Guideline

* Activities of branches of foreign banks and credit institutions in the free trade-industrial zones of the Islamic Republic of Iran are governed by the special regulations of the said zones (Executive Guidelines for Monetary and Banking Operations in Free-Trade Zones approved in the Currency and Credit Council's session dated 03.09.2000)

provided that at least 5 years has elapsed from the commencement of its activities. Financial performance of a foreign bank during the last three years should indicate its profitability during all three (3) years.

Article 3- Foreign bank making a request for establishment of a branch, should be of good standing in the international money and financial markets as judged by Central Bank and enjoy the necessary financial stability and health.

Article 4- Minimum capital endowed by foreign bank to each branch in Iran stands at 5 million euros or its equivalent in other major currencies, the entirety of which (100%) is required to be deposited with Central Bank before issuance of establishment license

N.B. 1: Central Bank shall be free to change minimum capital endowed by foreign bank to the branch in Iran, if necessary.

N.B. 2: Repatriation of capital endowed by foreign bank shall be possible exclusively at the time of dissolution of branch.

N.B. 3: Modality and conditions for inflow of capital endowed by foreign banks could take place in accordance with the Foreign Investment Promotion and Protection Act approved in 2001 and its executive bye-law approved in 2002.

Article 5- Capital endowed to the branch by a foreign bank should be transparent with regard to its origins and by taking the operating plan of the branch into consideration to be adequate for performing the envisaged operations.

Documents required for issuance of agreement in principle

Article 6- Foreign bank should furnish the following documents and information to Central Bank together with its application:

6-1- The amount of capital endowed to the branch by foreign bank;

6-2- Conforming copy of notice of registration and the relevant documents together with the premises and the registered address of foreign bank, capital amount, management structure and persons (directors) who represent the foreign bank.

6-3- Conforming copy of operating license of foreign bank.

6-4- Conforming copy of charter of foreign bank.

N.B.: Conforming copy should be certified by Iranian embassies or supervisory authority.

6-5- Operating plan of foreign bank including operations, which the branch intends to perform

6-6- Organizational structure of branch

N.B.: Managerial structure of a branch should consist of at least 2 managers, who have no prohibition in Iran whatsoever with respect to residence and execution of tasks and related activities and at least one of them should be an Iranian national.

6-7- Consolidated and unconsolidated audited financial statements of foreign bank for the last three years

6-8- Written letter of consent from supervisory authority for opening branch in Iran

6-9- Written attestation from supervisory authority concerning desirability of financial status of foreign bank as well as undertaking from supervisory authority for co-operation with Central Bank

- 6-10-** Information relating to professional competencies and expertise of persons, who are to be appointed as manager of branch.
- 6-11-** Particulars of the shareholders, who are owners of more than 5% of the shares (capital) of foreign bank and percentage of partnership of each one
- 6-12-** Names and the other particulars of the managing director, deputy managing director, members of the executive board and the board of directors of foreign bank
- 6-13-** Number and modality of geographical spread of branches and representative offices of foreign bank
- 6-14-** Confirmation of the managing director of foreign bank concerning financial competence, good standing and lack of effective criminal conviction of senior executive managers of the branch in process of establishment
- 6-15-** Written undertaking by the board of directors of the foreign bank indicating that compensation will be made to customers that have incurred losses as a result of the branch's banking operations (be they negligent or premeditated)
- 6-16-** Written undertaking of the board of directors and the managing director of foreign bank concerning funding of the minimum capital endowment, in the event that the endowed capital is reduced to less than the minimum prescribed by Article 4 due to losses incurred
- 6-17-** Particulars of the Iranian independent auditor appointed for audit of financial statements of the branch
- 6-18-** Introducing fully authorized representative of foreign bank for performance of registration affairs of the branch, receiving licenses and payment and withdrawal of the endowed capital
- 6-19-** Other information and documents, which help Central Bank with regard to adopting decisions relating to approval of the application for establishment of branch.

Conditions and manner of issuance of licenses

Article 7- Agreement-in-principle of Central Bank will be issued after an examination of information and documents provided for in Article 6 has been conducted and if it can be verified that the requirements for establishment of branch and assurance is gained that the following conditions will be satisfied:

- 7-1-** Supervisory authority should be in a position to have effective supervision over the branch
- 7-2-** Supervisory agreement to be concluded between Central Bank and supervisory authority
- 7-3-** Rules and regulations of the foreign bank's respective country should not prevent Central Bank from supervising the branch and receiving the required information
- 7-4-** Organizational structure of foreign bank for activities which it intends to perform should be evaluated as suitable and sufficient.
- 7-5-** Managers of the branch, as judged by Central Bank, should enjoy the requisite qualifications and good standing required for taking charge of management of the branch

N.B.1: Competence of the branch managers should be confirmed by Central Bank beforehand at the time of establishment and or in the event of any modification.

N.B.2: Branch managers should have at least a bachelor's degree and 10 years work experience in bank affairs, at least two years of which must have been spent in positions of executive management at branch level

7-6- Rules and regulations of the foreign bank's respective country in connection with ring-fencing¹, separate entity and or the like, should not prevent the foreign bank from fulfilling its obligations towards its branch.

N.B.: The issued agreement- in-principle shall be valid for two months from the date of issuance and foreign bank has a duty to take action for depositing the endowment capital with Central Bank for receiving establishment license within the aforesaid deadline. Otherwise, Central Bank upon request of foreign bank and presenting plausible reasons shall be free to take action for extension of validity of agreement-in-principle.

Article 8- Central Bank after deposition of the entirety (100%) of capital endowed by foreign bank will take action for issuance of establishment license.

Article 9- Establishment license issued by Central Bank shall be valid for 3 months from the date of issuance and foreign bank has a duty to take action for registration of the branch and to produce the following documents and information to Central Bank within the above-mentioned period:

9-1- Notice of registration of branch at registrar of companies

9-2- Written announcement for commencement of branch's activity

9-3- Determination of location of branch

N.B.: Validity of establishment license may be extended if reasonable grounds are presented

Article 10 - Central Bank after receiving and studying documents and information mentioned in Article 9 will take action for issuance of operating license. Operating license issued by Central Bank for commencement of activity shall be valid for 3 months from the date of issuance.

N.B.: Should the branch not commence its operations within one year from obtaining the establishment license, all the issued licenses will be deemed as null and void.

Article 11- Concurrent with the issuance of the operating license, permission for making use of sums deposited as endowment capital shall be also issued and conveyed to the fully authorized representative of foreign bank by Central Bank.

Article.12- The branch has a duty to announce the date of commencement of its business to Central Bank, in writing, in advance.

Article 13- The issued operating license shall be limited to the authorized activities for foreign bank.

Article 14- Assurance of Central Bank from being altered or incomplete documents and information sent by foreign bank for establishment of branch, if necessary and at the discretion of Central Bank will lead to nullification of all issued licenses.

¹ Ring-fencing and separate entity, refer to the collection of rules and regulations based on which foreign banks are exempted and exonerated from discharging their financial obligations towards their foreign branches under special circumstances.

Part III-Manner of activity

Article 15- The branch in performing its banking operations shall be bound to observe The Law for Usury (Interest) Free Banking Operations and its regulations. The branch is authorized to offer services in the framework of the articles of association of the foreign bank and license of Central Bank.

N.B1: The rate of interest on deposits, loans granted and commission fee of bank services shall be determined in accordance with rules and regulations laid down by the Monetary and Banking Law and the Law for Usury (Interest) Free Banking Operations.

N.B2: Bank's foreign exchange deposit rates, extended loans and facilities at foreign exchange and the commission fee of bank's foreign exchange operation of services would be determined on the basis of and at the discretion of bank's branches.¹

Article 16- Total balance of loan and facilities granted and liabilities of the branch at any time should not exceed fifteen times its endowed capital.

N.B.: Credit lines funded from resources of foreign bank shall be excluded from the restriction mentioned in this Article.

Article 17- Transfer of foreign exchange in any form from the branch abroad and vice versa as well as buying and selling foreign exchange shall be subject to foreign exchange rules and regulations of Iran.

Article 18- Information and documents relating to deposits, loans granted and services offered to the customers should be available in the Persian language at the branch at any time.

Article 19- The branch, in case of receiving deposits from the public, has a duty to produce sufficient information indicating the amount and manner of guarantee of the branch in connection with repayment of deposits to the depositors.

In the event of offering deposit insurance services, the branch has a duty to hand over to the depositors, information relating to conditions of insurance and payment thresholds.

Article 20- The branch has a duty to announce information relating to modality of offering its services to the customers in transparent manner and make clear the process of investigation of their objections and complaints.

Article 21- Those sentenced to theft, bribery, embezzlement, breach of trust, fraud, forgery, issuance of bad checks and bankruptcy through fault or fraud, whether decree is issued by domestic courts or abroad or the sentenced person is the principal guilty person or accessory or assistant to the crime, shall be prohibited from taking charge of managerial positions of the branch.

Article 22 - Binding instruments of the branch should be signed by at least two authorized signatories of the branch.

¹ Approved in 1125th session of the Money and Credit Council, dated 17.May.2011.

Article 23- The branch shall be free to increase capital endowed through one of the following methods and after having obtained permission from Central Bank:

23-1- Granting capital by foreign bank

23-2- Out of accumulated profits and or the other contingency reserves, except the legal reserve

Article 24- At the end of each fiscal year, the branch has a duty to allocate at least twenty (20) percent of its net annual profits to the legal reserve account. Legal reserve after reaching the amount of the capital endowed shall be optional.

Article 25- The branch has a duty to deposit legal deposit with Central Bank.

N.B.: Central Bank will determine the legal deposit ratio.

Article 26- In the conduct of its activities, the branch has a duty to observe supervisory criteria relating to liquidity ratios, fulfillment of undertakings and restrictions relating to large facilities and exposures, related party facilities, insurance of deposits, risk management, authorized extent of net open positions, accounting standards and policies as well as mechanisms relating to internal control systems, which are laid down by Central Bank.

Article 27- Bank exchanges in Rial between the branch and other banks and branches will take place through the payment system set up by Central Bank. Membership of the branch in the payment system is a necessity.

Article 28- The branch has a duty to present its audited financial statements in the Persian language to Central Bank at the end of each fiscal year and also on an interim basis.

N.B.: For the purpose of informing Central Bank about the financial status and health of foreign bank and banking group, the branch has a duty to present audited consolidated financial statements of foreign bank in the English language to Central Bank at the end of each fiscal year.

Article 29- Persian copy of financial statements and notes attached thereto should be available at the branch at any time after publication.

Article 30- Foreign bank has a duty to inform Central Bank about the main changes in the shareholders and managers as well as ratios of adequacy of its capital and liquidity and other instances, which can weaken the power of bank and its foreign branches in fulfillment of its liabilities and changes in prudential regulations, which will affect operations of foreign bank and its branches abroad, as soon as they occur.

Article 31- Financial statements of the branch should be examined by an auditor member of Association of Certified Accountants of Iran confirmed by Central Bank. In the event of making a decision with regard to changing the auditor, the matter should be brought to the attention of Central Bank for obtaining permission.

Part IV-Supervision

Article 32- Central Bank with the aim of protecting the interests of depositors, ensuring compliance with regulations of this Guideline as well as stability and health of managers of the branch in dealing with risks that face it and or future potential risks and adequacy of the resources of branch for controlling such risks, will supervise the branch through applying supervisory and corrective measures.

Article 33- Supervision of the branch by Central Bank will be conducted on-site and off-site. Managers of the branch have a duty to take steps necessary for the performance of this matter.

Article 34- For compliance with regulations of the bye-law and the present Guideline, Central Bank may evaluate all regulations, strategies, policies and executive mechanisms of the branch.

Article 35- Central Bank will dispatch its examiners to scrutinize accounts and manner of activity of the branch whenever it deems expedient.

Article 36 - Central Bank may ask supervisory authority to take action immediately for on-site supervision and assurance of accuracy of operations and activities of the branch. On-site supervision may be carried out by Central Bank examiners and representatives of supervisory authority jointly.

Article 37- Supervisory authority with prior notice to Central Bank, may take action, at any time, to ensure that the branch complies with the regulations through control and supervision.

Article 38- Central Bank together with supervisory authority may take action for exchange of supervisory findings concerning the branch.

Article 39- Central Bank may ask the auditor of the branch to examine legal registers of the branch on an ad-hoc basis and present the required information to Central Bank.
N.B.: Expenses of audit subject matter of this Article shall be borne by the branch.

Article 40- Managers of the branch have a duty to produce all their documents, instruments and registers to the examiners of Central Bank and to enable them to conduct the necessary and adequate examination.

Article 41- The branch has a duty to produce information relating to its financial activities in the framework of reporting forms and the respective instructions, at prescribed intervals, to Central Bank.

Article 42- Central Bank while protecting the professional secrets of the branch and its customers, may take steps to process and present branch information by means of statistical application.

Article 43- In the event that the following breaches are established, Central Bank will apply its supervisory and corrective measures:

43 -1- Breach of criteria and regulations of the bye-law and the present Guideline and or written instructions of Central Bank

43-2- Breach of trust duties

43-3- Breach of written undertakings of the branch given to Central Bank

43-4- Performing operations or activities not within the framework of the license received by the branch

43-5- Prevention of conduct of on-site supervision

43-6- To risk the interests of depositors

43-7- Infringement of rules and regulations governing prevention of money-laundering

43-8- Non-compliance with regulations governing payments system

43-9- Fault or delay in producing information or sending incomplete and or altered reports and information

Article 44- Supervisory and corrective measures of Central Bank include:

44-1- Conveying written notification to the branch stating the breaches

44-2- Conveying written instructions for removing breaches and binding the managers of branch to carry out corrective measures according to a schedule

44 -3- Making a request for preparation of interim financial statements and preparation of audit and legal inspector's report

44-4- Issuing written instructions to the branch for changing the auditor

44-5- Changing financial ratios mentioned in Article 26

44 -6- Issuing written instructions to the branch imposing restrictions for the conduct of some operations and activities of the branch

44-7- Inviting the managing director or senior authorities of foreign bank for presenting explanations concerning those breaches made

44-8- Issuing written instructions to the foreign bank for changing manager(s) of the branch

44-9- Obliging the foreign bank to increase the capital endowed

44-10- Obliging the branch to pay the amounts subject matter of the breach in accordance with Article 43 of the Monetary and Banking Law

44-11- Appointing temporary manager for running the branch or employing a resident supervisor

44-12- Suspension of operating license

N.B.1: Salary and fringe benefits of managers appointed by Central Bank for running the branch or resident supervisors, subject matter of Clause 11 of Article 44 shall be fixed as directed by Central Bank and shall be paid by the foreign bank.

N.B.2: Scope of duties and responsibilities and powers of temporary manager of the branch or resident supervisor shall be determined by Central Bank

N.B.3: The stages mentioned in this Article will not preclude Central Bank from exercising its powers without going through the above-mentioned stages and Central Bank may apply any one or a number of supervisory and corrective measures subject matter of this Article according to degree of importance of the breach.

N.B.4: Manner of computation and the amount of the fine subject matter of Clause 10 of Article 44 will be similar to the manner that Central Bank deals with Iranian banks.

Article 45- Execution of supervisory and corrective measures mentioned in Article 44 will not negate financial, civil, executive or criminal responsibilities of managers of the branch.

Part V- Dissolution of Branch

Article 46- Branch may be dissolved in the following instances:

46 -1- In the event of lack of condescension to supervisory and corrective instructions of Central Bank.

46-2- In case supervisory authority makes a request.

46-3- In case of non-commencement of activity for three months after obtaining establishment license from Central Bank.

This deadline shall be extendable for one year at the request of foreign bank and approval of Central Bank.

46-4- In case foreign bank makes a request.

46-5- In case the branch suspends its activities and operations for one working week without obtaining permission from Central Bank.

46- 6- In case it is proven to Central Bank that the information and documents sent by the foreign bank for establishment of branch have been incorrect or altered.

Article 47- Managers of the branch have a duty to bring to the attention of Central Bank the matter of suspension of operations or bankruptcy of the foreign bank immediately and stop all bank operations and activities of the branch. Central Bank as soon as it is informed of suspension or bankruptcy of the foreign bank, will take steps for appointment of temporary branch manager or resident supervisor subject matter of Clause 11 of Article 44 of the present Guideline.

Article 48- Decisions relating to implementation of order of bankruptcy and liquidation of foreign bank in connection with closure of branch shall be binding under the direction and supervision of Central Bank with respect to the fulfillment of obligations of the branch towards depositors and other customers of the bank.

Article 49- Branch closure shall be possible upon proposal of Central Bank and confirmation of the Currency and Credit Council.

Article 50- Foreign bank shall not be free to take action for closure of branch before fulfillment of all obligations of its branch towards creditors and other customers in Iran.

Article 51 - Foreign bank has a duty to present a detailed plan including methods of settlement of liabilities arising from banking operations of the branch as well as a schedule for settlement of these liabilities, to Central Bank within ninety (90) working days after the necessity of branch closure has been communicated by Central Bank.

Article 52 - Central Bank will take action with regard to rejection or approval of provisions thereof, within thirty (30) working days of the date of receipt of the detailed plan for the closure of the branch.

N.B.:, In the event that the detailed plan for the closure of the branch is rejected, Central Bank will present its exact instructions for review of the said plan,

Article 53- Detailed branch closure plan shall be applicable after confirmation of Central Bank and the branch has a duty to notify the matter of closure in mass circulation dailies in three turns.

Article 54- Managing director of the foreign bank or person who represents the foreign bank in this respect, has a duty to undertake, in writing, that all liabilities of foreign bank towards its creditors in Iran resulting from operations and activities of the branch have been settled.

Article 55- Central Bank after gaining assurance about the fulfillment of all liabilities of the branch and obtaining the letter of undertaking subject matter of Article 54 will cancel the operating and establishment licenses of the branch and will bring the matter to the attention of the Companies Registrar.

Article 56- Net cash remaining with the branch in the form of endowment capital shall be transferable to the accounts of foreign bank.

Article 57- Other instances not specifically dealt with in this Guideline shall be subject to Monetary and Banking Law approved in 1972, the Law for Usury (Interest) Free Banking Operations approved in 1983 and other relevant rules and regulations. The Executive Guideline laid down for Manner of Establishment, Activity, Supervision and Closure of Foreign Banks' Branches in Iran was approved in 57 Articles and 19 Notes in the second session, dated 06.05.2009 of the board of governors of the Central Bank of the Islamic Republic of Iran by virtue of the Executive Bye-law laid down for Manner of Establishment and Operations of Foreign Banks' Branches in Iran

Seal of the Central Bank of I. R. Iran; Secretariat Department, Currency and Credit Council and the Board of Governors affixed.