

# Saudi Arabian Capital Market Authority issues regulations on depositary receipts

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## New regulations will facilitate secondary listings outside of Saudi Arabia

On 7 September 2020, the Capital Market Authority of Saudi Arabia (CMA) issued instructions relating to listing of depositary receipts outside of the Kingdom (Instructions). Previously, foreign issuers were allowed to be listed on the Saudi Stock Exchange (Tadawul), but the CMA's regulations did not expressly permit secondary listings of Saudi issuers abroad. The Instructions provide, for the first time, a mechanism for companies listed on Tadawul to obtain secondary listings outside of the Kingdom.

### Depositary bank

Pursuant to the Instructions, a company with shares listed on Tadawul may deposit its shares with a depositary bank authorised by the CMA, which in turn would issue depositary receipts listed and traded on a regulated market outside of Saudi Arabia. The depositary bank must be licensed, or otherwise subject to regulatory oversight, by a regulatory authority and incorporated in a jurisdiction that applies regulatory and monitoring standards equivalent to those of the CMA or otherwise acceptable to the CMA (as the CMA may determine in its sole discretion).

### Continuing obligations

The issuer must obtain the CMA's approval prior to issuing depositary receipts outside of the Kingdom and continue to comply with its continuing obligations pursuant to the applicable regulations of the CMA and Tadawul. Disclosures to the public in Saudi Arabia and the foreign market should be made simultaneously, in a manner that ensures that no information or material developments are disclosed to the foreign market before being made available to the public in Saudi Arabia. The issuer and the depositary bank will also need to establish a mechanism for the exercise of voting rights of the shares represented by depositary receipts, in accordance with a voting mechanism set up by the Saudi Securities Depository Centre (Edaa).

The Instructions also require that the issuer's shares and depositary receipts must be exchangeable. To achieve this, the depositary bank must allow the depositary receipt holders to cancel the depositary receipts and take direct ownership of the underlying shares, provided that the holder is among the categories of investors permitted to own shares listed on Tadawul (such as qualified foreign investors) and there is no breach of the 49 per cent. cap on foreign ownership in any Saudi listed issuer. The depositary bank must also enable a shareholder to convert its shares to depositary receipts, provided

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that such shareholder is permitted to own depositary receipts in the foreign market.

An offering of depositary receipts may be made simultaneously with an initial public offering of shares in Saudi Arabia, and the shares that correspond to the depositary receipts are deemed to be in public hands for the purpose of the 30 per cent. free float requirement under Tadawul's Listing Rules. However, the number of shares that correspond to depositary receipts cannot exceed the lesser of 10 per cent. of the total issued share capital and one-third of the number of shares held in public hands.

## **Conclusion**

The Instructions follow a series of developments in recent years designed to attract foreign direct investment into Saudi Arabia. The criteria for qualified foreign investors permitted to own shares listed on Tadawul were amended in 2018 to reduce the required assets under management from approximately US\$ 1 billion to approximately US\$ 500 million, and Saudi Arabia was included on the MSCI's Emerging Markets Index in 2019. We expect that the Instructions will encourage foreign investment in capital markets in Saudi Arabia by facilitating secondary listings of Saudi issuers outside of the Kingdom.

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