

Amended Capital Market Authority Regulations

Securities Business and Capital Market Institutions Regulations

2 February 2021

In line with its strategic objective to develop the capital markets in Saudi Arabia and Vision 2030, on 25 August 2020 the Capital Market Authority (the "CMA") announced amendments to its Securities Business Regulations ("SBRs") and Authorised Persons Regulations (now the Capital Market Institutions Regulations ("CMIRs")).

This note summarises certain material changes that are included in the amended regulations. Except as noted otherwise below, the changes came into force on 1 November 2020.

1 SBRs

Regulated Activities

The SBRs set out the range of regulated securities activities that require authorisation by the CMA in order to be carried on by way of business with a person in Saudi Arabia. Amongst those regulated activities are arranging, advising and managing and the CMA has specified the following changes to their scope **with effect from 1 January 2022**.

Arranging

Previous Scope

Advising a person on the merits of dealing in a security or exercising any right to deal conferred by a security.



Changes

Introducing will be limited to an offering of securities or arranging the underwriting of an offer. The general activity of acting to bring about a deal in a security has been deleted.



Comment

This change may bring helpful certainty for participants in the Saudi market on the scope of the arranging activity by limiting the introducing business that would be caught to securities offerings and their underwriting whilst removing the wide reference to bringing about deals in securities.



Advising

Previous Scope

Advising a person on the merits of dealing in a security or exercising any right to deal conferred by a security.



Changes

The reference to "the merits" of dealing has been deleted but financial planning and wealth management have been added to this activity.



Comment

The proposed changes clarify that any advice on dealing in a security is caught and broadens the scope of the regulated activity to cover financial planning and wealth management (these terms are not further defined and could be broadly interpreted by the CMA).



The CMA operates an on-shore regulatory model so any entity that carries on any securities activity by way of business in, or with or for a person in, Saudi Arabia, must be licensed by the CMA to carry on the relevant activity. Foreign businesses that are not licensed in Saudi Arabia and which currently offer services from offshore to clients in Saudi Arabia that could be construed as being financial planning or wealth management services should therefore carefully consider their business model and whether to cease such activities or instead offer them via an entity that is authorised by the CMA.

Managing

Previous Scope

Managing a security belonging to another person in circumstances involving the exercise of discretion.



Changes

Operating investment funds has been added as an alternative activity in this category.



Comment

It is now contemplated that rather than just being a discretionary manager a person carrying on the activity of managing may instead operate an investment fund. This change has also been reflected in proposed changes to the CMA's Investment Funds Regulations.



Securities Business Advertisements – Deletion of the Institutions Exemption

Under the SBRs, the general rule is that a securities advertisement¹ must not be made or communicated to a person in Saudi Arabia except if it is made or approved by an entity that is authorised by the CMA².

There are a number of exceptions contained in Article 20 of the SBRs from this requirement to involve an authorised person, including previously where a securities advertisement was directed only at “institutions³”. The CMA has deleted this exception, meaning that in the absence of another exemption a capital market institution will now need to be involved where any securities marketing is proposed to be sent to Saudi corporates even if they meet the assets test for an institution, including government owned companies (the government itself remains subject to a separate exemption that continues under the updated regulations).

2 CMIRs

The CMIRs set out the requirements for an entity to be authorised by the CMA to carry on securities business in Saudi Arabia, as well as the continuing obligations for such an authorised entity.

As a matter of terminology, the CMA has replaced the current references to “Authorised Persons” with “Capital Market Institutions”, including that the name of the regulations is changed to the Capital Market Institutions Regulations. More substantively for foreign entities considering establishing a securities business in Saudi Arabia, the CMA has published the following relevant amendments:

- > the required minimum initial cash capital for the managing activity is now (a) SR 20 million for “managing investments and operating funds” (this figure currently applies to, “managing investment funds and client portfolios”), and (b) an amount that covers the expected expenses for a year for managing investments (reference to minimum capital of SR5 million for “managing private non-real-estate investment funds and sophisticated investor portfolios” has been deleted);
- > arranging and advising (which previously had minimum capital requirements of SR2 million and SR400,000 respectively) will also have their minimum capital calculated by reference to one year’s expected expenses;
- > CMA authorisation will be granted for a 10-year renewable term, (currently licences are not granted for a set period);
- > all Capital Market Institutions must have an Arabic language website through which disclosures required by the CMA are made;
- > the requirement to hold client money with a local bank has been removed;
- > a requirement to include clear disclosure in advertisements approved by a Capital Market Institution that will be shared/distributed by another person, that such person has received or will receive benefits in exchange for communicating/sharing that advertisement; and

¹ Defined in Article 16(a) of the SBRs (as amended) as, “...any form of verbal, electronic, written or other communication in relation to securities or securities activity made in the course of business for the purpose of inviting or inducing a person to engage in securities activity.”

² SBRs, Article 17.

³ Defined in the CMA’s Glossary of Defined Terms as (a) any company which owns, or which is a member of a corporate group which owns, net assets of not less than SR10 million, or (b) any unincorporated body, partnership or other organisation which has net assets of not less than SR10 million.

- > **with effect from 1 January 2022**, rather than being classified as (a) a customer, (b) an execution-only customer, or (c) a counterparty, as is currently the case, clients must be classified as:
 - a retail client (any client that is not a qualified client or an institutional client);
 - a qualified client (this would include (i) natural persons who meet specified criteria that demonstrate they satisfy the CMA’s requirements for a professional investor (for example trading experience, net assets of not less than SR5 million or a relevant professional qualification), (ii) clients of an entity authorised by the CMA to conduct managing activities that is acting on a discretionary basis and where the offer is made to the authorised entity, and (iii) legal persons with net assets between SR10 and 50 million); or
 - an institutional client (defined as (i) the Saudi government or any supranational authority recognised by the CMA, (ii) companies owned by the government, either directly or through a portfolio managed by a capital market institution, (iii) legal persons acting for their own account and which have net assets of more than SR50 million, (iv) investment funds, and (v) “counterparties” i.e. a capital market institution, an exempt person, a local bank, an insurance company, a qualified foreign investor or a non-Saudi financial services firm).

Generally, the requirements that currently apply to “customers” will, under the proposed changes, be applicable to all clients regardless of their classification. Under the retained interim wording the requirement to ensure that advice or a transaction is suitable expressly does not apply to execution-only clients and it is not clear this will continue to be the case when the new classifications come into force. It is hoped that the CMA provides clarification on this point prior to the 2022 implementation date.