

New Saudi Listing Rules

The Saudi Capital Market Authority (“CMA”) recently published a set of revised Listing Rules. This briefing highlights the key changes from the previous regime.

On 22 January 2012 (corresponding to 28/2/1433H), the CMA published a set of revised Listing Rules (the “Rules”) and related Glossary terms, which took effect on that date. This is the culmination of a consultation process in which the CMA invited feedback from market participants on a draft set of Listing Rules which were published on the CMA’s website on 8 May 2011. Clifford Chance and Al-Jadaan participated in the consultation process by reviewing the draft legislation, discussing the same with various market participants and then submitting a detailed response to the CMA.

The publication of the new Rules has been presented by the CMA as part of its effort to develop the Saudi capital market, to enhance the regulatory framework which governs it and to better protect both investors and market participants.

We welcome the efforts which have been made by the CMA in the Rules to codify its current practices on capital markets transactions and to provide greater clarity and transparency to issuers and other market participants. The structure of the Rules has been significantly improved and they should be much more “user-friendly” for practitioners familiar with listing rules in other developed capital markets.

Overview of changes

The Rules contain a number of changes from the old regime including the following:

- The Rules now include specific requirements for listings of securities other than those for equity and debt including convertible debt instruments, contractually based securities and warrants. Furthermore, the Rules now include specific requirements for the issuance of listed debt instruments on a standalone basis and in tranches pursuant to programmes.
- It is now mandatory for issuers contemplating a listing of securities to appoint both a financial advisor and a legal advisor to assist them, both of whom must be independent of the issuer (and each other) and each satisfy a new independence test set out in Rules.
- The Rules require that the financial advisor and legal advisor to an issuer must each provide a pro forma letter (the forms of which are set out in Annexes to the Rules) addressed to the CMA which includes certain prescribed confirmations (including as to the issuer’s compliance with the Rules and their own independence). Some of these confirmations are fairly broad in scope, such as the requirement for the financial

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advisor to confirm that the directors of the issuer have established adequate procedures, controls and systems to comply with, *inter alia*, the Rules.

- In line with the CMA’s current practice, applications for listing to the CMA must be accompanied by additional supporting documents, including a working capital report, financial and legal due diligence reports, a presentation on the corporate structure of the issuer’s group and market studies detailing industry information and market trends mentioned in the prospectus.
- The Rules now permit cross-listings of a foreign issuer’s securities on the Tadawul, in the CMA’s absolute discretion, and provided that, in the CMA’s view, the listing rules applicable in the foreign issuer’s jurisdiction of primary listing are at least equivalent to the Rules. There is no guidance in the Rules on which jurisdictions the CMA considers to be “equivalent” for this purpose or on which

provisions in the Rules the CMA would require a foreign issuer seeking a cross-listing on the Tadawul to comply with.

- Offers of securities must be fully underwritten and underwriters must comply with the CMA's Prudential Rules, including any minimum capitalisation requirements they prescribe. The old Listing Rules required an underwriter to have a minimum net capital that was sufficient to meet any underwriting commitment. Alternatively, it could arrange financing or enter into sub-underwriting agreements to meet the underwriting commitment or meet such minimum net capital requirements respectively. This flexibility has now been removed and underwriters can no longer effectively transfer underwriting risk to a third party.
- In line with practice in other developed markets, the Rules now provide investors with a withdrawal right or a right to amend their subscription application where they have subscribed for securities prior to the publication of a supplementary prospectus related to the offering. However, these rights may only be exercised by investors prior to the end of the offering period and there is no express guidance as to whether an offering period would be extended in such circumstances.
- The Rules now contain separate conditions and requirements which apply to capital increases (including rights issues, capitalisation issues and increases to acquire companies or assets) and capital reductions

by listed issuers. On rights issues, the focus of the CMA will be on the use of proceeds in relation to which a detailed breakdown must be included in the rights issue prospectus. In particular, the CMA must be satisfied that no more than 25% of the net proceeds of a rights issue will be used for general investment or corporate purposes by an issuer.

- Directors of an issuer must provide a positive confirmation in the pro forma declaration (the form of which is set out in Annex 2 to the Rules) to be provided by an issuer to the CMA that the funds raised in the offering (whether primary or secondary) will be used in accordance with the reasons disclosed in the prospectus, unless the CMA and the shareholders are informed otherwise and their approval is obtained for any alternative use of proceeds.
- The continuing obligations of issuers in relation to ongoing disclosure have been widened in the Rules. All disclosures made by an issuer to the public and to the CMA must be clear, fair and not misleading. It is not yet clear if market practice will develop so that key statements in any such disclosure will require verification by an issuer and its advisors prior to publication. In relation to the obligation of an issuer to disclose material developments on an ongoing basis, when determining whether any development falls within the scope of the obligation to disclose, an issuer must assess whether "any investor" would be likely to consider information about the development in making his investment decision – a very

wide test which is not qualified by any objective standard.

Results of consultation

The CMA is renowned for being one of the more responsible and progressive regulators in the MENA region. Therefore, it is encouraging and reassuring to note that as a result of the consultation process, the CMA has decided not to include some of the more onerous requirements which were proposed in the draft listing rules in the Rules such as:

- An obligation on issuers to retain financial and legal advisors for 12 months post-listing to advise them on their obligations under the Rules.
- A reference to the nature of the relevant advisor's business relationship with, or financial interest in, the issuer as an example of circumstances in which an advisor would not be considered to be "independent".
- An obligation on an issuer of listed equity securities to provide the CMA with updates as to how it meets the free-float and minimum shareholder eligibility requirements on a monthly basis post-listing.
- Specific eligibility conditions for real estate companies including minimum capital requirements.
- The requirement for an issuer to conduct a rights issue through the offering of tranches of shares under an issuance programme in circumstances where it wishes to utilise the proceeds from the rights issue over a period of more than 12 months.

- The requirement that, in the context of an equity listing, a financial model be made available for inspection to prospective investors and, in the context of a debt listing, a financial model and valuation report be made available for inspection to prospective investors. Under the Rules, a valuation report must only be made available for inspection to prospective investors in the context of equity listings.

Next steps

- The Rules do not provide any “grace period” for existing issuers with securities (i.e. debt or equity) listed on the Tadawul to ensure full compliance with the new continuing obligations contained in the Rules. Article 55 of the Rules simply states that the Rules will become effective upon publication (i.e. they became effective from 22 January 2012G). Therefore, for example, issuers of listed equity securities should ensure that they monitor their compliance with, and continue to meet, the minimum shareholder requirement and free-float requirement.
- Although we expect the CMA will be fairly understanding in its enforcement of the new regime whilst it is still new, existing issuers would be well-advised to undertake an internal review exercise to ensure their compliance with the Rules and that they have the procedures, systems and controls in place to comply with the Rules on an ongoing basis.

A copy of the new Listing Rules is available [here](#).

A copy of the revised Glossary terms is available [here](#).

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