

## Kingdom of Saudi Arabia: Capital Market Authority Amends, Clarifies Listing Rules

***Domestic issuers will welcome the amendments as they largely clarify or formalize existing CMA practices.***

### Introduction

Further to the continuous efforts of the Capital Market Authority (the CMA) in the Kingdom of Saudi Arabia (the Kingdom) to further enhance the regulatory framework for listing securities on the Saudi Stock Exchange (Tadawul), the Board of the CMA recently adopted new amendments to the Listing Rules pursuant to resolution Number (1-38-2016) dated 22/6/1437H (corresponding to 31 March 2016G) (the Listing Rules). This *Client Alert* provides a general overview of the newly adopted amendments and their potential effect on current and upcoming public listings of companies in the Kingdom.

By way of background, the Listing Rules mainly aim to regulate public offering, registration and admission of securities to listing on Tadawul, as well as a company's continuing obligations post-listing. A number of the newly adopted amendments merely affirm the CMA's current practices, which were not part of the Listing Rules and provide further clarifications on certain areas thereof.

For the purpose of this *Client Alert*, a company with securities listed on Tadawul will be referred to as Issuer. In addition, reference to an Article means a reference to an article of the Listing Rules.

### The Amendments to the Listing Rules

The amendments along with their potential effect on current practices on the market are summarized below.

#### Amendments to Part 2 of the Listing Rules: Advisors to the Issuer

Share capital reduction is subject to the approval of the CMA. In this regard, Article 5 (*Appointment of Advisors*) now stipulates that if an Issuer wants to reduce its share capital, it is required to appoint a financial adviser and a legal adviser to advise on such reduction. As such, Article 33 (*Conditions Related to Issuer's Capital Reductions*) was amended to include the letters of appointment of the financial adviser and the legal adviser as deliverables which the Issuer must submit to the CMA as part of the share capital reduction application.

Whether these deliverables would entail the preparation and submission of legal and/or financial due diligence reports as part of the capital reduction application is still unclear. Furthermore, the form and level of detail of the reports (if required by the CMA) are yet to be seen in practice.

### **Amendments to Part 4 of the Listing Rules: Registration and Listing**

The amendment to Article 19 (*Application for Registration and Admission to Listing and Supporting Documents*) now requires a company that wishes to list its securities on Tadawul to submit, together with the application for registration and admission to listing to the CMA, an original copy of (i) the governmental approvals required by the relevant governmental agencies (if any), (ii) the company's board resolution approving the submission of the application for registration and admission to listing and (iii) the company's corporate governance code. In practice, the CMA has typically requested such documents in connection with any application for listing of securities on Tadawul. As such, this amendment represents a confirmation of the CMA's existing practice.

In addition, Article 19 requires companies applying to list their securities on Tadawul to maintain copies of all documents submitted to the CMA pursuant to Article 19 for a period not less than five years. However, if any such documents relate to any pending or threatened claim, litigation or on-going investigation, a company shall retain such documents until such claim, litigation or investigation has been decided upon by the relevant authority or adjudicatory body.

Article 25 (*Publication of Prospectus and Formal Notices*) has also been amended to require an Issuer in the case of a rights issue to publish the rights issue prospectus at least 14 days prior to the general assembly meeting convened to vote on the capital increase. In the past, the Listing Rules contained a general requirement for all listings pursuant to which the relevant prospectus is to be published 14 days prior to the start of the offering. This requirement now only applies in the case initial public offerings. This amendment also confirms the CMA's existing practice in the context of a rights issue and provides further clarification on the timing for publishing the rights issue prospectus, clarity previously omitted from the old Listing Rules.

### **Amendments to Part 5 of the Listing Rules: Capital Increase for Issuer of Listed Securities**

Paragraphs (c) and (d) of Article 29 (*Application Submission for Capital Increase of Issuer of Listed Securities and Supporting Documents*) have been amended to draw a distinction between what applies to: (i) rights issues for raising fresh equity to finance the Issuer's operations, and (ii) capital increases for acquiring a company or for purchasing an asset. In the previous version of the Listing Rules both events shared the same exemptions.

While the exemptions applicable to rights issue remain unchanged in the Listing Rules, Issuers seeking a capital increase for acquiring an asset are now exempt from submitting legal and financial due diligence reports. These new exemptions will likely facilitate and expedite the process for Issuers to make acquisitions through capital increases.

### **Amendments to Part 8 of the Listing Rules: Continuing Obligations**

In connection with an Issuer's continuing obligations, paragraph (c) of Article 40 (*Clear, Fair and Not Misleading Disclosure*), has been amended to incorporate the language of paragraph (d) of Article 26 (*Dissemination of Information*) of the Listing Rules into the Issuer's continuing disclosure obligations and formalize current market practice. This amendment allows an Issuer to apply to the CMA for a waiver from disclosing any matter which the Listing Rules would require to be disclosed. The CMA may grant a waiver if, in the opinion of the Issuer, the disclosure of such matter or information would be detrimental to the Issuer, and the omission of which would not likely mislead the investors and the knowledge of which

would not be essential to assess the Issuer's securities; provided that such request is made on a confidential basis and includes the reasons why the Issuer believes such information shall not be disclosed at that time. If the CMA approves such a non-disclosure request, the CMA reserves the right to require the Issuer to disclose the information at any point in time in the future, as it may deem fit.

The amendment to paragraph (d) of Article 40 imposes a new obligation on the Issuer with respect to information relating to material developments with respect to its affair. Pursuant to the amendment, the Issuer is prohibited, prior to disclosing the information relating to material developments to the CMA, from sharing any such information with any party that is not bound by a confidentiality obligation towards the Issuer with respect to that information. Further, the Issuer must take all steps necessary to prevent leaks of such confidential information prior to disclosing it to the CMA.

Paragraph (e) of Article 40 now stipulates that the Issuer must determine the need to make an announcement to the public with regards to rumours about a material development in relation to the Issuer's affairs. The CMA reserves its right to require the Issuer to make an announcement in such regard in the manner the CMA deems appropriate. This amendment mirrors a similar requirement prescribed by the M&A Regulations; a set of regulations the CMA issued which apply to public M&A transactions involving two listed companies, whereby an Issuer should announce a potential acquisition in case of rumours about such acquisition, coupled with material fluctuations in the Issuer's share price.

Furthermore, as part of the amendment to Article 41 (*Material Developments Disclosure Obligation*), paragraph (b) has been amended to further clarify what the term "Material Developments" encompasses. The amendments to paragraph (b) of Article 41 generally ties the various thresholds relating to the material developments to the latest reviewed interim financial statements or to the audited annual financial statements, as the case may be. In addition, an Issuer now must disclose any court judgment issued against the board or any of its directors if the subject of the decision relates to the business of the board or any of the directors of the Issuer.

Pursuant to the previous version of the Listing Rules, an Issuer was required to disclose any information regarding any transaction between the Issuer and a related party, or any arrangement through which the Issuer and a related party invested in a project or provided financing therefor, regardless of the amount of the transaction. The new listing rules limit this requirement to any transaction with a value equal to or greater than 1% of the Issuer's gross revenues, according to its latest audited annual financial statements. By setting a clear and quantifiable threshold, this amendment positively addresses one of an Issuer's main concerns as, under the old Listing Rules, Issuers were required to disclose any transaction with related parties, irrespective of the transaction's materiality, which often times proved to be burdensome and unpractical.

Overall, the amendments to Article 41 serve to give further guidance as to what is deemed to constitute a Material Development and remove part of the confusion surrounding related disclosures. Nonetheless, we expect these provisions to develop in the future to accommodate market developments and address specific incidents and situations which may constitute Material Developments.

***For a detailed list of the amendments to Paragraph (b) of Article 41 please refer to the table at the end of this Client Alert.***

Another important amendment to the "Continuing Obligations" section of the Listing Rules is the amendment to Article 43 (*Board of Directors' Report*) as it deals with an annual requirement of listed companies. Pursuant to the amendment to Article 43, an Issuer must now provide the CMA, and announce to its shareholders the board of directors' report, within a period not exceeding 75)calendar

days (as opposed to 40 business days or 56 calendar days, under the old rules) after the end of the annual financial period. In addition, the report must include information relating to any risks the Issuer faces (whether operations, credit or market related risks) as well as include the Issuer's risk management policy and the supervision thereof. The report must also include, together with the information regarding the Issuer's borrowings, the amount, duration and outstanding balance of each of its loans. Furthermore, an Issuer must disclose the nature, terms and amount of each transaction which the Issuer entered into and in which an Issuer's director, CEO, CFO or any person related to them has, or used to have, an interest and disclose the names of the related persons.

In addition, two new paragraphs have been introduced to Article 45 (*Notifications Related to Substantial Holdings in Shares or Convertible Debt Instruments*) to provide exemptions from the restrictions imposed by paragraphs (1) and (3). These paragraphs mainly deal with requirements that either of the following notify the CMA and the relevant Issuer of specific changes to the size of their ownership:

- Any person who becomes the owner of, or interested in, 5% or more of any class of voting shares or convertible instruments of an Issuer
- Any director or senior executive of the Issuer who becomes an owner of, or has interest in, any rights in the shares or convertible debt instruments of such Issuer

The amendments now introduce an exception to these notification requirements if the increase or decrease in the ownership was a result of (i) capitalization issuance, (ii) a capital increase in connection with acquiring a company or purchasing an asset, (iii) an Issuer's capital reduction, or (iv) a rights issue in which the relevant person has not participated or exercised his or her right to subscribe.

Finally, pursuant to the amendment to Article 46 (*Notifications Related to Securities*) an Issuer is no longer required to notify the CMA of any significant change or the identity of persons holding more than 5% of its shares or convertible debt instruments.

## **Conclusion**

Generally, the majority of the amendments serve to confirm the CMA's existing practices, while other amendments have been introduced to provide additional protection to investors in the market (such as the new requirements with respect to a capital decrease) and enhanced ongoing disclosure obligations (such as the new required items under the board of director's report).

Further amendments to the existing CMA regulations will likely take place in the near future, especially in light of the new Companies Law (which entered into force on 2 May 2016) as well as new corporate governance regulations and regulatory procedures related to the Companies Law (which the CMA and the Ministry of Commerce and Industry jointly published on 26 April 2016 for public consultation).

For your ease of reference, please see use the following link for a copy of the latest version of the Listing Rules issued by the CMA: <http://www.cma.org.sa/cma/RegulationsFB/En-12/>

## AMENDMENTS TO PARAGRAPH (B) OF ARTICLE 41 OF THE LISTING RULES

No.	The Sub-Paragraphs after the Amendments
Pursuant to Article 41, an Issuer is required to notify the CMA and the public in any of the following events:	
(1)	The lease or mortgage of an asset at a price equal to or greater than 10% of the Issuer's net assets according to the latest of either its most recent reviewed interim financial statements or audited annual financial statements.
(2)	Incurring debt outside the Issuer's ordinary course of business and the amount of which is equal to or greater than 10% of the Issuer's net assets according to the latest of either its most recent reviewed interim financial statements or audited annual financial statements.
(3)	Incurring losses equal to or greater than 10% of the Issuer's net assets according to the latest of either its most recent reviewed interim financial statements or audited annual financial statements.
(6)	The occurrence of a dispute including any litigation, arbitration or mediation in which the value involved is equal to or greater than 5% of the Issuer's net assets according to the latest of either its most recent reviewed interim financial statements or audited annual financial statements.
(7)	The issuance of any judicial decision against the board or any of the directors in which the subject of the decision relates to the business of the Issuer's board or any individual directors.
(8)	The increase or decrease of the Issuer's net assets by 10% or more according to the latest of either its most recent reviewed interim financial statements or audited annual financial statements.
(9)	The increase or decrease of the Issuer's gross profit by 10% or more according to the latest audited financial statements.
(10)	The entry into or the unexpected termination of any contract with revenues equal to or greater than 5% of the Issuer's gross revenues according to the latest audited financial statements.
(11)	The existence of any transaction between the Issuer and a related party, or any arrangement through which the Issuer and a related party invest in a project or provide financing therefor, in which the value of the transaction is equal to or greater than 1% of the Issuer's gross revenue according to the latest audited annual financial statements
(12)	The occurrence of any interruption in the principal activities of the Issuer or its subsidiaries in which the financial impact equals or is greater than 5% of the Issuer's gross revenue according to the latest annual audited financial statements.

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