

CMA Warns Unlicensed Entities Against Conducting Securities Business in the Kingdom of Saudi Arabia

The Saudi Arabian Capital Market Authority ("**CMA**") has issued a warning to all institutions that are not Authorised Persons, or Exempt Persons (as defined in the Securities Business Regulations ("**SBRs**")), against undertaking securities business in Saudi Arabia.

The CMA's warning reflects the legal position provided by the laws and regulations governing the securities industry in Saudi Arabia. The securities industry in Saudi Arabia is governed by the Capital Market Law ("**CML**") and its implementing regulations ("**Regulations**"). The CMA has prescribed an on-shore regulatory model which provides that an entity which 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 securities activity, or be an Exempt Person, unless an exclusion applies.

"**Securities**" include shares, debt instruments, warrants, certificates, units, options, futures, contracts for differences, and long term insurance contracts, and a "securities activity" means any of the following:

- dealing: a person deals in a security as principal or as agent, and dealing includes to sell, buy, manage the subscription or underwrite securities;
- arranging: a person introduces parties in relation to securities business, advises on corporate finance business or otherwise acts to bring about a deal in a security;
- managing: a person manages a security belonging to another person in circumstances involving the exercise of discretion;

- advising: a person advises a person on the merits of that person dealing in a security or exercising any right to deal conferred by a security; or
- custody: a person safeguards assets belonging to another person which include a security, or arranges for another person to do so, and custody includes taking the necessary administrative measures.

Pursuant to Article 6 of the SBRs, a breach of the licensing requirement may attract a fine or imprisonment, and any agreement or contract which is entered into in relation to a security related transaction conducted by an unauthorised person is void (as provided for by Article 60 of the CML).

Accordingly, while consistent with the provisions of the CML and the Regulations, this recent communication indicates that the CMA will now take a stricter approach to the enforcement of these laws and regulations. This is illustrated by the CMA's call to Saudi securities investors to deal only with persons authorised by the CMA to conduct securities business in Saudi Arabia, and by the CMA's urging such Saudi investors to report any incidence of securities business carried out by persons not authorised to do so.

Further demonstrating the CMA's intention in this regard is its emphasis of one of the consequences of unauthorised persons conducting

securities business in Saudi Arabia, namely that contracts entered into pursuant to the practise of securities business by unauthorised persons are considered to be void.

Given that the CMA's warning is consistent with the relevant securities laws and regulations that have always applied, there is no reason that the warning should negate the CMA's informal position that compliance with the CML and Regulations is not required in respect of securities activities conducted with the Saudi Arabian Monetary Agency ("**SAMA**") or with SAMA regulated banks ("**Banks**"), provided such securities activity is for SAMA's or the Banks' own account for treasury management purposes. It may be argued that this tolerated position is based on the reasonable argument that such activities with SAMA and Banks is indeed a banking activity regulated by the Banking Control Law and not securities business. The CMA should, therefore, continue to tolerate unlicensed entities undertaking such activities with SAMA and with Banks on the above basis (although the CMA has not taken a formal position to the effect that the securities regulatory regime does not apply to such activities conducted with SAMA and with Banks, and could cease to tolerate such practices at any time and without warning).

Authors



Tim Plews

Partner

T: + 966 1 250 6588
E: tim.plews@cliffordchance.com



Mohammad Al-Jadaan

Partner

T: +966 1 250 6555
E: mohammad@aljadaan.com



Khalid Al-Abdulkareem

Partner

T: + 966 1 250 6599
E: khalid.al-abdulkareem@aljadaan.com



Peter Stansfield

Senior Associate

T: +966 1 250 6560
E: peter.stansfield@cliffordchance.com



Mansoor Al-Hagbani

Associate

T: + 966 1 250 6554
E: mansoor.al-hagbani@aljadaan.com

Please note our new office address and contact details

Al-Jadaan & Partners Law Firm

Building 15, The Business Gate, King Khaled International Airport Road
Cordoba District, Riyadh, KSA.
P.O.BOX: 3515, Riyadh 11481, Kingdom of Saudi Arabia
Tel +966 1 250 6500
Fax +966 1 400 4201 / 400 3641

For more information, please visit <http://www.aljadaan.com/>

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Al-Jadaan & Partners Law Firm (Co-operation agreement), Building 15, The Business Gate, King Khaled International Airport Road, Cordoba District, P.O.Box: 3515, Riyadh 11481, Kingdom of Saudi Arabia

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