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ECM guide to the Middle East

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A NORTON ROSE (MIDDLE EAST) LLP GUIDE
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The currency conversions (from local currencies to US$) are correct as of 30 June 2010.

Introduction

We are pleased to present our ECM guide to the Middle East, which gives an overview of the IPO process in key jurisdictions and markets throughout the region.

The global financial crisis has had a considerable adverse effect on global ECM transactions, and the markets in the Middle East have been affected severely in the downturn. However, as renewed optimism grows for the recovery of the global economy it is widely anticipated that ECM business in the region will recover over the coming 12 to 18 months. This Guide is intended to provide guidance on the regulatory frameworks for ECM in the Middle East and will be of interest to financial advisers advising on potential IPO mandates and businesses considering listing in the region.

Notwithstanding that many of the capital markets in the region were established relatively recently, and that there are a number of areas in which the regulatory environment remains to be developed in consequence, it is clear that there remains a keen willingness to adopt international practice and standards, together with an appetite to grow ECM business in the Middle East. In addition, there is a strong desire on the part of regulators in the region to develop their exchanges in line with international standards – all of which provides excellent opportunities for issuers and their advisers to enter into cooperative dialogue with regulators in a manner which is often not feasible in more developed markets.

The topics covered in the Guide include a brief introduction to each of the exchanges covered, the legal framework for listing, considerations as to the distinction between retail and institutional offers (if any), the eligibility criteria for an IPO, the IPO process, ongoing compliance following a successful listing, any takeover regime that may apply to a listed entity and a brief review of the process for offering foreign securities into the relevant jurisdiction. (The currency conversions given – from local currencies to US$ – are correct as of 30 June 2010.)

The Guide has been prepared on the assumption that an issuer will be undertaking a capital raising (on a full retail basis) in conjunction with a listing of shares on the primary market of the relevant exchange.

The information contained in the Guide (which is intended simply as a summary of the key issues relevant to IPOs in the region and not to be definitive legal advice) is as accurate and up-to-date as possible as at 1 May 2010.

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Contents

Bahrain

Bahrain

The market

The Bahrain Stock Exchange (BSE) commenced operations in June 1989. By January 2010 there were 50 companies listed on the BSE with a total market capitalisation of approximately BHD6.2bn (around US$16.4bn).

The Central Bank of Bahrain (CBB) regulates the BSE and exercises considerable discretion in regulating the capital markets regime in Bahrain. At the time of writing, the CBB is re-writing the regulatory regime for IPOs and securities offerings in Bahrain. It is anticipated that drafts of the new laws will be issued during the latter part of 2010, and that the CBB will continue to have overall responsibility for, and wide discretion in, regulating the BSE following the adoption of the new laws.

Legal framework

Legislative and regulatory

The legislative and regulatory framework for the BSE consists of a number of laws and regulations issued by numerous bodies collectively known as the "Legal Framework of the Bahrain Stock Exchange". In addition, the CBB has developed certain practices and policies in relation to IPOs which are not necessarily set out in formal rules. The CBB does, however, have an open approach to discussing the individual circumstances of each BSE applicant.

The laws, regulations and agreements which currently govern admission to listing and ongoing disclosure requirements include:

- The CBB Law (Central Bank of Bahrain Law 2006)
- The BSE Law (Bahrain Stock Exchange Law 1987)
- The BSE Internal Regulations (Resolution 13/1998 (as amended))
- Appendix to the BSE Internal Regulations titled "Information Required for Listing on the Bahrain Stock Exchange"
- The Disclosure Standards (Disclosure Standards 2004)
- The Commercial Companies Law (Decree Law No. 21/2001).

Regulatory oversight

No securities may be listed on the BSE without the approval of the CBB (acting as the listing authority). The CBB also reviews and approves any prospectuses which are required to be prepared (Articles 81 and 82 of the CBB Law).

The CBB's powers to regulate the capital markets and the offering of securities in Bahrain are broad and include the power to suspend or cancel the trading of any securities in circumstances where the CBB considers there to be sufficient grounds (Parts 4 and 5 of the CBB Law).

The Capital Markets and Supervision Directorate (CMSD) (a specialised subdivision of the CBB) monitors and regulates the BSE. The CMSD's main functions include:

- regulating and supervising the BSE, clearing houses and central depositories
- regulating and supervising licensees that are members of the BSE, clearing houses and central depositories
- approving the listing and/or public offering of securities
- undertaking market surveillance, investigations and enforcement
- undertaking investor education initiatives.

The CMSD strives to comply with all relevant international standards, in particular those of the International Organization of Securities Commissions.

Retail offer and institutional offer

Any offer not falling within the scope of paragraph 1.3 of the 'Minimum Requirement for Private Placement Memorandum for Offerings of Financial Instruments in the Kingdom of Bahrain, October 2008 (the PPM Regulations), must comply with the Disclosure Standards (paragraph 1.2 of the PPM Regulations). If it is not an institutional offer, it is a retail offer.

Institutional offers can only be marketed to a very restricted group of investors: (i) "accredited investors"; and/or (ii) entities whose shareholders are all "accredited investors"; and/or (iii) the issuer's or promoter's directors, management and staff members. Retail offers can be marketed publicly to any individual.

The minimum individual subscription for an institutional offer must be at least US$100,000 or equivalent. There is no threshold for retail offers. In addition, nothing relating to institutional offers should be made public.

The disclosure requirements are more stringent for retail offers under the Disclosure Standards compared to those for institutional offers under the PPM Regulations.

The PPM Regulations will also be revised in connection with the revision of the IPO rules generally.

Companies preparing for an IPO frequently carry out a pre-IPO institutional offer to increase the number of shareholders and/or share capital required to meet the IPO eligibility requirements (summarised below).

Eligibility for IPO

Companies which can be listed

Local and foreign companies can be listed, although the listing of foreign companies is rare. An example of a foreign registered company whose shares are listed on the BSE is Sudan Telecommunications Company.

Corporate form

In relation to Bahraini incorporated entities, only open joint stock companies (B.S.C.) are eligible for listing and trading on the BSE.

Closed joint stock companies (B.S.C.(c)) and limited liability companies (W.L.L.) must be converted to open joint stock companies before their shares can be listed and made available for public trading. This conversion cannot be undertaken unless the company meets the qualifying criteria (set out below).

Qualification criteria for a Bahrain company to be converted into an open joint stock company and listed on the BSE

Requirements include, among others (Chapter 5, Article 39 of the BSE Internal Regulations):

- the company should have been established for at least two years
- the paid-up capital of the company should not be less than BHD500,000 (around US$1.3m), or the equivalent in other currencies and the number of issued shares should not be less than 500,000 shares
- the nominal value of issued shares must be paid in full
- the number of shareholders registered in the company's register must be at least 100
- the company can only have one class of shares
- the total net assets of the company should exceed 20 per cent of its paid-up capital
- the total annual turnover should not be less than BHD500,000 (around US$1.3m)
- the company should have realised net profits distributable to shareholders during the two successive years preceding the date of application which equates to a minimum of 10 per cent of the capital, on average
- the financial position of the company should be 'sound in terms of its assets, liquidity, financial structure and efficiency of performance'.

Additional criteria to be met by foreign companies

Foreign companies wishing to list on the BSE must comply with the following eligibility requirements (Board of Director's Resolution No.(6) of 1996), among others:

- the company should be a joint stock company, listed in its country of incorporation or a closed company, established at least three years before the date of listing
- the company's paid-up capital should not be less than US$10,000,000

- the company should have realised a net profit on its major activities for each of the three years proceeding the date of application
- the financial position of the company should be sound
- the number of the company's registered shareholders must be at least 100
- the company should have a representative office in Bahrain.

Foreign ownership restrictions

A number of industries have foreign ownership restrictions. These restrictions are applicable unless prior exemptions are granted by the relevant ministry.

Foreigners, including overseas investors, can collectively acquire up to 49 per cent (up from a previous 24 per cent) in most Bahraini listed companies (Amiri Decree Number 10/1999). By way of exception, two companies which are subsidised by the government, namely Bahrain Flour Mills Co and Delmon Poultry Co, must be 100 per cent Bahrain-owned. Gulf Co-operation Council (GCC) nationals can acquire (collectively) 100 per cent ownership of publicly listed companies.

In addition, the Minister of Commerce and Industry has discretion to determine the percentage of foreign ownership of any joint stock company, notwithstanding the foreign ownership limitations set out above (Articles 65, 119 and 345 of the Commercial Companies Law).

Foreign ownership limits are monitored by the company appointed registrar who maintains the shareholder register of the company and are advised to brokers on a regular basis. The brokers are responsible for checking these levels prior to executing a trade.

Dual / secondary listings

Primary listed companies on the BSE may have a secondary listing on another exchange. Dual or secondary listings are often made in an attempt to increase liquidity. Examples of such listings include Al Salam Bank (which has a secondary listing on the Dubai Financial Market) and Al Baraka Banking Group (which has a dual listing on NASDAQ Dubai).

IPO Process

The legal steps to convert to a public joint stock company

If a company satisfies the requirements of the Commercial Companies Law to convert to a public joint stock company (see above) there are four steps which must be completed in order to convert a Bahrain closed joint stock company into a public joint stock company (the Conversion).

The company must:

- obtain approvals from the CBB and any other relevant regulatory authority (for example, telecommunications companies may require the consent of the Telecommunications Regulatory Authority)
- amend its memorandum and articles to reflect the change in status and any other necessary amendments

- approve the IPO at an extraordinary general assembly (by 75 per cent of those present, or more if required by the Articles)
- secure the publication of a notice by the Ministry of Industry and Commerce (the MOIC) at least 60 days prior to the Conversion.

Documentation

The key documents which must be submitted in advance of listing include:

- a prospectus approved by the CBB
- the application form to be issued by the chairman or managing director of the company
- approval of the listing by the board of directors
- a listing agreement between the issuer and the BSE
- relevant supporting documents which normally include the issuer's constitutional documents and certain financial information.

The Disclosure Standards set out all matters to be disclosed in the prospectus. There is no specific requirement for an Arabic translation of a prospectus but it is common practice to publish it in both Arabic and English. Some of the principal matters that must be disclosed include:

- key information about the issuer's directors, senior managers, advisers and auditors and about the issuer in general
- detailed information about the offer
- reasons for the offer and use of proceeds
- key financial information of the issuer and any subsidiaries
- the issuer's liquidity and capital resources, both short and long term.

The CBB must approve the prospectus as well as the listing on the BSE. Once the application is submitted, the BSE has 45 days to respond.

The CBB may decide either to cancel the listing or to suspend trading of the company's securities if the company contravenes the Disclosure Standards (Article 87 of the CBB Law).

There are no taxes or stamp duties applied in Bahrain upon initial subscription or subsequent trading.

Marketing

Only institutions licensed by the CBB can carry on the marketing of securities in Bahrain. For retail offers, CBB approval must be obtained before any marketing may commence.

Issuers (and promoters acting on their behalf) should refrain from promotional disclosure activity over and above that necessary to enable the public to make informed investment decisions. These would include inappropriately-worded news releases, public

announcements not justified by actual developments in an issuer's affairs and exaggerated reports or predictions, (i.e. any form of disclosure which may mislead investors and affect the price of securities). Otherwise, retail offers approved by the CBB may be widely marketed in Bahrain including in national newspapers.

Brokers' research is permitted and there are no restrictions on this.

Clearing and settlement

Trading in uncertified form is compulsory although investors can hold shares in physical form.

Resolution No. 20 of 2001 Clearing, Settlement and Central Depository Procedures sets out the deposit and settlement procedure.

Deposited securities may be transferred, pledged or made subject to any other transaction through entries in the securities accounts maintained in the Central Securities Registry, without physical delivery of a securities certificate.

The CBB and the BSE have in the past proven to be flexible in considering and implementing clearing and settlement mechanisms which allow for the efficient transfer of shares between markets in the event of a dual or secondary listing.

Ongoing compliance

Corporate governance

All listed companies must appoint a Compliance Officer to liaise with the CMSD and the BSE.

A Corporate Governance Code (the Code) was issued in early 2010 forming part of the CBB Rulebook. The Code applies to all public companies incorporated under the Commercial Companies Law.

The provisions require the chairman of the board and the CEO to be different individuals, and that at least 50 per cent of the board of directors should be non-executive directors.

The Code is regarded as 'soft' law but will nevertheless constitute strong recommendations which should be considered in evaluating the quality of a company's corporate governance, and which a company should follow unless it has good reasons not to follow them. To the extent an issuer does not comply with the Code it will be required to disclose and explain the reasons for non-compliance.

The Code recommends that the Code itself be incorporated into a company's corporate governance guidelines.

The Code is generally modelled on existing international standards. It avoids imposing rigid rules which may not take account of a company's specific circumstances such as the size and nature of its business, its shareholding structure, activities, or its exposure to risks and management structure.

Ongoing compliance

An issuer is subject to extensive ongoing disclosure requirements (Chapter II Disclosure Standards). The issuer must immediately disclose major developments including changes to its constitutional documents, buy-backs or sales of shares as well as notification of all resolutions passed at extraordinary general meetings. There is also a blanket obligation on the "issuer or the issuer's subsidiaries to avoid the establishment of a false market in the issuer's securities or which would be likely to affect the price of its securities".

Other events which must be disclosed include, among others, new issues of securities, periodic and annual financial statements, certain dealings in securities, communications with holders of listed securities, transactions by directors and senior management and where the issuer learns that insider trading has taken or is taking place.

Generally, a company must disclose any information regarding its affairs, or about events or conditions in the market where the information is likely to have a significant effect on the price of the securities or is considered important by a reasonable investor.

The disclosure of material information can be temporarily withheld where immediate disclosure would limit the ability of the issuer to pursue its corporate objective or when the facts are in a state of flux and more appropriate time for disclosure is imminent. During these periods, information that is withheld must be kept strictly confidential.

The Disclosure Standards prohibit promotional activity that exceeds that necessary to enable the public to make informed investment decisions. This includes inappropriately worded press releases, public announcements not justified by actual developments, exaggerated reports, flamboyant wording and other forms of overstated disclosure activity, which may mislead investors and cause unwarranted price movements and activity in an issuer's securities.

The CBB may impose restrictions on licensees and listed companies to secure compliance with the law. The CBB has the power to cancel the listing of any securities that contravene the requirements of the listing rules. The CBB may also publicly censure the issuer following breaches committed by licensees and listed companies and it may impose a maximum fine of BHD20,000 (around US$53,000) or imprisonment (for an unspecified term) for concealing documents and information or providing false or misleading information or statements.

A person found guilty of committing the offence of insider trading or market manipulation may be liable for a maximum sentence of six months imprisonment and a maximum fine of BHD10,000 (around US$26,500).

The BSE also has the authority to strike off any listed company if, inter alia, the listed company is in breach of the Commercial Companies Law.

Restrictions on individual shareholders

Other than the foreign ownership restrictions set out above (i.e. a maximum of 49 per cent foreign ownership in non-exempt BSE listed companies), there are no other limitations on individual ownership (for Bahraini and non-Bahraini investors) of BSE listed companies.

All investors, whether Bahraini or non-Bahraini, are required to make disclosure to the BSE and the Registrar of Companies when their holdings reach 5 per cent or more. The consent of the CBB is required for acquisitions or disposals of 10 per cent or more of the paid-up capital of any issuer listed on the BSE.

Suspension and termination of listing

The disciplinary board of the BSE is responsible for deciding on violations of the provisions of the BSE Law, regulations and resolutions regulating the BSE, as well as any violation affecting the proper conduct of business and order in the market.

The disciplinary board is empowered to apply the following penalties (among others) which operate on a sliding scale depending on the severity of the breach:

- reprimand
- warning
- suspension of trading in respect of the violating company, for a period not exceeding four months
- striking off listed and unlisted companies from the Exchange, or conversion of a listed company into an unlisted company whose securities are admitted for trading.

There is a right of appeal against the decision of the BSE. The above powers are additional to those vested in the CBB as described above.

Takeovers

The CBB's Takeovers, Mergers & Acquisitions Module (the TMA Module) is organised as a set of general principles and rules on takeovers, mergers, and share repurchase offers.

The TMA Module provides an orderly framework within which takeovers, mergers or acquisitions are to be conducted and sets out special requirements relating to the timing and process of an offer, announcements, documentation and disclosure of adequate information to enable shareholders to make an informed decision as to the merits of an offer relating to a takeover, merger or acquisition.

The CMSD oversees the regulation of takeovers, mergers and acquisitions as well as share repurchases and monitors related dealings. The CMSD is available for consultation and gives rulings under the TMA Module.

The TMA Module applies to persons intending to engage in an offer for, takeover or merger or acquisition of a controlling interest (being 30 per cent) in a company which has a primary listing on the BSE.

Under the TMA Module, a mandatory offer must be made when a person (whether alone or together with persons acting in concert with him) acquires voting rights which results in them holding 30 per cent or more of the voting rights in the issuer. This requirement may be waived by the CBB in certain circumstances, such as the issue of new securities as consideration for an acquisition, cash injection or subsidiary loan.

Once a bidder acquires 95 per cent of the shares in the target company, it is required to make an offer for the remaining shares in the company within three months of the date on which the 95 per cent threshold was reached.

The CBB may modify or relax the application of a particular rule in the TMA Module if it considers that strict application of a rule would operate in an unnecessarily restrictive or unduly burdensome, or otherwise inappropriate, manner.

The offering of foreign securities into Bahrain

If there is a retail offering, the relevant foreign company must comply with the requirements set out in the Disclosure Standards. If the offer is an institutional offer, it must comply with the PPM Regulations.

Accordingly, offers made to Bahrain resident citizens or companies should be made by CBB licensed entities so as to ensure compliance with the CBB Rulebook.

Dubai International Financial Centre

Dubai International Financial Centre (DIFC)

The market

NASDAQ Dubai is situated within the Dubai International Financial Centre (DIFC), an onshore capital market which opened for business in 2004 and which is designated as a financial free zone (Federal Decree No. 35 of 2004).

Launched as Dubai International Financial Exchange (DIFX) on 26 September 2005, NASDAQ Dubai's key aim is to become a leading international stock exchange, connecting the global financial network between leading Western exchanges in Europe, the US and East Asia. Re-branded in November 2008 to NASDAQ Dubai (to reflect its strong links with NASDAQ OMX Group Inc. (NASDAQ OMX)), it has adopted comparable standards to leading international exchanges such as New York, Hong Kong and London.

The Dubai Financial Market (the DFM) made an offer to NASDAQ OMX and Borse Dubai Ltd. (Borse Dubai) at the end of 2009 for the entire issued share capital of NASDAQ Dubai. The acquisition was approved by NASDAQ OMX and Borse Dubai. The DFM has announced that the DFM and NASDAQ Dubai will continue to operate as two distinct markets (and will remain regulated by their respective current regulators). The acquisition will allow the DFM to increase its product offerings for investors and to integrate certain back office and technology functions. NASDAQ OMX will hold a minority stake in the DFM and will allow NASDAQ Dubai to use its brand and technology.

NASDAQ Dubai allows regional and DIFC incorporated companies to list on the exchange and also allows international issuers to apply for a secondary listing on the exchange which, among other things, distinguishes NASDAQ Dubai from the Abu Dhabi Exchange and the DFM and from a number of other exchanges in the region.

Legal framework

Legislative and regulatory

NASDAQ Dubai is regulated by the Dubai Financial Services Authority (DFSA). The DFSA regulates all financial services conducted in the DIFC and is an independent autonomous body. Both the DFSA and NASDAQ Dubai have their own rules governing the listing of securities on the exchange. The NASDAQ Dubai rules have been designed to complement the laws and regulations of the DFSA.

NASDAQ Dubai has established a Markets Authority which is responsible for, among other things, monitoring the market to ensure fairness and transparency. The Markets Authority is also responsible for the Listing Authority which reviews applications from potential issuers.

The DIFC has its own independent laws which are largely based on English Common Law. The laws and regulations which govern admission to listing and ongoing disclosure requirements include:

- The Markets Law (The Markets Law 2004) (DFSA) – this provides for the supervision of authorised market institutions and reporting entities involved in the trading and offering of securities

- The Offered Securities Rules (the OSRs) (DFSA) – these expand on the provisions set out in the Markets Law by regulating the offer of securities in or from the DIFC. The OSRs also set out an issuer's continuing obligations

- The Listing Rules (NASDAQ Dubai) – these regulate the listing application process including the eligibility requirements and set out certain continuing obligations. The Listing Rules are in the process of being updated. The consultation paper which accompanied the draft new rules explained that the revisions to the rules have been drafted with the objective of ensuring that NASDAQ Dubai maintains a listing regime which strikes a balance between an appropriate level of regulation and being internationally competitive

- The Business Rules (NASDAQ Dubai) – these regulate the process which an entity must follow in order to become a trading and/or clearing member of the exchange. These rules also regulate the behaviour of members on the market and regulate the clearing and settlement procedures.

Regulatory oversight

As noted above, the DFSA regulates all financial services conducted in the DIFC and is an independent autonomous body. In addition, the Markets Authority regulates issuers listed on the exchange.

Retail offer and institutional offer

The DIFC, as with most other international markets, has rules and exemptions which govern offers made either to "institutional" investors or to retail investors. Offers made to institutional investors are referred to as 'exempt offers' and offers made to retail investors are referred to as 'prospectus offers' under the DFSA regulations (each as defined in the Markets Law; see below).

The Markets Law and OSRs distinguish between an exempt offer and a prospectus offer. The distinction, for the purposes of the DFSA regulations, affects the contents requirements for the offer document and the level of review and approval required by the DFSA (i.e. there are limited contents requirements and no DFSA approval is required for exempt offers whereas prospectus offers require DFSA approval and the contents requirements are more extensive).

However, if the "offered" securities are to be listed the issuer will also need to comply with the Listing Rules. In such circumstances the distinction between an exempt offer and a prospectus offer will not affect the contents requirements for the offer document published in connection with the listing. This is discussed in more detail below.

DFSA regulations

The Markets Law restricts a person from making an offer of securities in the DIFC unless the offer of securities is made by way of an exempt offer (an Exempt Offer) or a prospectus offer (a Prospectus Offer) in accordance with the Markets Law and the OSRs. In addition, a person is restricted from making an offer of securities from the DIFC unless the offer of securities is made in accordance with the OSRs.

An offer of securities is made in the DIFC if the offer is directed at or received by a person (an offeree) in the DIFC at the time the offer is made and is capable of acceptance by that offeree regardless of where any resulting issue or sale occurs. We consider offers of securities in the DIFC in more detail below.

An offer of securities is made from the DIFC if the person making the offer is situated in the DIFC, the offer is directed at or received by an offeree situated, at the time the offer is made, outside of the DIFC and the offer is capable of acceptance by that offeree regardless of where any resulting issue or sale occurs. In these circumstances the offeror is, among other things, obliged to advise the DFSA in writing of the nature of the offer and must ensure that the offer document issued in conjunction with the offer contains a prominent disclosure that it has not been reviewed or approved by the DFSA.

Offers of securities in the DIFC

An offer of securities in the DIFC which is treated as a Prospectus Offer (because it does not satisfy any of the exemptions set out in the Markets Law or the OSRs) requires the offeror to prepare a prospectus which must be lodged with and approved by the DFSA. The requirement to prepare a prospectus and have it approved by the DFSA is the principal distinction between an Exempt Offer and a Prospectus Offer. The regulatory review process required in the course of a Prospectus Offer will affect the overall cost and timetable for the transaction.

We consider Exempt Offers and Prospectus Offers in more detail below.

Exempt Offers

Exempt Offers include:

- offers which are made to and directed at professional investors, as such term is defined in the Markets Law, being persons whose ordinary activities involve them acquiring, holding or managing or disposing of investments (Professional Investors)
- offers which are made by recognised governments
- offers made in connection with a takeover bid.

The OSRs also provide additional circumstances where an offer will be treated as an Exempt Offer including where:

- the offer is made to no more than 50 offerees in the DIFC in any 12 month period
- the total consideration payable for the securities does not exceed US$1,000,000
- the offer is made to the issuer's employees pursuant to an employee share scheme or similar arrangement.

There is however inconsistency between the Markets Law and the OSRs in the use of defined terms to identify the categories of sophisticated investors to whom an offer may be made without triggering the Prospectus Offer requirements.

The Markets Law states that an offer directed at Professional Investors would be treated as an Exempt Offer. However, the OSRs state that an offeror must not enter into a contract with an offeree which has arisen out of an Exempt Offer unless the offeree meets the professional client criteria set out in the Conduct of Business Module of the DFSA Rulebook (the COB). The professional client criteria are more restrictive than the criteria for a Professional Investor and include persons holding net assets of at least US$500,000 or who appear, on reasonable grounds, to have sufficient experience and understanding of relevant financial markets, products or transactions and any associated risks. Therefore, where the offeror is seeking to rely on the Professional Investor exemption in the Markets Law, the offer will only be treated as an Exempt Offer if the offerees accepting the offer also satisfy the professional client criteria in COB.

If an offer of securities falls within certain of the exemptions set out in either the Markets Law or the OSRs and is treated as an Exempt Offer then, for the purposes of the DFSA, the offeror is required to prepare an "exempt offer statement", the form of which is prescribed by the OSRs. The required information includes the name of the issuer, the address of its principal place of business, the nature of and rights attached to the securities and a prominent disclaimer that the document has not been reviewed or approved by the DFSA.

Prospectus Offers

Offers of securities in the DIFC which are not Exempt Offers will be treated as Prospectus Offers. In this instance, a 'full form' prospectus must be filed with and approved by the DFSA and the offeror or issuer must appoint a sponsor and an underwriter if so required by the DFSA.

A prospectus must comply with the OSRs and must contain all information investors would reasonably require for the purpose of making an informed assessment of the assets and liabilities, financial position, profits and losses, prospects of the issuer and the nature of and rights attached to the securities. The prospectus must include all information it would be reasonable for the offeror to have knowledge of, or acquire through reasonable enquiries. There is also an obligation to publish a supplementary prospectus prior to the close of the offer where there is a significant change affecting any matter contained in the prospectus or a significant new matter arises.

NASDAQ Dubai regulations

As summarised above, for the purposes of the DFSA regulations, the distinction between an Exempt Offer and a Prospectus Offer impacts on the contents requirements for the offer document (referred to as an exempt offer statement or a prospectus respectively). Under the Listing Rules, the categorisation of the offer as an Exempt Offer or a Prospectus Offer does not have the same impact on the contents of the offer document.

Where an issuer is seeking admission to trading on the exchange, the offer document (which is referred to in the Listing Rules as the "listing document") must be sufficiently comprehensive to enable the Listing Authority to assess whether the eligibility requirements set out in the Listing Rules have been satisfied (for example the requirements set out in Appendix E: Eligibility Criteria for Listing). In practice therefore, the offer document will be equivalent to a prospectus in terms of the scope and depth of the disclosures made.

Regulatory approval

If the offer is treated by the DFSA as an Exempt Offer (e.g. where it is addressed to professional clients only) then, although the offer document will be equivalent to a prospectus for the purposes of the Listing Rules, it will only require the approval of the Listing Authority and not the DFSA which reduces the regulatory burden. If the offer is treated by the DFSA as a Prospectus Offer the offer document will need to be prepared in accordance with both the OSRs and the Listing Rules, will be called a prospectus and will need to be approved by both the Listing Authority and the DFSA.

In practice, in order to avoid the requirement to obtain DFSA approval of the offer document, an issuer (other than a DIFC incorporated issuer) will typically apply for listing on NASDAQ Dubai but will ensure that no offer of securities is made in or from the DIFC. If the issuer is seeking to raise capital in conjunction with its application for listing, the issuer will typically seek to make the offer of securities in and from another jurisdiction.

Eligibility for IPO

Regulatory requirements

The Listing Rules contain the general eligibility requirements for both the issuer and the securities. In addition to the general criteria contained in the Listing Rules applicable to all types of securities, certain additional eligibility criteria will also apply to equity securities including, among others:

- there must be a minimum free float of 25 per cent of the securities to be listed (i.e. securities held in public hands and not by connected persons)
- a three year trading history (with the accounts having been prepared in accordance with International Financial Reporting Standards), although we are aware of instances when this requirement has been waived
- if there is a controlling shareholder, NASDAQ Dubai must be satisfied that the issuer will be able to operate its business independently of that shareholder
- the issuer must not have any warrants in issue which provide the holders with a right to subscribe for 20 per cent or more of the outstanding share capital of the issuer
- the issuer must have an expected market capitalisation of at least US$50m at the time of listing. This is also currently worded as an ongoing requirement; however, the proposed amendments to the Listing Rules recognise that an issuer's market capitalisation will fluctuate as a result of market conditions. Accordingly, the ongoing compliance requirement is expected to be amended
- the issuer must comply with the corporate governance requirements set out in the OSRs (as discussed below).

As noted above, the issuer must also comply with the general eligibility criteria that are applicable to all securities. These include, among others: compliance with the laws of the jurisdiction of incorporation; the issuer and the securities being suitable for listing; the directors being able to demonstrate that they have appropriate experience and expertise in the business of the issuer and exhibit high standards of integrity; and that appropriate clearing and settlement arrangements are in place.

In our experience both NASDAQ Dubai and the DFSA are prepared to take a pragmatic approach to the eligibility requirements and will waive some requirements in certain circumstances.

In addition, further criteria will apply in relation to a DIFC holding company with UAE subsidiaries which wishes to list (see below for an explanation of when such a company may be required). In order to incorporate a DIFC holding company and subsequently list on the exchange the following criteria must be satisfied:

- the company must have liquid assets of at least US$3 million
- the UAE Companies Code must be adhered to such that no less than 51 per cent of the share capital remains owned by UAE nationals at all times
- the relevant authorities in the UAE must approve the incorporation of the DIFC holding company and its ownership of the UAE subsidiaries.

Foreign ownership restrictions

No ownership restrictions, either direct or indirect, are imposed by NASDAQ Dubai on companies that wish to list on the exchange. As NASDAQ Dubai is located in the DIFC there are no restrictions on foreign ownership of securities which may be held 100 per cent by foreign parties.

However, a company which lists on NASDAQ Dubai may be subject to ownership restrictions in its country of incorporation. Ownership restrictions have recently arisen in relation to UAE companies which have sought to list on NASDAQ Dubai. These companies were previously unable to list on NASDAQ Dubai due to UAE foreign ownership restrictions, which meant that no more than 49 per cent of a UAE company's securities could be held by a foreign investor. In brief, recent changes introduced by a UAE Cabinet Resolution have now created the ability for UAE Companies to transfer 100 per cent of their securities to a DIFC holding company which is then permitted to list 100 per cent of its securities on NASDAQ Dubai. However, the DIFC holding company must in turn comply with the UAE foreign ownership restrictions and such restriction is policed in a number of ways, including through the Share Registry which is owned and operated by NASDAQ Dubai.

Sector specific ownership restrictions

The exchange itself imposes no restrictions for specific industry sectors – such restrictions would be imposed at the industry level or could be conditions to the grant of a particular licence. For example, airline industries are often subject to national ownership restrictions.

Dual / secondary listings

In order to obtain a secondary listing on NASDAQ Dubai, the issuer must have a primary listing on another exchange which is recognised by NASDAQ Dubai. Normally, NASDAQ Dubai will recognise an exchange which is a member or affiliate member of the World Federation of Exchanges.

A secondary listing can either be for capital or non capital raising reasons. In general terms, a secondary listing is subject to the same eligibility criteria and ongoing obligations, except as expressly modified in the Listing Rules, or as waived or modified by the exchange in a particular case. In most secondary listings no sponsor will be required and no prospectus will be required unless the applicant is raising capital as part of the listing on NASDAQ Dubai.

When making an application for a secondary listing an applicant will be required to provide to the exchange all public disclosures made on the primary exchange since the date of the latest audited accounts (or the offer document filed with the primary regulator if the primary listing is being applied for at the same time as the secondary listing on NASDAQ Dubai). In addition, when making the application, the issuer will need to provide evidence to show it has a primary listing on another exchange and is in good standing with that other exchange.

IPO process

A potential issuer is encouraged to approach the NASDAQ Dubai Business Development Team as soon as possible in order to ensure a smooth passage through the listing process and so as to enable the issuer to understand the various stages of the process.

A potential issuer will need to conduct an internal review to ensure that it will be able to fulfil the various eligibility requirements for listing, such as corporate governance best practice and appropriate financial history and records. If a waiver may need to be sought, it is important for this to be identified at an early stage and for the issuer to approach the exchange as soon as possible in the listing process.

The issuer will thereafter, if it has not already done so, need to appoint appropriate advisers which will include lawyers, accountants, PR agents and underwriters (if an offer is being made in conjunction with the listing and such offer is being underwritten). Depending upon the nature of the offering, a sponsor may also be required.

Once listed, there are no tax implications or stamp duty requirements. As noted earlier, NASDAQ Dubai is located in the DIFC, an onshore capital market designated as a financial free zone providing numerous benefits, one of which is a zero tax rate. Such advantageous tax treatment applies to both initial subscription and subsequent trading. However, investors and issuers may be subject to tax implications in their jurisdiction of residence.

Regulatory approvals

The relevant application documents will need to be prepared and submitted on a draft submission basis to the Listing Authority. The Listing Authority usually requires 7 working days for each draft review and normally 2 to 3 draft reviews are submitted and reviewed during the listing process. During the draft submission process the Listing Authority may require further documents or information to be submitted.

Once all completed application forms and supporting documents have been submitted to the Listing Authority (together with the relevant application fees) on a final submission basis the Listing Committee will take 12 working days to review the listing: 7 days of which will be a review by the Listing Authority and 5 of which will be a review by the DFSA.

At the end of the 12 working day period mentioned above an "In Principle Approval" will be granted, provided that a "No Objection" from the DFSA has been issued. Conditions may be attached to the "In Principle Approval".

Once an "In Principal Approval" has been provided, applicants may begin their IPO road shows and, as soon as all conditions set out in the "In Principle Approval" have been satisfied, a Final Approval will be provided.

A market announcement is required to be made 48 hours before the listing informing the market of the intended listing. Final fees will then be paid and the listing and trading will commence.

The listing fees for capital raising primary and secondary listings include a US$5,000 application fee, an initial listing fee of between US$70,000 and US$250,000 (depending on the number of securities listed) and an annual fee of between US$20,000 and US$50,000.

Documentation

Key documents include: the application form, an offer document; certified copies of incorporation documents (if this is a first issue on NASDAQ Dubai); audited annual accounts for 3 financial years; certified copies of annual general meeting minutes and board resolutions relating to the issue of securities; undertakings and declarations signed by each director of the issuer; sponsor appointment letter; sponsor undertaking letter; details of points of contact at the issuer; proposed offer timetable; and waiver letters, if applicable.

In relation to the offer document, the OSR contents requirements include:

- a statement by the directors confirming that the issuer complies with the OSRs and Markets Law and that the directors accept responsibility, jointly and severally, for the information contained in the offer document and that they believe that there are no other facts the omission of which would make the offer document or any statement therein misleading or deceptive

- audited financial accounts of the issuer for three financial years prior to the date of the offer document prepared in accordance with IFRS or other standards acceptable to the DFSA. Where an issuer is a member of a group which prepares consolidated accounts, the requirements to present individual accounts may be dispensed with, provided that the consolidated accounts are published

- where more than six months have elapsed since the end of the financial year to which the most recent audited accounts relate, an interim financial statement covering the period from the end of that financial year to the end of the quarter immediately preceding the date of the offer document

- a statement by the directors that in their opinion the working capital available to the issuer is sufficient or, if not, how it is proposed to provide the additional working capital

- the name, address and professional qualifications of any expert responsible for an expert statement or report contained in the offer document and the disclosure of any conflicts of interest between the expert and the issuer

- a detailed description of the issuer's actual and proposed principal activities, including the history of the issuer, a description of the principal activities and business of the issuer, any major customers or suppliers or other material dependencies, relevant security or principal investments by the issuer and, where the issuer belongs to a group, relevant material information relating to the group's activities

- a statement as to the material financial and trading position of the issuer and the group over the next 12 months, a statement of any material adverse change in the financial position or trading prospects of the issuer and the group since the last accounts and a summary of the annual accounts relating to the last completed financial year together with details of any significant events that may have had an impact on those accounts

- the identity of any person known to hold more than 5 per cent of the voting rights of the issuer

- details of the holdings of the directors or proposed directors and of any contracts, borrowings or other arrangements between the directors or proposed directors and the issuer

- information on any legal proceedings, current or threatened, which could have a significant impact on the issuer or on the price or value of the securities

- an explanation of any significant matter that investors would reasonably expect to be informed of in relation to the issuer and the issuer's jurisdiction. Any explanation should be given appropriate prominence depending upon the nature of the matter concerned and its significance

- terms and conditions of the offer including the number of securities offered, the price or price range of the securities, the period in which the securities may be offered (including the opening and closing dates), the manner of allocation of the securities to applicants (including over subscription allotments), details of any further rights to subscribe which attach to the securities, the proposed date for allotment of the securities, details of the current constitution and share capital, all relevant details of the underwriter and the plan of distribution including the nature of the obligations of the underwriter and details of the procedure to be applied should the offer not proceed (including return of funds)

- a summary of the nature of and the rights attaching to the securities, including any restrictions on transferability and any arrangements for settlement of transfers

- a description of the intended use of proceeds

- particulars of any commissions or other fees to be paid by the issuer in relation to the issue

- the nature of the risks involved in investing in the securities, including material risks associated with investing in the issuer and, where applicable, any risks associated with the assets to be acquired using the proceeds of the offer, the effect that the material risks may have on the issuer together with a discussion of how the risks could affect the business, operating results and financial condition of the issuer, any steps proposed by the issuer to mitigate such risks and general and specific risks relating to the industry or jurisdiction in which the issuer operates.

In the context of a Prospectus Offer, any person who is responsible for a prospectus is, pursuant to the Markets Law, liable to pay compensation to another person who has acquired securities to which the prospectus relates and who has suffered loss or damage arising from any untrue or misleading statement in the prospectus or the omission from it of any material matter required to have been included in the prospectus. In accordance with the provisions of the OSRs, those persons who are responsible for a prospectus include:

- the person who filed it and where the person is a body corporate, each director who was a director at the time when it was filed and each person who is authorised to be named, and is named, in the prospectus as a director or as having agreed to become a director either immediately on listing or at a future time

- each person who accepts and is stated in the prospectus as accepting responsibility for the prospectus, or for any part of it

- each person who has authorised the contents of the prospectus or any part of it (a person will not be responsible for the prospectus by reason only of giving advice (in a professional capacity) to any category of person specified above as to the contents of the prospectus).

The OSRs contain defences to any such liability including where the person believed on reasonable grounds, having made all reasonable enquiries, that the statement or omission was not misleading or deceptive.

Marketing

All NASDAQ Dubai members are authorised by the DFSA and are subject to the various modules of the DFSA Rulebook including the COB. The COB regulates authorised members who are preparing or publishing investment research. Any such research should be clear, fair and not misleading.

In addition, the COB states that authorised members should have adequate internal procedures, systems and controls to effectively manage any conflicts that arise in relation to the preparation of such research and to limit the extent to which investment analysts participate in corporate finance business and sales and trading activities.

If an authorised firm is acting as a manager or co-manager of an IPO it must take reasonable steps to ensure that it does not publish any research on the issuer during the period beginning on the day of publication of the prospectus and ending 30 days after the date on which the securities are admitted to trading on the exchange.

Clearing and settlement

NASDAQ Dubai owns and operates a Central Securities Depository (the CSD). The CSD holds listed securities in dematerialised electronic form on behalf of account holders such as custodians, clearing members, trading members and corporate investors. All NASDAQ Dubai CSD account holders are regarded as beneficial owners/nominees of the securities held in their accounts. The legal title rests with NASDAQ Dubai Guardian Limited which acts as a bare nominee and which is treated as holding the securities on the CSD for and on behalf of the beneficial owners.

NASDAQ Dubai is an order-driven market which allows market makers to make markets in the products listed. Trades are made through a central order book where orders are submitted by members and a binding contractual transaction is deemed to have been created between members when there are matching buy and sell orders. NASDAQ Dubai currently operates a clearing system with a T+3 continuous rolling settlement cycle. NASDAQ Dubai is also linked to Euroclear and Clearstream.

The CSD, in addition to general custody and settlement facilities, also offers internal and cross border (inter-market) transfers.

International central securities depositaries such as Euroclear and Clearstream access NASDAQ Dubai through the services of a NASDAQ Dubai custodian agent. This means that international investors can now hold NASDAQ Dubai listed securities (and trade in such securities) without the need to open a direct account with the CSD.

Ongoing compliance

Corporate governance

An issuer of securities will be required to comply with the corporate governance requirements set out in the OSRs.

The main requirements include:

- the establishment of a governing body, at least one third of which must comprise non-executive directors, of which at least two must be independent (the DFSA provides guidance as to the determination of independence)
- the governing body must meet sufficiently regularly throughout the year to discharge its duties effectively and hold a general meeting of the shareholders at least once every twelve months
- directors must stand for re-election at least once every three years

- an audit committee must be established to monitor and review the internal audit function, to deal with the engagement of external auditors and to make recommendations in relation to the external auditors. At least two independent non-executive directors must be appointed to the audit committee (one of whom should ideally have financial expertise)

- where appropriate, nomination and remuneration committees should be established (the DFSA provides guidance as to the circumstances when it would be appropriate to establish such committees)

- directors are restricted from dealing in the issuer's securities in certain circumstances.

The issuer must include a statement in its annual report outlining how it has complied with the corporate governance principles set out in the OSRs and, where it has not so complied, an explanation must be provided.

Where, in exceptional circumstances, an issuer or its directors are unable to comply with the obligations set out in the OSRs the guidance notes to the OSRs provide that, in such circumstances, they may apply to the DFSA for a waiver or modification of the relevant obligation.

Ongoing compliance

The continuous obligations framework (contained in both the Listing Rules and the OSRs) sets out two categories of obligations which an issuer must comply with: (a) general obligations; and (b) specific obligations. These obligations are in addition to the requirement that both the issuer and the securities must continue to fulfil the relevant eligibility conditions for listing.

General obligations

The relevant rules and regulations provide that a listed company is required to make market disclosure (without delay) of any and all material information, being information that significantly affects, or would reasonably be expected to have a significant effect on, the market price or value of the listed securities.

Any disclosure must be complete, true, plain and not misleading, false or deceptive.

Disclosures may be made by way of any of the following methods:

- announcement on the listed company's website

- to NASDAQ Dubai or such other entity created by the exchange for the purpose of public dissemination

- to the DFSA

- in the manner provided for in any specific disclosure obligation.

Whenever an issuer is required under the Listing Rules to make a public disclosure, the issuer must make the disclosure through the NASDAQ Dubai CAP system (company announcements platform).

Prior to the release of material information, the listed company is required to keep the information in strict confidence, however, it may provide the information to its various advisers, agents, custodians, sponsors and other specific persons provided that this is done so on a strictly confidential basis.

Where a listed company realises that it has or may have breached its continuous disclosure obligations it should contact the DFSA to discuss the matter and seek guidance on taking steps to prevent similar breaches from occurring. Where these obligations are not met sanctions may be imposed by the DFSA.

These general obligations are in addition to the specific requirements set out in the Listing Rules and the OSRs; both of which prescribe specific information to be disclosed and the manner in which the disclosure must be made.

Specific obligations
The specific obligations include:

- the relevant requirements of Appendix 2 and Appendix 3 of the OSRs which include disclosures relating to the listed company (such as price sensitive information, its business and transactions with connected persons), disclosures relating to the securities (such as decisions relating to dividends, further listings outside the DIFC and connected persons disclosures), financial disclosures (such as annual report and statements, compliance with corporate governance, preliminary financial results, interim financial statements and changes to accounting reference dates), disclosures relating to the capital of the listed company (such as proposed new issues and the results of new issues), disclosures of decisions submitted to and approved by shareholders and disclosures relating to insolvency

- the relevant requirements of Appendix F to the Listing Rules which include disclosures relating to any purchase, redemption or cancellation of any securities, any alteration to the issuer's constitution, changes in the rights attached to securities or failure to meet the eligibility criteria

- any additional continuing obligations which may be imposed by NASDAQ Dubai.

Where an issuer is required to disclose information under the OSRs or the Listing Rules but intends not to make such disclosure publicly it is permitted under the OSRs and the Listing Rules respectively to prepare a confidential report to be filed with the DFSA or NASDAQ Dubai, as the case may be, setting out the relevant information that is required to be disclosed together with the reasons why the issuer believes that the relevant information should not be publicly disclosed.

Restrictions on individual shareholders

Individual shareholders who hold, either directly or indirectly, securities carrying more than 5 per cent of the total voting rights of the issuer (the Threshold) must file a report with the DFSA and the issuer within 5 business days of the following events:

- the shareholder's holding reaches the Threshold

- the shareholder's holding increases by a full percentage point from the previous level notified to the DFSA and the issuer

- the shareholder ceases to hold sufficient securities to remain above the Threshold.

The issuer is then obliged to publicly disclose the report filed by the shareholder.

Suspension and termination of listing

The DFSA has powers to direct the exchange to de-list or suspend securities from its official list of securities. Such powers may be exercised when there are special circumstances which preclude regular dealings in securities or if it is in the interests of the DIFC. However, the guidance notes to the OSRs state that the DFSA expects to rarely exercise these powers as the exchange is responsible for maintaining its official list of securities, which would normally include decisions in relation to the delisting, suspension and restoration from suspension of securities.

Notwithstanding the above, every issuer which applies to have, or who has, securities admitted to trading will become subject to the OSR regime which is enforced by the DFSA. The OSRs regulate the offering of the listed securities and also prescribe the ongoing obligations which must be adhered to by a listed company (which may be in addition to any ongoing obligations that are prescribed in the Listing Rules). The DFSA has been granted a wide range of powers in the event that there is any breach of the OSRs or the Markets Law which include an absolute discretion to issue a stop order in relation to an offer of securities, including in circumstances where a breach is suspected but not actually established.

The Listing Rules also set out the circumstances in which NASDAQ Dubai may suspend, de-list or cancel securities including where:

- there are special circumstances which preclude regular dealings in the securities
- any of the ongoing conditions for listing have not been or are not being fulfilled
- the issuer has failed to comply with any provisions of the Listing Rules
- another exchange has suspended the listing of, or delisted, such securities
- the issuer has fulfilled the voluntary delisting criteria set out in the Listing Rules
- delisting or suspension would be in the interests of NASDAQ Dubai.

In the event that securities are suspended, the suspension may be for such time and in such circumstances as NASDAQ Dubai thinks fit and appropriate conditions may be imposed by NASDAQ Dubai prior to the removal of such suspension. An issuer must continue to comply with the Listing Rules notwithstanding that the securities may be suspended.

In addition, the DIFC Court or the Financial Markets Tribunal may, on the application of the DFSA, impose a fine, order that a person is prohibited from making offers in the DIFC, order that market disclosure be made, make an order restricting any conduct with such conditions as it thinks fit or make an order that any trading in investments cease permanently. These powers are in addition to the enforcement powers of the DFSA which are specifically set out in the Enforcement Module of the DFSA Rulebook.

Takeovers

Takeovers in the DIFC are principally regulated by the Takeover Rules Module (TKO) which is part of the rulebook administered by the DFSA. Essentially, the TKO will apply to transactions where the target is a “Reporting Entity” for the purposes of the OSRs. In the case of international issuers, the rules and regulations of other jurisdictions may also apply.

The rules in the TKO comprise the Takeover Rules as referred to in the Markets Law and thus must be read in conjunction with such law.

The TKO refers to general principles known as the "Takeover Principles" which are essentially statements of good standards of commercial behaviour. These are expressed in broad terms and the purpose is to:

- ensure that a takeover takes place in an efficient, competitive, fair and informed market
- ensure that shareholders are treated fairly and equally
- provide an orderly framework within which a takeover is conducted.

Other sources of law include the DIFC Companies Law (so far as the company or companies concerned are DIFC incorporated companies), the various modules of the DFSA Rulebook, including the COB, the OSRs and the Listing Rules. The Regulatory Law of the DIFC will also apply in relation to any schemes of arrangement for financial services businesses in the DIFC.

Mandatory purchase requirements

There is a 30 per cent threshold relating to voting rights which, once reached, will trigger the mandatory bid requirements.

In this regard, if:

- a person (either individually or together with any persons acting in concert with it) acquires, whether by a series of stake building transactions over a period of time or not, securities which carry 30 per cent or more of the voting rights of the issuer
- a person (either individually or together with any persons acting in concert with it) holds not less than 30 per cent of the voting rights of the issuer and such person acquires additional securities which have the effect of increasing that person's shareholding by more than 3 per cent from the lowest percentage holding of that person in the 12 month period ending on, and inclusive of, the relevant acquisition date,

then such person is obliged to make a mandatory bid for the remaining securities in the issuer. Any such bid must be in cash or be accompanied by a cash alternative at not less than the highest price paid by the bidder (or any person acting in concert with it) within the preceding six months.

Squeeze out and minority buy out rights

The DIFC Companies Law (which applies to DIFC incorporated entities) provides for both squeeze out and minority buy out rights where a bidder has acquired at least 90 per cent of the issued share capital of a company.

The TKO does not include any additional squeeze out or minority buy out rights and therefore, to the extent the target is not a DIFC incorporated entity, the relevant legislative provisions of the jurisdiction of incorporation of such entity will need to be considered.

The offering of foreign securities into the DIFC

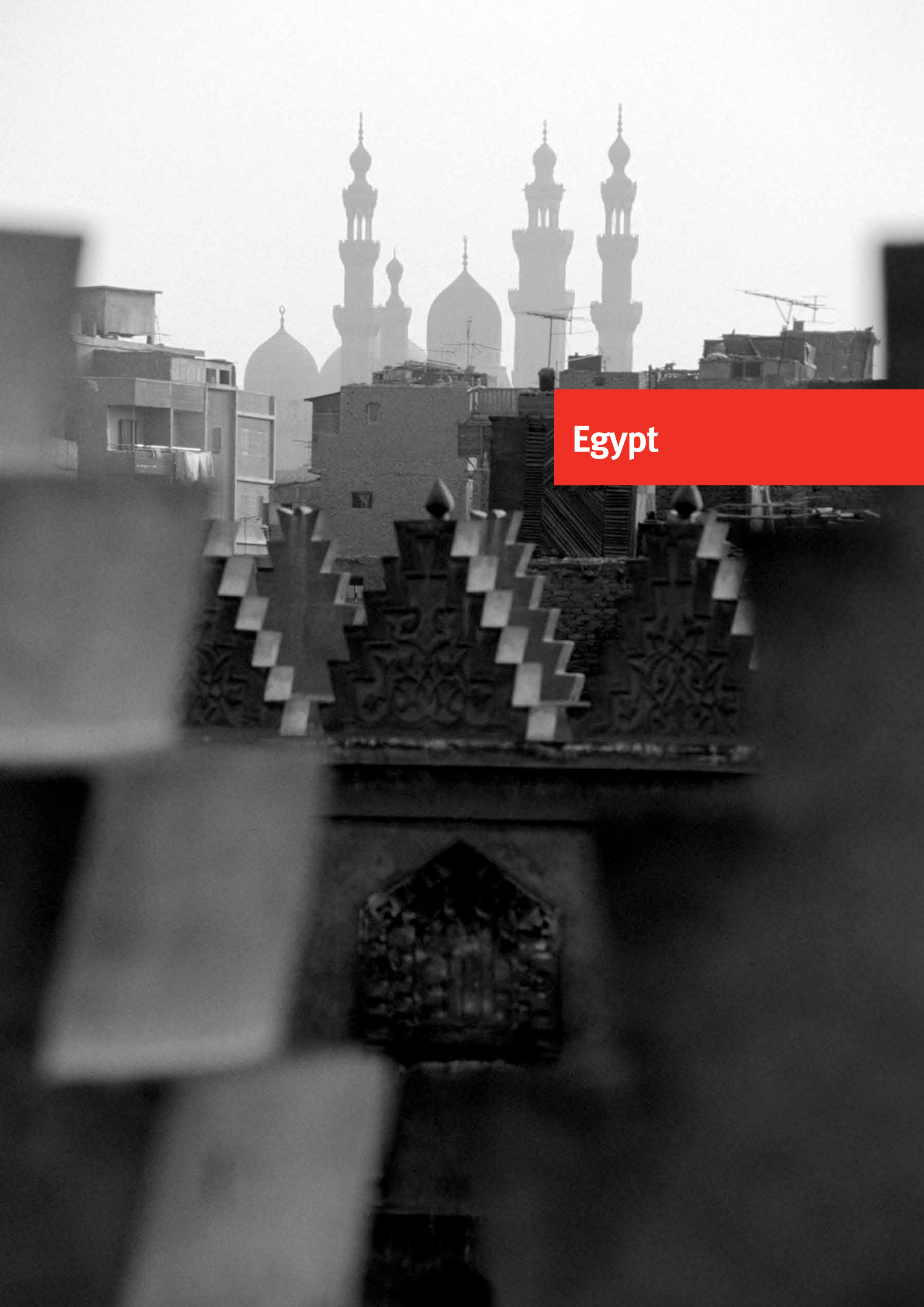
As noted above, a person is treated as making an offer of securities in the DIFC if the offer is directed at or received by a person in the DIFC and is capable of acceptance by that offeree. The guidance notes to accompany the OSRs indicate that cross-border offers of securities made to persons in the DIFC fall within the remit of the OSRs. Any person who makes such an offer is required to comply with the OSRs regardless of whether the offeror is established in the DIFC or elsewhere. The guidance notes go on to explain that the scope of the regime applies without differentiating the media by which the offer is made. In the context of internet-based offers, the guidance notes add that an operator of a website on which securities are offered to persons within the DIFC will be subject to the OSRs regardless of whether the operator is established in the DIFC or elsewhere.

As an offer of securities from another jurisdiction would be caught by the OSRs then the same process as set out in above would need to be followed (i.e. the offer should either be by way of an Exempt Offer or a Prospectus Offer).

Where an issuer is making a cross-border offer and is required to file the offer document with the DFSA then, where the DFSA is satisfied that an offer document produced under legislation in a jurisdiction other than the DIFC meets the standards of the OSRs and is compatible with the OSRs, the DFSA may accept such document as the relevant "offer document".

It is also worth noting that, in general, a person cannot conduct any financial services within the DIFC without being appropriately licensed to do so by the DFSA. Therefore, whilst the offeror itself may not necessarily need to be licensed to make the offer (although this should always be checked), any entities wishing to act as intermediaries, underwriters or brokers in relation to a proposed offering in the DIFC are likely to fall within the financial services restriction and require authorisation and an appropriate category of licence from the DFSA.

Notwithstanding the above, guidance on current regulations and market practice should be sought in each case.



Egypt

Egypt

The market

The Egyptian Stock Exchange (the EGX) is the only registered securities exchange in Egypt and its operations date back over 100 years. The EGX was formed following the merger of the Alexandria Stock Exchange, which was established in 1883, and the Cairo Stock Exchange, which was established in 1903. These two exchanges were very active in the 1940s and, at one point, were ranked in the top five exchanges in the world. Due to various government policies adopted in the mid 1950s, the exchanges were largely dormant until the early 1990s when new reforms were implemented. In 2007, the two exchanges were merged into one exchange, the EGX.

The EGX is a government owned and controlled entity.

Legal framework

Legislative and regulatory

The capital markets in Egypt are regulated by the Egyptian Financial Supervisory Authority (EFSA) which also acts as the controlling authority for the board of directors of the EGX. The EFSA was established to manage all non-banking financial activities in Egypt, including capital market operations. On 1 July 2009, the EFSA began operations and officially replaced the Capital Market Authority (the CMA), the former capital markets regulator.

The laws, regulations and decrees which govern admission to listing and ongoing disclosure requirements include:

- The CM Law (Capital Markets Law No. 95 of 1992 and its Executive Regulations) – this regulates the EGX and includes certain eligibility criteria and disclosure obligations in relation to the contents of the offer document
- The Listing Rules (Decree of the CMA's Board of Directors No. 30, dated 18 June 2002 concerning the securities listing & de-listing rules of the EGX, as amended) – this regulates all matters relating to the listing of securities on the EGX (including the eligibility criteria) and ongoing compliance obligations once listed
- The Companies Law (Company Law No. 159 of 1981 and its Executive Regulations) – this regulates incorporation and management of all entities incorporated in Egypt.

The current CM Law (together with its accompanying directives) and the Listing Rules are expected to continue to be applicable to companies listed on the EGX despite the recent replacement of the CMA by the EFSA. It is however anticipated that the legislation will be updated in due course so as to widen the categories of securities which can be listed (for example, futures, options and swaps) and to reform the corporate governance regulations.

In addition, it is understood that the Companies Law is currently under review by the Egyptian authorities and is expected to be updated in due course.

Regulatory oversight

As noted above, the EFSA is the regulator of the EGX and was established as a public authority with independent legal status. The EFSA has a wide range of discretionary powers to issue binding directives for issuers and financial services providers in Egypt. The EFSA is managed by a board of directors.

The EFSA oversees key market participants such as member firms, mutual funds, investment banks and rating companies. In addition, the EGX has its own internal regulatory remit and has established a number of committees including the "Listing Committee" whose mandate is to regulate compliance with the Listing Rules and the CM Law.

Retail offer and institutional offer

Egyptian law recognises the difference between a retail offer and an institutional offer. A retail offer, as with most jurisdictions, is a public offer of securities. An institutional offer, in comparison, is targeted at certain types of persons who are usually deemed to be "qualified investors" for the purposes of the regulations. Qualified investors must either satisfy certain financial criteria or have adequate experience of securities markets (see below).

The main practical difference between a retail offer and an institutional offer is that a retail offer will require a prospectus to be prepared and approved by the EFSA (see below) whereas an institutional offer will not.

Financial thresholds for qualified investors

Natural persons will be treated as "qualified investors" if they satisfy at least one of the following criteria:

- assets of no less than 2,000,000 Egyptian pounds (around US$350,000)
- an annual income of no less than 500,000 Egyptian pounds (around US$90,000)
- bank certificates of deposit with a total value of no less than 500,000 Egyptian pounds (around US$90,000)
- current investments in securities at the time of the offer with a total value of at least 2,000,000 Egyptian pounds (around US$350,000) in two different Egyptian joint stock companies other than the subject issuer.

A company will be treated as a "qualified investor" if at least one of the following criteria is satisfied:

- the company has equity of no less than 10,000,000 Egyptian pounds (around US$1.8 million)
- the company has assets with a total book value of no less than 20,000,000 Egyptian pounds (around US$3.5 million)
- the company has current investments in securities of joint stock companies (other than the subject issuer) of no less than 5,000,000 Egyptian pounds (around US$900,000)
- the company is licensed to practice in securities activities including underwriting offers.

Corporate qualified investors must submit a board resolution to the regulator setting out the names of the individuals who are authorised to make investment decisions together with details of their authorisation limits.

Experience of qualified investors

An investor will also be treated as a "qualified investor" if it has at least 5 years' experience in the field of securities and capital markets (whether national or international).

Eligibility for IPO

Regulatory requirements

The listing of securities on the EGX is predominantly governed by the Listing Rules which include the eligibility criteria which must be satisfied before securities can be listed. The CM Law includes the underlying regulatory regime of the EGX as well as some additional general disclosure obligations relating to the contents of the offer document.

The following requirements must be met before a company can be listed on the EGX:

- the securities available for subscription must be at least 10 per cent of the total number of securities in issue (all issued securities of each class must be listed)
- there must be a minimum of 100 shareholders each holding less than 5 percent of the share capital but collectively holding at least a total of 5 per cent of the share capital; this constitutes the "free float" requirement. These shareholders may include non-Egyptians and there is no minimum amount which each shareholder may hold
- a minimum of 2,000,000 issued shares must be proposed to be listed
- the issuer must have audited financial statements for a full year preceding the listing application
- the issued share capital of the issuer must be paid in full and must not be less than 20,000,000 Egyptian pounds (around US$3.5 million) or the equivalent
- the net revenue before tax for the last fiscal year preceding the listing application must not be less than 5 per cent of the paid up share capital of the issuer
- the shareholders' equity in the last financial statement preceding the listing application must not be less than the paid up capital of the issuer.

If an issuer is unable to comply with the requirements set out above then it may still be listed if the issuer submits an undertaking to the EGX stating that it will comply with the requirements within three months from the date on which its shares are listed on the EGX. During that three month period the securities are 'locked up' and cannot be traded without the prior approval of the EFSA. If the issuer fails to comply with its undertaking within the three month period the listing is deemed void.

As noted above, the Listing Rules were amended relatively recently in September 2008 and it is unclear how often such undertakings have been given and in what circumstances the requirements have been enforced. However, as of 1 January 2010, the EGX has been strictly applying the Listing Rules and a number of companies were delisted on that date for failure to meet the listing requirements.

In any event, all the requirements set out above require ongoing compliance. An issuer could be granted up to six months to rectify any non compliance after which the listing committee of the EGX (the Listing Committee) may consider delisting the issuer's securities. The Listing Committee monitors these requirements on an ongoing basis.

Foreign ownership restrictions

There are no material nationality requirements or restrictions in relation to the ownership of securities in any Egyptian company, whether listed or not.

Sector specific ownership restrictions

There are no specific sector ownership restrictions although any investor (whether Egyptian or foreign) which wishes to acquire (directly or indirectly) 5 per cent or more of the issued share capital of an Egyptian bank must notify the Central Bank of Egypt. The prior approval of the Central Bank is required if any investor wishes to acquire 10 per cent or more of the issued share capital of the bank in question.

Similarly, any entity (whether Egyptian or foreign) which wishes to acquire 5 per cent or more of the issued share capital of an insurance company must notify the EFSA, and must obtain the prior approval of the EFSA if the acquisition is for 10 per cent or more of the issued share capital of the insurance company in question.

In addition, ownership of certain industries may be restricted for national security reasons (such as the airline industry and port operations) and special permissions may be required in relation to ownership of securities in these companies.

Dual / secondary listings

It is also possible for foreign issuers to have a dual primary listing in Egypt provided their securities are already listed on a recognised exchange. Foreign securities will also have to meet the eligibility criteria as set out above.

Secondary listings are also possible and can be carried out for either capital or non-capital raising reasons (note though that a prospectus will be required for a capital raising secondary listing).

IPO process

There is a distinction between the offer of securities to the public and admission to listing on the EGX. It is not possible to carry out these two processes in parallel as the listing on the EGX is a subsequent step to the IPO procedure. The IPO process (which includes the preparation and submission of the prospectus) is monitored by, and requires the approval of, the EFSA. Only once the IPO is successfully completed can the relevant documents be submitted to the EGX for listing (which must be completed within no more than two months from the IPO subscription closing date)[1].

Approaching the regulator at an early stage of any proposed IPO is advisable to ensure that the process is conducted as smoothly as possible.

Conducting an IPO in Egypt involves the following key steps:

- shareholders must approve the IPO by way of an extraordinary resolution (i.e. 75 per cent of those shareholders attending the meeting)
- an independent financial adviser registered with the EFSA must issue a report confirming that the issue price is "fair value" (thereby fixing the issue price in advance)
- a prospectus needs to be prepared and approved by the EFSA (see below)
- once approved, the prospectus must be published in at least two daily Egyptian newspapers.

1 In practice, with the consent of the EFSA, it may be possible to obtain a non-trading listing on the EGX before the IPO is commenced.

As with most jurisdictions, the issuer will need to appoint appropriate advisers at an early stage in the process in order to assist with the complexities of the IPO process. Typically such advisers would include lawyers, investment bank/underwriter (depending upon whether the issue will be underwritten), brokers and financial advisers. There is no need to appoint a sponsor. Investment banks and underwriters need to be licensed by the EFSA.

The IPO process usually takes no less than three months from start to finish. Thereafter, the listing procedures at the EGX are carried out by the proposed issuer with support, where necessary, from specialist brokerage companies in Egypt.

Once listed, shares are not subject to any stamp duty or corporate taxes, whether on dividends or capital gains.

Regulatory approvals

The EFSA must approve the prospectus before securities can be offered to the public in Egypt. The EFSA has two weeks from the date of filing the prospectus to determine whether information included in the prospectus is insufficient or inaccurate. If no objection is raised within that two week period then an applicant can assume that the prospectus has been approved.

In relation to the listing, the Listing Committee of the EGX will be responsible for reviewing and verifying all applications and for providing the approval for listing.

Documentation

The key document in the IPO process is the prospectus and no offer of securities may be made to the public until a prospectus has been filed with, and approved by, the EFSA.

The prospectus itself must comply with the form prescribed by the EFSA (although the contents requirements are relatively limited by comparison with most international markets). In particular, some of the key contents requirements include:

- the issuer's name, purpose and legal status
- the nominal value of the securities, the number and type of securities, any particular characteristics of the securities and the rights attached to them (whether with respect to distribution of profits or at liquidation)
- details of any founder shareholders
- if only part of the capital is being offered for public subscription, an indication should be made as to the manner in which the remaining capital will be subscribed for
- details of the subscription period (including the dates for commencement and expiry of the period) and the manner in which the subscription can be made
- the amount required to be paid by each subscriber at the time of subscription (which should be no less than one-quarter of the nominal value of the securities to be subscribed for (in addition to issue charges))
- a summary of the contracts entered into by the founders during the five years preceding the intended subscription date if the founders intend to transfer these contracts to the issuer (together with an auditor's report on any establishment which was acquired for cash during that period)
- the dividend policy

- the method in which shares will be allotted in the event that the offer is over subscribed
- details of the proposed use of proceeds and the anticipated returns in relation to such use
- any other information which is deemed material by the EFSA.

The prospectus must also contain a statement that the EFSA has not approved the commercial merits of the offer or the issuer's ability to achieve specific results.

Any person who intentionally makes material misstatements in a prospectus or any other report, together with any person who is licensed to receive public subscriptions and publishes the prospectus, may be criminally liable for any misstatements.

In addition to the above requirements, the following information and documents will also need to be either disclosed in the prospectus or, where relevant, provided to the Listing Committee in advance of listing:

- the ownership structure detailing those shareholders whose ownership exceeds 5 per cent or more of each of the issuer, any holding company and any affiliated or sister companies
- details of the issuer's group
- details of the board, executive managers and shareholders
- a summary of the contracts which the issuer or any other affiliated company is a party
- details of any mortgages over the issuer's assets as ratified by the auditors
- details of any related party transactions including whether or not the provisions of any such contracts have been complied with
- a declaration from the issuer indicating the compliance of all contracts entered into between the issuer and its shareholders, board members or executive managers with applicable legal provisions
- a statement, ratified by the issuer's lawyers, indicating the names and addresses of the persons responsible for investor relations
- a statement, ratified by the issuer's lawyers, detailing all claims to which the issuer is a party indicating the status of each claim.

Marketing

Any entity wishing to market securities in Egypt must be licensed by the EFSA. It is a criminal offence for any other person to do so.

However, the CM Law does allow for certain marketing materials to be distributed following the filing of the prospectus but prior to the issuer obtaining EFSA approval for the prospectus. Any such materials may only contain basic information about the offer and must also include very clear and prominent rubric warning that the prospectus has not yet been approved by the EFSA.

Once approved by the EFSA, a summary of the prospectus should be published in two daily newspapers at least 15 days before the offer is due to commence, or, as the case may be, within 10 days of the approval of any amendments to the prospectus. The notice should include details of where a copy of the approved prospectus may be obtained from.

Thereafter, the subscription period must remain open for a period of not less than 10 days and not more than two months (although this may be extended by the EFSA if the offer is not fully subscribed during this period).

Broker's research is permitted and is prepared in practice. There are no black out periods that must be complied with.

An issuer must ensure that its marketing materials are true, accurate, up-to-date and not misleading so as to mitigate any potential action by investors.

Clearing and settlement

All listed securities are held in dematerialised form and are managed by Misr Central Depository, Settlement and Registry (the MCDR) which is the sole entity authorised to perform clearing and settlement for all securities traded on the EGX. Clearing and settlement is based upon delivery versus payment, whereby MCDR acts as the clearing house between the buying and selling member firms. The MCDR is responsible for the settlement of member firms' accounts at the request of and notification by the EGX.

Any person wishing to acquire listed securities through the EGX must place an order with a member firm which has been authorised and holds the appropriate licence to trade on the EGX.

The clearing and settlement process will depend on the nature of the security in question. For Egyptian listed shares, the broker will receive the buy or sell order and will then confirm with the custodian or settlement bank that the subject shares or funds required to complete the transaction are available. The broker will execute the deal at the exchange which in turn will notify the MCDR of the transaction. The MCDR will thereafter notify the broker and the custodian of the transaction and settlement will occur on a T+2 basis.

The MCDR is also responsible for the recording of pledges of listed securities.

Ongoing Compliance

Corporate governance

Corporate governance is still growing in importance in Egypt. There is currently no single all encompassing code for corporate governance in Egypt. The fiduciary duty and corporate governance related regulations can be found in several different laws and regulations including the Listing Rules, the CM Law and the Companies Law.

Currently, every listed company must have an audit and compliance committee comprising at least three non executive directors.

As a general protection, any shareholder may, before the Egyptian courts, challenge a shareholder resolution which has been issued in prejudice to, or in favour of, the majority or a specific group of shareholders.

Issuers who fail to comply with any corporate governance requirements are typically given small fines. The EGX has however recently indicated that it intends to adopt a more robust approach to compliance.

Ongoing compliance

The disclosure section of the Listing Rules (the Disclosure Rules) sets out the ongoing compliance obligations for any company listed on the EGX.

In addition to the list below, listed companies must provide the EGX and the EFSA with their quarterly financial statements (which must be reviewed by auditors) and must publish their annual and semi-annual financial statements in two daily Egyptian newspapers.

The reporting requirements under the Disclosure Rules are split into two main areas:

General
Any listed company must immediately report to the EGX any change to the information set out in the issuer's listing application or in its board of directors' annual reports.

All listed companies must appoint an investor relations officer who is responsible for reporting to the EGX and for publishing press releases (which includes information that is required to be published by the EGX).

Disclosure of material information
A listed company must immediately disclose any material events to the EGX which will have an effect on its activities, its financial position or on the trading of its securities on the EGX.

If a material event occurs during an official holiday, the issuer must release an announcement regarding the event in two daily newspapers (at least one of which should be in Arabic), and the EGX must be notified of this event promptly after the end of the holiday.

Material changes are, as noted above, defined as price sensitive information which will have a tangible effect on the issuer's activity, its financial position or that may affect trading of the issuer's securities. Examples include:

- any proposed change in the issuer's share capital which would result in the shareholding of any board member increasing above or decreasing below 5 per cent of the issued share capital
- any proposed issue of bonds and any related guarantees or pledges
- any decision that entails making a call on or cancelling previously issued listed securities (including accelerating the payment of bonds or the purchase of treasury shares)
- any change in the issuer's funding structure or its financial position in a manner that results in the increase in the issuer's liabilities exceeding its equity
- any material change in the investment policies of the issuer, such as opening new branches, undertaking new business activities or liquidating existing branches
- any material litigation against the issuer or against any of its board members
- the issuance, modification or withdrawal of any administrative decree which will have a material effect on the issuer's activities
- any transaction concluded with a related party.

An issuer must also notify the EFSA 15 days prior to the distribution of any coupons or bonus shares.

The documents and information which are required to be disclosed need to be physically delivered to the EGX by an individual specifically appointed by each issuer with authorisation to deal with the EGX. E-mail delivery will not suffice.

Restrictions on individual shareholders

There are various notification thresholds that apply to individual shareholders including:

- The 5 per cent threshold

  Any shareholder who holds 5 per cent or any multiple of 5 per cent of an issuer's issued share capital, either through one transaction or a series of transactions (but who holds less than one third of the issued share capital) must disclose their holding to the EGX and the EFSA. This disclosure must be made within two days from the completion of the relevant trade which takes the shareholder through this threshold.

  The threshold above drops from 5 per cent to 3 per cent in the case of shareholders who are employees or board members of the issuer.

- The 10 per cent threshold

  If a person intends to acquire more than 10 per cent of the issuer's issued share capital they must first give the issuer two weeks' notice of their intended acquisition. The issuer is obliged to notify all shareholders holding 1 per cent or more of its issued share capital of the proposed acquisition within one week of receiving the notification.

  Failure to give the requisite notice to the issuer will render the transaction void. The potential purchaser must also notify the EGX and the EFSA of their intended acquisition.

  These requirements are also applicable to transactions which would result in a board member or employee of the company holding more than 5 per cent of the shares of the issuer.

Suspension and termination of listing

Pursuant to the Listing Rules, securities listed on the EGX may be delisted in a number of circumstances including if:

- it appears that the listing has been made on the basis of incorrect information that affects the validity of the listing
- the issuer fails to comply with the disclosure requirements of the Listing Rules within one month of receiving a notification from the EGX requesting the same
- one of the listing conditions in the Listing Rules (as set out above) is no longer satisfied and is not remedied within the period specified by the EGX
- a period of six successive months passes by without any trading in the issuer's securities
- the issuer fails to pay any listing fees fines.

An issuer may also be delisted upon the request of an issuer provided that 75 per cent of its shareholders have approved the delisting. In addition, there must be no objection raised by any shareholder within a one month period and there must also be no objection raised by a debtor holding a pledge over any of the shares.

Takeovers

A new Chapter 12 of the Executive Regulations to the CM Law was introduced in 2007 (the Takeover Rules). Takeovers fall under the ambit of the EFSA.

The Takeover Rules apply to all listed Egyptian companies and to any unlisted Egyptian company that has offered any shares to the public in Egypt. Foreign companies which have chosen to list their securities on the EGX on a secondary or dual basis are also subject to the Takeover Rules, unless explicitly exempt by virtue of a decision by the EFSA.

Mandatory purchase requirements

Any person wishing to acquire by itself, or together with persons acting in concert, one third of the share capital or one third of the voting rights of a company which is subject to the Listing Rules must submit a tender offer (which must include a prospectus approved by the EFSA) in respect of all of the securities or the voting rights of the company, as the case may be (a Mandatory Purchase Offer).

The submission of a Mandatory Purchase Offer will require compliance with certain procedural requirements set out in the Takeover Rules (such as the requirement to submit the Mandatory Purchase Offer within 30 days from the date of the transaction which triggered the requirement to make a Mandatory Purchase Offer).

In addition, if a shareholder who holds (either alone or together with its concert parties) more than one third but less than 50 per cent of the issued share capital of the issuer:

- increases their shareholding by 2 per cent or more during any 12 month period; or
- increases their shareholding to more than 50 per cent,

a Mandatory Purchase Offer will be triggered.

There is a similar requirement for shareholders holding more than 50 per cent but less than 75 per cent of the issued share capital.

Exemptions may be granted by the EFSA from the Mandatory Purchase Offer requirement on a case by case basis.

The price to be paid by the offeror pursuant to a Mandatory Purchase Offer must not be less than the highest price paid by the offeror or any concert party in any takeover offer undertaken by the offeror in accordance with the Takeover Rules during the 12 months preceding the Mandatory Purchase Offer.

The only condition that can be applied to a Mandatory Purchase Offer is an acceptance condition of more than 50 per cent.

It is possible under the Takeover Rules for competing bids to be made in relation to the target securities once a Mandatory Purchase Offer has been made, provided such competing bids follow the procedures set out in the Takeover Rules.

Squeeze out rules

There is no ability to squeeze out a minority shareholder under the Takeover Rules.

Minority buy out rights

If a shareholder (either alone or together with concert parties) acquires 90 per cent or more of the issued share capital then any shareholders holding at least 3 per cent of the securities may, within one year following the acquisition of the 90 per cent interest, submit a request to the EFSA for a tender offer to be submitted by the majority shareholder to purchase minority shares. The price at which the minority shares shall be purchased must not be less than the highest price paid by the offeror (or any of its concert parties) in any tender offer undertaken by the offeror in accordance with the Takeover Rules during the previous 12 months.

The offering of foreign securities into Egypt

As an alternative to listing on the EGX and conducting an IPO in Egypt a company located outside of Egypt may instead look at the option of offering its securities to persons located in Egypt.

The law does not specifically address the marketing of foreign securities in Egypt and, as noted above, any entity marketing securities in Egypt must be licensed by the EFSA. It is a criminal offence for any other person to do so.

In relation to the marketing of foreign securities, the regulator's current policy is that it has licensed a number of banks and other financial institutions in Egypt to market securities, but will not confirm that this permits the marketing of foreign securities. In particular, the regulator is apparently concerned about its competence to approve the financial soundness of any foreign securities.

Notwithstanding the above, guidance on current regulations and market practice should be sought in each case.

Jordan

Jordan

The market

Capital market reforms in the 1990s led to the enactment of the Securities Law (No. 23 of 1997) which provided for the establishment of three new institutions – the Jordanian Securities Commission (JSC); the Amman Stock Exchange (ASE); and the Securities Depository Centre (SDC) – to replace the Amman Financial Market (AFM), the original Jordanian stock exchange.

The ASE was established in March 1999 and took over the operations of the AFM as the Jordanian stock exchange. It is a non-profit, private institution and has administrative and financial autonomy in the running of the exchange.

The ASE is the only securities exchange in Jordan and has two markets:

- the First Market – for companies which meet strict eligibility requirements as summarised below
- the Second Market – for companies which do not meet all the eligibility requirements for the First Market.

Legal framework

Legislative and regulatory

The ASE is licensed and regulated by the JSC. The laws and directives which govern admission to listing and ongoing disclosure requirements include:

- The Securities Law – which, among other things, created the JSC and provides that the ASE is to be regulated by the JSC (Law No.76, 2002)
- The ASE Listing Directive – which sets out the procedures and requirements for listing securities on the ASE (Directives for Listing Securities on the Amman Stock Exchange for the year 2004)
- The Companies Law – which regulates Jordanian companies in general (Law No.22, 1997).

Regulatory oversight

The JSC has financial and administrative autonomy and was created under article 7 of the Securities Law.

In summary, the JSC aims to: protect investors; regulate and develop the capital market to ensure fairness, efficiency and transparency; and protect the capital market from risks which it may face (article 8 of the Securities Law). The JSC has been given a broad range of powers and responsibilities, which include regulating the issuance of and trading in securities, regulating disclosure and regulating and monitoring the ASE in order to achieve these aims.

Retail offer and institutional offer

Jordanian law distinguishes between a "private offer" and a "public offer" (referred to for the purposes of this Guide only as an institutional offer and a retail offer respectively). Any offer of securities to more than 30 persons is treated as a retail offer under the Securities Law

(irrespective of the sophistication of these persons).

A retail offer requires the issuer to prepare and file a prospectus with the JSC and to then obtain approval from the JSC for the marketing of the securities (article 34 of the Securities Law). This approval must be obtained before any marketing activities commence.

Any offer of securities to 30 persons or less would constitute an institutional offer. Institutional offers must be disclosed to and approved by the JSC. In practice, the JSC has not been very strict in enforcing this requirement, although it is recommended that the institutional offer rules are, nevertheless, observed.

Eligibility for IPO

Regulatory requirements

Any company intending to carry out a retail offer of securities must apply to the JSC to register the securities and must prepare and submit a prospectus to the JSC for approval. After the marketing has been completed, the issuer must obtain the ASE's approval for the securities to be admitted to trading on either the First Market or the Second Market.

The eligibility requirements for listing will vary depending upon whether the securities are to be listed on the First or the Second Market. The First Market has more stringent requirements and is intended for securities which are to be actively traded. The Second Market caters for less liquid securities which may have been issued by less established companies.

Companies can list their shares on the Second Market as soon as they fulfil the eligibility requirements set out in the ASE Stock Listing Regulations (as summarised below). Shares will normally be traded on the Second Market before being admitted to the First Market.

The ASE Board of Directors is entitled to list the following securities directly on the First Market, provided it receives all the information and statements requested from the issuer:

- securities arising from the privatisation of public shareholding companies
- securities resulting from the conversion of limited liability companies, limited partnerships or private shareholding companies to public shareholding companies
- securities of non-Jordanian public shareholding companies.

The eligibility requirements for the ASE provide that securities can be listed on the ASE once it has been verified that (article 3 of the ASE Listing Directive):

- the securities are registered with the JSC
- the securities are deposited with the SDC (as defined below)
- there are no restrictions on the transfer of ownership of the securities
- the issuer has appointed an audit committee
- the issuer has signed a listing agreement with the ASE (which determines the rights and obligations of the two parties in relation to the listing of the securities).

Once these eligibility requirements have been satisfied (and the other regulatory requirements have been complied with as summarised below) an issuer can be admitted to trading on the Second Market.

While there is no requirement for companies which have listed on the Second Market to move over to the First Market (and a number of companies which have listed have remained on the Second Market), securities listed on the Second Market may transfer their listing to the First Market once the following eligibility requirements have been met:

- the securities have been listed on the Second Market for at least one year
- net shareholders' equity is not less than the paid up capital
- the issuer has made net pre-tax profits for two out of the past three years
- the securities available for free float are not less than a certain minimum – this must be 5 per cent if the paid up capital is 50 million Jordanian Dinars or more (around US$70.5 million) or 10 per cent if the paid up capital is less than 50 million Jordanian Dinars
- there are a minimum of 100 shareholders by the end of the issuer's current fiscal year
- the securities have traded for at least 20 per cent of the overall trading days of the ASE for the past 12 months and at least 10 per cent of the free float has traded during the same period.

In certain circumstances, as set out in the ASE Listing Directive, an issuer's listing can be transferred from the First Market to the Second Market. For example, if the number of shareholders drops to less than 75 at the end of the issuer's fiscal year.

Every public shareholding company, established under the Companies Law, is required to apply for listing of its outstanding securities and for trading on the ASE.

Any other type of company can list on the ASE with the approval of the JSC.

The JSC has the power to grant exemptions from the eligibility criteria however, in practice, this is very rarely done.

Foreign ownership and sector specific restrictions

Foreign ownership of securities listed on the ASE is allowed, although there are certain restrictions (as set out in the Regulating Non-Jordanian Investments Regulation No.54 (2000)). For example, foreign shareholding in companies which provide certain services (such as engineering services, money exchange services, transport services and certain commercial activities) is limited to either 49 or 50 per cent, depending on the particular service, while foreign ownership is prohibited in companies which provide certain other services (such as security and investigation services). In theory, this is monitored by the trading system, which is equipped to reject an order which violates the rules. However, this is not implemented in practice. The SDC also monitors trading activity in order to ensure compliance with these restrictions, and will require a broker to take corrective action if its client has acquired securities in breach of any restrictions.

Dual / secondary listings

The JSC's approval must be obtained before a security listed on the ASE can be listed on any other stock exchange. The JSC is very reluctant to allow dual listings. To our knowledge, the JSC has not (to date) approved any Jordanian company listings on a foreign stock exchange.

There are a limited number of Jordanian global depositary receipts listed on other exchanges. For example, Arab Potash Company has a dual listing of its global depository receipts on both the ASE and the London Stock Exchange.

IPO process

A company seeking to make a retail offer must appoint an issuance manager. An issuer will also usually appoint an underwriter and financial adviser, legal counsel, payment agent and a custodian.

Once the advisers have been appointed, the issuer must prepare and submit the various documents which the ASE and the JSC require (see below). The issuer must also obtain the JSC's approval for the retail offer and must then list the securities on the ASE.

The IPO process usually takes between two to six months to complete.

There is no stamp duty payable on the subscription or trading of securities once listed.

Regulatory approvals

A prospectus must be submitted and approved by the JSC before a retail offer may be commenced[1]. In practice, there is no specific timetable for obtaining this approval. The JSC retains the right to reject a prospectus if it determines that this is necessary (e.g. the prospectus does not comply with the Securities Law or it contains false information or the appropriate fees have not been paid).

If a retail offer is made without prior approval of a prospectus by the JSC then the following penalties may be applied:

- a fine of up to 100,000 Jordanian Dinars (around US$140,000) in addition to a second fine of not less than twice and not more than five times the profits made or the loss averted
- a jail sentence of up to one year.

If a prospectus is filed with the JSC but contains false or insufficient information then the first penalty above may be applied.

Documentation

The prospectus is the key document in the IPO process. The prospectus must include a full description of the securities offered as well as the conditions of the offer.

Broadly speaking, the prospectus should include the following information:

- information about the securities (for example, name of the issuer, type of securities, number of issued securities, value per security and total value)
- the conditions of the offer (for example, the duration of the offer, a description of the procedures for accepting or rejecting the offer, the method for returning oversubscribed funds, the measures in case of under subscription and the minimum number of units to be purchased)

1 A prospectus is deemed to be effective 30 days after its submission to the JSC unless the JSC declares the prospectus to have been ineffective or rejected within this period (article 39 of the Securities Law). However, this provision is never relied upon in practice and it is recommended that the issuer seeks the JSC's specific approval rather than relying on the implied approval process.

- the rights and obligations of the shareholders
- the reason for the offer and a description of the intended use of proceeds
- a brief description of the issuer (for example, type of products or services provided, major suppliers and agents, its competitive position and any major pending legal actions for or against it or any of its subsidiaries)
- the sources of corporate funding
- the financial statements
- details of the shareholders holding 5 per cent or more.

In addition to the prospectus, the following documents must be submitted to the JSC:

- any underwriting agreement
- a legal opinion prepared by the issuer's legal counsel confirming the validity of the proposed issue (this is usually a very short opinion that the issuance has been conducted in accordance with the requirements of the law)
- the issuer's memorandum of association and articles of association and any other documents witnessing the creation of the issuer (to the extent relevant, depending upon the type of entity)
- all material contracts
- all agreements to be entered into between the issuer, the payment agent and the custodian of the securities.

In addition, the issuer must provide the ASE with the following:

- a report by the company's board of directors
- the company's memorandum of association
- the annual report for the past fiscal year (if any)
- audited financial reports (if any)
- any other information which the ASE might ask for.

Marketing

The marketing of all securities in Jordan must be carried out by local "issue managers" licensed by the JSC. If the marketing of securities relates to a retail offer the JSC's approval must be obtained before any marketing of the securities can commence (see above).

There are no restrictions on the type of marketing which may be undertaken, nor any requirements as to the language of the marketing documents. Furthermore, the issue manager is not restricted to certain types of activities when marketing securities, except for acts prohibited under the Securities Law and the regulations and instructions issued under them.

An issue manager must ensure that the contents of the marketing materials, as with the prospectus, are true, accurate, up-to-date and not misleading so as to mitigate against any potential action by investors. If any person licensed by the JSC engages in deception, misrepresentation or any prohibited act under the Securities Law, it will be deemed to be in violation of the Securities Law.

Brokers' research is permitted without any restrictions. In addition, there are no closed periods during which time there are information embargoes before listing.

Clearing and settlement

Settlement at the ASE is carried out through an electronic trading system (the SDC) that allows for near-instantaneous settlement. Publicly traded securities are completely dematerialised. There is therefore no need for certificates and most if not all issuers have stopped issuing them.

The SDC was established in 1997 with the aim of ensuring safe custody and ownership of securities. It is responsible for the registration and transfer of ownership of securities which are traded on the ASE. The SDC is also responsible for settling the prices of securities amongst the various brokers trading on the ASE.

All persons wishing to trade in ASE securities must do so through an ASE broker which must be an authorised ASE member firm holding appropriate accounts at the SDC. The transfer of ownership of deposited securities from the seller's account to the buyer's account is conducted via book entries following the submission of the daily trading files to the SDC. Securities will stay suspended in the buyer's account until the settlement process is completed and full payment is made.

There are currently no arrangements in place to facilitate settlement and trading through other exchanges and, as noted above, any dual listing would require the JSC's prior approval.

Ongoing compliance

Corporate governance

Both the Companies Law and the Securities Law contain corporate governance requirements which an issuer is required to comply with (the key requirements of which are summarised below). If these requirements are not met various penalties can be imposed on the issuer under both laws. Furthermore, the JSC has issued a Guide on Corporate Governance for Publicly Listed Companies (the Guide), which includes a combination of guidelines and mandatory requirements. These are based on the corporate governance principles in the Companies Law and the Securities Law, as well as the corporate governance principles adopted by the Organisation for Economic Co-operation and Development.

The Guide provides that the following key requirements are mandatory under the Companies Law and the Securities Law:

- the issuer must provide shareholders and investors with accurate, clear and timely disclosure of information
- the issuer must organise its accounts and keep its books and records in accordance with the International Financial Reporting Standards
- the issuer's audit committee must meet regularly (not less than four times a year) and keep minutes of each meeting.

The Guide places various other duties and obligations on the issuer's board of directors and shareholders. A list of all mandatory obligations is set out in the Guide.

Penalties may be imposed for any non-compliance with the Guide although it is difficult to comment on how the JSC exercises its enforcement powers as there is limited precedent.

Ongoing compliance

All companies which have issued securities to the public (on both the First and the Second Market) must publish the following periodic reports:

- an annual report including financial statements (certified by an independent financial auditor) within 90 days of the end of its fiscal year
- a semi-annual report within 30 days of the end of its bi-annual fiscal year
- a preliminary report about its activities (submitted after a preliminary audit) within a maximum of 45 days from the end of the fiscal year
- a report relating to the election of the board of directors or any change in the composition or identity of any members of the board.

Publication of the reports listed above should be effected through a local newspaper or by means of written or electronic mailings addressed to each shareholder or by such other means as the JSC may direct.

In addition, significant matters that affect an issuer's securities must be disclosed by the issuer to the JSC within seven days of their occurrence. Significant matters which require disclosure include material changes to the issuer's assets, changes to its capital structure, credit rating, material losses, and important board of directors' decisions that might affect the price of securities (including decisions relating to the issue of new securities, initiation of a merger or distribution of dividends). The issuer must also disclose all shareholder resolutions and any decisions to cease the issuer's activities.

Restrictions on individual shareholders

There are generally no restrictions on the ownership of securities, but disclosure requirements are triggered once a shareholder reaches 5 per cent ownership (and each percentage thereafter). The disclosure must be made within one week of acquiring the relevant percentage shareholding. At 10 per cent ownership, the shareholder must disclose whether it intends to make any further acquisitions. In addition, the acquisition of more than 40 per cent ownership is prohibited except through a Public Takeover Offer, which is regulated by the JSC (see below for more details on the takeover process).

The issuer's board of directors must disclose in its annual report to the JSC the details of any shareholder who holds 5 per cent or more of the issuer's securities. This disclosure is initially made when the application for listing is submitted and is then made to the JSC within three months of the end of the issuer's fiscal year. If an issuer fails to submit the report, the application for listing may be rejected and, following listing, the issuer may face fines and penalties.

In addition, the founding shareholders of a public shareholding company are locked in for a period of two years from the date of the issuer's formation. Any sale of securities will be deemed null and void.

Suspension and termination of listing

The JSC has the discretion to suspend or delist any securities listed on the ASE. Furthermore, securities listed on the ASE may be suspended from trading or delisted if any of the following events occur:

- the issuance of a shareholder resolution approving a reduction in the issuer's capital
- a merger
- the provision of any contingency that substantially affects the sound trading in securities or the financial position of the issuer
- a request made by the board of directors of the issuer
- an interruption to the normal business of the issuer for a period exceeding three months without justified reasons for the interruption
- a shareholder resolution liquidating the issuer
- the submission of a statement of action before a competent court for the compulsory liquidation of the issuer.

Once the conditions causing the suspension or the delisting have ceased to exist, or have been rectified, the JSC may reinstate the issuer's listing on either its own initiative or based upon a request made by the issuer.

Takeovers

A takeover of a publicly listed company can be accomplished in one of two ways. The first involves a public takeover offer through the JSC. The second is through the Ministry of Industry and Trade (the MoIT) as set out in the Companies Law.

Other than as summarised below, there are no other regulations in Jordan which govern the takeover of a company listed on the ASE.

Takeovers through the JSC

Any person wishing to purchase securities which would result in the shareholder acquiring more than 40 per cent of the issued securities of a publicly listed company must make a public takeover bid (a Public Takeover Offer).

The bidder is required to file certain documentation with the ASE and the JSC in order to effect a Public Takeover Offer. The documentation must set out the bidder's intention regarding the number of securities it is seeking to acquire, the price it wishes to pay for these securities and the date on which it proposes to make the offer. The details of the offer must then be discussed with and approved by the ASE and the JSC.

Once the ASE and JSC approval has been obtained (which usually takes 30 days from the commencement of the initial discussions with the regulators) the bidder must make a public announcement (in two daily newspapers) of its intention to purchase the securities. The announcement will set out the terms and conditions of the offer including the number of securities the bidder is seeking to acquire, the aggregate shareholding of the bidder following the date of the offer if the bidder was successful in purchasing all of the securities it is seeking to acquire, the date on which the offer will be made (which must be at least two weeks after the date of the announcement) and the price at which the bidder is seeking to acquire the securities. The price is usually set as a range around the current market price at the time of the announcement and might include a premium.

There is no requirement for a Public Takeover Offer to be made for all securities in issue. The bidder can state in the announcement how many securities it is seeking to acquire and can

set this at any number as long as it has been pre-approved by the ASE and the JSC. Subject to the procedure discussed below, selling shareholders will then be entitled to sell their securities on a pro rata basis.

On the date set out in the announcement, the bidder may make on market purchases of securities in the issuer through the ASE electronic trading system. Therefore, the offer can only be made in cash – there is no concept of a securities exchange offer. The bidder can only make these purchases in the first hour of trading. After the first hour of trading, the bidder is not entitled to purchase any more securities. If the bidder acquired securities at different prices during that hour it will be obliged to pay the highest price at which it acquired securities to all other selling shareholders.

The bidder is not obliged to purchase any securities during that first hour of trading. However, there will be an expectation in the market and by the regulators that the bidder will complete these purchases. In addition, any shareholder who does not wish to sell its securities is not obliged to do so and there are no mechanisms by which minority shareholders can be squeezed out, other than in circumstances referred to below under the Companies Law.

Takeovers through the MoIT

Article 222(b) of the Companies Law outlines the steps that must be taken when a company wishes to acquire 100 per cent of the issued share capital of another company. The relevant provisions include a right to squeeze out the minority shareholders if 75 per cent of the shareholders present at an extraordinary general meeting approve the takeover (including the price at which their securities will be acquired).

The offering of foreign securities into Jordan

As an alternative to listing on the ASE and conducting an IPO in Jordan, a foreign company may consider offering its securities to persons located in Jordan.

As the provision of financial services (including the marketing of securities) in Jordan must be undertaken by a locally registered entity licensed by the JSC, any such offering must be conducted through such a locally registered entity. Further, as noted above, in order to undertake a retail offer (even in respect of securities in a foreign company) a prospectus must be submitted to and approved by the JSC.

In addition, and separate from the requirements under the Securities Law, any marketing of securities listed on a foreign exchange must either be undertaken by locally licensed banks and financial institutions or, in accordance with the FEX Law (the Law Governing Dealings in Foreign Exchanges No. 50 (2008)). The FEX Law requires a licence to be issued by the Foreign Exchange Board in order to undertake the marketing of securities listed on a foreign exchange. The FEX Law does however provide an exemption from the requirement to obtain a licence for foreign banks and financial institutions, subject to the approval of the Council of Ministers.

Failure to abide by the above requirements may result in civil or criminal penalties being imposed, including the possibility of fines of up to 100,000 Jordanian Dinars (around US$140,000) plus a fine of up to five times the profit made or loss averted from the violation. Prison sentences may also be imposed if a breach occurs.

Notwithstanding the above, guidance on current regulations and market practice should be sought in each case.

Lebanon

Lebanon

The market

The Beirut Stock Exchange (BSE) is one of the oldest markets in the region. It was initially established in 1920 and saw significant activity during the 1950s and 1960s. The mid 1970s witnessed various security events in Lebanon which affected trading and caused the exchange to be suspended in 1983, re-opening in 1996. In recent times the BSE has sought to modernise itself by extending the categories of securities which can be traded and by adopting a more modern trading system.

The BSE comprises three different markets:

- the official market (the Official Market)
- the junior or secondary market (the Secondary Market) – which is largely for newly established companies which are unable to meet the eligibility requirements of the Official Market
- the over-the-counter market – for companies with a share capital equivalent to US$100,000 (the shares of these companies are traded without being listed on the exchange).

Legal framework

Legislative and regulatory

The laws and regulations which govern admission to listing and ongoing disclosure requirements include:

- The BSE Law (Legislative decree No. 120 regarding the regulation of the BSE dated 16/9/1983, as amended) – this provides for the regulation and governance of the BSE and deals with the composition and powers of the Stock Exchange Committee, the regulatory body of the BSE
- The BSE Bylaws (Ministry of Finance Decree No. 7667 regarding the implementation of the Bylaws of the BSE) – in particular, the BSE Bylaws contain the admission and listing procedures as well as the ongoing compliance requirements for listed companies
- The Code (Legislative decree No. 304 of 24 December 1942 regarding the Lebanese Code of Commerce, as amended) – this provides for the formation and ongoing regulation of Lebanese Joint Stock Companies.

In addition, any person wishing to promote and market financial products to the public in Lebanon (including BSE listed equities) will need to be aware of:

- The Bank Circular (The Central Bank of Lebanon (the Central Bank) Basic Circular No. 66 dated 24 December 1999 concerning financial instruments and products)
- The Central Bank Basic Circular No. 82 dated 11 May 2001 concerning bank equity issuing and trading, bank bond issuing and bank ownership of real estate.

Regulatory oversight

The BSE is organised and regulated by the Stock Exchange Committee (the SEC) under the supervision of the Ministry of Finance. The SEC has certain autonomous authority in regulating the market pursuant to the powers granted to it under the BSE Law and the BSE Bylaws.

The SEC runs the BSE affairs, oversees the proper functioning of its operations and is specifically responsible for, amongst others:

- managing, regulating and developing the BSE
- protecting the interests of investors trading on the BSE
- monitoring the activities of listed companies and providing appropriate information to issuers and traders
- approving contracts relating to transactions which exceed 20 million Lebanese pounds (around US$13,000)
- issuing any implementing circulars it deems necessary
- any suspension of trading in listed securities or of operations more generally in any of the markets.

The Ministry of Finance indirectly monitors the trading and membership of the BSE through its representatives who are appointed to the SEC. A Government Commissioner is also appointed to the SEC by virtue of a decree issued upon a proposal from the Ministry of Finance. The Government Commissioner is entrusted with the implementation of the BSE Laws and accompanying regulations.

In addition, the Central Bank, pursuant to the Bank Circular, regulates all public offers, promotions and marketing of securities (whether listed or not) and prior approval of the Central Bank will be required in all such cases.

Retail offer and institutional offer

As is common with most jurisdictions, the difference between a retail offer and an institutional offer is that an institutional offer is the offer of securities to a selected group of investors. A retail offer, by comparison, is the offer of securities to the public at large.

In the context of the listing process, there is no distinction in terms of regulatory requirements between these two types of offer. Both retail offers and institutional offers will need to follow the same listing process. However, in the context of the offer of securities, there is a distinction between retail and institutional offers in that Central Bank approval will be required for any sale, promotion or marketing of securities to the public. Central Bank approval is not required for institutional offers.

Eligibility for IPO

Regulatory requirements

In relation to Lebanese incorporated companies, only joint stock companies (Société Anonyme Libanaise (S.A.L.)), which are established under the Code, are eligible for listing on the BSE.

Any foreign issuer of securities (i.e. a company not incorporated in Lebanon) may apply for the admission of its securities to the Official Market or the Secondary Market (article 83 of the BSE Bylaws). Any foreign issuer would have to comply with the same eligibility requirements as a Lebanese company. The SEC may also request official Lebanese or foreign authentication of the application documentation submitted by a foreign applicant which should demonstrate the conformity of the documents presented to the laws and regulations in the country of the applicant's registration. Any foreign applicants seeking to have their securities admitted to the BSE should be the equivalent of a public joint stock company in the country in which they are incorporated.

The BSE Bylaws stipulate eligibility requirements which must be met before an applicant's securities can be listed and admitted for trading on the BSE. The requirements include the obligation to secure an underwriter for a minimum of 10 per cent of the subscription value.

The SEC is responsible for reviewing all applications and will determine whether the appropriate eligibility criteria have been satisfied. In certain situations, waivers from the criteria may be obtained from the SEC.

Official Market

The eligibility requirements for companies wishing to join the Official Market include:

- the issuer's share capital should be the equivalent of at least US$3 million in Lebanese pounds
- the issuer should have been in existence for at least three years with a three year track record
- at least 25 per cent of the issuer's share capital should be held in public hands (i.e. held by at least 50 shareholders).

Secondary Market

For companies wishing to join the Secondary Market the eligibility criteria include:

- the issuer's share capital should be the equivalent of at least US$1 million in Lebanese pounds
- at least 25 per cent of the issuer's share capital should be held in public hands (i.e. held by at least 50 shareholders).

Any company which fulfils the eligibility criteria for either the Official Market or the Secondary Market, and which has already offered its securities for public subscription (article 81 of the Code), must also submit a request for admission of those securities to the BSE. The request for admission should be addressed to the SEC and must be made within a maximum of one year from the date of the retail offer.

Foreign ownership and sector specific restrictions

Generally, there is no distinction between Lebanese investors and foreign investors who hold securities of companies listed on the BSE. However, some restrictions apply in relation to real estate companies in Lebanon and companies involved in the management and running of public utilities.

Dual / secondary listings

Any foreign issuer of securities may apply for the admission of its securities to either the Official Market or the Secondary Market on either a dual or secondary basis. The requirements for a dual or secondary listing are as set out above.

IPO process

In general, the BSE Law and the BSE Bylaws will need to be complied with and SEC approval obtained for admission to listing. Central Bank approval will also be required for any sale, promotion or marketing of securities to the public.

Any company wishing to list on the BSE should enter into a dialogue with the SEC as soon as possible in the IPO process to ensure a smooth passage through the listing process and so as to enable the issuer to understand the various requirements that will need to be dealt with.

In addition, the issuer will need to appoint appropriate advisers at an early stage. There are no requirements as to the advisers that are required to be engaged but typically these will include lawyers, investment bank/underwriter[1], accountants and an appropriately licensed bank or financial institution for the purpose of marketing and promoting securities to the public in Lebanon (as required by the Bank Circular).

Following the appointment of the relevant advisers, the issuer will need to prepare and submit various documents to the SEC (see below), obtain the SEC's approval and thereafter list the securities on the BSE. There is no fixed timetable for the listing process and it varies in each case depending upon the duration of the SEC's review. In this regard, neither the BSE Law nor the BSE Bylaws set out a prescribed timetable in which the SEC must conduct its review.

Regulatory approvals

As noted above, SEC approval is required in order for an issuer to be admitted to trading on the BSE and there is no fixed timetable prescribing how long this should take.

In addition, Central Bank approval will be required for any sale, promotion or marketing of securities to the public.

1 An issuer must appoint a broker to guarantee 10 per cent of the subscription value (article 91.9 of the BSE Bylaws). This can be considered as an underwriting commitment. As discussed above, this is a requirement for listing.

Documentation

Certain key documents are required to be attached with the application to the SEC including:

- an application for admission
- a certified copy of the application for registration in the Commercial Register
- a certified copy of the registration in the Commercial Register
- a certified copy of the constitutional documents of the issuer (together with all amendments) which should include a text permitting the issuer's securities to be traded on the BSE
- copies of the minutes of every shareholder and board meeting held during the last three years or, if shorter, for the period between the date of incorporation and the date of submission of the application
- certain financial information for the last three years, or, if shorter, the period between the date of incorporation and the date of submission of the application
- a general description of the issuer's activity and markets
- a description of the issuer's group, if applicable
- a letter which confirms that the issuer is committed to complying with the rules of the BSE and, in particular, which confirms that it will comply with the ongoing obligations and requirements set out in the BSE Bylaws.

The sanctions referred to below may be imposed if any incorrect information or documentation is submitted to the SEC as part of the application process. The board of directors of the issuer will be responsible for such information and documents.

Any foreign issuer wishing to apply for listing on the BSE should also present all of the above stated documents or their equivalent in the country of registration. The financial documents presented should conform to the Lebanese or International Accounting Standards. The SEC may also request official Lebanese or foreign authentication of the documents constituting the file presented by the foreign issuer.

In the event that the SEC approves the application for admission, it will publish its decision in the BSE Official Bulletin. The BSE Official Bulletin includes information regarding securities listed on the exchange and further information of interest to brokers, issuers and the public in general.

Following the SEC's approval of the application for admission, the issuer is required to publicly disclose, in the BSE Official Bulletin, certain information which was provided to the SEC as part of the application for admission process including information regarding the issuer, its sector and financial information. However there are no provisions which stipulate what should be included in this disclosure.

The BSE is not allowed to publish anything in the BSE Official Bulletin that has advertising characteristics.

Marketing

Pursuant to the Bank Circular, only licensed entities may promote and market financial products in Lebanon including securities.

In addition, and in order to market securities, the licensed entity will be required to provide a "brochure" type document containing a minimum amount of information. This document must be approved by the Central Bank. Such brochure must include clear and explicit information on, amongst others:

- the securities
- the risks that the customer may encounter when entering into the investment
- historical and anticipated revenues together with accompanying calculations
- all relevant information to ensure sufficient clarity and accuracy of the transaction.

There is no time limit within which the Central Bank must approve the brochure.

There are significant publicity restrictions and the SEC will be the body responsible for monitoring whether a breach of the publicity restrictions has taken place. There are no black out periods.

Clearing and settlement

The clearing and settlement of securities is carried out through Midclear-custodian and the clearing centre of Financial Instruments for Lebanon and the Middle East (Midclear).

Midclear was established by the Central Bank in June 1994 and its members are the Central Bank, local and foreign banks, local and foreign institutions, foreign central securities depositaries and clearing houses and issuers. Midclear was appointed as the Central Depository for Lebanon pursuant to Law no.139 of October 1999 and as the Central Registrar for all Lebanese bank shares pursuant to Law no.308 of April 2001. In addition, Midclear acts as registrar for some commercial companies listed on the BSE.

Trades between Midclear members are settled on a delivery versus payment basis, where transactions are settled on a T+3 basis. The transfer of ownership for traded securities is conducted via book entry based on daily files submitted by the BSE to Midclear at the end of each trading session.

All orders transmitted to Midclear for clearing and settlement are considered final and irrevocable and Midclear will not settle partial trades.

Ongoing compliance

Corporate governance

There are significant corporate governance requirements such as the requirement to appoint independent directors and an audit committee. The Code and the Commercial Register set out these requirements. The Lebanese courts are responsible for the enforcement of the Code.

The requirements which are applicable to issuers listed on the Secondary Market are less stringent than those which are applicable to issuers listed on the Official Market.

Ongoing compliance

The BSE Bylaws set out the ongoing compliance obligations for an issuer. As noted above, the issuer, when applying for admission, signs a written commitment that it will comply with the ongoing obligations set out in the BSE Bylaws. Such obligations include:

- providing the exchange with the minutes of every shareholder and board meeting
- notifying the SEC and the public of every "element or change" affecting the issuer's financial situation or activity (there is no materiality threshold in relation to this requirement)
- publishing its annual accounts in the BSE Official Bulletin within a maximum of six months from the relevant financial year end
- publishing the issuer's results every six months in the BSE Official Bulletin
- notify shareholders of any material information which is of interest to those shareholders
- disclosing:
  - any essential change in the nature of the issuer's operations
  - any total or partial change in the issuer's administration, general management or board of directors
  - any sale or transfer of ownership of the issuing company's assets, when the transaction in question exceeds 5 per cent of its market capitalisation
  - anything that may positively or negatively affect the price of the issuer's securities.

The issuer is also required to abstain from all undertakings that may mislead the market as to the price of the traded securities. There is no materiality threshold in respect of this requirement, nor is there any guidance as to the types of undertaking which would be viewed as misleading.

The above information is usually disclosed by the issuer to the BSE which, in turn, provides the information to shareholders and periodically discloses the information in local newspapers.

Disclosure obligations for individual shareholders

In general there is no restriction preventing an individual shareholder from holding any number of securities.

The BSE Bylaws require issuers to include provisions in their constitutional documents which would restrict a shareholder from exercising more than 10 per cent of the issuer's total voting rights unless the relevant shareholder has notified the issuer that its shareholding has exceeded 10 per cent of the issued share capital.

In addition, the issuer is required to notify the exchange of the following events (to the extent the issuer is aware of the events):

- when the shareholding of the General Manager, Assistant General Manager or any Director increases by 2 per cent or more
- when the shareholding of any shareholder which holds more than 10 per cent of the total issued share capital increases by 1 per cent or more.

Suspension and termination of listing

The SEC may temporarily suspend the trading of any security admitted to the Official Market or the Secondary Market upon either the issuer's request or where it deems that a suspension is necessary to protect the interests of the market and investors.

In the event that no trading takes place for a one year period on securities admitted to the Official Market the SEC has the ability to transfer the issuer's listing to the Secondary Market.

In addition, the SEC may delist an issuer in the following circumstances:

- following a decision taken by the issuer's shareholders
- following a decision taken by the SEC's Disciplinary Board (which is mandated to examine any violations of the BSE Law and the BSE Bylaws)
- in the event that the issuer incurs losses exceeding more than half its capital and no restructuring takes place
- where the issuer is declared bankrupt.

Any decision to delist, suspend or re-price[2] is published in the BSE Official Bulletin. The notice would include the relevant details of the decision together with confirmation as to the effective date of the decision.

Takeovers

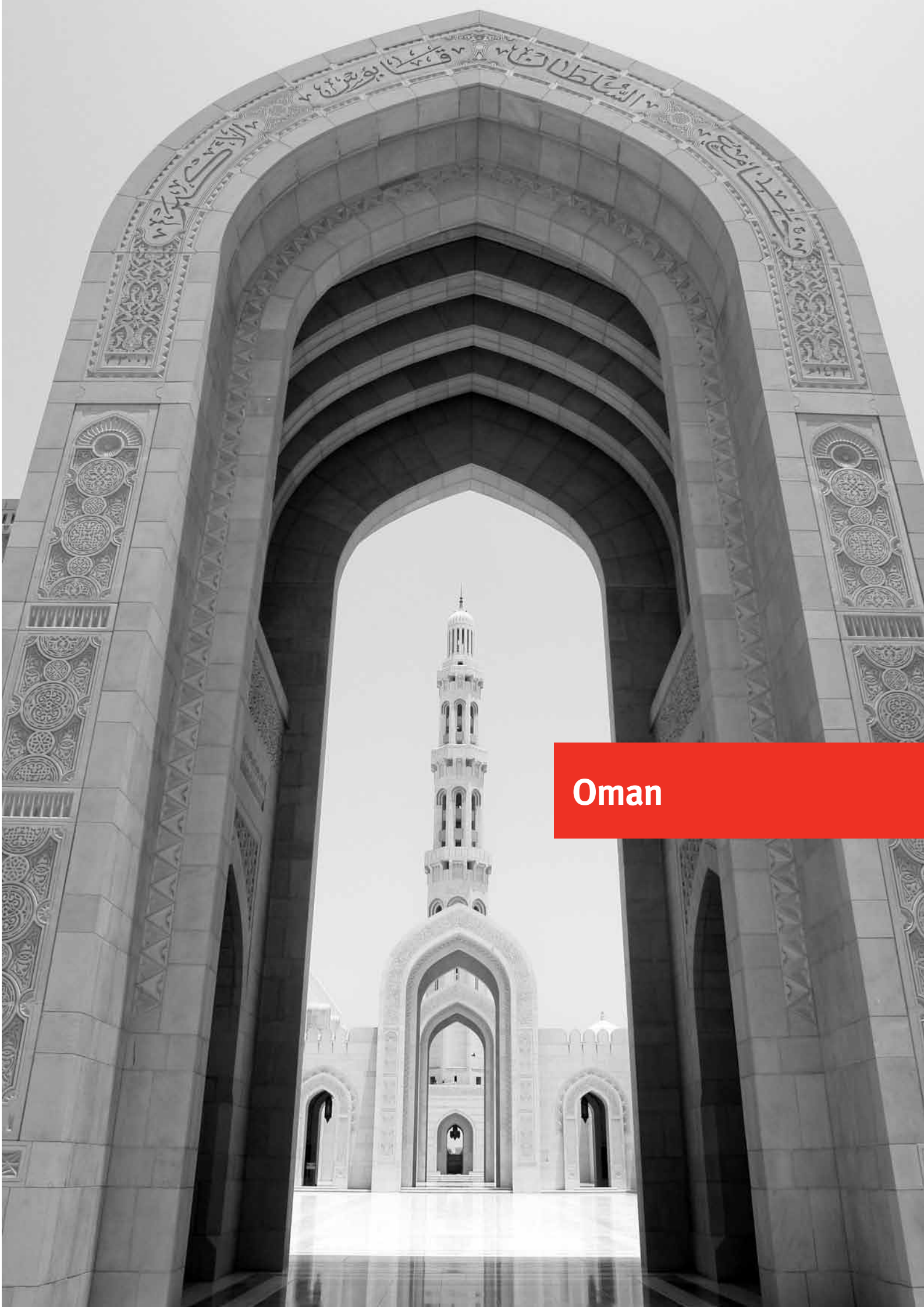
There are currently no regulations that apply to takeovers of companies listed on the BSE. In practice though, takeovers are dealt with under articles 210 to 213 of the Code which requires shareholder approval of both the target and the bidder to effect the takeover. To date, there have been no hostile takeovers in Lebanon.

2 The BSE could re-price a security following its suspension.

The offering of foreign securities into Lebanon

As an alternative to listing on the BSE and conducting an IPO in Lebanon, a foreign company may instead look at the option of offering its securities to persons located in Lebanon. The law does not specifically address the marketing of foreign securities in Lebanon although, as noted above, only entities licensed by the Central Bank may promote and market financial products in Lebanon. In addition, any licensed entity promoting or marketing these products must provide certain information to investors and the Central Bank must approve any marketing documents, although there is no timeframe for such approval. The information to be provided will be in the form of a brochure and will need to comply with the provisions set out earlier.

Notwithstanding the above, guidance on current regulations and market practice should be sought in each case.



Oman

Oman

The market

The Muscat Securities Market (the MSM) was established in 1988 as an independent organisation which would regulate and control the Omani securities market and work with other organisations to set up the infrastructure of Oman's financial sector (Royal Decree No. 53/88, 21 June 1988).

The MSM was restructured by the Capital Market Law (the CML) to adapt to new developments in the local and international financial sectors with the aim of enhancing control and regulation of market activities to provide greater protection to investors (Royal Decree No. 80/1998, 9 November 1998).

Legal framework

Legislative and regulatory

The laws and regulations which govern admission to listing and ongoing disclosure obligations include:

- The CML – this regulates a number of activities in relation to the public offer of securities in Oman. The CML includes provisions on the issue of securities, the settlement of transactions and the dissemination of public information, investment funds and trust accounts and the establishment of the Capital Markets Authority (the CMA)
- The Executive Regulation of the CML (ER 1/2009) – this implements the CML and consolidates all the regulations and directives regulating the capital markets sector, including the Listing Rules (Decision No. 1/2009)
- The Listing Rules (contained in ER1/2009)
- The Royal Decree No. 82/1998 – this established the Muscat Depository and Securities Registration Company (the MDSRC)
- The Commercial Companies Law (the CCL) – this governs the various types of companies recognised under Omani law such as general and limited partnerships, joint-stock companies, joint ventures, limited liability companies and holding companies (Royal Decree No. 4/1974).

The CML provides for the establishment of two separate entities:

- The CMA – the regulator and governmental authority responsible for organising and overseeing the issuance and trading of securities in Oman
- The MSM – a governmental entity financially and administratively independent from the CMA but subject to its supervision. The board of directors of the MSM is elected from among members of brokerage firms, listed companies, the CMA and the Central Bank of Oman (CBO).

Regulatory oversight

The CMA is responsible for regulating quoted companies and issuing the laws and regulations for the MSM. Previously, although the MSM was regulated by the CMA, the laws and regulations which applied to the MSM were generated by the central government in consultation with the CMA (the Executive Regulation of the CML (which preceded ER 1/2009) was issued by Ministerial Decision No. 4/2001).

On 18 March 2009, the CMA issued ER 1/2009 which repealed Ministerial Decision No. 4/2001 and any other decisions which infringe on the powers of the CMA. The CMA is now generating and issuing all laws and regulations in relation to the MSM.

Public joint stock companies are subject to the provisions of the CML, the CCL and ER 1/2009. The CCL applies to both public and private joint stock companies as well as limited liability companies.

Retail offer and institutional offer

Omani law distinguishes between a retail offer and an institutional offer. The main difference between the two relates to the pool of target investors.

A retail offer is an open invitation to the public to subscribe for the shares of a joint stock company, under the conditions set out in the prospectus of the company, which is approved by the CMA. An institutional offer is an invitation to certain categories of persons to subscribe for the shares of a public joint stock company, subject to the conditions and requirements specified by the CMA. Unlike in other jurisdictions, the categories of persons to whom an institutional offer can be made are not defined. However, the issuer can identify investors, subject to CMA approval (ER 1/2009).

A prospectus must be published for both retail and institutional offers and must be approved by the CMA. However, there are different content requirements for each type of offer (with less stringent requirements for institutional offers).

Eligibility for IPO

Regulatory requirements

Securities are listed on different "segments" of the MSM, depending on certain characteristics of the issuer or the securities being offered. There are three markets on which an issuer can list its securities (depending on whether the relevant eligibility requirements are met). These are: the Regular Market; the Parallel Market; and the Third Market.

An issuer listed on the Regular Market must comply with more stringent regulatory requirements. The Parallel and Third Markets provide markets for less well established companies to list their securities.

The eligibility requirements for each market are set out below (ER 1/2009):

The Regular Market
The Regular Market is the primary market of the MSM. Securities are usually listed on the Regular Market if all the following criteria are met:

- the issuer's paid-up capital is not less than RO 2 million (around US$5.1 million)
- shareholders' equity in the joint stock company is not less than the paid-up capital, or
- the issuer has earned net profits in the last two years.

In order to maintain a listing on the Regular Market, the issuer's securities must have been traded for at least 30 trading days in any given year and the securities' annual turnover must be at least 5 per cent of the total issued share capital.

The Parallel Market
Securities of companies are typically listed on the Parallel Market if:

- the company is a newly established joint stock company
- the shareholders' equity in the joint stock company is not less than 50 per cent of the paid-up capital, or
- the corporate vehicle is a public joint stock company which has not satisfied the eligibility requirements for listing on the Regular Market.

The Third Market
Securities of companies will be listed on the Third Market in the following cases:

- the corporate vehicle is a private joint stock company
- the shareholders' equity in the private joint stock company is less than 50 per cent of the paid-up capital
- the corporate vehicle is a public joint stock company which has not satisfied the eligibility requirements for listing on the Regular Market.

The CML and ER 1/2009 do not provide the CMA with the authority to waive any of the above eligibility requirements.

A CMA approved underwriter must be appointed by the issuer in order to list its shares on the MSM. The underwriter must confirm that it has verified the feasibility of the project. The issuer must also appoint an issue manager which is properly licensed by the CMA and which must not be a related party of the issuer.

A public joint stock company must obtain the CMA's approval to issue securities by way of a public subscription by submitting an application together with certain required documents which include:

- the prospectus and offering notice in Arabic

- an economic feasibility study of the project or work plan prepared by a professional adviser for the proposed projects or the expansion of existing projects

- copies of the agreements between the issuer and the underwriter(s), the issuer and the issue manager and the issue manager and the collecting banks.

Foreign ownership and sector specific restrictions

Foreign investors can own the securities of listed companies or investment funds in Oman without the CMA's prior approval. However, there are restrictions on foreign ownership of certain companies, for example:

- foreign shareholdings (those held by Non-Omani and Non-GCC nationals) in a listed company must generally not exceed 70 per cent of the issued share capital of the issuer. However, this limit does not apply to US persons who are permitted to own up to 100 per cent of the issued share capital of an Omani listed company (with some limited exceptions) under the US – Oman Free Trade Agreement

- the articles of association of joint stock companies listed on the MSM may also contain restrictions – they may specify that foreign ownership is prohibited or limited or that shareholding in the company is restricted to GCC shareholders only

- Government-controlled public joint stock companies are not permitted to offer their shares to foreign investors

- if the issuer is a bank or an establishment practising banking business, the CBO's approval must be obtained before any securities can be transferred (Banking Law Royal Decree 114/2000).

Dual / secondary listings

The MSM may enter cross listing agreements with other stock exchanges which include conditions for listings. It is also possible to purchase and sell securities in Omani listed companies through licensed brokers established outside of Oman and in the GCC.

IPO process

A dialogue should be opened with the CMA as early as possible in the IPO process, to ensure a smooth passage through the listing process.

The issuer will need to appoint appropriate advisers at an early stage in the process, including lawyers, an issue manager, an underwriter, collecting banks and accountants.

Regulatory approvals

As mentioned above, any joint stock company that wishes to issue securities through a public subscription must first apply to the CMA for approval of the issue.

If the issuer has been converted to a public joint stock company, it must submit a listing application to the CMA together with the following documents and information (within one month from the date of registration as a public joint stock company):

- certificate of commercial registration

- list of authorised signatories

- copies of the company's memorandum and articles of association and prospectus
- an attested copy of the minutes of the constitutive general meeting
- any additional documents and information which the CMA may require.

While there is no set timetable for a listing, the process usually takes around six months.

Documentation

The prospectus is the key document in the retail offer process. As outlined above, if an issuer wants to issue securities by way of a public subscription it must file a prospectus, through its issue manager, which must be approved by the CMA. The issuer may not issue the prospectus without the prior approval from the CMA.

The prospectus must be in Arabic, in the format prescribed by the CMA and must contain financial statements (prepared in accordance with the International Financial Reporting Standards) covering at least the last 2 years (depending on the CMA's decision). The prospectus must also contain all other necessary information that would enable an investor to make an investment decision. Where the company does not include material information in the interests of the company and its existing investors, it should set out in the prospectus the reasons and justifications for not including this material information. The issue manager may translate the prospectus into English; however, in the event of a dispute the Arabic version approved by the CMA will prevail. This must be disclosed in the English version of the prospectus.

The issuer and the issue manager are jointly responsible for the accuracy of the information in the prospectus.

The information which must be included in a prospectus includes:

- company name, legal form, principal place of business, object and term
- date of incorporation of the company
- capital of the company: number of securities and their nominal value
- major shareholders who hold 5 per cent or more of the issuer's issued share capital
- offer period and terms and conditions of the offer
- number of securities offered for subscription, their nominal value, method of payment and issue expenses, if any
- details of the collecting banks
- the place where an investor can obtain the prospectus including internet addresses
- any other information the CMA deems necessary to be disclosed.

The CCL contains provisions on liability for fraud and misrepresentation which apply to the information disclosed in (or omitted from) the prospectus. Prison sentences or fines can be imposed against any person who breaches these provisions.

In addition, the issue manager and collecting banks are liable to the issuer and subscribers for any damage or loss suffered by them as a result of the issue manager's or collecting banks' negligence.

In addition to the prospectus, the following documents must also be provided to the CMA:

- a draft subscription application form
- a copy of the memorandum and articles of association of the issuer including all updated amendments
- a bank certificate evidencing payment of the founders' contribution
- an economic feasibility study of the project or work plan prepared by a professional entity for new projects or expansion of existing projects
- a copy of the agreement between the issuer and the underwriters
- confirmation from the underwriter to the CMA that it has verified the feasibility of the project
- a copy of the agreement between the issuer and the issue manager
- a copy of the agreement between the issue manager and the collecting banks
- any other documents that the CMA deems necessary.

Marketing

All important notices and documents must be in Arabic. Documents may be translated into English; however, in the event of a dispute the Arabic version shall prevail.

The CML sets out the penalties (fines or imprisonment) which may be imposed if a person makes false statements to induce or influence investors, carries on activities that are supervised by the CML without being duly licensed or offers securities for public subscription or receives money for those securities in a manner that is contrary to the CML.

Once a prospectus has been approved by the CMA an offer notice must be published in 2 daily newspapers (1 of which must be an Arabic daily). It must be published at least 1 week prior to the subscription date.

In addition, the draft of any promotional advertisements regarding the offered securities must be approved by the CMA. The issue manager must also inform the CMA of the timetable of these marketing campaigns. The advertising and promotional campaigns must inform investors of risks in the investments.

Clearing and settlement

The MDSRC was established in 1998 as a closed joint stock company to act as the sole service provider in Oman for the registration and transfer of ownership of securities and as a depository of ownership documents. The MDSRC is linked to the MSM through an electronic system. All MSM transactions are paperless – there are no certificates and the shareholders' register is maintained by the MDSRC.

Ongoing compliance

Corporate governance

The Code of Corporate Governance for MSM Listed Companies (the Code), issued by the CMA, provides mandatory corporate governance standards for all public companies listed on the MSM, which include the requirement to have independent directors and non-executive directors. While the Code is not as stringent as the corporate governance requirements which apply to listed companies on other internationally recognised exchanges, some aspects of the Code reflect international best practice. For example, the majority of the board of directors must be non-executive directors and at least one third of the board (subject to a minimum of two) must be independent directors. The annual report must identify the non-executive and independent directors. If an independent director resigns or is removed from office, the issuer must notify the CMA and the MSM of the reasons for this. Under the Code, the board of directors of a listed company is required to establish an audit committee with at least three members. All members must be non-executive directors) and a majority of them must be independent. The chairman of the audit committee must be an independent director and at least one member should have finance and accounting expertise.

Ongoing compliance

All material information regarding an issuer must be disclosed in a timely manner before the next trading session. Material information is defined as information which is price sensitive and, if disclosed, might affect market participants' investment decisions or market trends. Material information must be disclosed by written announcement (in both Arabic and English), and must be sent to the MSM. The MSM must disseminate and circulate the information by suitable means to make it available to market participants. The MSM must also create proper communication channels between itself, the CMA and the media to circulate the information disclosed.

In addition, every issuer is obliged to prepare unaudited interim financial statements for the first, second and third quarters of every financial year and disclose these (in both Arabic and English) immediately after they have been approved by the board of directors and within 30 days of the end of the quarter. Issuers who are required to prepare consolidated financial statements have 45 days from the end of the relevant quarter to disclose the previous quarter's financial statements.

Issuers are also required to prepare audited financial statements and disclose these (in both Arabic and English) immediately after approval by the board of directors and not less than 2 weeks before the annual general meeting. Issuers must also prepare a:

- directors' report
- management discussions and analysis report
- corporate governance report
- auditors' report on corporate governance report
- auditors' report on audited financial statements.

Restrictions on individual shareholders

Under the CML, a person who holds, individually or together with his minor children, 10 per cent or more of the issued share capital of a joint stock company, must notify the CMA in writing of this holding. He must also inform the CMA of any transaction he makes that leads to an increase in this percentage immediately after the transaction.

In addition, a person and certain related persons (including minor children, spouses, siblings, parents and grandparents) cannot hold 25 per cent or more of the issued share capital of a joint stock company whose securities are offered for public subscription, without first obtaining approval from the Executive President of the CMA or his delegate. Where securities are acquired in contravention of this restriction, the transaction will be deemed null and void. The Board of Directors of the CMA shall specify the terms and conditions of this holding.

There are no regulatory lock-in periods in Oman.

Suspension and termination of listing

The CMA has the power to temporarily suspend an issuer's listing if there is speculation or rumour that may affect the price of its securities, if the company restructures its capital, or if the company is dissolved or liquidated.

In addition, an issuer may be moved from the Regular Market to the Parallel Market or Third Market if the eligibility, ongoing compliance and filing requirements are not met.

Takeovers

While there is no specific legislation on takeovers in Oman, there is a cumbersome procedure under the CCL for a "merger", (usually "by acquisition") whereby each company has to hold an extraordinary general meeting to approve the terms of the merger. The assets and obligations of the target are transferred to the dominant company and the target is then liquidated. Under the CCL, the target's creditors are entitled to file claims within six months of the merger. Following the conclusion of this six month period the merger will become effective.

While takeovers are regulated by the CMA, there are no specific mandatory bid rules or squeeze out rules allowing for the forced buyout of minorities. Furthermore, minorities are not able to force a bidder to buy them out.

The offering of foreign securities into Oman

As an alternative to listing on the MSM and conducting an IPO in Oman, a foreign company may look at the option of offering its securities to persons located in Oman.

The offer of securities to investors in Oman should be structured as an invitation to specific categories of investors, such as banks, financial institutions, pension funds, sophisticated family offices and private high net worth individuals, in order to avoid it being deemed to be a retail offer or "distribution". The securities should also be marketed in a particular way. No announcements should be placed in the local media and activities such as cold-calling should be avoided. However, there is no legal limit on the number of potential investors that may be targeted. The offer should also only be capable of being accepted outside the jurisdiction and no completed application forms or payment should be received in Oman.

Notwithstanding the above, we recommend that you seek guidance on current regulations and market practice in each case.

Qatar

Qatar

The market

In June 2009, Qatar Holding LLC, (the strategic and direct investment arm of the Qatar Investment Authority (QIA)) and NYSE Euronext announced the signing of a joint venture agreement to establish a new market in Qatar. A new company – the Qatar Exchange Company (the Qatar Exchange) – was established, commencing operations on 21 June 2009. The Qatar Exchange replaced the Doha Securities Market (the DSM), which had been established in May 1997 and in which NYSE Euronext had acquired a 20 per cent stake in 2008. The QIA holds an 80 per cent stake in the Qatar Exchange, with the remaining 20 per cent being held by the NYSE Euronext.

Legal Framework

Legislative and regulatory

The Qatar Financial Market Authority (the QFMA) is the market regulator of the Qatar Exchange. The DSM performed the function of both the regulator and the exchange before the QFMA was established under the Qatar Financial Market Authority Law (Law 33 of 2005 amended by Decree-Law No. 14 of 2007, the QFMA Law). Although the QFMA Law has replaced the law which established the DFM (the DSM Law), the DSM internal regulations which are referred to below (and which regulate the listing and admission of securities in Qatar) will remain in force until the QFMA issues its own regulations on these areas.

Both the Qatar Exchange and the QFMA have their own rules governing the listing of securities on the exchange. The laws and regulations which govern admission to listing and ongoing disclosure requirements include:

- The DSM Law – which provided for the establishment and development of the DSM including the development of the regulations for the issuance, listing and trading of securities on the DSM (now the Qatar Exchange) (Law No. 14 of 1995)
- The QFMA Law – which provides for the establishment and operation of the QFMA and for the establishment of the Qatar Exchange
- The QFMA Regulations – which regulates the listing of securities on a financial market in Qatar (the QFMA Internal Regulations of 2009)
- The DSM Regulations – which regulates the listing and admission of securities on the Qatar Exchange and also set out the ongoing compliance requirements for an issuer listed on the Qatar Exchange (The DSM Internal Regulations, 24 March 2009)
- The Companies Law – which regulates the incorporation and ongoing requirements of companies incorporated in Qatar (Commercial Companies Law No. (5) of 2002 as amended).

It is expected that the acquisition of a minority stake in the Qatar Exchange by NYSE Euronext will trigger an amendment to the regulations – the creation of a fully diversified financial market in Doha (leveraging NYSE Euronext's technology and product expertise, and developing governance and transparency standards in line with international best practice) being the principal stated aim of the NYSE Euronext partnership.

Regulatory oversight

The Qatar Exchange

The Qatar Exchange has an internal regulatory remit. However, this is gradually being superseded by the regulatory role of the QFMA. The Qatar Exchange can propose amendments to the DSM Regulations but any amendments must be approved by the Market Committee of the Ministry of Business and Trade.

The QFMA

Established as an independent regulatory authority for capital markets in Qatar, the QFMA exercises regulatory oversight and fulfils an enforcement function over the Qatar Exchange and regulated businesses. The QFMA's mandate includes the establishment and maintenance of the Qatar Exchange as a leading securities market in the Middle East.

The QFMA is also responsible for ensuring market integrity and fairness (in accordance with international standards of best practice) by monitoring trading activity and the market's participants.

The QFMA is in the process of taking over the regulatory and supervisory responsibilities of all financial markets in Qatar from the Qatar Exchange, including its responsibilities relating to setting regulatory policies for securities markets; drafting and issuing relevant rules and regulations governing admission to listing; licensing market participants; and enforcing relevant laws and regulations.

The QFMA is currently implementing a transitional compliance programme to enable market participants to transfer from the existing rules and regulations (including the DSM Regulations) to the new legal and regulatory framework to be implemented by the QFMA.

Retail offer and institutional offer

While Qatari law appears to distinguish between a retail offer and an institutional offer, the regulations do not deal with these alternative types of offer in any detail.

Where an offer of securities is made to "specific investors" the offer will not constitute a public offer of securities (a retail offer). It is not clear from the regulations what is meant by "specific investors" and, the QFMA has sole discretion to determine the meaning of this phrase. It is therefore important to approach the QFMA at an early stage of the process to determine whether the QFMA would construe the offer as an institutional offer or a retail offer and what the consequences of this categorisation would be in terms of the listing process (including the contents requirements for the offer document).

A retail offer requires the issuer to prepare a prospectus which must be filed with and approved by the QFMA (Article 45 of the DSM Regulations). The QFMA's approval must be obtained before the securities can be marketed.

Eligibility for IPO

Regulatory requirements

The DSM Regulations contain a limited number of requirements for an issuer to be eligible to list on the Qatar Exchange. The only companies that can list on the Qatar Exchange are Qatari Joint-Stock Companies with subscribed share capital of at least 40 million Qatari Riyals (or equivalent – around US$10.6 million), a minimum of 30 shareholders (of which a maximum of 25 per cent may be non-Qatari unless the constitutional documents provide otherwise – see below) and at least 50 per cent paid up share capital (Articles 37 and 38 of the DSM Regulations).

There are no additional restrictions which apply to issuers in particular industry sectors, nor is the issuer required to have any particular length of trading record or profitability.

If a company wants to apply for its existing issued share capital to be listed on the exchange without making an offer of its securities to new subscribers, then it must obtain the QFMA's approval for listing (see below) and must comply with the requirements set out in Articles 37 and 38 of the DSM Regulations (as described above). The company will not have to prepare a prospectus as there will be no offer of securities.

Foreign ownership restrictions

Non-Qatari nationals or companies cannot hold more than 25 per cent (in aggregate) of an issuer's listed securities unless the issuer's constitutional documents provide otherwise. These foreign ownership restrictions only apply to an issuer's immediate shareholders – i.e. a non-Qatari may itself own securities through a Qatari company, which will qualify as a Qatari shareholder for the purpose of the regulations.

The Qatar Exchange uses a basic system as part of its trading platform which allows it to track the level of foreign investment in a listed company at any given time. The system would automatically reject an order if that order would breach the relevant company's foreign ownership threshold.

Dual / secondary listings

There are no provisions in the regulations which restrict a company listed on the Qatar Exchange from obtaining a dual listing on any other stock exchange.

IPO process

As there have not been many IPOs in Qatar, it is important to start a dialogue with the QFMA as early as possible in the IPO process in order to ensure a smooth passage through the listing process. The issuer will need to understand the various requirements that must be dealt with during the listing, including the contents requirements for the prospectus (see below).

The issuer will need to appoint appropriate advisers at an early stage in the process including an investment bank/underwriter (depending on whether the issue will be underwritten) and lawyers. Once the advisers have been appointed, the issuer must:

- prepare and submit the various documents which the Qatar Exchange requires under the DSM Regulations (see below)
- obtain the QFMA's approval for listing (see below)
- hold any required shareholders' meeting (e.g. in order to reorganise the issuer's share capital), and finally
- list the shares on the Qatar Exchange.

The IPO process can take between three to four months to complete.

Regulatory approvals

QFMA approval is required in order for an issuer to be admitted to trading on the Qatar Exchange. The QFMA is required to issue its decision on whether the application for admission to trading has been approved within 90 days from the date the issuer files the application.

Documentation

The key document in the IPO process is the prospectus, which (as stated above) an issuer must publish where it undertakes a retail offer. The prospectus must be filed with and approved by the QFMA in advance of the securities being marketed to potential subscribers.

The contents requirements for a prospectus are not prescribed, other than to require disclosure of "all particulars and information capable of assisting investors to make their investment decision". In addition, the prospectus must include the particulars and information which the Qatar Exchange deems necessary for publication.

From experience, the QFMA will typically require a prospectus to include (among other information):

- details of the incorporation, objects and activities of the issuer
- information regarding the rights and liabilities of the issuer's shareholders
- a summary of the intended use of proceeds
- a summary of the business (and its group's business, if relevant) including information on the industry it operates in
- other than for newly incorporated companies, the audited accounts for the previous financial year. The accounts must be prepared in accordance with the International Financial Reporting Standards as prescribed by the International Accounting Standards Board
- details of the issuer's directors and managers (including short biographies for each director).

The information in the prospectus must be correct and include "all financial statements and important information related to the issuer". If the prospectus includes false, inaccurate or misleading information or omits certain important information, the issuer and its directors are responsible for this information and criminal sanctions can be applied against persons authorised to sign on behalf of the issuer.

In addition, the issuer must provide the QFMA with certain documentation before listing including:

- a copy of the issuer's memorandum and articles of association
- a statement containing the names of the issuer's directors, together with specimen signatures for the persons authorised to sign on behalf of the issuer
- other than for newly incorporated companies, the audited annual financial statement for the last fiscal year as audited by an independent auditor
- particulars of the existing shareholders
- an undertaking by the issuer to observe and comply with the provisions of the DSM Regulations and the Qatar Exchange's instructions and to provide the Qatar Exchange with any information available to the issuer which is capable of affecting the price of its securities (in a continuous and timely manner).

Marketing

An entity marketing securities to the public in Qatar must be licensed by the Qatar Central Bank (QCB) or authorised by the Qatar Financial Centre (QFC).

The QCB's approval is required before any marketing of securities can begin. Certain documents (including the approved prospectus) must be provided to the QCB at least three weeks before marketing is due to commence. If the QCB does not raise any objections within that three week period, QCB consent is deemed to have been given.

If the marketing of securities relates to a retail offer the QFMA's approval must also be obtained before any marketing can begin (see above).

There are no restrictions as to the form of marketing which may be undertaken. However, any marketing documents must be prepared in Arabic (a bilingual Arabic and English form is acceptable), and the issuer must publish a summary of such documents in two local daily newspapers.

As with the DSM Regulations, the QFMA Law is not particularly detailed and does not deal with what marketing activities are permitted or prohibited. However, in practice, as with the prospectus requirement, an issuer will need to ensure that its marketing materials are true, accurate, up-to-date and not misleading so as to mitigate against any potential action by investors.

Brokers' research is permitted. In addition, there are no closed periods during which research cannot be disseminated. However, the broker must obtain the QFMA's approval before it undertakes this activity.

Clearing and settlement

A listed company typically only issues securities in uncertificated form. Following listing, these securities are traded through the exchange's trading system. A person who wishes to acquire securities through the exchange must place an order with a licensed broker who will match the purchase order to a sale order. Once the order has been executed, the purchase price is paid into the selling shareholder's broker's account. Title to the securities will pass in the trading system within three business days.

Ongoing Compliance

Ongoing compliance obligations

The DSM Regulations set out the ongoing compliance obligations of the issuer. However, as mentioned above, the DSM Regulations do not yet include certain provisions that you would typically expect to see in other jurisdictions. For example, there are currently no corporate governance requirements nor are there any restrictions on certain transactions following listing (e.g. related party transactions or reverse takeovers). However, due to the involvement of NYSE Euronext, we expect the regulations to develop over time.

The DSM Regulations do, however, require an issuer to provide the exchange with certain documents on an ongoing basis which would affect a shareholder's decision to continue to invest in the issuer (in accordance with the time limits set out in the DSM Regulations), including:

- copies of annual accounts
- any "price sensitive information" (although the DSM Regulations do not expand on what would be considered to be price sensitive)

- copies of any decisions (taken at either board or shareholder level) that relate to the issuer's shareholders or the price of its listed securities as a result of, among other things, increases, reductions or reorganisations of the issuer's share capital, distributions of bonus shares and any other matter which has or may have a direct impact on trading in the issuer's securities

- any legal proceedings instituted by or against the issuer which have, or may have, a material impact on its activities or its financial position

- any other documents or information which the Qatar Exchange may request.

In addition, listed companies must hold press conferences in order to reply to any questions from investors, journalists and other concerned persons on the information disclosed in their semi-annual accounts (within the period of three days to three weeks after these accounts are issued).

If instructed by the Qatar Exchange, a listed company must also publish a summary of its quarterly and semi-annual reports and financial statements in two local daily newspapers, one of which must be in English if non-Qataris are permitted to trade in the issuer's securities. These reports should include a summary of the activities of the issuer and its group and should be published within three weeks from the end of the relevant quarter or half year.

Restrictions on individual shareholders

As discussed above, non-Qataris are now entitled to invest in companies listed on the Qatar Exchange so long as their aggregate holding is not more than 25 per cent of the issuer's total issued share capital (unless the issuer's constitutional documents provide for a different threshold) (amendment to law (13) of 2000, 3 April 2005).

There are also certain shareholding thresholds that, if met, impose notification obligations on shareholders. The Qatar Exchange's approval is required if a shareholder wishes to acquire additional securities that would result in the shareholder exceeding these thresholds. For example, without approval from the exchange, a shareholder can only hold a maximum of 10 per cent of the issued share capital of a company listed on the Qatar Exchange (when aggregated with the securities held by the shareholder's minor children).

In addition, if a shareholder (together with certain connected persons) holds in aggregate 25 per cent (or more) of the issued share capital of a listed company and the shareholder intends to acquire securities which would increase its shareholding to 50 per cent (or more) of the issued share capital, the shareholder is obliged to notify the Qatar Exchange and the QFMA of its intended purchase 30 days before the intended purchase date. The Qatar Exchange and the QFMA have the power to prohibit such acquisitions if it is not in the interests of the national economy.

In the case of private subscriptions (where the issuer is admitted to trading on the Qatar Exchange without undertaking a retail offer) founder shareholders must retain a minimum of 50 per cent of their securities for a period of two years from the date of listing.

Suspension and termination of listing

If the number of shareholders in a listed company falls below 30 but remains above 15 the issuer must increase the number to 30 within one month. Failure to comply may result in the issuer's securities being suspended from trading. In addition, the issuer's securities will be immediately suspended from trading if the number of shareholders falls below 15. The suspension will only be lifted once the number of shareholders is increased to 30 or more.

The DSM Regulations also include a list of other occasions when an issuer's securities can be suspended from trading. These include failure to disclose the issuer's annual accounts to the exchange within three months of the relevant financial year end; failure to disclose the issuer's semi-annual audited balance sheet to the exchange within 45 days of the end of the first six months of the relevant financial year; or where the issuer has suspended its normal activities for a period not exceeding three months.

The issuer's listing can also be terminated in the following circumstances:

- if the issuer fails to fulfil and satisfy its current financial obligations, fails to pay its debts or fails to finance its activities in accordance with the last auditor's report
- if the net shareholders' interests fall below 50 per cent of the paid-up share capital of the issuer
- if a resolution is passed to dissolve the issuer.

Takeovers

The Companies Law was recently amended and now includes certain provisions on takeovers for companies incorporated under the Companies Law (Law No. 3 of 2010). The law appears to apply to both listed and unlisted companies. However, the application of the law to listed companies is unclear as it states that takeovers of listed companies are to be regulated by the provisions of the QFMA Regulations. At present, the QFMA Regulations do not include any provisions on takeovers. However, new regulations relating to takeovers are expected to be published by the QFMA shortly. Accordingly, we recommend that you seek guidance on the status of current regulations on a case by case basis.

As presently drafted, the law states that any purchase of shares constitutes a takeover and must be undertaken in compliance with the relevant provisions of the law.

The offering of foreign securities into Qatar

As an alternative to listing on the Qatar Exchange and conducting an IPO in Qatar, a foreign company may consider offering its securities to persons located in Qatar. However, the marketing of all securities inside Qatar, including foreign securities, must be conducted by an entity licensed by the QCB or authorised by the QFC.

The law does not specifically address the marketing of foreign securities from outside Qatar and therefore it is not clear what marketing activities would be permitted or prohibited. In practice, targeted marketing of foreign securities to Qatari investors on a low profile basis is currently tolerated (to a very limited number of sophisticated investors who have solicited this marketing). It is important to ensure that the marketing of these foreign securities is conducted in a manner which will not be construed to be "carrying on business" in Qatar.

Notwithstanding the above, we recommend that you seek guidance on current regulations and market practice in each case.

Saudi Arabia

Saudi Arabia

The market

The capital markets of Saudi Arabia were established in the 1930s and remained informal and unregulated until 1984 when the Saudi Arabian government formed a Ministerial Committee to regulate and develop the market.

The Saudi Arabian Stock Exchange (the Exchange), the only stock exchange in Saudi Arabia, was established in 2001. The Exchange was established as a joint-stock company whose functions are operated by 'Tadawul', the securities trading, clearing and settlements body.

The Capital Market Authority (the CMA), a government authority with financial and administrative autonomy reporting directly to the King, was established in 2003. The CMA is the sole regulator and supervisor of the capital market; it issues the required rules and regulations to protect investors and ensure fairness and efficiency in the market.

Legal framework

Legislative and regulatory

The Exchange is licensed and regulated by the CMA. The laws and regulations which govern admission to listing and ongoing disclosure requirements include:

- Capital Market Law (Royal Decree No M/30 dated 2/6/1424H corresponding to 31/7/2003G) – includes provisions regarding the establishment and governance of the CMA and the Exchange, the Securities Depositary Centre, brokers regulations, investment funds and collective investment schemes, certain disclosure requirements for issuers as well as laws on market manipulation and insider trading

- Listing Rules (CMA board resolution number 3-11-2004 dated 20/08/1425H corresponding to 4/10/2004G, as amended) – sets out the requirements by which joint-stock companies must abide in order to be listed on the Exchange (including prospectus requirements and exemptions). The Listing Rules also detail continuous obligations for listed companies

- Market Conduct Regulations (CMA board resolution number 1-11-2004 dated 20/08/1425H corresponding to 4/10/2004G) – sets out provisions that relate to the prohibition of market manipulation, insider trading and untrue statements, as well as liability for breach of those prohibitions

- Offers of Securities Regulations (CMA board resolution number 2-11-2004 dated 20/08/1425H corresponding to 4/10/2004G as amended by CMA board resolution number 1-28-2008 dated 17/8/1429H corresponding to 18/8/2008G) – sets out provisions that relate to the issue of securities, the invitation to members of the public to subscribe for securities and the direct and indirect marketing of securities

- Internal Regulations – the regulations issued by the CMA in relation to its administrative and financial affairs

- Merger and Acquisition Regulations (CMA board resolution number 1-50-2007 dated 21/9/1428H corresponding to 31/10/2007G) – sets out provisions that regulate an acquisition of, or offer for, certain percentages of securities, a takeover offer or reverse takeover offer relating to any company listed on the Exchange

- Corporate Governance Regulations (CMA board resolution number 1-212-2006 dated 21/10/1427H corresponding to 12/11/2006G, as amended) – includes a corporate governance guide for all companies listed on the Exchange

- Companies Law (Royal Decree dated 22/3/1385H) – sets out, among other things, the general provisions that govern joint-stock companies as well as private companies.

Regulatory oversight

The CMA is responsible for regulating listed companies in Saudi Arabia. It issues the rules and regulations to implement the provisions of the Capital Market Law.

The CMA has a broad range of powers as set out in the Capital Market Law. Such powers include the authority to set policies and issue necessary rules to achieve the CMA's objectives of fairness, efficiency and transparency in securities transactions.

Generally, the CMA has absolute regulatory authority over the market. However, in certain cases, the CMA must co-ordinate with the Saudi Arabian Monetary Agency (SAMA) where CMA regulations may have an impact on the economy more generally.

Retail offer and institutional offer

The law of Saudi Arabia recognises the difference between a retail offer (a "public offer") and an institutional offer.

According to the Offers of Securities Regulations, an offer of securities is a public offer if it does not fulfil the conditions of a private placement. A private placement is defined as any offer of securities which is not a public offer and which may be offered to the following categories of investor:

- the securities are issued by the government or a supranational authority (for example GOSI – the General Organisation of Social Insurance)

- the offer is restricted to sophisticated investors

- the offer is limited to 60 offerees excluding sophisticated investors, or

- the minimum subscription amount is 1,000,000 KSA Riyals (around US$265,000).

The CMA also has the discretion to treat an offer of securities as a private placement irrespective of whether the above requirements have been complied with. If the offer is treated as a private placement (by exercising this discretionary power), the CMA may impose additional conditions on the offer in question.

The principal distinction between a retail offer and an institutional offer lies with the nature of the offeree. Under a retail offer, securities can be offered to retail investors and the offeror can generate broad publicity about the securities being offered. An institutional offer, by comparison, is directed at a small group of specialised, sophisticated investors and the marketing of the securities must be aimed directly at those investors and no-one else.

Securities may not be offered by way of a retail offer unless all the requirements and conditions provided for in the Listing Rules have been complied with. A retail offer would require the issuer to file a prospectus (among other documents) with the CMA for approval.

Eligibility for IPO

Regulatory requirements

A company seeking to list its securities on the Exchange must abide by the provisions set out in the Listing Rules. Only joint-stock companies incorporated in Saudi Arabia can apply for admission to and listing on the Exchange. Any other form of company, including a foreign company, cannot list on the Exchange.

A company must comply with the eligibility requirements to list on the Exchange. The requirements include a three year trading history prior to listing (with published audited accounts for this period) and the company must have been administered by the same management during this period (the senior management of which must have appropriate experience).

There are also certain eligibility requirements relating to the securities being issued. For example, there must be a sufficiently liquid and open market for the securities being issued: there must be at least 200 public shareholders and at least 30 per cent of the issued share capital must be in public hands. In addition, the securities must be registered and settled centrally though the depositary centre.

The expected aggregate market value of all securities to be listed must be at least SAR 100 million (around US$26.5 million). However, the CMA may admit securities to trading which do not comply with this minimum capital requirement if it is satisfied that there will be a sufficiently liquid market for the securities.

The CMA has the authority to waive certain eligibility requirements if it deems it appropriate. For instance, the CMA may permit less than 30 per cent of an issuer's share capital to be held in public hands. The CMA may also accept, in certain specific circumstances, accounts for a period of less than three financial years if it is considered in the best interests of the applicant and the investors.

Foreign ownership restrictions

The CMA allows only Saudi Arabian nationals to participate in retail offers. Foreigners are permitted to be founding shareholders and are allowed to subscribe for shares in the market only through an "authorised person" (being a financial adviser duly authorised and licensed by the CMA to carry on securities business). The authorised person holds the legal title to the shares while, pursuant to a "Swap Agreement", the economic benefits attaching to the shares vest with the foreign investor. GCC nationals are permitted to subscribe for shares through Tadawul, the trading, clearing and settlements body.

In addition, while the CMA does not impose specific ownership requirements on foreign investors, requirements are laid down by other regulations in force in Saudi Arabia, such as the restrictions imposed by SAMA on the ownership of securities in Saudi Arabia. Listed companies must comply with these requirements.

The CMA also imposes a six month lock-in period (commencing on the date on which trading in the securities commences on the Exchange) for shareholders holding either a direct or indirect controlling interest. A person is treated as the owner of a controlling interest in the issuer when they own individually or together with any relatives or affiliates, directly or indirectly, 5 per cent or more of a class of voting securites of the issuer.

The shares of founding shareholders are not tradeable on the Exchange even after the lapse of the lock-in period.

Furthermore, the CMA distinguishes between a newly incorporated joint-stock company and an existing joint-stock company with three years trading history in relation to the lock-in period for the founding shareholders and any person shown to own securities in the prospectus. The founding shareholders in an existing joint-stock company may dispose of their securities after six months from the commencement of trading, while the founding shareholders of a newly incorporated joint-stock company are locked in for three years from commencement of trading.

Dual / secondary listings

The CMA does not permit dual or secondary listings in Saudi Arabia.

There is no Saudi Arabian company listed in any jurisdiction other than in Saudi Arabia and no foreign companies or GCC companies are listed on the Exchange.

IPO process

A dialogue should be commenced with the CMA as soon as possible to ensure a smooth passage through the listing process.

The issuer will need to appoint appropriate advisers at an early stage including lawyers, a financial adviser and accountants.

Regulatory approvals

In order for an issuer to be admitted to trading on the Exchange they must obtain the approval of the CMA and comply with the requirements set out in the Listing Rules.

The Listing Rules require an issuer to appoint a financial adviser, duly authorised by the CMA.

The financial adviser must ensure that the issuer has satisfied all conditions required for admission of the issuer's securities to listing. The financial adviser must also provide the CMA with any information or clarifications in such form and time period as the CMA may require for the purpose of verifying whether the financial adviser and the issuer have complied with the Capital Market Law and the Listing Rules.

The CMA co-ordinates with the financial adviser to determine the timetable for the proposed listing and sets the deadlines within which documents must be presented to the CMA.

The application for listing must be accompanied by a prospectus which meets the content requirements set out in Annex 4 of the Listing Rules. Upon receiving the draft of the prospectus, the CMA will provide its initial comments to the issuer. The issuer then has an opportunity to review the comments, to amend the prospectus accordingly and to submit it to the CMA for a second round of comments. The CMA then provides its final comments on the prospectus. This process is typically completed within 45 days.

Following receipt of the CMA's approval of the prospectus, the listing date will be set. The company must then ensure that the prospectus is made available to the public at least 14 days prior to the listing. The CMA will indicate on its website that the prospectus will be available at the issuer's head office.

The CMA has discretion to decline an application for approval if the offer of securities is not in the best interests of investors or it may result in a breach of any law or regulation.

Documentation

The key document in the retail offer process is the prospectus. As discussed above, an issuer is required to obtain approval of their prospectus from the CMA if that issuer intends to issue securities by way of a retail offer. A prospectus must include all information which is necessary to enable an investor to make an assessment of the activities, assets and liabilities, financial position, management and prospects of the issuer, and of its profits and losses. The prospectus must also include information in relation to the obligations, rights, powers and privileges attaching to the securities being offered.

In addition to the Listing Rules, the Capital Market Law also sets out certain information that must be included in a prospectus including, among other things:

- an adequate description of the issuer, the nature of its business, the individuals in charge of its management (such as members of the board of directors, executive officers and senior staff) and major shareholders
- an adequate description of the securities being issued, their number, price, and the related rights, preferences or privileges of the issuer's other securities (if any). This information must disclose the intended use of proceeds as well as commissions levied by persons connected with the issue
- a clear statement of the financial position of the issuer and any significant data including the audited financial balance sheet, the profit and loss account and the cash flow statement, as well as any other information which may be required by the CMA.

In addition to the prospectus, other documents that must also be provided to the CMA include:

- a formal letter of application for admission to listing, signed by an authorised officer of the issuer
- a signed declaration of the issuer declaring, among other things, that it believes it has taken due care to ensure that it has satisfied all relevant conditions for listing, submitted information required and has supplied or will supply all documents required for listing

- a declaration and undertaking (questionnaire) signed by the directors and each proposed director of the issuer stating certain personal information as well as information regarding the directors' business history. The purpose of this declaration is to determine the suitability of the directors for the position and to be able to disclose in the prospectus certain information required to be disclosed by the Listing Rules e.g. whether the directors have ever been convicted of a criminal offence
- all underwriting, sub-underwriting and distribution agreements
- a certified copy of the issuer's certificate of commercial registration
- a certified copy of the issuer's by-laws and all amendments to date (if any)
- the audited annual report and accounts of the issuer for each of the three financial years immediately preceding the application (or any shorter period approved by the CMA)
- any interim financial statements issued since the date of the last audited report and accounts
- a certified copy of every material report, letter, valuation, statement of adjustments, contract, expert statement, resolution or other document referred to in the prospectus
- any other documentation as may be required by the CMA.

Marketing

Securities may not be offered in Saudi Arabia other than in accordance with the CMA regulations.

In the case of a retail offer, the Listing Rules will apply to the marketing of the securities in question. In the case of an institutional offer, the Offers of Securities Regulations apply.

In the case of both a retail offer and an institutional offer, CMA approval must be obtained before the marketing of securities can be commenced and an "authorised person" approved by the CMA must be appointed to undertake the marketing.

Clearing and settlement

The clearing process is managed by the Securities Depositary Centre, which is the sole body in Saudi Arabia authorised to practise the operations of deposit, transfer, settlement, clearing and registering ownership of securities traded on the Exchange.

The Securities Depositary Centre is currently operated by Tadawul. The clearance process usually takes 24 hours. Some brokers however pay the client immediately after deducting the transaction commission. If the broker does so, it will receive the actual value of the transaction 24 hours after the transaction.

Trading on the Tadawul is based on transferring the ownership of uncertificated securities. The Securities Depositary Centre will register the ownership of securities in order to protect against third party claims and will, upon the investor's request, issue a certificate of registration. The certificated securities are mere evidence of ownership; however, certificated securities cannot be traded on the Exchange unless they are converted to uncertificated securities and registered at the Securities Depositary Centre.

Ongoing compliance

Corporate governance

The Corporate Governance Regulations serve as a "non-binding guide" for corporate governance of listed companies. However, certain provisions in the Guide are mandatory – such as the provisions relating to the establishment of an audit committee and the requirement to appoint non-executive independent directors to the board.

While the majority of the provisions of the Corporate Governance Regulations are non-binding, listed companies are obliged to submit a justification report to the CMA in the event of non-compliance which must include the reasons for the non-compliance. Non-compliance with the mandatory provisions will entitle the CMA to impose penalties which are generally announced to the public.

Ongoing compliance

The Listing Rules and certain provisions in the Capital Market Law set out an issuer's ongoing compliance obligations which include the disclosure of information that would have an impact on a shareholder's or a potential shareholder's investment in the issuer.

An issuer must notify the CMA and the public of any "major developments" which are not public knowledge and which may have an effect on the issuer or on its general course of business. Major developments include the purchase of major long term assets, the incurring of substantial debt or losses, changes in the composition of the board or senior management of the issuer, significant legal proceedings and transactions between the issuer and connected persons. The notification should be made at least two hours before the first trading period in the Exchange following the occurrence of the major development.

An issuer must also inform the CMA and the public of any material developments which may affect the price of the issuer's securities. In addition, every issuer offering securities to the public through a prospectus must notify the CMA in writing of any material change to the statements included in the prospectus where the change would affect the value or the price of the security. The issuer must also issue a press release disclosing the details of the change.

An issuer is obliged, on an ongoing basis, to provide the CMA with certain financial information. For example, interim and annual accounts must be filed with the CMA and published on the issuer's website. The interim accounts must be provided to the CMA and announced publicly no later than 15 days after the end of the relevant financial period, while the annual accounts must be provided and announced within 40 days of the end of the relevant financial period, but not less than 25 days before the issuer's annual general meeting.

Other significant ongoing disclosure requirements include:

- notification relating to the capital of the issuer including proposed changes in the capital of the issuer, declarations of dividends or the making of distributions, the decisions to call, repurchase or redeem any of the issuer's securities, and changes in rights attached to the issuer's securities

- changes to the issuer's by-laws

- a petition or order for the winding-up of the issuer, the appointment of a liquidator in respect of the issuer or the commencement of a proceeding under Saudi Arabian bankruptcy regulations.

Restrictions on individual shareholders

As referred to above, any person or group of persons shown in the prospectus to have a "controlling interest" in the issuer must not dispose of any of his securities in the issuer during a period of six months from the date on which trading in the securities of the issuer commences on the Exchange. For the purposes of the relevant provision, a "controlling interest" refers to a person who directly or indirectly owns 5 per cent or more of a class of voting securities of the issuer.

In addition, founding shareholders of a newly incorporated company are locked in for a period of three years from commencement of trading in the securities of the relevant issuer.

Any shareholder who increases their shareholding through 5 per cent of the issued share capital of the issuer must notify the issuer and the CMA of the increase.

Suspension and termination of listing

The CMA has the authority to bring legal action before the Committee for the Resolution of Securities Disputes to seek an order for appropriate sanctions for violations of the Capital Market Law. One such sanction is the suspension of trading in the security.

The CMA has the authority to suspend trading on the Exchange for a period of one day only. If the CMA deems that a suspension of more than a day is necessary, the Minister of Finance must authorise this extension.

In addition, under the Listing Rules, the CMA may at any time suspend or cancel the listing of a security as it sees fit in any of the following circumstances:

- the CMA considers it necessary for the protection of investors or the maintenance of an orderly market

- the issuer fails, in a material manner, to comply with the Listing Rules (including the failure to pay any applicable fees or fines in a timely manner)

- the amount of securities of the issuer that are publicly traded is not sufficient to meet the prescribed requirements under the Listing Rules

- the CMA considers that the issuer does not have a sufficient level of operations or sufficient assets to warrant the continued trading of its securities on the Exchange

- the CMA considers the issuer or its business not to be suitable to warrant the continued listing of its securities on the Exchange.

Takeovers

The CMA assumes all power and responsibilities in terms of regulating the Exchange which includes takeovers. The Merger and Acquisition Regulations apply in any situation where there is a purchase of, or an offer for, certain percentages of securities, a takeover offer, or a reverse takeover offer relating to any listed company.

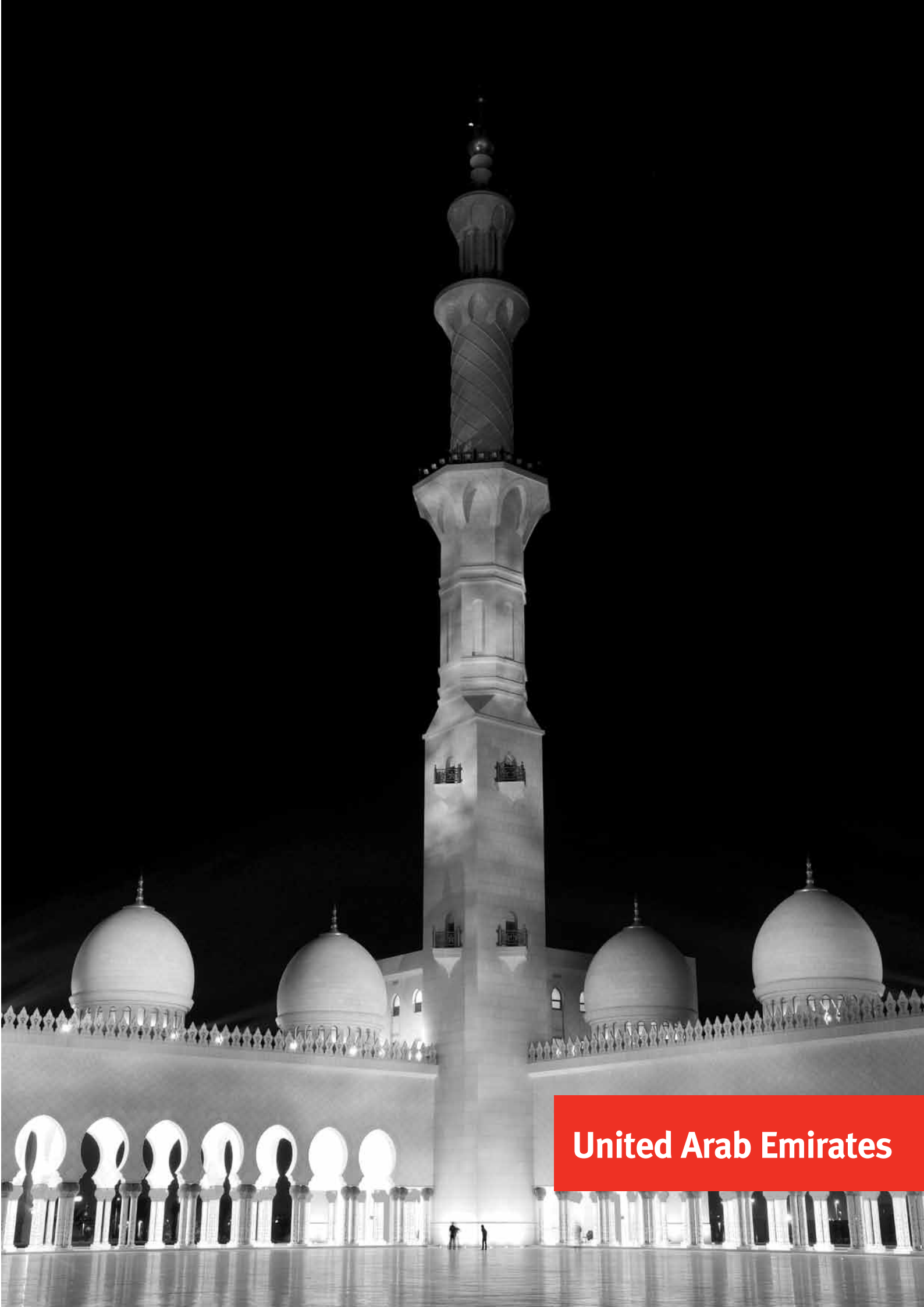
Where a person, together with his concert parties, acquires securities in a listed company which carry 30 per cent or more of the voting rights of the issuer, the Merger and Acquisition Regulations provide that the relevant shareholder may extend an offer to all holders of any class of equity share capital or voting non-equity share capital of the offeree company. However, where a person, together with his concert parties, increases his ownership of securities in a given company through 50 per cent or more of the voting rights of the issuer, the Capital Market Board will have the right within 60 days of the increase (if it deems it necessary for shareholder protection and the safety of the market) to order the relevant person to offer to purchase the remaining securities of the same class.

Any offer document issued in connection with a takeover offer (including a mandatory bid) must be approved by the CMA. The CMA will also set the timetable for any takeover. To date, there has only been one takeover of a company listed on the Exchange.

The offering of foreign securities into Saudi Arabia

Foreign securities cannot be publicly offered in Saudi Arabia. However, in practice, overseas companies offer their securities to certain investors on a private placement basis in Saudi Arabia following notification of the marketing activity to the CMA. Such marketing activity can only be conducted through an authorised person.

Notwithstanding the above, guidance on current regulations and market practice should be sought in each case.



United Arab Emirates

United Arab Emirates

The market

There are three main markets in the UAE:

- the Dubai Financial Market (DFM);
- the Abu Dhabi Securities Exchange (ADX); and
- NASDAQ Dubai.

Of these, NASDAQ Dubai is a stock exchange located in the Dubai International Financial Centre (the DIFC). The DIFC section of this Guide summarises the listing process for NASDAQ Dubai.

This section looks at the other onshore exchanges in the United Arab Emirates (UAE) – DFM and ADX. Recent discussions about a potential merger between the two exchanges are still at an early stage; we understand that the structure of any potential merger has not yet been discussed in detail, and we do not address the merger in this section.

We propose referring here to the ADX and the DFM as, separately, the Market and, together, the Markets. We only distinguish between the two Markets where the regulatory requirements are different and warrant highlighting.

Dubai Financial Market

The DFM was established in 2000 by Resolution No. 14 of 2000 of the UAE Ministry of Economy and commenced operations on 26 March 2000. The DFM is a public joint stock company (a PJSC) with a paid-up capital of AED8 billion (around US$2.2 billion), of which 20 per cent is available for public subscription (Executive Council Decree, 27 December 2005).

At the end of 2009 the DFM made an offer, subsequently approved, to NASDAQ OMX Group Inc. and Borse Dubai Ltd for the entire issued share capital of NASDAQ Dubai. The DFM has announced that the DFM and NASDAQ Dubai will operate as two distinct markets (and will remain regulated by their respective current regulators). The acquisition will allow the DFM to increase its product offerings for investors and to integrate certain back office and technology functions. NASDAQ OMX will hold a minority stake in the DFM.

Abu Dhabi Securities Exchange

The ADX was established in 2000 as an autonomous legal entity with independent finance and management powers, and with the necessary supervisory and executive powers to exercise its functions (Local Law No. 3, 15 November 2000).

Legal framework

Legislative and regulatory

Both the ADX and the DFM are licensed and regulated by the Securities and Commodities Authority (SCA). The main laws, regulations and resolutions which govern admission to listing and ongoing disclosure obligations for the Markets include:

- The Companies Law (Federal Law No. 8 of 1984 concerning Commercial Companies) – this governs UAE companies in general, including PJSCs
- The SCA Law (Federal Law No. 4 of 2000)
- The Listing Resolution (Council of Ministers' Decision No. 12 of 2000 concerning the Regulations as to the Listing of Securities and Commodities)
- The Disclosure Resolution (Council of Ministers' Decision No. 3/R of 2000 concerning the Regulations as to Disclosure and Transparency)
- The ADX Rules (There are no separate listing rules for the DFM: any issuer seeking to list on the DFM need only comply with the listing requirements set out in the Listing Resolution)
- The Central Bank Resolution (the UAE Central Bank Board of Directors' Resolution No. 164/8/94 regarding the Regulation for Investment Companies and Banking, Financial and Investment Consultation Establishment or Companies).

Regulatory oversight

There is no specific securities law in the UAE which regulates the offer and sale of securities by an issuer to the public. The promotion and sale of both domestic and foreign securities in the UAE is regulated by the SCA and the Central Bank pursuant to a suite of regulations.

The SCA was established on 29 January 2000 under the SCA Law. The SCA Law granted the SCA financial and administrative independence together with the supervisory and executive powers necessary to perform its functions.

The purpose of the SCA is fivefold: firstly, to provide a suitable climate for the investment of savings and funds in securities and commodities in a manner that serves the interest of the national economy, secures integrity of transactions and protects investors; secondly, to work to secure financial and economic stability; thirdly, to protect holders of securities, investors and the public in a manner that secures integrity and accuracy of transactions; fourthly, to regulate, develop and monitor the securities and commodities markets; and, last, to develop investment awareness by conducting studies and presenting recommendations (article 7 of the Council of Ministers' Decision No. 13 of 2000).

Retail offer and institutional offer

UAE law does not distinguish between a retail offer and an institutional offer. All offers must follow the same regulatory process.

The sale of any securities within the UAE is prohibited unless approved by the Central Bank. Anyone (underwriter, broker or dealer) who makes an offer of securities in the UAE has to obtain a licence from the Central Bank first; and only juridical (corporate entities established under the Companies Law) or natural persons (UAE nationals as per the general restrictions on persons doing business under the UAE Commercial Code) are entitled to apply for a licence (as set out in the Central Bank Resolution).

Eligibility for IPO

Regulatory requirements

An issuer wishing to list its securities on one of the Markets must first obtain a licence to list from the SCA. It must then submit an application for listing to the relevant Market.

Under the Listing Resolution, the SCA has jurisdiction over UAE listed securities. No securities may be admitted to trading on a Market without the SCA's prior approval. These rules apply to domestic and foreign issuers.

Only the following securities can be listed on the Markets (article 4, Listing Resolution):

- securities in PJSCs incorporated in the UAE, or whose head office is located in the UAE
- securities of foreign companies approved for listing by the board of directors of the SCA (the SCA Board)
- bonds and debt instruments which the SCA Board resolves to list
- any other securities approved for listing by the SCA Board.

Article 6 of the Listing Resolution sets out the conditions for listing of PJSCs incorporated in the UAE. These securities are classified as first or second category, depending on whether the conditions in article 6 are met. The conditions for obtaining a first category classification include that:

- the issuer must be registered with the UAE Ministry of Economy & Commerce
- the issuer must have been incorporated for (and have audited accounts for) a period of not less than two years
- the issuer's paid-up capital must not be less than AED25 million (around US$6.8 million) or 35 per cent of the subscribed share capital, whichever is higher
- the shareholders' equity must not be less than the paid-up capital at the time of applying for listing
- the issuer must publish its balance sheet and financial results in two daily Arabic language newspapers before its securities can be admitted to trading on a Market.

A second category classification is given to a company when it does not satisfy one or more of the above conditions. Companies move from the second to the first category when they satisfy the first category listing conditions. Similarly, companies move from the first to the second category when there is a breach of a first category listing condition.

In practice, there is currently no particular relevance or consequence arising from being classified as either a first or second category company.

The board of directors of the Market has discretionary authority to exempt a company from some of its eligibility requirements or from submitting certain documents. Furthermore, the Market may decline a listing application without giving any reason.

Foreign companies that wish to list on either of the Markets must comply with the eligibility requirements (including Council of Ministers' Decision No. 7/R, 2002):

- the issuer must comply with all provisions in the law of the country of its incorporation
- the issuer must be in the form of a public joint stock company or equivalent
- the issuer must be listed in the market of its home country (and the market should be subject to the supervision of a body or authority exercising competencies similar to the competencies of the SCA)
- the issuer must have been incorporated for (and have audited accounts for) a period of not less than two years
- the issued share capital of the issuer must not be less than the equivalent of AED40 million (around US$10.9 million) and must be issued to not less than 100 shareholders
- during the two years preceding the date of submission of the application for listing, the issuer's net assets must have been in excess of 20 per cent of its paid-up capital, or it had realised net profits distributable to the shareholders averaging not less than 5 per cent of the paid-up capital
- the issuer must publish its balance sheets and financial results in two daily Arabic language newspapers before its securities can be admitted to trading on a Market
- the issuer must appoint a representative in the UAE to register the securities, distribute profits and receive and issue reports and documents connected with the business of the company
- the issuer must comply with any additional conditions that the Board may from time to time prescribe.

The SCA's Board and the board of directors of the Market may, in certain circumstances, exempt a foreign company wishing to list its securities on one of the Markets from any of the conditions and requirements listed above. Furthermore, the Market may decline a listing application without assigning any reason.

Any companies incorporated in a financial free zone which are seeking to list their securities on either of the Markets must comply with the eligibility requirements set out in Decision No. 43/R of 2008 (the Dual Listing Resolution), which include:

- the capital of the issuer must be divided into securities with equal rights guaranteed to shareholders within the relevant category
- the issuer must be listed on a financial free zone market
- the issuer must have been incorporated for (and have audited accounts for) a period of not less than two years. (Issuers in which the Federal Government or a local government owns a minimum of 25 per cent of the securities are exempted from this requirement)
- the issued share capital of the issuer must not be less than the equivalent of AED40 million (around US$10.9 million) and must be issued to not less than 100 shareholders
- the number of securities to be listed on the relevant Market must not exceed 30 per cent of the issuer's capital
- the equity of the shareholders in the issuer must not be less than 120 per cent of its paid-up capital. The issuer must have realised net profits (distributable to shareholders) during the two years immediately prior to the date of submitting the application for listing which must equate to a minimum of 5 per cent of the paid-up capital, on average.

Foreign ownership restrictions

Under the Companies Law, the maximum percentage of shares in a PJSC that can be owned by foreigners (non-UAE nationals) is 49 per cent; depending upon the activities of the PJSC, the required UAE ownership threshold may even be 100 per cent (although a company may specify a lower figure in its memorandum and articles of association).

In some instances, nationals of countries which are members of the Gulf Cooperation Council may be permitted to own 100 per cent of the securities of a UAE company.

Dual / secondary listings

Dual listings are permitted and regulated by the Dual Listing Resolution which imposes certain conditions that must be satisfied by a UAE company whose securities are listed on the Markets and that wishes to list its securities on any free zone market (such as NASDAQ Dubai in the DIFC) or any market or exchange outside the UAE. The Dual Listing Resolution imposes similar conditions on free zone companies whose securities are listed on a free zone financial market but which wishes to list on one of the Markets.

UAE companies with securities listed on either Market may not list their securities on any free zone market or any market or exchange outside the UAE without obtaining the prior consent of the SCA (article 2, Dual Listing Resolution).

Free zone companies are prohibited from listing their securities on one of the Markets without obtaining the SCA's prior consent (article 4, Dual Listing Resolution).

IPO process

Conversion to PJSC

The PJSC is the only form of Companies Law company which can issue securities to the public in the UAE. In order to convert a private joint stock company (a Private JSC) into a PJSC, the following conditions must be satisfied (article 217, Companies Law):

- the nominal value of the issued securities must be fully paid-up
- a period of not less than two financial years must have expired since the incorporation of the Private JSC
- for both of the two years preceding the application for conversion, the company must have achieved net profits for distribution which exceed 10 per cent of the value of the issuer's capital
- at least three quarters of shareholders must vote in favour of the conversion at an extraordinary general meeting
- the SCA must approve the conversion (its approval will be published in the Official Gazette).

The founder members of the PJSC must subscribe for a minimum of 20 per cent and a maximum of 45 per cent of the share capital of the company (article 78, Companies Law). The Companies Law in effect imposes a free float requirement of a minimum of 55 per cent. An updated federal companies law is expected to be issued shortly following a consultation round in October 2009. The new companies law will contain articles affecting IPOs – including the reduction of the required float offered from 55 per cent to 30 per cent.

At the beginning of the process a lead manager is usually appointed, together with other advisers, such as legal advisers, a financial adviser and PR company, to assist with the IPO process.

An issuer wishing to list its securities on either Market must submit a listing application to the SCA for its approval. The application will be supported by the documents listed below.

Once an application has been submitted to the SCA, a committee composed of technical and legal members formed by resolution of the chairman of the SCA Board (the Committee) examine the listing application. If it is complete, the Committee will make its decision within a 15 day period from the date of application. If the listing application is incomplete, the party will be notified of the need to complete it within a 15 day period from the date of notification, failing which the applicant is deemed to have abandoned its application.

The Committee's decision goes before the SCA Board, which has 30 days to issue its decision. The SCA Board may first request any particulars it deems necessary in order to issue its decision. The applicant will be notified of the SCA Board's decision within one week from its issue date.

Approval by the SCA Board entitles the company to list its securities on the relevant Market, subject to compliance with the Market's listing procedures.

As mentioned above, an offer of securities within the UAE is prohibited unless approved by the Central Bank.

Documentation

All documents submitted to the SCA and to the relevant Market must be in Arabic.

The SCA application must have attached to it three items: a report issued by the issuer's board of directors; the issuer's financial statements; and a prospectus.

The report must include:

- a statement of the securities previously issued by the issuer and of those the issuer wishes to have listed
- the names of the members of the board of directors and the executive managers, and the securities (whether of the issuer or any of its parent, subsidiary, allied or affiliated company, if any) which are owned by those individuals and certain of their relatives, and the membership of any of them on the boards of directors of other public joint stock companies
- details of those shareholders who own more than 5 per cent of the issued share capital of the issuer
- the percentage holdings in the issuer's share capital of persons who are not UAE nationals
- the issuer's significant events from the date of incorporation to the date of submitting the application for listing
- the board of directors' assessment, supported by figures, of the issuer's performance and achievements, as compared with its recent business plan.

The issuer's financial statements must include its audited annual report for the two financial years before the date of submission of the listing application and, in addition, interim audited financial statements (covering the period from the end of the financial year before the submission of the application for listing to the end of the last quarter before the date of the application).

The prospectus must include:

- a summary of the memorandum and articles of association of the issuer
- the maximum number of securities that may be subscribed for by each person
- the number of securities required to be held to qualify for membership of the board of directors of the issuer
- the date, place and conditions of the offer
- the percentage of securities owned by UAE nationals and the conditions of the disposal thereof
- any other matters affecting the rights or obligations of the shareholders.

The founder members are jointly liable for the accuracy of the information provided in the prospectus.

Clearing and settlement

The ADX and DFM have adopted a book-entry clearing system to clear and settle trades on the Markets which is operated by licensed brokers. After the transactions are cleared by the Market, the transfer of ownership of the securities is conducted through a book-entry system (operated by the ADX or DFM). Once the licensed broker has matched the purchase order to the sale order, title to the securities then passes in the trading system within 2 business days.

Ongoing compliance

Corporate governance

The SCA introduced corporate governance regulation in May 2007 (the Corporate Governance Code), which applies to all joint stock companies established in the UAE (irrespective of the Market) and to their board of directors. All such companies were required to comply with the Corporate Governance Code by 30 April 2010 (following a transitional period).

The obligations contained in the Corporate Governance Code set high standards of corporate governance and are largely based on international standards.

The SCA has also issued a comprehensive template business plan for adoption by companies to help them comply with the requirements of the Corporate Governance Code.

In its annual report to the SCA, the issuer must identify areas where it does not comply with any of the provisions or requirements of the Corporate Governance Code (and any other relevant rules and regulations) and must set out its planned actions to rectify the non-compliance.

The main provisions of the Corporate Governance Code include:

- at least one third of directors must be independent directors, while the majority of directors must be non-executive directors
- meetings of the board of directors must be held at least once every two months
- the board of directors must form an audit committee and a remuneration committee. Committees must consist of not less than three non-executive directors, at least two of which should be independent directors. The chairman of the board of directors may not be a member of those committees
- the audit committee must comprise not less than three non-executive directors (including a director with financial and accounting expertise), the majority of whom must be independent directors. Individuals who are not directors of the company may be appointed as members of the committee where there are insufficient numbers of non-executive directors available
- the board of directors must establish a strict internal control system to evaluate the means and procedures for risk management and the implementation of the Corporate Governance Code

- the issuer must submit a report on its corporate governance practices (the Governance Report) to the SCA on an annual basis. The Governance Report must include all information set out in the SCA-approved form, including, in particular, violations committed during the financial year together with the reasons for these violations and the company's plans to remedy them and to avoid the same in the future; and a summary of the composition of the board of directors including their level of remuneration.

Ongoing Compliance

The Disclosure Resolution sets out ongoing disclosure requirements and reporting obligations once listed that need to be observed by an issuer.

An issuer whose listed securities have been the subject of a transaction will not change the ownership of the securities in its register of shareholders unless the management of the Market has approved the transaction, or it has been conducted under the provisions of the SCA Law.

The issuer is required to immediately notify the SCA and the management of the Market of any price sensitive information (subject to exemptions relating to transactions under negotiation). The board of directors of the Market will have the right to publish any statement concerning such information in the local press and any other media it deems appropriate.

An issuer must immediately notify the SCA and the Market of any shareholders whose direct or indirect shareholding (together with their minor children) is equal to or more than 5 per cent of the issuer's securities. The issuer must comply with this obligation every time the shareholding increases by 5 per cent over and above the 5 per cent threshold.

ADX Rules

The ADX Rules state that, once the relevant shareholder goes through the 5 per cent threshold, the issuer must notify the SCA and the ADX every time the shareholding of the relevant shareholder increases through a percentage point. There are no equivalent provisions for the DFM.

Reporting

In addition, issuers must notify and provide the SCA and the Market with certain information including:

- transactions effected in the issuer's securities outside the Market, before entering them in the register of shareholders
- the number of securities owned by the issuer's directors, within 15 days of the acquisition and also at the end of each financial year, and all trades effected by such directors and the issuer's executive management
- details of the sale or purchase of major assets which affect the position of the issuer
- any changes to the issuer's board of directors or its executive management
- short form final accounts (preliminary financial statements which are unaudited and unreviewed) within 45 days from the end of the financial year, signed by the board of directors or the person authorised to sign on its behalf

- financial reports: interim financial reports (quarterly, half-yearly), which are reviewed by the external auditor of the issuer within 45 days from the end of the relevant financial period and signed by the board of directors or person authorised to sign on their behalf; and annual financial reports audited by the external auditor of the issuer, within 90 days from the end of the financial year, signed by the board of directors or person authorised to sign on their behalf. These financial reports must be presented in both Arabic and English, in accordance with the rules of the International Accounting Standards Board.

Restrictions on individual shareholders

Differing notification thresholds apply to individual shareholders.

Any shareholder who owns, or, together with his minor children owns, 5 per cent or more of the securities of an issuer must immediately notify the Market when they reach the 5 per cent threshold (and see above).

Anyone who owns a percentage equivalent to, or in excess of, 10 per cent of the securities of a Parent, Subsidiary, Affiliate or Allied Company (as defined in the Disclosure Resolution) of the issuer, must immediately notify the Market thereof.

Equally, anyone who owns 10 per cent or more of the issuer's securities, and wishes to purchase 20 per cent or more of the issuer's securities, must notify the Market before it places the purchase order for execution on the floor. The Director General of the Market may, after consultation with the SCA, prohibit the acquisition if, in their opinion, the acquisition would prejudice the interests of the national economy.

A bank or financial institution carrying on banking business must obtain the Central Bank's approval before it enters into any transaction which would result in it acquiring 5 per cent or more of the securities of any issuer listed on the Market.

Suspension and termination of listing

The SCA Board may suspend the listing of any securities on either Market in a number of circumstances. These include:

- the issuer ceasing to satisfy a condition for listing
- the net value of the shareholders' equity in the issuer falling below 50 per cent of its capital
- the market value of the listed securities falling below 60 per cent of their nominal value (or the value suddenly rising)
- a resolution being passed to reduce the issuer's capital
- the issuer failing to issue annual, half-yearly or quarterly reports on its activities
- a resolution being passed to sell the majority of the company's assets.

The SCA may also cancel the listing of any securities trading on either Market if any of the following occurs:

- a resolution is passed to dissolve and liquidate the issuer

- the listing of the securities remains suspended for or beyond a period of six months
- any radical change in the main activity of the issuer occurs
- the issuer discontinues its activity
- the issuer is merged with another company or companies by way of a merger in consequence of which the juristic personality of the issuer comes to an end.

Takeovers

Laws and regulations are expected to come into force in due course to regulate takeovers. We understand that the SCA are currently considering such matters; draft regulations will be put in place in the near future to address common issues regarding takeovers.

For the moment, there is no takeover code or equivalent set of rules in the UAE. The prevalent method of acquiring control of a UAE company is by buying securities in a company or by acquiring its assets (subject to share transfer and foreign ownership restrictions, outlined above).

An acquisition can also take place as an amalgamation under the Companies Law. There are two forms of amalgamation: by merger, whereby the acquired company ceases to exist and is absorbed into an existing company; and consolidation, whereby two or more existing companies are dissolved and their assets and liabilities transferred to a newly incorporated company.

The offering of foreign securities into the United Arab Emirates

As an alternative to listing on the Markets and conducting an IPO in the UAE, a foreign company may instead look at the option of offering its securities to persons located in the UAE.

The strict interpretation of the Central Bank Resolution is that no entity may conduct marketing or other activities in the UAE unless and until the entity is appropriately licensed by the relevant UAE authorities. However, the Central Bank Resolution does not distinguish between retail and institutional offers, nor is there any express guidance as to what conduct would be treated as an offer being conducted outside the UAE.

In practice, and perhaps as a result of certain ambiguities in the relevant legislation, we understand that the general consensus is that there is an accepted category of conduct which is unlikely to attract Central Bank scrutiny provided that it falls within certain parameters (the Offering Safe Harbour).

In our experience the generally held view is that:

- the regulations and the reach of the Central Bank only apply to the general solicitation or offers of securities to the public at large
- the Central Bank does not exercise supervisory control over foreign entities in relation to the marketing of foreign financial products within the UAE, provided the activity is conducted discretely to a limited number of investors

- in the past, the Central Bank has informally advised that it is not actively monitoring low key investment marketing activities, as to do so would not be practicable, however, it has given no formal confirmation that this approach will continue to be taken in the future.

Nevertheless, the following guidelines should be observed:

- to the extent practicable, all documentation (including application forms and subscription agreements) should be executed outside the UAE
- while no formal restrictions exist on the number of persons who may be targeted, as a matter of practice, the smaller the number of offerees is, the more likely it is that the offer will be characterised as within the Offering Safe Harbour
- it would be preferable to target persons falling within the classic definition of sophisticated investors (such as banks, financial or commercial institutions and high net worth individuals)
- no public promotion or advertising should be conducted in the UAE
- marketing should generally be performed from outside of the UAE, except for pre-arranged marketing visits by individuals to pre-identified potential investors in the UAE, and any such marketing visits to the UAE should be kept to a minimum
- the transaction should be structured such that the completion of the transaction takes place outside of the UAE
- any payments by investors should be made directly to an entity and bank account outside the UAE.

The regular use of the Offering Safe Harbour does not mean that such activities are legally permissible under the regulations. Such conduct has no source in the laws of the UAE, the regulations of the Central Bank or otherwise and therefore guidance on current regulations and market practice should be sought in each case.

Glossary of terms

Audit committee	a committee (with powers delegated to it by the board of directors) whose primary responsibilities include monitoring the integrity of the financial statements of the company, reviewing significant financial reporting judgements, reviewing the company's internal financial control system and monitoring and reviewing the effectiveness of a company's internal audit function. The audit committee also provides a link between the auditor and the board independent of the company's executives
Bare nominee	an entity in whose name the securities are held, for and on behalf of the actual owner
Book-entry clearing system	an accounting system that permits the electronic transfer of securities without the movement of certificates
Clearing member	a member of an exchange clearing house responsible for executing transactions in securities by customers
Clearstream	a clearing house
Euroclear	a clearing house
Free float requirement	securities which are held by the "public" and are readily available for trading with the aim of ensuring sufficient liquidity in the securities. The relevant percentage required to be in free float differs in each jurisdiction. The concept is also often referred to as securities being held in public hands
Independent directors	non-executive directors which are determined by the board to be independent in character and judgement. In making this determination the board will typically have regard to whether there are any relationships or circumstances which are likely to affect, or could appear to affect, the director's judgement in the performance of his duties
IPO or initial public offer	the process by which a company obtains a listing of its securities on a securities exchange and offers securities to the public for the first time
Issuer	any company or other legal entity whose securities have been admitted to listing or is the subject of an application for admission to listing
Lead manager	the party appointed by the issuer to arrange the IPO of its securities
Lock-in	an arrangement whereby the relevant shareholder agrees not to dispose of any interest in its securities for a specified period
Mandatory bid	a bid required to be made under statute, where a person or entity who acquires securities which carry with them voting rights in the target in excess of the relevant statutory threshold, is required to make an offer for all the remaining securities in the target
Market capitalisation	the valuation of the issuer determined by multiplying the number of securities in issue by the price at which the securities are traded
Market makers	a broker or dealer who is willing to accept the risks of holding securities, on his own account, in order to facilitate trading in those securities. Once an order is received the market maker immediately sells from its own inventory and seeks an offsetting order

Minority buy out rights	the right, following a takeover offer, for a minority shareholder who has not accepted the offer to require the bidder to buy their securities if the bidder has acquired a certain percentage of the securities and/or voting rights of the issuer. This threshold is typically set at 90 per cent. This is also referred to as a minority sell out right
Nominal value	the stated value of an issued security that remains fixed, as opposed to its market value which fluctuates
Nomination committee	a committee (with powers delegated to it by the board of directors) whose responsibilities include evaluating the various members of the board of directors in light of the skills and characteristics that are needed in board candidates. The committee will often identify suitable candidates for various director positions. The committee is often combined with the remuneration committee
Non-executive directors	a director who is not a full or part time employee of the company or holder of an executive office with the company
Primary listing	the main exchange on which an issuer's securities are listed
Prospectus	an offer document given to potential investors which sets out certain required information on the issuer and the securities being offered including, among other things, information about the issuer's business and business prospects, the terms of the offer and any material risks in investing in securities of the issuer
Remuneration committee	a committee (with powers delegated to it by the board of directors) whose responsibilities include setting up a policy for the remuneration of the executive management, determining targets for performance based incentive schemes and determining the total individual remuneration package of each executive director including, where appropriate, salary, bonuses, pensions, incentive payments and share schemes. The committee is often combined with the nomination committee
Secondary listing	a listing of a security on an exchange other than its primary exchange. Secondary listings are usually implemented in an attempt to access new markets to raise capital
Sophisticated investors	a term used to describe certain institutional investors such as banks and financial institutions, commercial organisations and high net worth individuals who are deemed to have sufficient investment experience and knowledge to weigh up the risks and merits of an investment opportunity. The exact definition for the purposes of the relevant regulations will differ in each jurisdiction
Sponsor	in certain circumstances, an issuer must appoint a financial adviser to act as a sponsor. The sponsor advises the issuer on a wide range of issues relating to its public offer including the appropriateness of the issuer to list on the relevant exchange and compliance with the relevant laws and regulations
Squeeze out rights	the right of the bidder in a takeover offer who has acquired a certain percentage of the securities and/or voting rights of the issuer to acquire the remaining minority shareholdings on a compulsory basis. This threshold is typically set at 90 per cent
T+2/3	the settlement period for transactions being 2/3 working days after the trade date
Trading member	members of an exchange who have a licence to trade in securities on that exchange
Warrant	a certificate, valid for a specified period, which gives the holder the right to subscribe for securities at a stipulated price. The warrant can sometimes be traded independently from the underlying securities

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