

Update on Capital Markets: Authority issues and capital requirements

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The Capital Markets Authority Law ("CML") and its executive regulations (the "Regulations") granted the Capital Markets Authority (the "Authority") the right to issue resolutions after the publication of the Regulations that will determine the minimum capital requirement and the legal form of the entities subject to licensing under the CML.

The CML and its Regulations provides that no person may carry on activities of securities in Kuwait unless it is licensed by the Authority. In such respect, the Regulations set forth a full list of requirements, documents and information to be presented to the Authority along with an application for license, allowing the Authority to study the application request and to issue the license if such application is approved.

However, amongst the extensive list of requirements, documents and information set forth in the Regulations, no specific share capital or legal form for the applicant has been identified. In fact, the Regulations provides that the Authority shall determine, under a resolution passed thereby, the minimum share capital of the applicant as per the type of securities business subject of license and the legal form required for carrying on the business.

Pursuant to the above, the Authority issued on 13 June 2011 the Decision No.9 for the year 2011, whereby it provides for the minimum share capital and the legal form of the entities subject to licensing under the CML:

	Activity	Legal Entity	Capital
1	Securities Brokerage	Shareholding Company	Kuwaiti Dinar Ten Million
2	Investment Advisory	Shareholding Company	Kuwaiti Dinar One Million
3	Investment Portfolio Management	Shareholding Company	Kuwaiti Dinar Ten Million
4	Collective Scheme Management	Shareholding Company	Kuwaiti Dinar Fifteen Million
5	Custodian	Shareholding Company	Kuwaiti Dinar Fifteen Million
6	Investment Controller	Shareholding Company	Kuwaiti Dinar Five Million
7	Marketing and selling securities	Shareholding Company	Kuwaiti Dinar Ten Millio

However, Decision No.9 failed to specify whether such requirements are imposed on existing companies seeking to be licensed under the CML, or imposed on companies to be established post-issuance of said Decision No.9. The lack of specification has had a severe impact on the current companies who may need to amend their share capital or legal form for the purposes of the license under the CML.

Nevertheless, and following several queries from the existing companies in the securities sector in Kuwait,

the Authority has advised (unofficially) that the requirements above will only be imposed on new companies to be established after the issuance of the said Decision No.9. However, until a further decision is issued or Decision No.9 is modified to state the same, there will be some confusion as to its applicability.