

Kuwait: The Impact of the New CMA Regulations

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This article considers the key considerations in respect of Book 5.

Recently, the CMA has trended towards taking a more stringent approach towards the activities that require to be regulated and who can perform these activities.

Book 5 outlines various matters including:

- the types of activities considered as “securities activities” (Article 1-2);
- a description of the licensing conditions (Article 1-3);
- the requirements and procedures for applying and obtaining or renewing a license to perform the regulated securities activities (Article 1-4, 1-7, 1-12);
- the definitions of the professionals who perform the regulated securities activities (Article 1-23 to 1-41);
- the capital requirements for the entities performing certain activities (Annex No. 1);
- academic qualifications for specialized professional roles which conduct these activities (Annex No. 3); and
- the application forms for obtaining or canceling the licenses it requires for these activities to be performed in Kuwait (Annex No. 4 through Annex 10).

We now consider the most important provisions of Book 5 an entity should take into consideration before conducting securities activities in Kuwait.

The following securities activities require a license by the CMA (Article 1-2):

- Stock Exchange brokerage activities;
- Clearing Agency activities;
- Investment portfolio management;
- Collective investment system management;
- Investment advisor activities;
- Underwriting agent activities;
- Custodian activities;
- Market maker activities;
- Activities by a Securities broker registered in the stock exchange;
- Activities by a Securities broker unregistered in the stock exchange;
- Investment controller activities;
- Credit rating agency activities;
- Asset Valuation; and
- Any other activities determined by the Authority.

It is important to note the last item above, which reserves wide discretion for the CMA to deem any activity not outlined in the bylaws as being regulated and to require a license. Moreover, subject to other

provisions in the bylaws, a single person or entity may apply for more than one license. In other words, the activities may be combined by one person or entity (Article 1-3). However, the CMA does reserve the right to prohibit the combination of activities to a single licensed person or entities.

The license application requirements set out in Book 5 are a general requirement for all who seek to obtain a license (Article 1-4, 1-5). The CMA, however, may exempt certain applicants from certain requirements or impose additional requirements at its discretion (Article 1-6).

Book 5 stipulates a number of special conditions for certain regulated activities. These activities tend to be of particular interest to foreign companies and multinational firms intending on or already performing regulated securities activities in Kuwait. Among these are the activities of an Investment Advisor and Asset Valuator, (as defined under Article 1-27 and Article 1-39). Book 5 sets out additional conditions to regulate Investment Advisor and Asset Valuator activities being specific academic and professional qualifications, practical threshold experience requirements and requiring a minimum number of licensed representatives.

In some scenarios, foreign and multinational financial advisory firms are engaged by Kuwaiti financial institutions and companies to arrange a cross-border or local transaction, for example, a sell-side or buy-side acquisition. These transactions will often require the services of an investment advisor and/or an asset valuator during the transactional cycle. Book 5 appears to require the actual persons or entities performing these specific activities to be licensed, not necessarily the foreign company or multinational firm quarterbacking the transaction. In such circumstances, the foreign entity may provide its expert advice on how the transaction is arranged and executed. However, a CMA licensed company or individual is then brought in to perform the actual regulated activities surrounding the securities that are the subject of the transaction. Foreign and multinational financial advisory firms should be ever diligent in drawing the line between providing overall transaction advice and delving into regulated activities in order to mitigate the risks of running afoul of the CMA's regulations.

In summary, Book 5 outlines the securities activities that are under the regulatory purview of the CMA and which require entities to obtain a license from the CMA in order to engage in the same. We strongly advise firms looking to engage in any of the securities activities referenced in Article 1-2 of Book 5 in the State of Kuwait to ensure that they are not violating the licensing requirements of the CMA.