

Kuwait's New CMA Bylaws Regarding Trading Securities, Premium and Treasury Shares

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The focus of this note will be to outline the rules specified in the executive bylaws that companies should be aware of in relation to trading securities, premium shares, and treasury shares, which became immediately effective upon issuance of the new executive bylaws.

Trading Securities

The rules governing the buying and selling of securities of Kuwaiti public and closed shareholding companies are spelled out in Chapter 8 of Book 11 of the CMA Executive Bylaws (the 'Rules'). The Rules set forth that, with respect to the securities of a listed company, securities are transferable if the transfer is completed in accordance with the rules and procedures outlined by the Kuwait Stock Exchange and upon registration of the securities with the clearing agency. The ownership of unlisted shareholding company's securities are transferred through the process and procedures for transfer by the clearing agency. The Rules further specify that founders and shareholders of a listed Kuwait shareholding company are subject to a lock up period with respect to transacting in their shares.

Pursuant to the Rules, non-Kuwaiti investors may subscribe and acquire sukuk, Shari'a-compliant certificates that represent an undivided interest in an underlying tangible asset proportionate to the value of the holder's investment, and bonds subject to any restrictions imposed in the prospectus and any other law. Finally, Chapter 8 provides rules and conditions in relation to the issuance of profit shares, including their assignment and the ability to enter into repurchase agreements with respect to the selling of securities.

Premium Share Rules

Kuwaiti public and closed shareholding companies may issue, trade, transfer and redeem shares which enjoy rights and privileges in voting, profits, liquidations or any other rights ('Premium Shares') in accordance with the rules and conditions outlined in Chapter 13 of Book 11 of the CMA Bylaws. Among the conditions a company must adhere to in order to issue premium shares is that the company's memorandum and articles of association must explicitly allow for the issuance of Premium Shares by vote of an extraordinary general assembly of the company which shall describe the rights and privileges of the Premium Shares.

Unless the CMA otherwise approves an issuance of Premium Shares by public offering, Premium Shares may only be issued by private placement. Any issuance of Premium Shares shall only be effected after the CMA has been provided with a prospectus in accordance with the rules and conditions set forth in the CMA Bylaws, and the same is furnished to professional clients (as such term is defined in the CMA Bylaws). A company issuing Premium Shares must comply with the disclosure requirements set forth in the CMA Bylaws and any other regulatory body in relation to Premium Shares.

Treasury Shares

The purchase, re-sale and use by a Kuwaiti public or closed shareholding company of its own issued shares ('Treasury Shares') is regulated by the CMA under Book 11, Chapter 14 of the Rules. Chapter 11 provides specific instances in which a company may transact with its Treasury Shares, including, without limitation, in the following circumstances: (i) in the event the company desires to reduce its share capital; (ii) in event the company wishes to pay an existing debt obligation; (iii) in the event of a distribution of the Treasury Shares in connection with an employee share option plan; or (iv) in any other event or circumstance determined by the CMA.

A company may acquire its shares only if the company's memorandum and articles of association provides that it may do so. In addition, a company may only acquire the number of shares which equals or is less than 10% of its issued share capital according to the market value of the company's shares. A Company wishing to buy or sell Treasury Shares must seek and obtain the approval of the CMA and, in relation to the company purchasing its shares; it must submit a report to the CMA detailing the reasons for such acquisition. It is important to note, that a sale or purchase by the company of its Treasury Shares can only be effected upon approval by the company's general assembly and, in the event that the sale of the Treasury Shares is to particular shareholders, those shareholders are prohibited in participating in any general assembly vote.

Finally, Chapter 14 sets forth explicit instructions on the accounting treatment with respect to Treasury Shares, including, amongst other things, that (i) such shares shall be recorded in the company's financial statements under the shareholders' equity and (ii) that the shares shall not be entitled to cash profits. Treasury shares are not included in the calculation of the required quorum for validity of the general assembly meeting and voting.

In conclusion, whilst the new CMA Rules are a welcomed change in Kuwait because they offer clearer guidance, companies desiring to transact in securities should pay close attention to the Rules to ensure strict compliance.