

# Client Alert:

## CMA New Executive Bylaws

### November 2015

On November 10th 2015, the Capital Markets Authority (the **CMA**) officially announced the new executive bylaws that have come into effect by virtue of CMA Resolution No. 72 of 2015. November 10th marks the same day the most recent Law No. 22 of 2015 (the CML **Amendment** which was enacted on May 10th 2015), comes into effect. The CML Amendment contains revisions of 64 out of the 165 articles that make up the CMA Law.

The CMA seized the opportunity to introduce substantial reform to its executive bylaws and processes. One of the goals of such major reforms is trying, as much as possible, to bring the regulatory framework of the capital markets in the State of Kuwait in line with IOSCO standards.

We aim here to give a brief background of the CMA law, as well as review the application and implications of the newly enforced executive bylaws.

#### ***The CML as amended in the recent years***

On February 21st 2010, a major change took place with regards to the regulation of capital markets activities in Kuwait; the National Assembly (the Kuwaiti parliament) enacted the Capital Markets Authority Law (the CML). The CML created the CMA, as a previously non-existent regulatory body, and provided a new legal framework which filled a much needed regulatory gap.

The CML in many views is considered to be one of the most complex laws in the recent history of Kuwait's legal system. This presented a serious problem when it came to the application and enforcement of the new law; especially given the rickety infrastructure of the capital market's regulation preceding the CMA, and the fact that the CML is closely connected and related to many other public and private laws. Therefore, when the law was enacted (prematurely and hastily), the transition to the new regulatory framework proved to be anything but smooth.

Hence, in the five years since its promulgation, the CML and its executive bylaws have seen the enactment of several other resolutions and regulations overseeing securities activities.

In terms of the CML Amendment, the overarching goal is to give the CMA more power to create rules. The CML Amendment defers quite heavily the bylaws and delegates several matters thereto. In addition, it enables the CMA to make additional rules and exceptions. The CML Amendment has altered many of the definitions within the CMA Law and adds new ones, in addition to solving several technical issues that have been identified.

The Amendment also aligns the CML with the various legislation enacted by the Kuwaiti parliament since its original enactment, including the New Companies Law of 2012, the Promotion of Investment Law of 2014 and the PPP Law of 2014.

#### ***The New Executive Bylaws***

The new executive bylaws adopt a handbook format (therefore, we will refer to bylaws as the **CMA Handbook**), moving away from the previous framework legislation structure under the 2011 bylaws - in an effort to consolidate all the rules regulating securities activities in one easily referenced place. The CMA Handbook includes 16 different

modules and a total of 1665 articles. The CMA has also published a supplement outlining previous resolutions that have been rendered void.

For the full list of bylaws, you can review the complete CMA Handbook online [here](#). The following are the 16 titles of each module of the CMA Handbook.

1. Definitions
2. The Capital Markets Authority
3. Enforcement of the Law
4. Exchanges and Clearing Agencies
5. Capital Markets Activities and Registered Persons
6. Internal Policies and Procedures for Licensed Persons
7. Clients' Funds and Assets
8. Conduct of Business
9. Mergers and Acquisitions
10. Disclosures and Transparency
11. Dealing in Securities
12. Listing Rules
13. Collective Investment Schemes
14. Market Practices
15. Corporate Governance
16. Anti-Terrorism and Anti-Money Laundry

### ***Regulatory timeline for transitional rules***

With the publication of the CMA Handbook, the CMA has put forth a clear and detailed timeline to ensure a seamless transition to the new regulatory framework completely by May 2017. The following is the summary of this timeline:

#### **10 November 2015:**

- Immediate effect of any rule conferring a binding legislative capacity whether by virtue of the CML or the CML Amendment or any other law or regulation that is incorporated by reference.

#### **December 2015:**

- Clearing agencies: satisfying all licensing requirements

#### **January 2016:**

- Stock Exchanges: commencement of delivering annual disclosures
- Trading percentage of persons exhibiting control: calculation of the periods prescribed for the purchase and sale allowed for a person exhibiting control over a publically traded company
- Funds: providing the CMA with template of the Monthly Data as outlined in Appendix 5 of Module 13

#### **June 2016:**

- Corporate governance: Module 15 (Corporate Governance) will come into effect.

#### **October 2016:**

- Licensed Persons: Satisfying capital requirements and legal form.

#### **November 2016:**

- Funds: licensed existing funds must take the following actions:
  - Appointment of a management body/committee for the fund and dissolution of the board of directors of the funds.

- Amendment of the definition of an "investment unit" in the constitutive documents (i.e. the fund's articles of association) of "investment unit"
- Transfer of records of unit holders from the fund manager to the clearing agency or custodian
- The new requirements for the Unit Holders Meetings come into effect.
- The new requirements regarding investment controls in accordance with the fund type, come into effect.
- Satisfaction of the requirements outlined in paragraph (2) of Article (2-11) regarding the fact that the investment auditor, the external auditor or the external Sharia audit office must not be connected to the fund manager.
- Market Maker: the clearing agencies must complete application of the regulations and procedures necessary to for the functioning of the market maker, and the stock exchanges must issue the technical guidelines for the functioning of the market maker.
- Licensed Persons: the companies licensed by the CMA must meet the new requirements set forth in Modules 5, 7 and 8

#### **May 2017:**

- Listing Rules: end of exemption period for currently listed companies from the application of clause (2) of Article (2-7-2) and item (1A) of Article (1-8-2) of Module 12

#### **Conclusion**

The CMA Handbook has set a very positive precedent on how regulators should engage stakeholders in the development of regulation. During the development phase of the Handbook, the CMA has consulted the public (albeit for a shorter period of time than other countries that adopt a public consultation and commentary approach to regulatory changes) and solicited feedback on an exposure draft of the Handbook.

It remains to be seen what shape the enforcement of this substantial regulatory reform would take in light of, among other things, the backlash from various publically traded companies that have recently chosen to voluntarily delist. The CMA has in fact seems to be shifting towards a more transparent approach and intends to host regular workshops to bring the various stakeholders up to speed with the new changes.

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#### **About The International Counsel Bureau (ICB)**

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