

# Offering Securities in the Kingdom of Saudi Arabia

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## Background

On 6 October 2019, the Saudi Arabian Capital Market Authority (the CMA) published the amended Rules on the Offer of Securities and Continuing Obligations (the ROSCO), which were approved by CMA Board Resolution No. 1-104-2019 dated 01/02/1441H (corresponding to 30 September 2019). In the same Board Resolution, the CMA Board also approved the amended Listing Rules (the “Listing Rules”) of the Saudi Stock Exchange (“Tadawul”).

This article sets out a high-level overview of the new legal framework governing the offering of securities in the Kingdom of Saudi Arabia (the “Kingdom”).

## Legal Framework

The primary legislation regulating the offering of securities in the Kingdom is the Capital Market Law (issued by Royal Decree No. M/30 dated 2/6/1424H corresponding to 31 July 2003), under which the CMA is tasked with the implementation and enforcement of the Capital Market Law, including by way of issuing implementing regulations.

The ROSCO contains a detailed legal framework governing the offering of securities in the Kingdom and must be read in conjunction with the Listing Rules and other implementing regulations issued by the CMA such as:

- the Authorised Persons Regulations approved by CMA Board Resolution No. 1-83-2005 dated 21/05/1426H (corresponding to 28 June 2005), as amended;
- the Corporate Governance Regulations approved by CMA Board Resolution No. 8-16-2017 dated 16/5/1438H (corresponding to 13 February 2017), as amended;
- the Instructions of Book Building Process and Allocation Method in Initial Public Offerings approved by CMA Board Resolution No. 2-94-2016 dated 15/10/1437H (corresponding to 20 July 2016), as amended (the “Book Building Instructions”); and
- the Instructions on the Price Stabilisation Mechanism in Initial Public Offerings approved by CMA Board Resolution No. 4-87-2018 dated 24/11/1439H (corresponding to 6 August 2018) (the “Price Stabilisation Instructions”).

## What Constitutes an Offering of Securities?

Securities are defined broadly and include:<sup>1</sup>

- shares;
- debt instruments;
- warrants;
- certificates;
- units;
- options;
- futures;
- contracts for differences;
- long-term insurance contracts; and
- any right to, or interest in, any of the foregoing.

Article 1(b) of the ROSCO states that offering securities means:

- issuing securities;
- inviting the public to subscribe in securities or the direct or indirect marketing of securities; or
- any statement, announcement or communication that has the effect of selling, issuing or offering securities.

Preliminary negotiations or contracts entered into with or among underwriters do not constitute an offering of securities for the purposes of the ROSCO. In addition, the ROSCO do not apply to the offering of units in investment funds. The latter are regulated by:

- the Investment Funds Regulations approved by CMA Board Resolution No. 1-219-2006 dated 3/12/1427H (corresponding to 24 December 2006), as amended;
- the Real Estate Investment Funds Regulations approved by CMA Board Resolution No. 1-193-2006 dated 19/6/1427 (corresponding to 15 July 2006); and
- the Real Estate Investment Traded Funds Instructions approved by CMA Board Resolution No. 6-130-2016 dated 23/1/1438H (corresponding to 24 October 2016), as amended.

<sup>1</sup> Glossary of Defined Terms Used in the Regulation and Rules of the Capital Market Authority approved by CMA Board Resolution No. 4-11-2004 dated 20/8/1424H (corresponding to 4 October 2004), as amended.

## Types of Offers of Securities

Securities may be offered in the Kingdom by way of:

- an exempt offer;
- a private placement offer;
- a public offer; or
- a Parallel Market offer.

## Exempt Offer

Article 6 of the ROSCO lists eight cases that qualify as exempt offers, meaning such cases are not subject to the requirements of the ROSCO (e.g., approval of the CMA or publication of a prospectus). The only legal requirement is for the offeror or the authorised person<sup>2</sup> (if the offer is carried out through an authorised person), when making an exempt offer, to notify the CMA by providing the information set out in Articles 6(b)<sup>3</sup> and 6(c)<sup>4</sup> of the ROSCO.

The following constitute exempt offers:

- where the securities are issued by the government of the Kingdom;
- offers of contractually-based securities;<sup>5</sup>
- where an issuer whose shares are not listed on Tadawul increases its capital by offering new shares to existing shareholders;
- where the offeree is an affiliate<sup>6</sup> of the issuer, unless it is an offer of a class of shares that is listed on Tadawul;

<sup>2</sup> A person authorised by the CMA to carry on securities business (e.g., dealing, managing, arranging, advising or custody) in the Kingdom in accordance with the Authorised Persons Regulations issued by CMA Board Resolution No. 1-83-2005 dated 21/05/1426H (corresponding to 28 June 2005), as amended. The list of the authorised persons can be found at <https://cma.org.sa/en/Market/AuthorisedPersons/Pages/default.aspx>.

<sup>3</sup> This includes: the type of exempt offer, the categories of offerees (e.g. sophisticated investors, employees), the amount paid by each offeree category in Saudi Riyals, the start and end dates of the offering, the name and nationality of the offeror, the price paid for each security, the type of security and the total size of the offering.

<sup>4</sup> In relation to ongoing offerings, the notification needs to state the expected date of completion of the offering.

<sup>5</sup> These are options, futures, contracts for differences, long-term insurance contracts and any right to or interest in any of the foregoing.

<sup>6</sup> Affiliate is defined by the CMA as a person who controls another person or is controlled by that other person, or who is under common control with that person by a third person. In any of the preceding, control could be direct or indirect. Control is defined by the CMA as the ability to influence the actions or decisions of another person through, whether directly or indirectly, alone or with a relative or affiliate (a) holding 30% or more of the voting rights in a company, or (b) having the right to appoint 30% or more of the members of the governing body.

- where all of the offerees are employees of the issuer or of any of its affiliates, unless it is an offer of a class of shares that is listed on Tadawul;<sup>7</sup>
- offers in an insolvency situation where shares are offered to creditors;
- where an issuer whose shares are not listed on Tadawul increases its capital by way of debt conversion;<sup>8</sup> and
- where the total value of the subscription in the securities being offered is less than SAR 10 million (or an equivalent amount), an offer is made in accordance to the following conditions:
  - the offer must not be made more than once during the 12 months after the completion of the offeror’s previous offer under this exempt category;
  - subscription in the offered securities must not exceed 50 offerees (excluding sophisticated investors<sup>9</sup>) provided that the amount payable per offeree (excluding sophisticated investors) must not exceed SAR 200,000 (or an equivalent amount); and
  - any person who participates in the subscription for such offered securities (excluding sophisticated investors) must

<sup>7</sup> This will cover an offering of shares pursuant to an employee share plan by a Saudi unlisted joint stock company or by a foreign listed parent company to the employees of its Saudi subsidiary or affiliate.

<sup>8</sup> This will, for example, apply to a capitalisation of a debt by a Saudi unlisted joint stock company.

<sup>9</sup> Article 9 of the ROSCO provides that the offering of securities to the following persons will qualify as an offer of securities to sophisticated investors: (i) the Government of the Kingdom, any supranational authority recognised by the CMA, Tadawul (and any other stock exchange recognised by the CMA) or the Securities Depository Center (which is the sole entity in the Kingdom responsible for providing securities deposit, settlement, clearing and registering ownership of securities traded on Tadawul); (ii) institutions acting for their own account (institutions are defined as: (1) any company which owns, or which is a member of a group which owns, net assets of not less than SAR 10 million; (2) any unincorporated body, partnership or other organisation which has net assets of not less than SAR 10 million; and (3) any person (“A”) whilst acting in the capacity of director, officer or employee of a person (“B”) falling within items (1) or (2) above where A is responsible for B undertaking any securities activity); (iii) authorised persons acting for their own account; (iv) clients of an authorised person licensed to carry out management activities, provided that the offer is made to that authorised person and all relevant communications are made through the authorised person and the authorised person has been engaged on terms which enable it to make decisions concerning the acceptance of private offers of securities on the client’s behalf without reference to the client; (v) registered persons (*i.e.*, persons who are registered with the CMA to perform a registrable function (*e.g.*, CEO, finance manager, director or senior officers/managers)) of an authorised person (if the offer was carried out through that authorised person itself); (vi) professional investors; or (vii) any other persons prescribed by the CMA. A professional investor is defined as any individual who fulfils at least one of the following conditions: (i) he/she has carried out at least ten transactions per quarter over the last 12 months of a minimum total amount of SAR 40 million on securities markets; (ii) his/her net assets are not less than SAR 5 million; (iii) he/she works or has worked for at least three years in the financial sector in a professional position which requires knowledge of securities investment; (iv) he/she holds a professional certificate that is related to securities business and accredited by an internationally recognised entity; or (v) he/she holds the General Securities Qualification Certificate that is recognised by the CMA and has an annual income of not less than SAR 600,000 in the last two years.

issue a declaration to the offeror or the authorised person (if the offer is carried out through an authorised person) acknowledging (i) the risks associated with the investment, including that it may result in loss of the full amount of the investment, (ii) that the CMA will not give any assurance as to the accuracy and completeness of the documents related to the offering or its completeness, and expressly disclaim any liability whatsoever for any loss arising from, or incurred in reliance upon, any part of the offer documents, and (iii) that the offeror or the authorised person does not have to notify the CMA of the suitability of such an investment.

### Private Placement Offer

An offer of securities is a private placement where it is not an exempt offer, public offer or a Parallel Market offer and falls under any of the following categories:

- the subscription is restricted to sophisticated investors<sup>10</sup>; or
- the offer is a limited offer.

An offer of securities is a limited offer if the subscription is limited to no more than 100 offerees (excluding sophisticated investors) and the minimum amount payable per offeree is not less than SAR 1 million or an equivalent amount in other currencies. The minimum amount payable per offeree may be less than SAR 1 million where the total value for the offered securities does not exceed SAR 5 million.

The ROSCO require that any private placement must be made through an authorised person licensed to carry out arranging activity and the offeror notifies the CMA at least ten days prior to the proposed offer date and submits a private placement notification<sup>11</sup> and the declarations by the

<sup>10</sup> See footnote 9 above.

<sup>11</sup> The private placement notification must state, among others: (i) the names of the issuer and the offeror, their principal place of registration and the address of their principal place of the business; (ii) the name and address of the authorised person whom the offer is made through; (iii) the proposed start and end dates of the offer; (iv) the class of securities to be offered; (v) the offer price for each security offered in Saudi Riyals; (vi) the total size of the offer in Saudi Riyals; and (vii) the minimum amount (if any) to be paid by each offeree.

offeror<sup>12</sup> and the authorised person<sup>13</sup> prescribed by Article 11(a)(2) of the ROSCO and copies of any offering documents to be used in the advertising the offer.

The offeror is also required to make a post-closing filing within ten days of closing of the offer period informing the CMA of the persons who have acquired the securities and the total proceeds of the offer.

### Public Offer

Below is a summary of key provisions of the ROSCO, the Listing Rules, the Book Building Instructions and the Price Stabilisation Instructions regarding an initial public offering of shares (IPO) on the Main Market of Tadawul.<sup>14</sup>

<b>Conditions for a Public Offer of Shares</b>	<ul style="list-style-type: none"> <li>• The issuer must be a joint stock company.<sup>15</sup></li> <li>• The issuer must prepare a prospectus.</li> <li>• The issuer must have been carrying on, either by itself or through one or more of its subsidiaries, the same activity for at least the previous three financial years.</li> <li>• The issuer must have audited financial statements that cover at least the previous three financial years, which were prepared in accordance with the accounting standards adopted by the Saudi Organisation of Certified Public Accountants (SOCPA).<sup>16</sup> If the period covered by the most recent audited financial statements has ended more than six months prior to the expected date of approval of the IPO, the issuer must submit to the CMA reviewed interim financial statements covering the period from the date of the latest audited financial statements until the expected date of approval of the IPO or audited annual financial statements<sup>17</sup> (as applicable).</li> <li>• Where the issuer has undergone a material restructuring, an IPO application may not be submitted until one full financial year<sup>18</sup> has passed</li> </ul>
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<sup>12</sup> The offeror must submit a declaration in the form set out in Annex 3 of the ROSCO, which essentially contains the offeror's confirmation that all the relevant conditions for the intended private placement have been satisfied and that the information contained in the private placement notification and the offering documents is fair, accurate and not misleading.

<sup>13</sup> The authorised person must submit a declaration in the form set out in Annex 4 of the ROSCO, which essentially contains the authorised person's confirmation that the offeror has satisfied all the relevant conditions for making the intended private placement and has submitted or will submit all the information and documentation required to be provided to the CMA under the ROSCO in connection with the private placement.

<sup>14</sup> The ROSCO and the Listing Rules contain detailed provisions regarding the offering of debt instruments and financing transactions using Special Purpose Entities. These are beyond the scope of this article.

<sup>15</sup> If the issuer is a limited liability company or a sole proprietorship (establishment), it must be converted to a joint stock company prior to the IPO application.

<sup>16</sup> SOCPA has adopted International Financial Reporting Standards (IFRS). All Saudi listed companies are required to apply IFRS for financial periods beginning on or after 1 January 2017, and all unlisted entities for financial periods beginning on or after 1 January 2018.

<sup>17</sup> Including the balance sheet, statement of income, statement of cash flow and statement of changes in shareholders' equity.

<sup>18</sup> If, for example, the issuer completes a material restructuring in July 2020, it will have to wait until 2022 before making an IPO application.

	<p>from the date of completion of such material restructuring. Material restructuring means:</p> <ul style="list-style-type: none"> <li>• disposing any of the issuer’s assets that generated 30% or more of the issuer’s revenue or net income as per the most recent audited annual financial statements;</li> <li>• acquiring assets with a value exceeding 30% or more of the net asset value of the issuer as per the most recent audited annual financial statements; or</li> <li>• acquiring a company with shareholders equity constituting 30% or more of the issuer’s shareholders equity as per the most recent audited annual financial statements.</li> </ul> <ul style="list-style-type: none"> <li>• The senior executives of the issuer must have appropriate expertise and experience for the management of the issuer’s business.</li> <li>• The issuer must, on its own or with its subsidiaries (if any), hold sufficient working capital to continue operating for at least the 12 months immediately following the date of publication of the prospectus.<sup>19</sup></li> </ul>
<p><b>Listing Conditions for Shares</b></p>	<ul style="list-style-type: none"> <li>• Shares must: <ul style="list-style-type: none"> <li>• conform with the statutory conditions in the Kingdom;<sup>20</sup></li> <li>• be duly issued according to the requirements of the issuer’s bylaws or any other constitutional documents, as applicable; and</li> <li>• be freely transferable and tradable.</li> </ul> </li> <li>• There must be a sufficiently liquid market for the shares that are the subject of the application for listing: <ul style="list-style-type: none"> <li>• there are at least 200 public shareholders<sup>21</sup> at the time of listing; and</li> <li>• at least 30% of the class of shares that is the subject of the application must be owned by the public (<i>i.e.</i>, public shareholders) at the time of listing.</li> </ul> </li> </ul>

<sup>19</sup> The prospectus will contain a declaration by the issuer’s directors confirming that the issuer (individually or jointly with its subsidiaries, if any) has working capital sufficient for a period of at least 12 months immediately following the date of publication of the prospectus.

<sup>20</sup> Meaning the shares comply with the Companies Law and other applicable regulations.

<sup>21</sup> Public shareholders exclude: (i) affiliates of the issuer; (ii) substantial shareholders of the issuer (see footnote 28 below); (iii) directors and senior executives of the issuer; (iv) directors and senior executives of affiliates of the issuer; (v) directors and senior executives of substantial shareholders of the issuer; (vi) any relative (*i.e.* husband, wife and minor children) of any of the foregoing; (vii) any company controlled by any of the foregoing; or (viii) persons acting in concert, with a collective shareholding of (5%) or more of the class of shares to be listed.

	<ul style="list-style-type: none"> <li>• Where none of the shares of a particular class is listed, the application for listing must relate to all shares of that class issued or proposed to be issued.</li> <li>• At the date of listing, the expected aggregate market value of all shares to be listed must be at least SAR 300 million.</li> <li>• Shares whose listing has been approved, must be deposited with the Securities Depository Centre.<sup>22</sup></li> </ul>
<b>Appointment of Advisors</b>	The issuer must appoint a financial advisor licensed by the CMA and a legal advisor licensed to practise law in the Kingdom.
<b>Underwriting</b>	The offer of securities must be fully underwritten by underwriter(s) licensed by the CMA. <sup>23</sup>
<b>Application and Supporting Documents</b>	The issuer must simultaneously submit an application to the CMA and Tadawul, together with a draft prospectus and the supporting documents required by the ROSCO and the Listing Rules, respectively. The supporting documents include, among others, the constitutional documents of the issuer, its audited financial statements for the last three years, legal and financial due diligence reports prepared in connection with the IPO application, due care letters from the legal advisor and reporting accountants of the issuer and underwriting commitment letters. <sup>24</sup>
<b>Application Review Period and Approval</b>	<ul style="list-style-type: none"> <li>• The CMA will review the application within 45 days of receiving all required information and documentation.</li> <li>• Tadawul will review the application within ten days of receiving all required information and documentation.</li> <li>• Tadawul's approval of the application will be conditional on receiving the CMA's approval. Upon issuance of the CMA's approval, Tadawul's approval becomes unconditional and final.</li> </ul>
<b>Prospectus</b>	<ul style="list-style-type: none"> <li>• The prospectus must be prepared in Arabic.</li> <li>• The issuer must not publish the prospectus without obtaining the CMA's approval for the IPO.</li> <li>• The issuer must publish the prospectus and must ensure that it is made available to the public at least 14 days prior to the start of the offering period.</li> <li>• The issuer and its financial advisor may prior to the CMA's approval of the IPO provide information on the issuer and its financial statements to: <ul style="list-style-type: none"> <li>• potential investors to ascertain investor appetite to invest in the issuer's shares provided that this does not result in the issuer taking binding undertakings or</li> </ul> </li> </ul>

<sup>22</sup> This means the listed shares must be uncertificated (electronic) and placed in the issuer's account at the Securities Depository Centre. The electronic settlement of trades on Tadawul is done via the Securities Depository Centre.

<sup>23</sup> This will be a firm commitment (hard) underwriting, whereby the underwriter guarantees to purchase all of the securities being offered by the issuer regardless of whether or not the issuer can sell them to investors.

<sup>24</sup> The full list of the supporting documents required to be submitted by the issuer is contained in Article 29 of the ROSCO and Article 16 of the Listing Rules.

	<p>commitments from such investors to subscribe for its shares; and</p> <ul style="list-style-type: none"> <li>• authorised persons for the purpose of preparing research and financial reports on the issuer, provided that such reports must not be published before obtaining the CMA’s approval for the IPO.</li> </ul>
<b>Book Building</b>	<ul style="list-style-type: none"> <li>• The book-building process is run by the financial advisor. Only certain types of institutional investors<sup>25</sup> are eligible to participate as bidders in the book-building process.</li> <li>• IPO shares may only be offered to institutional investors during the book-building process. The book-building process begins after the CMA approves the prospectus. The duration of the book-building process cannot exceed 14 calendar days, during which time the issuer and financial advisor are expected to set a price range, conduct investor roadshows, complete the book building and set the offer price.</li> <li>• The CMA-approved prospectus will set out the proportions of the overall offering that are reserved for retail and institutional investors, respectively. The Book Building Instructions leave it to the financial advisor (in coordination with the issuer) to determine the allocation between the retail and institutional offering. The current practice is to allocate up to 10% of the offering to retail investors and the rest to institutional investors.<sup>26</sup></li> </ul>

<sup>25</sup> The following persons (defined as “Participating Parties” in the Book Building Instructions) are eligible to participate in book-building: (i) public and private funds that invest in securities listed on Tadawul as permitted by the fund’s terms and conditions and in accordance with the Investment Funds Regulations; (ii) authorised persons who are licensed to deal as a principle; (iii) clients of an authorised person who is licensed to conduct managing activities provided that (1) the authorised person has been appointed on terms which enable it to make decisions concerning the acceptance of the participation in the offering and investing in Tadawul listed securities on the client’s behalf without reference to the client and (2) the participation in book building and all related communication must be directed through the authorised person; (iv) any legal persons allowed to open an investment account in the Kingdom (an “investment account” is an accounting record created by the authorised person for the purpose of the deposited client’s money in a client account opened by the authorised person to fund the client’s transactions in the securities and reflects all details of the client account) and an account with the Securities Depository Center); (v) Government entities, any supranational authority recognised by the CMA, Tadawul (or any other stock exchange recognised by the CMA) and the Securities Depository Center; (vi) Government-owned companies (i.e., companies fully owned by the government or any government entity (including legal persons affiliated to one of the GCC countries)), whether investing directly or through a portfolio manager; and (viii) GCC companies (i.e., companies that have the nationality of one of the GCC countries, and are incorporated according to the companies law of such country, and which the majority of its capital is owned by citizens of the GCC countries or their governments), and GCC funds (i.e., the investment funds, which have legal personality that are established in one of the GCC countries, and their units are publicly or privately offered to investors in these countries according to the regulations in these countries, and the majority of their capital is owned by citizens of GCC countries or their governments) if the terms and conditions of the fund permit that.

<sup>26</sup> In the recent IPO on the Main Market of Dr. Sulaiman Al-Habib Medical Services Group Company, the IPO prospectus stated that the offering of IPO shares (up to 10% of the total offering) to retail investors was conditional on institutional investors covering 100% of the IPO shares during the book-building process. Institutional investors were to be initially allocated 100% of the IPO shares. If there was sufficient demand by retail investors, the financial advisor was allowed to reduce the allocation to institutional

	<ul style="list-style-type: none"> <li>• Before any shares are offered to retail investors, the offer price is set by reference to the institutional book-building process. Retail investors may participate in the IPO at the offer price. Shares are allocated to retail investors on a pro rata basis while the allocation of shares to institutional investors is determined by the financial advisor in coordination with the issuer.</li> </ul>
<b>Price Stabilisation</b>	<ul style="list-style-type: none"> <li>• Price stabilisation and market making to help stabilise the after-market share price and maintain liquidity in the issuer's shares are permitted in the Kingdom.<sup>27</sup></li> <li>• The price stabilisation period must not exceed 30 calendar days from the first day of listing of the IPO shares on Tadawul.</li> <li>• The over-allotment option for price stabilisation must not exceed 15% of the IPO of shares.</li> <li>• Price stabilisation must be conducted at a price not exceeding the lower of (i) the IPO price and (ii) a price not exceeding 2% of the last trading price.</li> </ul>
<b>Offering Timetable</b>	<p>A typical offering timetable will include the following milestones:</p> <ul style="list-style-type: none"> <li>• Prospectus is published and made available to the public at least 14 days prior to the start of the offering period.</li> <li>• Book building period for institutional investors, which usually lasts seven to ten days (but cannot exceed 14 calendar days).</li> <li>• Offering period for retail investors, which usually lasts seven days.</li> <li>• Deadline for submission of subscription application forms based on the provisionally allocated IPO shares for institutional investors.</li> <li>• Deadline for payment of the subscription monies by institutional investors based on their provisionally allocated IPO shares.</li> </ul>

investors to 90% of the IPO shares and refund the subscription money to institutional investors in respect of the 10% allocated to retail investors. It seems that the previous practice of requiring the entire IPO offering to be pre-funded by institutional investors participating in the book-building process before the retail offering is still followed despite the Book Building Instructions removing the legal requirement to do so.

<sup>27</sup> In the recent IPO of Saudi Arabian Oil Company (Saudi Aramco), Goldman Sachs Saudi Arabia (GSSA) acted as stabilising manager. The Saudi Arabian Government (the "Selling Shareholder") granted GSAA an over-allotment option in respect of 450,000,000 shares of Saudi Aramco at the IPO price of SAR 32. The over-allotment shares were allocated to investors during the book building process. GSSA (as stabilizing manager) also entered into a stock lending arrangement with the Selling Shareholder, pursuant to which GSSA was allowed to borrow from the Selling Shareholder, free of charge, up to 450,000,000 shares, for purposes of implementing price stabilization. GSSA did not acquire any shares from the market during the stabilisation period and instead exercised the full over-allotment option, thereby effectively acquiring the 450,000,000 over-allotment shares, which had been borrowed under the stock lending agreement.

	<ul style="list-style-type: none"> <li>• Deadline for submission of subscription application forms and payment of the subscription monies by retail investors.</li> <li>• Announcement of the final allocation of IPO shares.</li> <li>• Refund of excess subscription monies (if any).</li> <li>• Expected trading commencement date for the issuer's shares on Tadawul.</li> </ul>
<b>Lock-up Period</b>	<ul style="list-style-type: none"> <li>• The substantial shareholders<sup>28</sup> of the issuer stated in the prospectus will not be permitted to dispose of any of their shares during a period of six months from the date on which the issuers' shares start trading on Tadawul, except where the prospectus states a longer lock-up period.</li> <li>• If the substantial shareholders have beneficial owners, then they will be required to provide an undertaking that they will procure that the registered holders of the relevant shares will not dispose of such shares during the lock-up period.</li> </ul>

### Public Offer of Securities Not Requiring a Prospectus

A prospectus is not required for the issue of further securities by an issuer whose securities are already listed on the Main Market of Tadawul in the following situations:

- the securities to be issued would increase the securities of a class already listed by no more than 10% in any 12-month period;
- shares issued as a result of a capitalisation issue;<sup>29</sup>
- an employee share scheme;
- shares issued as a result of the conversion of debt instruments that convert into shares already listed;
- shares issued as a result of a capital increase by conversion of debt, provided that a shareholders' circular must be produced in accordance with the ROSCO requirements;
- shares issued as a result of a capital increase that is made to acquire a company or purchase an asset provided that a shareholders' circular must be produced in accordance with the ROSCO requirements; or
- the split of shares already issued.

Where an issuer wishes to issue securities in any of the above situations, the issuer must still make an application for registration and offer to the

<sup>28</sup> A substantial shareholder is a person who holds 5% or more of any of the class of shares of the issuer.

<sup>29</sup> A capitalisation issue is an issue of new shares to existing shareholders, fully paid up out of the issuer's reserves, on a pro rata basis.

CMA in accordance with the requirements of the ROSCO. The relevant securities may not be issued prior to the approval of such application by the CMA.

### Cross-Listing

A summary of key provisions of the ROSCO and the Listing Rules regarding cross-listing of shares of foreign issuers on the Main Market is set out below.

<b>Conditions for Cross-Listing of Shares</b>	<ul style="list-style-type: none"> <li>• Currently, shares may only be cross-listed on the Main Market of Tadawul.<sup>30</sup></li> <li>• Tadawul may, in consultation and with the agreement of the CMA, approve the listing of shares of a foreign issuer listed on another regulated exchange if the country in which the shares of the foreign issuer are listed applies at least similar standards to those applied by the CMA and Tadawul.</li> <li>• At the date of submitting the application, the expected aggregate market value of all of the foreign issuer's shares must be at least SAR 300 million or an equivalent amount.<sup>31</sup></li> </ul>
<b>Appointment of Advisors</b>	<ul style="list-style-type: none"> <li>• The foreign issuer must appoint a financial advisor licensed by the CMA.</li> </ul>
<b>Application Review Period and Approval</b>	<ul style="list-style-type: none"> <li>• Tadawul will review the application within 45 days of receiving all required information and documentation.</li> <li>• Tadawul's approval of the application is conditional on receiving the CMA's non-objection notification for the proposed cross-listing.</li> <li>• The foreign issuer must list its shares within six months of Tadawul's approval of the cross listing application.</li> </ul>
<b>Cross-listing Document</b>	<ul style="list-style-type: none"> <li>• The foreign issuer must publish a cross-listing document within three trading days following the announcement of Tadawul's approval of the cross-listing application.</li> <li>• The cross-listing document must include the minimum information specified in the Listing Rules.</li> <li>• The cross listing document must be available for review for a period of not less than ten trading days prior to the date of cross-listing.</li> </ul>

<sup>30</sup> As of March 2020, there has been no cross listing on Tadawul. We note that the ordinary general meeting of Eshraq Investments, a company listed on the Abu Dhabi Securities Exchange (ADX), approved the cross-listing of the company's shares on Tadawul during its meeting on 5 January 2020 and authorised the board to implement the cross listing. It has been reported that Tadawul expects the first cross-listing to take place in 2020.

<sup>31</sup> Tadawul may, after the obtaining of CMA approval, allow the listing of shares of a lower aggregate market value if Tadawul is satisfied that there will be a sufficiently liquid market for the shares concerned.

### Parallel Market Offer

The Parallel Market (Nomu) of Tadawul caters for small- and medium-sized companies and family businesses with a minimum capitalisation of SAR 10 million and has relatively less stringent listing conditions. Only Qualified Investors<sup>32</sup> are allowed to invest in securities listed on the Parallel Market.

Below is a summary of key provisions of the ROSCO and the Listing Rules regarding an initial public offering of shares (IPO) on the Parallel Market.

<b>Conditions for a Public Offer of Shares</b>	<ul style="list-style-type: none"> <li>• The issuer must be a joint stock company.<sup>33</sup></li> <li>• The issuer must prepare a prospectus.</li> <li>• The issuer must have been carrying on, either by itself or through one or more of its subsidiaries, a main activity for at least one financial year.</li> <li>• The issuer must have audited financial statements that cover at least the previous financial year which were prepared in accordance with the accounting standards adopted by SOCPA. If the period covered by the most recent audited financial statements has ended more than six months prior to the expected date of approval of the IPO, the issuer must submit to the CMA audited interim financial statements covering the period from the date of the latest audited financial statements until the expected date of approval of the IPO or audited annual financial statements (as applicable).</li> </ul>
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<sup>32</sup> “Qualified Investors” means any of the following: (i) authorised persons acting for their own account; (ii) clients of an authorised person licensed to conduct managing activities provided that such authorised person has been appointed as an investment manager on terms which enable it to make decisions concerning the acceptance of an offer and investment in the Parallel Market on the client’s behalf without obtaining prior approval from the client; (iii) the Government of the Kingdom, any government body, any supranational authority recognised by the CMA or Tadawul, and any other stock exchange recognised by the CMA or the Securities Depository Centre; (iv) Government-owned companies, either directly or through a portfolio managed by a person authorised to carry out managing activities; (v) companies and funds established in a GCC member state (Note: Neither the ROSCO nor the Listing Rules nor the Glossary of Defined Terms clarifies whether such companies and funds must be wholly or majority owned by GCC nationals. It is assumed that they must be majority owned by GCC nationals and this will be consistent with the definition of Participating Parties in the Book Building Instructions—see item (viii) at footnote 24 above); (vi) Investment Funds authorised by the CMA; (vii) non-resident foreigners permitted to invest in the parallel market and who meet the requirements stipulated in the Guidance Note for the Investment of Non-Resident Foreigners in the Parallel Market (approved by CMA Board Resolution No. 4-95-2017 dated 26/01/1439H (corresponding to 16 October 2017), as amended); (viii) qualified foreign financial institutions; (ix) any other legal persons allowed to open an investment account in the Kingdom and an account at the Securities Depository Centre; (x) natural persons allowed to open an investment account in the Kingdom and an account at the Securities Depository Centre, and fulfil any of the following criteria: (1) he/she has conducted transactions in security markets of not less than SAR 40 million in total, and not less than ten transactions in each quarter during the last 12 months; (2) he/she has net assets is not less than SAR 5 million; (3) he/she works or has worked for at least three years in the financial sector; (4) he/she holds the General Securities Qualification Certificate which is recognised by the CMA; or (5) he/she holds a professional certificate that is related to securities business and accredited by an internationally recognised entity; or (xi) any other persons prescribed by the CMA.

<sup>33</sup> See footnote 15 above.

<p><b>Listing Conditions for Shares</b></p>	<ul style="list-style-type: none"> <li>• Shares must: <ul style="list-style-type: none"> <li>• conform with the statutory conditions in the Kingdom;<sup>34</sup></li> <li>• be duly issued according to the requirements of the issuer’s bylaws or any other constitutional documents, as applicable; and</li> <li>• be freely transferable and tradable.</li> </ul> </li> <li>• There must be a sufficiently liquid market for the shares that are the subject of the application for listing: <ul style="list-style-type: none"> <li>• there are at least 50 public shareholders<sup>35</sup> at the time of listing; and</li> <li>• at least 20% of the class of shares that are the subject of the application must be owned by the public (<i>i.e.</i>, public shareholders) at the time of listing or the market value of shares owned by the public at the time of listing is not less than SAR 30 million (whichever is less).</li> </ul> </li> <li>• Where none of the shares of a particular class is listed, the application for listing must relate to all shares of that class issued or proposed to be issued.</li> <li>• At the date of listing, the expected aggregate market value of all shares to be listed must be at least SAR 10 million.</li> <li>• Shares whose listing has been approved must be deposited with the Securities Depository Centre.<sup>36</sup></li> </ul>
<p><b>Appointment of Advisors</b></p>	<p>The issuer must appoint a financial advisor licensed by the CMA. Unless required by the CMA, the issuer is not obliged to appoint a legal advisor.</p>
<p><b>Underwriting</b></p>	<p>The offer of securities is not required to be underwritten.</p>
<p><b>Application Review Period and Approval</b></p>	<ul style="list-style-type: none"> <li>• The CMA will review the application within 30 days of receiving all required information and documentation.</li> <li>• Tadawul will review the application within ten days of receiving all required information and documentation.</li> <li>• Tadawul’s approval of the application will be conditional on receiving the CMA’s approval. Upon issuance of the CMA’s approval, Tadawul’s approval becomes unconditional and final.</li> </ul>
<p><b>Prospectus</b></p>	<ul style="list-style-type: none"> <li>• The prospectus must be prepared in Arabic.</li> <li>• The issuer must not publish the prospectus without obtaining the CMA’s approval for the IPO.</li> <li>• The issuer must publish the prospectus and must ensure that it is made available to the public at least 14 days prior to the start of the offering period.</li> </ul>

<sup>34</sup> See footnote 20 above.

<sup>35</sup> See footnote 21 above.

<sup>36</sup> See footnote 22 above.

	<ul style="list-style-type: none"> <li>The issuer and its financial advisor may prior to the CMA's approval of the IPO provide information on the issuer and its financial statements: <ul style="list-style-type: none"> <li>potential investors to ascertain investor appetite to invest in the issuer's shares provided that this does not result in the issuer taking binding undertakings or commitments from such investors to subscribe for its shares; and</li> <li>authorised persons for the purpose of preparing research and financial reports on the issuer, provided that such reports must not be published before obtaining the CMA's approval for the IPO.</li> </ul> </li> </ul>
<b>Book Building</b>	<ul style="list-style-type: none"> <li>The Book Building Instructions do not apply to Parallel Market IPOs.</li> <li>The book-building process is run by the financial advisor. The price determination and allocation of shares to participating Qualified Investors follows largely the Main Market book-building practice.</li> <li>The IPO shares are placed by the financial advisor on a best efforts basis during the book-building stage. There is no retail offering in a Parallel Market IPO.</li> </ul>
<b>Lock-up Period</b>	<ul style="list-style-type: none"> <li>The substantial shareholders of the issuer stated in the prospectus will not be permitted to dispose of any of their shares during a period of 12 months from the date on which the issuers' shares' trading first commences on Tadawul, except where the prospectus states a longer lock-up period.</li> <li>If the substantial shareholders have beneficial owners, then they will be required to provide an undertaking that they will procure that the registered holders of the relevant shares will not dispose of such shares during the lock-up period.</li> </ul>

### Direct Listing on the Parallel Market

The ROSCO and the Listing Rules now allow small-sized companies to directly list their shares on the Parallel Market without conducting any offering. The eligibility criteria, liquidity conditions, approval and listing process, appointment of financial advisor and document requirements<sup>37</sup> applicable to a Parallel Market IPO largely apply to a direct listing of shares on the Parallel Market. The Listing Rules permit a direct listing even where an issuer does not meet the liquidity conditions<sup>38</sup> if the issuer meets the following requirements:

<sup>37</sup> An issuer seeking a direct registration is required, among other conditions, to prepare a registration document, the content of which is similar to that of a prospectus for a Parallel Market offering.

<sup>38</sup> Meaning: (i) 50 public shareholders; and (ii) 20% free float or the market value of shares owned by the public is not less than SAR 30 million (whichever is less).

- The issuer submits to Tadawul a liquidity plan for satisfying the liquidity requirements for a period of 12 months following the listing of the shares on the Parallel Market in the form specified in the Listing Rules.
- The issuer appoints an authorised person for the purpose of satisfying the liquidity requirements for the shares subject to the direct listing application, in accordance with the following:
  - the authorised person must be authorised by the CMA to conduct a managing activity in a way that enables the authorised person to sell the issuer's shares at its own discretion; and
  - the agreement between the issuer and the authorised person must include the obligation of the authorised person to execute the liquidity plan.
- The issuer must submit monthly reports to Tadawul regarding the execution of the liquidity plan as well as announce to the market, after the completion of the 12-month period, the extent of satisfaction of the liquidity requirement.

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