

The Capital Markets Authority Law An Introduction

A significant turning point for Kuwait?

Abdul Aziz A. Al-Yaqout, Regional Managing Partner Middle East

Kuwait Chamber of Commerce

10 June 2010

- Between Self Regulation and No Regulation
- The IOSCO Financial Sector Assessment
- What lack of regulations can lead to
- What regulations can achieve
- Objectives of the CMA Legislation
- Key Areas of the CMA Legislation

- Regulated by
 - Market Committee/KSE - Protecting investors and organising and developing the securities market
 - MOCI (Companies Department) - Licensing intermediaries and regulating and supervising the primary market
 - CBK - Collective Investment Schemes & Investment Companies
- Fragmented regulatory powers
- No sufficient formal coordination procedures
- No reliability as to information on regulatory changes
- Regulatory system does not explicitly and clearly recognise and organise self-regulation

- Existing regulations:
 - focus on organising the secondary market
 - lack of sufficient protective measures at the issuing stage
 - no clear prudential rules and regulations regarding standards of conduct, ethics and avoidance of conflicts of interest
 - insufficient in respect of standards for market entry and proper prerequisites for licensing of intermediaries
 - no real deterrent for market manipulation or insider trading
 - no transparency
 - limited disciplinary actions

- International Organisation of Securities Commission (2004)
- Of the 30 principles set out by the IOSCO only 25 were deemed partly implemented and 5 not implemented
- None were deemed fully implemented or even broadly implemented
 - Responsibilities of the regulators are clearly stated
 - Regulator is operationally independent and accountable
 - Proper powers, resources and capacity of the regulator
 - Clear and consistent regulatory process
 - Highest professional standards and appropriate standards of confidentiality

- Marginal role of capital markets as source of medium and long-term finance
- Limited volume of issued stocks
- Finance that is mainly provided by banks at higher cost
- Few true institutional investors
- Limited penetration of foreign investment
- Leaves room for corruption and mismanagement
- Higher systemic risk

- Saudi Arabia as an example
 - Higher liquidity
 - Prompt disclosure of relevant information
 - Qualitative jump in stocks that dominate trading
 - Drop in complaints
 - Higher number of regulated intermediaries

- Working group, headed Dr. Amani Burousli, appointed by the cabinet in April 2006
- The concept of an independent market regulator was approved by the Kuwait Parliament in May 2006
- Draft law versions commented and amended by various public and private sector institutions, scholars and practitioners
- Law No. 7 of 2010 was approved by the National Assembly on 2 February 2010 and came into effect on 28 February 2010 with its promulgation in the official gazette
- Next steps: announcement of the members of the Authorized Council, to be followed the issuance of the executive bylaws

- Regulate Market Activity
- Promote Transparency
- Instil Fairness
- Educate the public of risks and obligations
- Enforcement of penalties against violators

- Independent entity with legal personality
- Under the umbrella, but not supervision, of the Ministry of Commerce and Industry
- To be managed by the Authorised Council, consisting of 5 individual nominated by the Minister of Commerce and Industry
- Independent Budget
- Employees of the CMA entitled to act as judicial officers
- A bespoke commercial, criminal, criminal and administrative court system

- Oversight of the Stock Exchange
- Definition of the role of a Stock Exchange
- Oversight of market intermediaries (clearing agencies, brokers, investment managers and trustees)
- Oversight of collective Investment schemes
- Account Auditing and Record Keeping
- Takeover Rules
- Minority Shareholder Protection
- Prospectus Rules
- Disclosure Rules
- Penalties and Disciplinary Actions

- Minimum of 5 years
- Apply minimum standards of recording of transactions that allow proper accounting and auditing
- Appoint within one month of having been granted a license an accounts auditor approved by the CMA
- Notify the CMA within 7 days of the appointment and of any changes to the appointment

- Defined as the offer, attempt or request to acquire
 - all shares of a listed company or all shares of any category within a listed company, or
 - shares that would lead to a majority stake, allowing for a control of the board (exact thresholds still to be defined)
- Acquisition of more than 30% of the shares of a listed company
- Process
 - Submittal of offer to CMA and Issuer (who can opine)
 - Approval of the CMA required
 - Specific rules are still to be defined
- Minority Rights are still to be defined

- Shareholder obtaining 5% or more must disclose this interest within 5 business days to the stock exchange
- A listed company shall at all times publish the names of all shareholders holding 5% or more as well any changes to these shareholdings
- A shareholder must disclose to the stock exchange within 5 days of any change of 0,5% or more to his shareholding, if it has been subject of publication
- A shareholder must disclose to the stock exchange any change that will result in their holding being reduced to below 5% of the company's capital
- Directors of listed companies must disclose any interest in the stocks of the company, regardless of the percentage of ownership

- A commercial, civil, criminal and administrative court system has already been set up
- The disciplinary tribunal may take various actions against violators, ranging from warnings to suspension or revocation of licenses
- Disciplinary tribunal can require the violator to pass qualification exams
- Fines up to a maximum of KD 100,000.
- Imprisonment up to a maximum of 5 years.

Thank you for your attention!



The Capital Market Authority Law An Introduction

A significant turning point for Kuwait's capital market?

Abdul Aziz A. Al-Yaqout, Regional Managing Partner Middle East

Kuwait Chamber of Commerce

10 June 2010