



EVERYTHING MATTERS

# Capital Market Oversight in Europe

*Andreas Erm – Senior Associate – DLA Piper, Frankfurt*

*Kuwait Chamber of Commerce, Al Boom Hall, 11th Floor.*

*Thursday 10 June 2010*

## **Topics:**

- European regulations**
- German regulations**
- Comparison with the Capital Market Bill of Kuwait**

- The Term "Directive"
  
- The important Directives
  - Collective Investments
    - Markets in Financial Instruments Directive (MiFID)
    - Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
    - Alternative Investment Fund Managers Directive
  - Banking Directive

- MiFID provides harmonised regulation for investment services across the 30 EU member states
- Key aspects:
  - Authorisation, regulation and passporting
  - Client categorisation
  - Client order handling
  - Pre-trade transparency
  - Post-trade transparency
  - Best execution rules

- The aim is to allow collective investment schemes to operate freely throughout the EU on the basis of a single authorisation from one member state.
- European lawmaker works on the regulation of Alternative Investment Fund Managers Directive
- Throughout Europe approximately 6.8 trillion Euro are invested in collective investments. Of these funds about 76% are UCITS.

- Rules concerning the taking up and pursuit of the business of credit institutions, and their prudential supervision
- All mentioned Directives MiFID, UCITS, Banking Directive and the AIFM form a part of the so called **European Passport** that enables licensed companies to act all over Europe under the supervision of their home Member State.

- Börsengesetz (Stock Exchange Act)
- Wertpapierhandelsgesetz (Securities Trading Act)
- Kreditwesengesetz (German Banking Act)

- **Authorities structure**
  - Located under the Ministry of Commerce and Finance
  - Organisation similar to Europe
  
- **Authorities competences**
  - Regulation of capital markets activities
  - Supervision to reduce risks

- Stock exchange authorization required
- Supervised by the competent authority
- Common understanding of the organization of a stock exchange in Kuwait and Germany

- Licensed Institution under the Banking Directive and the German Banking Act
- The European rules are comparable to the Capital Markets Bill
- Minimum capital requirement - 5 Million Euro.

- Europe: Authorization requirements and licensing procedure are regulated in the MiFID
  
- Germany
  - German Banking Act
  - Securities Trading Act
  
- Difference to Kuwait
  - In Europe it is possible to apply for a license concerning more than two regulated activities

- The Capital Markets Bill rules the possibility of the Capital Markets Authority to refuse its approval if certain conditions are not met.
  
- Difference between Kuwait and Germany:
  - Objection rights are only regulated in the Antitrust Act
  - Not in the Capital Markets regulatory Acts.
  
- Exception: Acquisition of an Institution (MiFID / Banking Directive)

- In Europe Investment funds are mainly UCITS funds, based on the UCITS Directive
- But what did happen in Europe?
- The control mechanisms partly failed and supervisory has to be enforced.
- One consequence: Alternative Investment Fund Managers Directive

- Sanctions classified in the MiFID Directive
- Sanctions concerning the violation of the rules of the German Securities Trading Act:
  - Imprisonment of up to 5 years
  - Fines in a range between an amount of 50.000 Euro and 1 Million Euro.
- Difference to Kuwait: no Special Courts established in Europe

- The Capital Markets Bill regulates similar to the European and German situation the key points for an effective Capital Market Supervision.
- The possibility to regulate the details with bylaws is an effective way to structure an efficient framework for supervisory reasons

**Thank you very much for your attention**

**Andreas Gregor Erm**

Attorney

DLA Piper UK LLP

Westhafenplatz 1

60327 Frankfurt am Main

Germany

T: +49 69 271 33 382

F: +49 69 271 33 200

E: [andreas.erm@dlapiper.com](mailto:andreas.erm@dlapiper.com)