

KINGDOM OF SAUDI ARABIA

Capital Market Authority

**DRAFT INSTRUCTIONS ON ISSUING DEPOSITARY RECEIPTS
OUT OF THE KINGDOM FOR SHARES ISSUED IN THE KINGDOM**

English Translation of the Official Arabic Text

Issued by the Board of the Capital Market Authority

Pursuant to its Resolution Number 00-00-2018

Dated 00/00/1439H Corresponding to 00/00/2018G

Based on the Capital Market Law

issued by Royal Decree No. M/30 dated 2/6/1424H

Arabic is the official language of the Capital Market Authority

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Part 1: Preliminary

- a) The purpose of these Instructions is to set out the requirements and conditions for issuing Depositary Receipts out of the Kingdom for shares issued in the Kingdom.
- b) These Instructions shall not prejudice the provisions of the Capital Market Law, its Implementing Regulations, and the other related laws.

Part 2: Definitions

- a) Any reference to the “Capital Market Law” in these Instructions shall mean the Capital Market Law issued by Royal Decree No. M/30 dated 2/6/1424H.
- b) Expressions and terms in these Instructions shall have the meanings which they bear in the Capital Market Law and in the Glossary of defined terms used in the Regulations and Rules of the Capital Market Authority unless the context indicates otherwise.
- c) For the purpose of implementing these Instructions, the following expressions and terms shall have the meaning they bear as follows, unless the context indicates otherwise:
 - Foreign Market: A regulated market for the trade of securities out of the Kingdom.
 - Depositary Bank: A financial institution of legal personality that is authorised to issue Depositary Receipts out of the Kingdom.
 - Depositary Receipts: Financial instruments listed and traded in a Foreign Market and issued by the Depositary Bank for shares issued in the Kingdom.
 - Ratio of Shares to Depositary Receipts: The number of Depositary Receipts against each of the issued shares in the Kingdom.
 - Size of Depositary Receipts Initial Issuance: The size of the initial offer through Depositary Receipts in a Foreign Market for the issued shares in the Kingdom.

Part 3: Waivers

The Authority may waive any person from applying the provision of these Instructions in whole or in part, upon the such person's request or on its own initiative.

Part 4: General Provisions

- a) The issuance of Depositary Receipts out of the Kingdom for shares issued in the Kingdom shall not prejudice any of the continuing obligations on the issuers of

the securities in the Kingdom under the provisions of the Capital Market Law, its Implementing Regulations and the Exchange Rules, including the provisions stipulated in the Rules On The Offer of Securities and Continuing Obligations and the Listing Rules.

- b) The Depository Bank appointed by the issuer must be a financial institution licensed (or otherwise subject to regulatory oversight) by a regulatory authority, and must be incorporated in a jurisdiction that applies regulatory and control standards equivalent to those of the Authority or acceptable to it. The Authority may, at its sole discretion, determine whether such regulatory and control standards are equivalent to those of the Authority or acceptable to it.
- c) For the purpose of issuing Depository Receipts out of the Kingdom for shares issued in the Kingdom in accordance with the provisions of these Instructions, the Depository Bank appointed by the issuer shall be exempted from the licensing requirement to perform dealing activity as principal or agent when dealing with such issuer.
- d) For purposes of the issuer's continuing obligations relating to sufficient liquidity requirements under the provisions of the Listing Rules, the shares held by the Depository Bank for the benefit of the Depository Receipts owners are deemed publicly owned.
- e) The shares held by the Depository Bank for the benefit of the Depository Receipts owners shall be subject to the investment limits stipulated in the Rules for Qualified Foreign Financial Institutions Investment in Listed Securities.

Part 5: The Authority's Approval for Issuing Depository Receipts out of the Kingdom

- a) The issuer must obtain the Authority's approval prior to issuing Depository Receipts out of the Kingdom for its issued shares in the Kingdom.
- b) The issuer seeking to issue Depository Receipts out of the Kingdom for its issued shares in the Kingdom must submit an application to the Authority accompanied by the information and documents required in Annex 1 of these Instructions.
- c) In considering an application, the Authority may:
 - 1. Carry out any enquiries that it considers appropriate;
 - 2. Require the issuer, or his representative, to attend before the Authority to answer questions and explain any matter the Authority considers relevant to the application;
 - 3. Require the issuer to provide additional information as the Authority considers appropriate within 30 days of the request; and
 - 4. Verify any information furnished by the issuer.
- d) The Authority may refuse to consider the application where the issuer has failed to provide information requested from it, or has failed to provide information requested from it within the time requested.

- e) The Authority shall, upon receipt of all information and documents required, notify the issuer in writing, and shall take any of the following decision within a maximum period of 45 days from the date of notice:
 - 1. Approve the application;
 - 2. Approve the application subject to conditions and limitations as it considers appropriate;
 - 3. Reject the application and give the reasons thereof.
- f) If the Authority decides to approve the application, it shall inform the issuer in writing of such approval and of the limitations that the Authority may consider appropriate.
- g) If the Authority decides to reject the application, it shall notify the issuer in writing.
- h) If a material change to the application arises after submission to the Authority in accordance with requirements of these Instructions, the issuer must immediately notify the Authority of such change upon knowledge. In such event, the Authority, in its own discretion, may then require the issuer to re-submit the documents.
- i) The Authority may, when it decides to approve the application, publish the identity of the Depositary Bank appointed by the issuer.

Part 6: The Issuer's Obligations

- a) The issuer shall, after obtaining the Authority's approval to issue Depositary Receipts out of the Kingdom for its issued shares, notify the Authority with no delay of the listing of the Depositary Receipts in the Foreign Market.
- b) The issuer shall, in agreement with the Depositary Bank, establish a mechanism for the distribution of voting rights related to shares to the holders of Depositary Receipts, in accordance with voting procedures set by the Depositary Centre.
- c) The issuer must disclose to the public in the Kingdom any event to be disclosed to the public under the Capital Market Law and its Implementing Regulations and the Exchange Rules before disclosing such event in the Foreign Market.
- d) The issuer shall disclose to the public in the Kingdom all information disclosed in the Foreign Market at the same time or before disclosing those information in the Foreign Market.
- e) The issuer shall make available, with no delay, the information available in the prospectus for the Foreign Market as a document available for the public in the Kingdom.

Part 7: The Depositary Bank's Obligations

- a) The Depositary Bank appointed by the issuer shall appoint a custodian authorised to perform custody activities as the custodian of the shares

represented by the Depositary Receipts outside the Kingdom, in accordance with any regulations, rules or procedures the Authority, the Exchange or the Depositary Center issues.

- b) The Depositary Bank shall notify the Exchange in the event of any change in the Ratio of Shares to Depositary Receipts.
- c) The Depositary Bank shall enable the holder of Depositary Receipts, if it is among the categories of investors allowed to invest in the listed shares in the Kingdom, to cancel such Depositary Receipts to become the holder of the shares listed in the Exchange after meeting the related requirements in the Implementing Regulations and the Exchange Rules.
- d) The Depositary Bank shall enable the shareholder, if it is among the categories of investors allowed to invest in the Depositary Receipts listed in the Foreign Market, to convert its shares to Depositary Receipts to become a holder of Depositary Receipts in the Foreign Market.
- e) The Depositary Bank shall prepare and maintain correct records of all transactions related to Depositary Receipts and associated shares. All records shall at all times be current and sufficient to demonstrate compliance with these Instructions.
- f) Records required to be maintained by these Instructions must be retained for a period of ten years at least unless the Authority specifies otherwise.
- g) All records required to be maintained by the Depositary Bank under these Instructions must be available for review of the Authority at request.

Part 8: The Authority's Powers in Relation to the Depositary Bank

- a) If the Authority considers that any of the events specified in paragraph (d) of this Part has occurred or may occur in relation to a Depositary Bank appointed by the issuer, the Authority may:
 - 1) Require the Depositary Bank to provide such information, documents and/or written explanation as the Authority deems necessary to verify the relevant situation;
 - 2) Require the Depositary Bank or its representative, to attend before the Authority to answer questions and explain any matter the Authority considers relevant;
 - 3) Carry out any enquiries that it considers appropriate;
 - 4) Take any steps to verify any information furnished by the Depositary Bank, including communicating with foreign regulatory authorities;
 - 5) Prohibit the Depositary Bank from dealing in shares in the Kingdom; and
 - 6) Exercise any of its other powers under the Capital Market Law and its Implementing Regulations.
- b) Prohibition of the Depositary Bank from dealing in shares in the Kingdom under sub-paragraphs (5) of paragraph (a) of this Part shall be effective

immediately upon sending a written notice of such fact from the Authority to the issuer and the Depository Bank.

- c) The Authority may publish the identity of the Depository Bank whose been prohibited from dealing in shares in the kingdom under this Part.
- d) The events referred to in paragraph (a) of this Part include the following:
 - 1) The Depository Bank no longer meets the conditions, obligations and requirements stated in these Instructions;
 - 2) The Depository Bank becomes insolvent;
 - 3) The Depository Bank has violated any of its obligations under the Capital Market Law and its Implementing Regulations and/or any other laws of the Kingdom;
 - 4) The Depository Bank has been subject to any material legal or regulatory sanction in any jurisdiction;
 - 5) Any other event that the Authority believes necessitates its intervention to protect investors or safeguard the functioning of the Exchange in the Kingdom.
- e) Following prohibition from dealing in shares in the Kingdom under this Part, the Depository Bank may not dispose of shares held in its account with the Depository Center without the prior consent of the Authority.

Part 9: Publication and Entry Into Force

These Instructions shall become effective in accordance to its approval resolution.

Annex 1: Required Information and Documents to Apply for the Authority's Approval

The issuer shall attach to its application to the Authority electronic copies of the following documents (and shall retain the original copies of such documents and submit them to the Authority upon request):

1. A summary of a technical study that includes the objective of listing in the Foreign Market and the potential advantages and risks of such listing, and a statement of the measures to be taken by the issuer to mitigate those risks.
2. The required approvals under the Articles of Association of the issuer and the Companies Law and its Implementing Regulations.
3. Name of the Depository Bank, its place of incorporation, and details of its legal form, and demonstration of the regulatory and supervisory situation in which it is subject to.
4. A list prepared in coordination with a legal advisor that identifies any conflicts between the regulatory requirements in the Kingdom and the regulatory requirements in the Foreign Market, which may have a material impact on the related listed shares, including the identification of any potential regulatory conflicts between the requirements of governance, disclosure and listing in the Kingdom, and the suggested methods of addressing them.
5. The Size of Depository Receipts Initial Issuance.
6. The Ratio of Shares to Depository Receipts.
7. The percentage of Depository Receipts to be issued to the total number of shares issued in the Kingdom.
8. The process and cost for canceling Depository Receipts when a holder requests to be the owner of the shares represented by Depository Receipts, including the time needed for canceling Depository Receipts and enabling the holder to trade the underlying shares in the Exchange.
9. The process and cost for issuing Depository Receipts when a shareholder requests to be a holder of Depository Receipts, including the time needed for issuing Depository Receipts and enabling the holder to trade them in the Foreign Market.
10. Any other conditions or requirements determined by the Authority.