

KINGDOM OF SAUDI ARABIA

Capital Market Authority

THE RULES FOR SPECIAL PURPOSES ENTITIES

English Translation of the Official Arabic Text

**Issued by the Board of the Capital Market Authority
Pursuant to its Resolution Number 4-123-2017
Dated 9/4/1439G Corresponding to 27/12/2017G
Based on the Capital Market Law
Issued by Royal Decree No M/30 dated 2/6/1424H**

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Arabic is the official language of the Capital Market Authority

**Important Notice: the current version of these Rules, as may be amended, can be found at
The Authority website: www.cma.org.sa**

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PART 1: GENERAL PROVISIONS

Article 1: Preamble

(a) The purpose of these Rules is to regulate the special purposes entities including its establishment, licensing, registration, offering, management and associated activities ~~in the Kingdom.~~

(b) These Rules shall have no prejudice to the provisions of [the Capital Market Law and Its Implementing Regulations, including the provisions of](#) the Authorised Persons Regulations and the Securities Business Regulations.

~~(b)~~(c) [Assets of the special purposes entity shall not be transferred for any reason other than to issue debt instruments or investment units.](#)

~~(d) [If the special purposes entity is offering debt instruments by a mean of public offer, the provisions of the Rules of the Offer of Securities and Continuing Obligations and the Listing Rules shall apply to such entity.](#)~~

~~(e) [If the special purposes entity is offering debt instruments by a mean of private placement, the provisions of the Rules of the Offer of Securities and Continuing Obligations shall apply to such entity.](#)~~

Article 2: Definitions

(a) Any reference to the “Capital Market Law” in these Rules shall mean the Capital Market Law issued by Royal Decree No. M/30 dated 2/6/1424H.

(b) Expressions and terms in these Rules shall have 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 contrary intention appears.

Article 3: Scope and Application

These Rules apply to any person referred to in them.

Article 4: Waivers

The Authority may waive any provision of these Rules in whole or in part as it applies to any person either on an application from such person or on its own initiative.

Article 5: Right of Appeal

Any person subject to these Rules may appeal to the Committee in respect of any decision or action that the Authority takes under these Rules.

PART 2: SPECIAL PURPOSES ENTITIES ISSUING OR IS TO ISSUE DEBT INSTRUMENTS
~~ESTABLISHMENT AND LICENSING~~

CHAPTER 1: GENERAL PROVISIONS

Article 6: Scope and Application

- (a) The provisions of this Part shall only apply to a special purposes entity that is issuing or is to issue debt instruments.
- (b) A special purposes entity that is issuing or is to issue debt instruments must register its shares under the name of its trustee.
- ~~(a)~~(c) If the special purposes entity is offering debt instruments through public offer, the provisions of the Rules on the Offer of Securities and Continuing Obligations and the Listing Rules shall apply to such entity.
- ~~(b)~~(d) If the special purposes entity is offering debt instruments through private placement, the provisions of the Rules on the Offer of Securities and Continuing Obligations shall apply to such entity.

CHAPTER 2: AUTHERISATION

Article ~~67~~: Licensing Requirements

- (a) A special purposes entity shall be licensed at all times in accordance with these Rules.
- (b) A sponsor seeking the licensing of a special purposes entity shall submit an application to the Authority in the form prescribed by the Authority, and pay such application fees as the Authority prescribes under Article ~~47-45~~ of these Rules.

Article ~~78~~: Licensing conditions

A special purposes entity shall satisfy the following conditions at all times:

- 1) the special purposes entity shall be established under, and comply with all applicable requirements of these Rules;
- ~~2) the special purposes entity shall not issue securities other than:~~
 - ~~a. debt instruments or units; and~~
 - ~~b. shares for establishment purposes;~~
- ~~3) the shares of the special purposes entity shall be issued to person(s) approved by the Authority.~~
- ~~4)2)~~ the special purposes entity shall not engage in activities other than the following:
 - ~~a. issuing of debt instruments and the issue of shares to its initial shareholders on establishment; or to shareholders as part of an increase in capital under its By-Laws.~~
 - b. issuing shares for establishment purposes, where the shares are in the name of the trustee.
 - c. ancillary activities necessary to achieve its purpose.

~~5)3)~~ the special purposes entity shall have by-laws meeting the requirements of ~~Part~~Chapter 3 of these Rules;

~~6) the special purposes entity shall have paid-up share capital as specified in its by laws;~~

~~7) the special purposes entity shall have at least one shareholder meeting the requirements of Part 5 of these Rules; and~~

~~8) the special purposes entity shall have at least two directors meeting the requirements of Part 6 of these Rules.~~

Article 8: Procedures and powers of the Authority in relation to an application for licensing

~~(a) In considering an application made under paragraph (b) of Article 6 of these Rules, the Authority may carry out any enquiries that it considers appropriate;~~

~~(b) The Authority shall, upon receipt of all information and documents required, notify the sponsor in writing of the same, and shall make any of the following decisions within 5 days from the date of the notice:~~

~~1) to approve the application;~~

~~2) to approve the application subject to such conditions and limitations as it considers appropriate; or~~

~~3) to reject the application, and provide reasons;~~

~~(c) The Authority may reject an application if the Authority believes that the licensing of the special purposes entity, or the sale of debt instruments in the special purposes entity may result in a breach of the Capital Market Law or its Implementing Regulations;~~

~~(d) In the event where the Authority approves the application, the special purposes entity shall offer debt instruments within 12 months of approval, otherwise, the Approval shall be deemed cancelled.~~

Article 9: Effect of licensing

~~Upon approval by the Authority of the application to licence the special purposes entity, it shall be registered in its register, with the effect that:~~

~~1) the special purposes entity shall be considered a legal person capable of exercising all of the functions of a special purposes entity;~~

~~2) the by laws shall bind the special purposes entity, its shareholders and directors, such that each of them understands all the provisions of the by laws.~~

Article 10: Pre licensing contracts

~~Any person who has purported to make a contract in the name of a special purposes entity before its licensing is personally liable for the obligations arising from such contract unless and until the special purposes entity, after its establishment, adopts such obligations.~~

Article 11: Paying up share capital

The initial shareholders shall, within six months of the approval by the Authority of an application to license the special purposes entity:

- 1) ~~pay the full nominal value of their shares;~~
- 2) ~~deposit the full nominal value of the special purposes entity's share capital in cash, in an account under the entity's name with a local bank; and~~
- 3) ~~obtain a certificate from that bank acknowledging receipt of the deposit.~~

PART-CHAPTER 3: BY-LAWS

Article 12: By-laws

- (a) A special purposes entity shall have by-laws that specify the following:
- 1) the name and registered office of the special purposes entity;
 - 2) the name, registered office and business of the sponsor;
 - 3) the name, registered office ~~or residence~~ and business of the trustee each shareholder, if different from the sponsor;
 - ~~4) the share capital of the special purposes entity;~~
 - ~~5) the number of shares to be subscribed for by each shareholder and the nominal value of those shares;~~
 - ~~6) 4) the start and end dates of the special purposes entity's financial year;~~
 - ~~7) 5) the purposes, management, operation and ownership of the special purposes entity; and~~
 - ~~8) 6) any other matters required by the requirements set out in paragraph (a) of Article 33 of these Rules, and any other provisions that must ~~to~~ be specified in the by-laws in accordance with these Rules.~~
- (b) The Authority may prescribe one or more standard forms of by-laws to be adopted by special purposes entities. Where the Authority has prescribed such standard form by-laws, no departure from that standard form is permissible without the prior written consent of the Authority, except for adding details required to be included in the standard forms prescribed by the Authority, or selections required to be made.
- (c) A special purposes entity's by-laws shall be approved by the Authority. Upon approval by the Authority of the Special purposes Entity's by-laws, the by-laws shall be signed by the sponsor ~~and, where the sponsor is not the special purposes entity's shareholder, each other shareholder~~ in the presence of a Saudi Arabian notary public or a notary certified in the Kingdom.

~~PART 3: CAPITAL~~

~~Article 13: Paid-up capital~~

- ~~(a) The paid-up share capital of a special purposes entity shall be divided into one class of non-divisible shares of equal value.~~
- ~~(b) Contributions by shareholders to the paid-up share capital of the special purposes entity may only be made in cash and not by way of other property, services, or otherwise in kind.~~
- ~~(c) The full nominal value of a special purposes entity's paid-up capital shall at all times be deposited and maintained in cash with a local bank.~~

PART 4: SHAREHOLDERS

Article 14: Financial rights and liabilities

~~A shareholder is considered indebted to the special purposes entity for the contribution it has undertaken to make to the special purposes entity's share capital.~~

CHAPTER 4: SPONSOR

Article 10: Requirement for Sponsor

A special purposes entity issued, or is to issue debt instruments, and all of its financing transaction, shall be sponsored by a single sponsor.

Article 11: Statues of Sponsor

- (a) A sponsor of a special purposes entity that issued debt instruments shall fulfil the following conditions at all times:
- 1) if the special purposes entity issues, or is to issue, debt-based recourse debt instruments, asset-linked recourse debt instruments, the sponsor shall be a Saudi joint stock company, an authorised person licensed to carry on securities business related to the business of the special purpose entity, a local bank, or finance company;
 - 2) if the special purposes entity issues, or is to issue, asset-backed debt instruments, the sponsor shall be a Saudi joint stock company, an authorised person licensed to carry on securities business related to the business of the special purpose entity, a local bank, finance company or a limited liability company.
- (b) A sponsor, that is not an authorised person, shall submit to the Authority, at request, a legal opinion that demonstrate that with the business it carries on in relation to the special purposes entity does not require authorisation under the Capital Market Law. The legal opinion referred to in this paragraph shall be issued by an independent lawyer/law firm licensed in Saudi Arabia with considerable experience in the field.

Article 12: Restrictions on Sponsor Rights Against Special Purposes Entity

Neither a sponsor, nor any of its affiliate, may have any interest in, or claims against, the assets of the special purposes entity other than claims fully and fairly disclosed in the special purposes entity's documents.

Article 13: Notification and Record-Keeping Requirements and Powers of the Authority

- (a) A sponsor shall ensure that:
- 1) it complies with the notification requirements set out in Annex 1 which apply to it; and
 - 2) all information it provides to the Authority in relation to its sponsorship is complete, clear, accurate and not misleading.
- (b) On receiving a notification under paragraphs (a) of this Article, the Authority may require the sponsor to provide any information it considers necessary.

- (c) A sponsor shall record and retain sufficient information about its sponsorship to demonstrate compliance with these Rules. This includes records of all financial transactions with or relating to the special purposes entity. Such records shall be maintained for a minimum of ten (10) years.
- (d) A sponsor shall promptly provide the Authority with any information and documents that the Authority may require for the purpose of applying the provisions of the Capital Market Law and its Implementing Regulations.
- (e) A sponsor shall disclose its name and address in the debt instruments issuance prospectus.

Article 14: Changing Sponsor

A sponsor of the special purposes entity that issues or is to issue debt instruments may not be changed, except in the event of bankruptcy and after obtaining the Authority's approval on such.

CHAPTER 5: TRUSTEE

Article 15: Trustee

- (a) The trustee may not dispose of the shares of the special purposes entity registered under its name or carry out any structural changes in the special purposes entity unless the Authority's approval is obtained.
- (b) The sponsor may not be the trustee of the special purpose entity in the event that such sponsor is the beneficiary of the special purpose entity.
- (c) In the event that the special purpose entity issues asset-backed recourse debt instruments or asset-linked recourse debt instruments, the trustee must be an authorised person licensed to carry on custody business in the event that it takes custody the assets of such entity in accordance to provisions set out in Chapter 7 of this Part.
- (d) The registered office of the special purpose entity may not be transferred to any other place except with the written consent of the trustee.

Article 16: Responsibilities of Trustee

- (a) The trustee of the special purpose entity shall appoint the members of the board of directors, determine their remuneration, and ensure that they carry out all their duties and responsibilities towards the entity and the debt instruments holders.
- (b) The trustee of the special purpose entity shall appoint a custodian to be responsible for taking custody of real-estate assets and securities owned by the special purpose entity, and for taking all necessary administrative measures related to the custody of those real-estate assets and securities in accordance with the provisions set out in Chapter 7 of these Rules.
- (c) The trustee is responsible for appointing the auditor for the special purposes entity.

PART-CHAPTER 6: BOARD of DIRECTORS

Article 1517: Requirements for registration

- (a) The directors of a special purposes entity shall be registered with the Authority at all times in accordance with these Rules.
- (b) A special purposes entity must have, at least, two board members.

Article 1618: Residence

At least one of the directors shall be resident in the Kingdom ~~unless the Authority exempts him from this requirement.~~

Article 1719: Appointment, removal and remuneration of directors

- (a) A special purposes entity's by-laws shall provide for the procedures to appoint and remove directors and their remuneration.
- (b) A person who is appointed as director shall comply with the special purposes entity's by-laws and all of its provisions.

Article 1820: Duties of Directors

A director of a special purposes entity owes the following duties to the special purposes entity:

- 1) To act in accordance with the special purposes entity's by-laws.
- 2) To exercise his powers only for the purposes for which they are conferred.
- ~~3) To exercise independent judgment.~~
- 3) To exercise his powers in a manner that does not conflict with the interests of the special purposes entity.
- 4) A director is responsible for ensuring that the special purposes entity carries on its business in accordance with these Rules.
- 5) This Article applies to any person who fulfils the role of a director of a special purposes entity, whether or not registered as such.
- 6) A director shall provide the Authority with all the information and documents required by the Authority.

~~6~~7) The members of the Board of Directors must submit an annual report to the trustee that includes details of the business and decisions related to the issued debt instruments, and any relevant information or documents required by the trustee.

Article ~~19~~21: Decision-making

- (a) The by-laws shall specify the decision-making processes to be followed by directors.
- (b) Minutes shall be kept of every directors' meeting and of every resolution made by them.

Article ~~20~~22: Powers and authorities

The directors of the special purposes entity shall have all powers and authorities ~~as are not required by that do not interrelate with the powers and authorities of the trustee in accordance with~~ these Rules or the special purposes entity's by-laws, ~~to be exercised by the shareholders.~~ Such powers and authorities of the directors shall cease on and from the point at which the special purposes entity enters into the stage of liquidation.

Article ~~21~~23: Delegation

- (a) Subject to paragraph (b) of this Article, the directors may delegate any of their powers to any person, in writing, without prejudice to the responsibilities of the director in regards to the exercise of any such delegated powers.
- (b) A special purposes entity's board of directors shall notify the Authority in writing of any arrangements relating to directors delegating any of their powers to any other person.
- ~~(c) If the special purposes entity has issued, or is to issue, asset linked recourse debt instruments or asset backed debt instruments, the directors may not delegate any of their powers to the sponsor, an affiliate of the sponsor, or any person that is closely linked with, employed by, contracted to, remunerated by, or an officer of, the sponsor or an affiliate of the sponsor.~~

Article ~~22~~24: Liability

The directors shall be jointly responsible for compensating the special purposes entity or third parties for any damages sustained ~~by the special purposes entity, the shareholders, or third parties~~ as a result of the directors violating the provisions of these Rules or ~~of~~ the special purposes entity's by-laws, or any wrongful acts committed by them in the performance of their duties mentioned in Article 18 of these Rules. The liability of such shall be on all directors, if the wrongful act was due to their unanimous decision, ~~however if~~ as for the wrongful act caused by a resolution ~~decision that~~ was not issued unanimously made by the majority vote, the objecting directors ~~won't~~ will not be questioned as long as ~~they~~ he/she explicitly reflects their ~~his/her~~ objection on the meeting minutes. Moreover, absenteeism from the meetings shall not consist ~~as an~~ cause for pardoning a director from the liability, unless it became evident that the absent director was unaware of such resolution or could not object on it after becoming aware of such.

Article ~~23~~25: Register of directors

A special purposes entity shall maintain a register of the details of each director.

Article ~~24~~26: Registration

The registration shall be made on the form prescribed by the Authority.

~~Article 25: Responsibilities of directors~~

- ~~(a) A director is responsible for ensuring that the special purposes entity carries on its business in accordance with these Rules.~~
- ~~(b) This Article applies to any person who fulfils the role of a director of a special purposes entity, whether or not registered as such.~~
- ~~(c) A director shall provide to the Authority any information and documents that the Authority may require for the purpose of administration of the Capital Market Law and its Implementing Regulations.~~

Article ~~26~~27: Notification requirements and powers of the Authority

- (a) A director shall ensure that:
 - 1) he complies with the notification requirements set out in Annex 1 of these Rules where applicable; and
 - 2) all information he provides to the Authority under these Rules is complete, clear, accurate and not misleading.
- (b) Upon receiving a notification under paragraph (a) of this Article, the Authority may require the director to provide any information it considers necessary.
- (c) In relation to a director, the Authority has the power to take any actions relevant to his role or the registration request.

Article ~~27~~28: Suspension or cancellation of registration

- (a) The Authority may suspend or cancel the registration of a director on notice to the special purposes entity, if the director violates any provision of the Capital Market Law or its Implementing Regulations, commits any offence involving fraud or any act involving a lack of integrity or dishonesty, or becomes insolvent.
- (b) A special purposes entity may terminate the services of a director upon request of the director or as otherwise provided by these Rules or the by-laws of the special purposes entity.
- (c) If a director's registration is suspended or cancelled, the special purposes entity shall ensure that the person immediately ceases to act as a director of the special purposes entity.

- (d) The special purposes entity shall notify the Authority in writing within seven (7) days of a director ceasing to be a director. Upon receipt of the notice by the Authority, the registration shall be terminated.
- (e) In the event where the number of directors becomes less than the minimum required under paragraph (8b) of Article (17) of these Rules, or the resignation of the director residing in the Kingdom which will result in violation of Article (18) of these Rules, the special purposes entity shall make the needed corrective measures to fulfil the requirements ~~of the paragraph~~ referred to, in a period no later than (30) calendar days from date of the notice referred to in paragraph (d) of this Article.
- (f) A director continues to be subject to the jurisdiction of the Authority from the date of cancelling his registration in respect of any act or omission that occurred as a member of the board of directors, before the cancellation of his registration and for two (2) years thereafter. and in case of any litigation or claim (including current litigation, or to be filed) or any ~~If at any time during this period the Authority commences any enforcement~~ investigation ~~or proceedings,~~ relating to his duty as a director of the special purposes entity or the special purposes entity for which he acted as a director, the director with cancelled registration continues to be subject to the jurisdiction of the Authority until the end of the related ~~enforcement~~ investigation or litigation or claim ~~proceedings~~.

PART 7: SPONSOR

Article 28: Requirement for sponsor

~~A special purposes entity, and all of its financing transaction, shall be sponsored by a single sponsor.~~

Article 29: Status of sponsor

~~(a) A sponsor shall fulfil the following conditions at all times:~~

- ~~1) if the special purposes entity has issued, or is to issue, debt based recourse debt instruments, the sponsor shall be a Saudi joint stock company that complies with all applicable requirements of the Corporate Governance Regulations;~~
- ~~2) if the special purposes entity has issued, or is to issue, asset linked recourse debt instruments or asset backed debt instruments, the sponsor shall be an authorised person whose permitted business profile covers all securities business activities to be undertaken in connection with the activities of the special purposes entity, a local bank or a finance company.~~

~~(b) A sponsor that is not an authorised person shall produce to the Authority on demand a legal opinion that demonstrate that its activities in connection with the special purposes entity do not require authorisation under the Capital Market Law. The legal opinion referred to in this paragraph shall be issued by an independent lawyer/law firm licensed in Saudi Arabia with considerable experience in the field.~~

Article 30: Restrictions on sponsor rights against special purposes entity

~~Neither a sponsor, nor any of its affiliate, may have any interest in or claims against the assets of the special purposes entity other than claims fully and fairly disclosed in the offering documentation of the special purposes entity.~~

Article 31: Notification and record keeping requirements and powers of the Authority

~~(a) A sponsor shall ensure that:~~

- ~~1) it complies with the notification requirements set out in Annex 1 which apply to it; and~~
- ~~2) all information it provides to the Authority in relation to its sponsorship is complete, clear, accurate and not misleading.~~

~~(b) On receiving a notification under paragraphs (a) of this Article, the Authority may require the sponsor to provide any information it considers necessary to assess the matter.~~

~~(c) A sponsor shall record and retain sufficient information about its sponsorship to demonstrate compliance with these Rules. This includes records of all financial transactions with or relating to the special purposes entity. Such records shall be maintained for a minimum of ten (10) years.~~

~~(d) A sponsor shall promptly provide the Authority with any information and documents that the Authority may require for the purpose of applying the provisions of the Capital Market Law and its Implementing Regulations.~~

PART-CHAPTER 87: CUSTODIAN

Article 3229: ~~Role and responsibilities~~ Appointment of the custodian

(a) In respect of the issuance of asset-linked recourse debt instruments and asset-backed debt instruments, the ~~special purposes entity trustee~~ shall appoint a custodian to be responsible for taking custody of real-estate assets and securities owned by the special purposes entity (if any) and for safeguarding and taking all necessary administrative measures in relation to such real-estate assets and securities in accordance with Article ~~33-30~~ of these Rules;

~~(a)~~(b) In cases other than those where the trustee is the sponsor, the trustee may be the custodian, without prejudice to the obligations prescribed to the custodian as per the provisions of these Rules.

~~(b)~~(c) The custodian shall be an authorised person duly authorised to carry on the activity of custody.

~~(e)~~(d) The appointment of the custodian shall meet the following conditions:

- 1) the custodian shall not be a sponsor of the special purposes entity, ~~or~~ an affiliate of the sponsor or controlled by it;
- 2) the agreement under which the custodian is appointed shall:
 - a. include a provision that enables the special purposes entity to report any information required under these Rules to the Authority;
 - b. be consistent with the obligations of the custodian under this Part; and
 - c. not include any encumbrance over the securities of the special purposes entity or right of set-off, or counterclaim with respect to any amounts deposited in an account of the special purposes entity unless clearly disclosed in the prospectus or the private placement offering document, as the case may be.

(e) Any fees, commissions or charges levied by the custodian shall be determined on fair basis.

(f) The special purposes entity must provide the custodian with all necessary data and information to perform its duties.

(g) The special purpose entity may terminate the services of the custodian upon its request, or in accordance with the entity's by-laws.

Article 3330: Custody of Real-Estate Assets and securities in respect of asset-linked recourse or asset-backed transactions

- (a) This Article applies in respect of real-estate assets and securities owned by a special purposes entity.
- (b) The custodian shall separately identify, by registration under the name of the relevant ~~special purposes entity~~ trustee, the real-estate assets and securities of the entity, and shall maintain all necessary records to support the performance of its contractual responsibilities.
- (c) A custodian may appoint one or more third parties or affiliates as a sub-custodian in relation to the real-estate assets and securities of a special purposes entity. The fees of the sub-custodian shall be paid by the custodian out of its own resources unless otherwise disclosed in the prospectus or private placement offering memorandum.
- (d) The special purposes entity may appoint a sub-custodian operating in a jurisdiction outside the Kingdom to hold custody of its real-estate assets and securities located in other jurisdiction, and it shall be established, authorised and subject to the supervision of a regulator that employs regulatory standards and requirements at least equivalent to those of the Authority.
- (e) Any sub-custodian shall be appointed pursuant to a contract in writing and shall be an authorised person to conduct the custody business, provided that the sub-custodian is not a sponsor of the special purposes entity or an affiliate of the sponsor.
- (f) The Authority has discretion to assess whether the jurisdiction in which any sub-custodian operates has regulatory standards and requirements at least equivalent to those of the Authority.
- (g) The delegation by a custodian to one or more third parties or affiliates as a sub-custodian does not constitute a prejudice to the custodian's responsibilities, toward its custody of the special purposes entity's real-estate assets and securities pursuant to these Rules.

Article 3431: Notification and record-keeping requirements and powers of the Authority.

- (a) A custodian shall ensure that:
 - 1) it complies with the notification requirements set out in Annex 1 which apply to it; and
 - 2) all information it provides to the Authority in relation to its functions under these Rules are complete, clear, accurate and not misleading.
- (b) Upon receiving a notification under paragraph (a) of this Article, the Authority may require the custodian to provide any information it considers necessary to assess the matter.
- (c) A custodian shall record and retain sufficient information about its functions under these Rules, and maintain it in special records for that to demonstrate compliance with these Rules. This includes records of any financial transactions with or relating to the special purposes entity. Such records shall be maintained for a minimum of ten (10) years. in case of any litigation or claim (including current litigation, or to be filed) or any investigating procedures related to that

information and records, the custodian shall keep such information and records until the litigation, claim or ongoing investigating procedures are finished.

- (d) A custodian shall provide to the Authority any information and documents that the Authority may require for the purpose of implementing of the Capital Market Law and its Implementing Regulations.

Article 35~~32~~: Powers of the Authority ~~to remove and replace~~ in relation to custodian

(a) Without prejudice to the other relevant powers of the Authority, if the Authority deems that any of the events stipulated in paragraph (d) of this Article has occurred or may occur, it may do the following:

- 1) Require the custodian to submit any written clarification, information or documents it considers necessary to address any relevant matter.
- 2) Request the custodian or its representative appear before the Authority to answer any question or explain any matter that the Authority considers relevant.
- 3) carry out any enquiries which it considers appropriate;
- 4) take any action to verify the information rendered by the custodian, including communicating with any relevant entity.
- 5) remove and replace the custodian.
- 6) Take any other measures as it considers appropriate.

(b) The removal and replacement of custodian under sub-paragraph (a/5) of this Article shall be effective immediately upon sending a written notice of such from the Authority to the terminated custodian. The removed custodian must not take any decision or action related to the special purposes entity after being notified of the removal decision, and must take the necessary actions to transfer business and anything under custody related to the special purposes entity for which it was removed from taking custody of its assets.

(c) The Authority may disclose the identity of any custodian removed under this Article.

~~(a)(d) The events referenced in paragraph (a) of this Article include any of the following Authority may remove the custodian of a special purposes entity and appoint a replacement custodian or to take any other measures it deems necessary, as appropriate, in the event of:~~

- 1) The custodian does not continue to fulfil the conditions, obligations and requirements stipulated in these Rules.
- 2) The occurrence of any insolvency case to the custodian.
- 3) The custodian's violation of any obligations stipulated in the Capital Market Law and its Implementing Regulations.
- ~~4) the custodian ceasing to carry on business;~~
- ~~2)5) the cancellation or suspension of the custodian's authorisation;~~

~~3)6)~~ a request by the custodian to cancel its authorisation;

~~4)7)~~ the Authority believing that the custodian has failed, in a manner which the Authority considers material, to comply with the Capital Market Law and its Implementing Regulations; or

~~5)8)~~ any other event determined by the Authority to be of sufficient significance.

(e) If the Authority exercises its power pursuant to paragraph (a) of this Article, the sponsor and special purposes entity shall co-operate fully with the Authority in order to appoint a replacement custodian.

~~(b)~~ (f) In the event where the trustee of the special purposes entity is the custodian of its assets, the trustee must immediately appoint another custodian upon the occurrence of any of the events stipulated in paragraph (d) of this Article.

PART 9: SUPERVISION

Article 36: ~~Special purposes entity's notification, record-keeping requirements and powers of the Authority.~~

- ~~(a) A special purposes entity shall ensure that:~~
- ~~1) the notification requirements set out in Annex 1 which apply to it are complied with,~~
 - ~~and~~
 - ~~2) all information required to be provided to the Authority under these Rules is complete, clear, accurate and not misleading.~~
- ~~(b) On receiving a notification under paragraph (a) of this Article, the Authority may require the special purposes entity to provide any information it considers necessary to assess the matter.~~
- ~~(c) A special purposes entity shall record and retain sufficient information about its functions under these Rules to demonstrate compliance with these Rules. This includes records of all of its financial transactions. Such records shall be maintained for a minimum of ten (10) years, unless where they relate to an individual financing transaction, the records shall be maintained for at least three (3) years after the maturity or termination of the transaction, whichever is longer; and in case of any lawsuit or claim (including current lawsuit, or to be filed) or any investigating procedures related to that information, the special purposes entity shall keep such records until the lawsuit, claim or investigating procedures are finished.~~
- ~~(d) A special purposes entity shall provide to the Authority any information and documents that the Authority may require for the purpose of administration of the Capital Market Law and its Implementing Regulations.~~

PART 10: ~~THIRD PARTY RELIANCE~~

Article 37: ~~Third party reliance on acts of the special purposes entity~~

~~A person that deals with a special purposes entity is taken to have notice of the content of and restrictions in these Rules and the special purposes entity's by laws but shall not be required to confirm the regularity of the special purposes entity's internal proceedings.~~

PART 11 CHAPTER 8: ACCOUNTS AND AUDIT

Article 3833: Appointment of an auditor

- (a) The special purposes entity's by-laws shall provide provisions for the following:
- 1) the appointment of an auditor registered with the Authority in accordance with Rules for Registering Auditors of Entities Subject to the Authority's Supervision ~~from among those authorised to practice the auditing of accounts in the Kingdom, in the event that the special purposes entity has issued debt instruments;~~
 - 2) the auditor's remuneration and term of office; and
 - 3) the removal of an auditor.
- (b) The auditor shall be responsible for ~~producing~~ reviewing the report to be procured under paragraph (b) of Article ~~39-34~~ of these Rules and shall at any time have access to the special purposes entity's books, records and other documents. It shall be entitled to request such particulars and clarifications as it may deem it necessary to obtain, and to verify the assets and liabilities of the special purposes entity.

Article 3934: Report prepared by directors

- (a) The directors shall within one (1) month of the end of every financial year prepare an annual report stating the details listed in paragraph (a) of Article ~~12-9~~ of these Rules.
- (b) The directors shall within (3) months of the end of every financial year prepare ~~a balance sheet and a profit and loss account for the special purposes entity, a report on the financial position~~ the annual financial statements of the special purposes entity, in accordance with the accounting standards approved by the Saudi Organization for Certified Public Accountants, audited by an auditor in accordance with the auditing standards approved by the Saudi Organization for Certified Public Accountants, and sign it by one of the directors. ~~Provided it includes, among other items, details of any all outstanding issuances of debt instruments by the special purposes entity, and directors shall obtain an auditor's report on those documents.~~
- (c) The directors shall immediately after signing the documents referred to in paragraph (b) of this Article, send a copy of each of them to the Authority ~~and shareholders~~.
- (d) Paragraphs (b) and (c) of this Article do not apply to a special purposes entity licensed all of whose debt instruments in issue are debt-based recourse debt instruments.

PART 12 CHAPTER 9: RECORD-KEEPING

Article 4035: Record-keeping

- (a) A special purposes entity shall keep complete and accurate books and records, which shall include at least the following:
- 1) the register of directors required by Article ~~23-25~~ of these Rules;
 - 2) minutes of all board meetings ~~and shareholder meetings~~;
 - 3) all board decisions and trustee decisions where applicable ~~all shareholder resolutions~~;
 - 4) the terms of all contracts and transactions entered into by the special purposes entity, including in relation to any issuance of debt instruments and any associated financing transaction;
 - 5) details of the special purposes entity's income and expenditure;
 - 6) details of the Special purposes Entity's assets and liabilities; and
- (b) A special purposes entity shall make its books and records available to the Authority immediately on request by the Authority.
- (c) The special purposes entity shall maintain records and information referred to paragraph (a) of this Article, for 10 years at least. Except if such information is related to a financing transaction, then it shall be kept for a period no less than 3 years from the date of the transaction entitlement or end, whichever is longer. Moreover, in case of any lawsuit or claim (including current lawsuit, or to be filed) or any investigating procedures related to that information, the special purposes entity shall keep such records until the lawsuit, claim or investigating procedures are finished.

PART 13 CHAPTER 10: MERGER AND CONVERSION

Article 4136: No merger or conversion

- (a) A special purposes entity may not merge with another special purposes entity or other legal person of any kind.
- (b) A special purposes entity may not convert into another form of legal person of any kind.

PART 3: INVESTMENT FUNDS THAT TAKE THE FORM OF- SPECIAL PURPOSES ENTITIES

CHAPTER 1: PRELIMINARY PROVISIONS

Article 37: Scope and Application

- (a) The provisions of this Part shall be limited to investment funds that take the form of a special purpose entity.
- (b) The provisions stipulated in the Investment Funds Regulations or the Real-Estate Investment Funds Regulations - whichever applies - apply to investment funds that take the form of a special purpose entity.

Article 38: Preliminary Provisions

- (a) All assets of investment funds that take the form of a special-purpose entity are jointly owned by unit holders.
- (b) The manager of the investment fund that takes the form of a special-purpose entity shall be responsible for managing such entity, in accordance with the provisions stipulated in the Investment Funds Regulations and the Real-Estate Investment Funds Regulations.
- (c) The investment fund that takes the form of a special purpose entity shall be granted legal personality and independent financial liability.

CHAPTER 2: AUTHORISATION

Article 39: Authorisation Requirements and Conditions

- (a) The manager of an investment fund that takes the form of a special-purpose entity must fill out the part for establishment of a special purposes entity in the fund establishment form and shall attach the by-laws form for such entity.
- (b) The following conditions must be met at all times:
 - 1) That the investment fund that takes the form of a special purpose entity shall be established in accordance with these Rules, the Investment Funds Regulations or the Real-Estate Investment Funds Regulations - whichever applies, and abides by all relevant provisions.
 - 2) The investment fund that takes the form of a special-purpose entity shall not participate in any activity other than the following:
 - a. issuing shares for establishment purposes.
 - b. issuing investment units.
 - c. ancillary activities necessary to achieve its purpose.
 - d. The activities stipulated in both the terms and conditions of the fund, which takes the form of a special purpose entity, and the by-laws of the special purpose entity.

CHAPTER 3: BY-LAWS

Article 40: By-laws

- (a) The Authority may prescribe one or more standard forms of by-laws to be adopted by investment funds that take the form of special-purpose entity. Where the Authority has prescribed such standard form by-laws, no departure from that standard form is permissible without the prior written consent of the Authority, except for adding details required to be included in the standard forms prescribed by the Authority or selections required to be made.
- (b) The Authority's approval of the by-laws is required, and upon obtaining approval the by-laws of the special purposes entity shall be signed by the manager of the investment fund that takes the form of a special-purpose entity in the presence of a Saudi Arabian notary public or a notary certified in the kingdom.

CHAPTER 4: MONITORING PROCEDURES AND SYSTEMS

Article 41: Special Purposes Entity's Notification and Record-Keeping Requirements and Powers of the Authority

- (a) A manager of an investment fund that takes the form of a special-purpose entity must ensure that:
- 1) it complies with the notification requirements set out in Annex 1 of these Rules; and
 - 2) all information it provides to the Authority are complete, clear, accurate and not misleading.
- (b) Upon receiving a notification under paragraphs (a) of this Article, the Authority may require manager of an investment fund that takes the form of a special-purpose entity (where applicable), to provide any information it considers necessary.
- (c) A manager of an investment fund that takes the form of a special-purpose entity, shall record and retain sufficient information to demonstrate compliance with these Rules. This includes records of all financial transactions with or relating to the special purposes entity. Such records shall be maintained for a minimum of ten (10) years. In case of any litigation or claim (including any on-going or threatened litigation) or any on-going investigations relating to these documents, the fund manager shall retain such documents until the closure of that litigation, claim or on-going investigation.
- (d) A manager of an investment fund that takes the form of a special-purpose entity shall provide to the Authority any information and documents that the Authority may require for the purpose of administration of the Capital Market Law and its Implementing Regulations.

PART 4: GENERAL PROVISIONS

CHAPTER 1: PROCEDURES AND POWERS OF THE AUTHORITY IN RELATION TO THE AUTHORISATION APPLICATION

Article 42: Procedures and Powers of the Authority in Relation to the Authorisation Application

- (a) In considering an application made under paragraph (b) of Article 7 or paragraph (a) of Article 39 of these Rules, the Authority may carry out any enquiries that it considers appropriate;
- (b) The Authority shall, upon receipt of all information and documents required, notify the sponsor, manager of an investment fund that takes the form of a special-purpose entity whichever applies, in writing of the same, and shall make any of the following decisions within 5 days from the date of the notice:
- 1) to approve the application;
 - 2) to approve the application subject to such conditions and limitations as it considers appropriate; or
 - 3) to reject the application, and provide reasons.
- (c) The Authority may reject an application if the Authority believes that the authorisation of the special purposes entity, or the sale of debt instruments in the special purposes entity may result in a breach of the Capital Market Law or its Implementing Rules.

Article 43: Effect of Authorisation

Upon approval by the Authority of the application to licence the special purposes entity, it shall be registered in the register referenced in paragraph (a) of Article 48 of these Rules, with the effect that:

- 1) the special purposes entity shall be considered a legal person capable of exercising all of the functions of a special purposes entity;
- 2) the special purposes entity, its sponsor, or manager of an investment fund that takes the form of a special-purpose entity where applicable, trustee, where applicable, and directors shall comply with all provisions of such entity's by-laws, to the effect that each of them understands all the provisions of the by-laws.

CHAPTER 2: LIABILITY TOWARDS PRE-AUTHORISATION CONTRACTS

Article 44: Pre-Authorisation Contracts

Any person delegated to make a contract in the name of a special purposes entity before it obtains authorisation is personally liable for the obligations arising from such contract unless and until the special purposes entity, after its establishment, adopts such obligations.

CHAPTER 3: THIRD PARTY RELIANCE

Article 45: Third party reliance on actions of the special purposes entity

A person that deals with a special purposes entity is taken to have notice of the content of and restrictions in these Rules and the special purposes entity's by-laws but shall not be required to confirm the regularity of the special purposes entity's internal proceedings.

PART 14: SETTLEMENT AND INSOLVENCY PROCEEDINGS

Article 42: Settlement proceedings

If a special purposes entity proposes to submit a petition to request a settlement with any of its creditors, the special purposes entity shall:

- 1) ~~notify the Authority of the proposed petition at least fourteen (14) days prior to its submission;~~
- 2) ~~provide the Authority with any documentation it requests; and~~
- 3) ~~cooperate with the Authority prior to initiating settlement proceedings in order to ensure that all claims relating to its money or assets are resolved appropriately.~~

Article 43: Liquidation proceedings

If a special purposes entity enters into the stage of liquidation, the special purposes entity shall:

- 1) ~~notify the Authority of the liquidation and of the proposed date of any meeting of creditors or any other persons relating to the liquidation;~~
- 2) ~~provide the Authority with any documentation it requests; and~~
- 3) ~~cooperate with the Authority prior to initiating liquidation proceedings in order to ensure that all claims relating to its money or assets are resolved appropriately.~~

Article 44: Restrictions on the special purposes entity during settlement or liquidation proceedings

From the initiation of any proceedings referred to in Article 42 or 43 of these Rules to the end of such proceedings, the special purposes entity may not, without the prior written consent of the Authority, undertake any of the following actions:

- 1) ~~accept further money or assets;~~
- 2) ~~dispose of money or assets including — compromising, effecting a mortgage, charging or pledging, giving a guarantee, donating any part of its money or assets or effecting a transfer of ownership in relation to any of its money or assets.~~

Article 45: Powers of the Authority in proceedings

- (a) ~~The Authority may attend and be heard at any proceedings relating to the insolvency or bankruptcy of the special purposes entity, including:~~

- ~~1) any meeting of members or creditors of the special purposes entity including shareholders, board directors, sponsor or any other relevant parties;~~
 - ~~2) any application for conciliation with creditors or settlement to prevent bankruptcy; and~~
 - ~~3) any liquidation proceedings.~~
- ~~(b) The Authority is an interested party for the purposes of any proceedings referred to in Article 42 or 43 of these Rules and any other proceedings related to the insolvency of the special purposes entity.~~

Article 46: ~~Proceedings completion and final accounts~~ Compliance with the Bankruptcy Law

- (a) A special purposes entity must comply with the provisions of the Bankruptcy Law and its implementing regulations.
- (b) A special purposes entity must notify the Authority in writing of the outcome of any bankruptcy procedure, within (14) days of its completion.
- ~~(a) Within fourteen (14) days of the completion of any settlement proceedings, the special purposes entity shall notify the Authority in writing of the outcome of, and present to the Authority a final account of, such proceedings.~~
- ~~(b) Within fourteen (14) days of the completion of any liquidation, the liquidator shall present a final account of its operations to the Authority.~~

PART 15 CHAPTER 5: FEES

Article 47: Fees

The special purposes entity and the sponsor or the manager of an investment fund that takes the form of a special-purpose entity whichever applies, must pay such fees as the Authority may prescribe.

CHAPTER 6 ~~PART 16~~: AUTHORITY TO MAINTAIN REGISTERS

Article 48: Register of special purposes entities

- (a) The Authority shall maintain a register of each special purposes entity that is established under these Rules in such form as it deems appropriate.
- (b) This register shall record a copy of the special purposes entity's by-laws as at its incorporation, together with any subsequent amendment to the by-laws.
- (c) A special purposes entity shall notify the Authority immediately of any change to the information specified in paragraph (b) of this Article.

Article 49: Register of directors

- (a) The Authority shall maintain a register of the directors of each special purposes entity that is established under these Rules in such form as it deems appropriate.
- (b) This register referred to in paragraph (a) of this Article shall record the following details:
 - 1) The name of the special purposes entity and its commercial register;
 - 2) names and addresses of the directors;
 - 3) national identification number, ~~permanent resident~~iqama or passport numbers ~~or passport number~~ of the each director, as ~~appropriate~~applicable;
 - 4) nationality of the each director;
 - 5) business occupation of the each director (if any);
 - 6) date of appointment of the each director; and
 - 7) date of removal or resignation of the director (if applicable).
- (c) A special purposes entity shall promptly notify the Authority of any change to the information specified in paragraph (b) of this Article.

Article 50: Access to registers

An extract of each of the registers referred to in Article 48 and Article 49 of these Rules shall be made available for public viewing in the manner prescribed by the Authority.

Article 51: Forms

The Authority may publish forms to be used for the provision of the information that a special purposes entity is required to provide to the Authority under Articles 48 and 49 of these Rules.

Article 52: Fees

The Authority may levy such fees as it deems appropriate in relation to the recording of, and the provision of access to, information required to be kept by it set out in Articles 48 and 49 of these Rules.

PART ~~17~~5: PUBLICATION AND ENTRY INTO FORCE

Article 53: Publication and entry into force

These Rules shall become effective as per its approval resolution.

Annex 1: Notification requirements
Notifications to be submitted at least seven (7) days before the relevant event

No.	Notification	Person required to notify	Required documents or information
A)	Notifications to be submitted at least seven (7) days before the relevant event related to the establishment and licensing of the entity		
1.	Any changes to the identity of trustee or agent delegated	Special purposes entity	Details reasoning the change and the identity of the new trustee or agent.
<u>2.1.</u>	Any proposed change to the identity of any party responsible for managing the special purposes entity	Special purposes entity <u>Directors</u>	Details of the proposed change; copies of any documents, circulars or resolutions on which holders of debt instruments are proposing or approving the change
B)	Notifications to be submitted at least seven (7) days before the relevant event related to the financing transaction involving the issue of debt instruments publicly offered		
1.	Any proposed material change to the terms of any agreement to which the special purposes entity is party relating to a financing transaction.	Special purposes entity	Details of the proposed change.
2.	Any proposed material change to the terms of the debt instruments issued by the special purposes entity as a party relating to a financing transaction.	Special purposes entity	Details of the proposed change; copies of any documents, circulars or resolutions on which holders of debt are instruments proposing or approving the change.
C)	Notifications to be submitted at least seven (7) days before the relevant event related to a financing transaction involving the issue of asset-linked recourse debt instruments publicly offered:		
1.	any proposed change to the terms on which the assets of the special purposes entity are or are to be invested;	Special purposes entity	Details of the proposed change; copies of any documents, circulars or resolutions on which holders of debt instruments are proposing or approving the change.
2.	any proposed change to the identity of the valuer of the property of the special purposes entity.	Special purposes entity	Details of the proposed change; copies of any documents, circulars or resolutions on which holders of debt instruments are proposing or approving the change.

Immediate Notifications

A)	Immediate notifications to be promptly submitted in relevance to the establishment and licensing of the entity		
1.	Any breach of these Rules.	Special purposes entity; —sponsor or manager of an investment fund that takes the form of a special-purpose entity; directors; and custodian.	Details of breach; assessment of impact on holders of debt instruments <u>or investment units holders, whichever applies,</u> and proposed remediation plan.
2.	Any material breach of the terms of an agreement or instrument relating to the special purposes entity.	Special purposes entity; —sponsor or manager of an investment fund that takes the form of a special-purpose entity whichever applies; directors and custodian	Details of breach; assessment of impact on holders of debt instruments <u>or investment units holders, whichever applies,</u> and proposed remediation plan.
3.—	The resignation or removal of the trustee or agent assigned.	Special purposes entity	Date of resignation or removal and grounds therefore.
4.3.	The identification of irregularities in the accounting or other records of the special purposes entity.	Directors Special purposes entity; sponsor; and custodian	Details of regulations; details of irregularities; proposed remediation plan.
5.4.	any change to the identity of any person with responsibility for the management of the assets of the special purposes entity;	Directors Special purposes entity	Details of change.
6.5.	The insolvency of the sponsor.	Directors Special purposes entity	Time and date of insolvency.
7.6.	The insolvency of the special purposes entity.	Directors Special purposes entity	Time and date of insolvency.
8.7.	The insolvency of a registered director	Directors	Time and date of insolvency.
	For the purpose of this Annex a person is “insolvent” in the event of any of the following occurring: <ul style="list-style-type: none"> - becoming unable to pay its debts as they fall due; - becoming insolvent, as defined under any insolvency laws applicable to the sponsor; and - the commencement of a case or other procedure seeking or proposing liquidation, administration, restructuring its debts, 		

	performing settlement arrangement, the freeze or moratorium or other similar relief with respect to its debts under any bankruptcy, regulatory, supervisory laws or any similar law, or seeking the appointment of a receiver, liquidator, or other similar official of the sponsor or any part of the sponsor's assets in any jurisdiction.		
9.8.	Any amendment made to the incomplete, or unclear, or inaccurate, and misleading information previously provided to the Authority, and an explanation of such.	Directors Special purposes entity; custodian; sponsor; director	
B)	Immediate notifications to be promptly submitted in relation to a publicly offered financing transaction		
1.—	Any material breach of the terms of an agreement or instrument relating to a financing transaction.	Special purposes entity; sponsor; custodian	Details of breach; assessment of impact on holders of debt instruments and proposed remediation plan.
2.—	Any breach of the terms on which the debt instruments were issued (including report on a payment obligation);	Special purposes entity; custodian	Details of breach; assessment of impact on holders of debt instruments and proposed remediation plan.
3.—	Any event which accelerates any payment obligations under the terms of the debt instruments.	Special purposes entity; custodian	Details of the event; assessment of impact on holders of debt instruments and proposed remediation plan.
4.—	Any amendment made to the incomplete, or unclear, or inaccurate, and misleading information previously provided to the Authority, and an explanation of such	Special purposes entity; custodian; sponsor; director	
C)	Immediate notifications to be promptly submitted related to a financing transaction involving the issue of asset-linked recourse debt instruments publicly offered		
1.—	any change to the terms on which the assets of the special purposes entity are or are to be invested;	Special purposes entity	Details of the change
2.—	any change to the identity of the valuer of the property of the special purposes entity.	Special purposes entity	Details of the change
3.—	Any dispute related to the special purposes entity's assets evaluation	Special purposes entity; custodian	Details of the dispute (its parties, its subject, reason and price)
4.—	Any default in repayment of entitlements of the debt instruments holders as a result of the special purposes entity's assets decrease	Special purposes entity; custodian	Details of default and its reason

5.	Entry of the special purposes entity into transactions on non-commercial terms	Special purposes entity; custodian	Details of the transaction (its parties, its subject, the price) and the reasons for not agreeing on mere commercial terms
6.	Suspicion of any fraud or embezzlement of assets of the Special Purposes Entity	Special purposes entity; custodian; sponsor	Details of the fraud or embezzlement in question

Notifications to be submitted within 7 days

No.	Notifications to be submitted at least seven (7) days related to the establishment and licensing of the entity		
A)	Any change to the information submitted in the licensing application relating to the sponsor <u>or the manager of an investment fund that takes the form of a special-purpose entity</u> , and shall not be considered among the required notifications under section A or B above.		Sponsor <u>or the manager of an investment fund that takes the form of a special-purpose entity</u> Details of change.
1.	Any change to:		
2.	(a)	the custodian; or	Directors Special purposes entity Details of change.
	(b)	the bank which has the account of the special purposes entity.	Custodian Details of change.
3.—	Any change to the identity of any shareholder in the special purposes entity		Special purposes entity Identity of new shareholder; nature of relationship between new shareholder and sponsor (if any).
4.3.	The director ceasing to perform his functions		Directors Special purposes entity Details of cessation
B)—	Notifications to be submitted at least seven (7) days related to a publicly offered financing transaction		
1.—	Any change to the information submitted in the request for approval of the financing transaction relating to the Sponsor, and shall not be considered among the required notifications under section A or B above.		Sponsor Details of change