



the Draft Amendments to the Capital Market Institutions Regulations

A) Introduction:

As part of the Capital Market Authority's ("CMA") strategic objectives to develop the capital market, and based on the Capital Market Law issued by Royal Decree No. (M/30) dated 02/06/1424 H, the CMA Board issued its resolution to publish the Draft amendments to the Capital Market Institutions Regulations ("Draft Amendments") for public consultation for a period of (30) calendar days.

B) Objectives of the Draft Rules and its main elements:

The Draft Amendments aim to develop the provisions stipulated in Part (8) of the Capital Market Institutions Regulations in light of CMA's authorities under the Capital Market Law and Bankruptcy Law issued by Royal Decree No. (M/50) dated 28/05/1439H, and developing the provisions regulating a capital market institution's dissolution in accordance with the Companies Law issued by Royal Decree No. (1/132) dated 01/12/1443H, which will contribute to enhancing the protection of investors, and promote every aspect that would enhance the confidence of the capital market's participants and support its growth and prosperity.

The main elements of the Draft Amendments are as follows:

- a) Stating the requirements to obtain CMA's written approval by a capital market institution that holds clients' money or assets, or manages investment funds, before filing a petition for the initiation of any of the bankruptcy procedures or judicial depository to the competent court.
- b) Adding a requirement on the Capital Market Institutions that neither hold clients' money or assets nor manage investment funds to notify the CMA in writing before filing a petition for the initiation of any of the bankruptcy procedures or judicial depository to the competent court, without the need of obtaining the CMA's approval.
- c) Adding a provision confirming the CMA's authority to direct the Capital Market Institution to take any measures that it considers necessary under the Law and its implementing regulations for the protection of the Capital Market Institution's clients, including completing any outstanding business or transferring it to another capital market institution, and taking the necessary measures to transfer the clients' money and assets and protect their rights, and pay back any shortage in the clients' money or assets - if any- from the Capital Market Institution's own money.



C) Proposed amendments to the Capital Market Institutions Regulations compared with the current provisions:

Current Provisions	Provisions after Proposed Amendments	Clarification
<p>PART 8 INSOLVENCY PROVISIONS</p> <p>Article 95: Supervision of Insolvency Proceedings</p> <p>The Authority shall supervise the compulsory and voluntary liquidation of capital market institutions and shall have the power to take any of the steps set out in this Part, which it considers appropriate to ensure the proper protection of the rights of clients of the capital market institution.</p>	<p>PART 8 PROVISIONS OF BANKRUPTCY OR DISSOLUTION OF A CAPITAL MARKET INSTITUTION</p> <p>Article 95: Preamble</p> <p>a) This Part aims to determine the provisions regulating the bankruptcy of a capital market institution in accordance with the Authority's powers under the Law and the Bankruptcy Law, and determining the provisions regulating the Capital Market Institution's dissolution in accordance with the Companies Law.</p> <p>b) The Authority has the power to take any of the steps, which it considers appropriate to ensure the proper protection of the rights of clients of the Capital Market Institution.</p>	<p>The proposed provision aims to clarifying the legal basis in determining the provisions of this Part under the Capital Market Law and the Bankruptcy law.</p> <p>In addition, the proposed amendment aims to amending the provision stated the Authority's supervision over the insolvency proceedings in light of the supervision role of the competent court in accordance with the Bankruptcy Law.</p>
<p>Article 96: Rights of Clients on Insolvency of a Capital Market Institution Holding Client Money and Assets</p> <p>a) If, on an insolvency event of a capital market institution holding client money or client assets, the capital market institution has or may have insufficient client assets or client money to satisfy its obligations to return such money and assets to its clients, then the claims of clients in respect of any shortfall in client assets and client money rank ahead of all other creditors.</p> <p>b) The Authority may represent the interests of all clients who may be entitled to the return of client money or client assets, or who may have any other claim relating to their account, in insolvency, liquidation or settlement proceedings of capital market institutions.</p>	<p>Article 96: Rights of Clients on Bankruptcy of a Capital Market Institution Holding Client Money and Assets or Managing Investment Funds</p> <p>a) Clients' money and assets shall not be included in the Capital Market Institution's bankruptcy assets. Clients' money and assets are excluded from the provisions of moratorium stipulated in the Bankruptcy Law.</p> <p>b) If, on a bankruptcy event of a capital market institution holding client money or client assets, the Capital Market Institution has or may have insufficient client assets or client money to satisfy its obligations to return such money and assets to its clients, then the claims of clients in respect of any shortfall in client assets and client money rank ahead of all other creditors.</p>	<p>The proposed amendments aim to adding a general provision stating that Clients' money and assets shall not be included in the Capital Market Institution's bankruptcy assets, and excluding clients' money and assets from the provisions of moratorium stipulated in the Bankruptcy Law; for the purpose of confirming that neither the Capital Market Institution or the trustee nor any other person shall include such money and assets to the bankruptcy assets, and to ensure that clients' right to claim such money and assets is not suspended in any phase of the bankruptcy procedures.</p> <p>It is worth mentioning that the proposed amendments also aim to replace the terms "Insolvency", "liquidation" and "Settlement" with the term "Bankruptcy"; to be consistent with the term used in the Bankruptcy Law.</p>



Current Provisions	Provisions after Proposed Amendments	Clarification
<p>Article 97: Settlement Proceedings</p> <p>a) If a capital market institution proposes to submit a petition to request a settlement under the Bankruptcy Regulations, the capital market institution must:</p> <p>1) notify the Authority of the proposed petition at least 14 days prior to its submission;</p> <p>2) provide the Authority with any documentation it requests; and</p> <p>3) cooperate with the Authority prior to initiating settlement proceedings in order to ensure that client money, client assets and all other claims of clients relating to their accounts are resolved.</p> <p>b) The Authority may attend and be heard at any proceedings relating to the insolvency or bankruptcy of the capital market institution, including:</p> <p>1) any meeting of members or creditors of the capital market institution; or</p> <p>2) any application for conciliation with creditors or settlement to prevent bankruptcy under the Bankruptcy Regulations.</p> <p>c) No settlement proceedings in respect of a capital market institution may be granted unless the Authority consents to it.</p> <p>d) From the initiation of settlement proceedings to the end of such proceedings, the capital market institution may not, without the prior consent of the Authority, undertake any of the following actions:</p> <p>1) accept further client money or client assets;</p> <p>2) dispose of client money or client assets; or</p> <p>3) compromise, effect a mortgage, charge or pledge, give a guarantee, donate any part of its assets or effect a transfer of ownership in relation to any of its assets.</p> <p>e) The Authority is an interested party for the purposes of any proceedings relating to a capital</p>	<p>Article 97: Procedures for Obtaining the Authority's Approval</p> <p>a) A capital market institution that holds clients' money or assets, or manages investment funds, must obtain the Authority's written consent prior to filing a petition for the initiation of any of the bankruptcy procedures or the judicial depository with the competent court. A creditor of a capital market institution must, in all cases, obtain the Authority's written consent prior to filing a petition for the initiation of any of the bankruptcy procedures or the judicial depository for the Capital Market Institution with the competent court.</p> <p>b) an application submitted by the Capital Market Institution for obtaining the Authority's consent - in accordance with the provisions of Paragraph (a) of this Article- must be accompanied by a written acknowledgement from an auditor registered with the Authority in accordance with the Rules for Registering Auditors of Entities Subject to the Authority's Supervision, that there is no deficit in the clients' money and assets which the Capital Market Institution holds, or if any, a statement of the amount of deficit, and its justifications. The Capital Market Institution must provide the auditor with any information or documents that it requires for this purpose.</p> <p>c) If a creditor of a capital market institution applies for obtaining the Authority's consent - in accordance with Paragraph (a) of this Article-, The Authority may - at its discretion- requires the Capital Market Institution to provide a written acknowledgement from an auditor registered with the Authority in accordance with the Rules for Registering Auditors of Entities Subject to the Authority's Supervision, that there is no deficit in the clients' money and assets which the Capital Market Institution holds, or if any, a statement of the amount of deficit, and its justifications. The Capital Market</p>	<p>The proposed amendments aim to replace the current provision that stated that a capital market institution must notify the Authority of the proposed settlement petition at least (14) days prior to its submission, with provisions stating that:</p> <p>1. A capital market institution that holds clients' money or assets, or manages investment funds, must obtain the Authority's written consent prior to filing a petition for the initiation of any of the bankruptcy procedures or the judicial depository with the competent court.</p> <p>2. A capital market institution that does not hold clients' money or assets nor manage investment funds, must notify the Authority in writing at least (30) days in advance of filing a petition for the initiation of any of the bankruptcy procedures or the judicial depository with the competent court.</p> <p>3. A creditor of a capital market institution must, in all cases, obtain the Authority's written consent prior to filing a petition for the initiation of any of the bankruptcy procedures or the judicial depository for the Capital Market Institution with the competent court.</p> <p>In addition, the proposed amendments aim to adding a new provision clarifying the Authority's power to request the information and documents from the Capital Market Institution in case the Authority or any of the creditors of the Capital Market Institution filing a petition for the initiation of any of the bankruptcy procedures or the judicial depository.</p> <p>The proposed amendments also aim to adding a new provision</p>



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<p>market institution under the Bankruptcy Regulations.</p>	<p>Institution must provide the auditor with any information or documents that it requires for this purpose.</p> <p>d) The Capital Market Institution must provide the Authority with any information and documents that it requires for the purpose of initiating any of the bankruptcy procedures or judicial depository for the Capital Market Institution.</p> <p>e) The Authority shall, upon receipt of all information and documents required, notify the applicant in writing of the same, and shall take any of the following decisions within a maximum period of (30) days from the date of the notice:</p> <ol style="list-style-type: none"> 1. Approve the application; 2. Approve the application subject to such conditions and limitations as it considers appropriate; or 3. Refuse the application. <p>f) In case of deficit in the clients' money and assets, the Authority may request a report from the Capital Market Institution clarifies the remedial action for such deficit, and the expected timeframe to execute such remedial action.</p> <p>g) The Capital Market Institution must cooperate with the Authority prior to initiating bankruptcy proceedings in order to ensure that client money, client assets, and all other claims of clients relating to their accounts are resolved.</p> <p>h) The Authority may appoint or require the Capital Market Institution to appoint a third party to take any steps as it considers necessary for the protection of the clients of the Capital Market Institution. The fees and expenses of the third party shall be collected from the Capital Market Institution's own money. The fees and expenses of the third party has the same debts' priority ranking of the fees and expenses of the trustee in accordance with the Bankruptcy Law.</p> <p>i) The Authority may direct the Capital Market Institution to take any measures that it considers necessary under the Law and its implementing regulations for the protection of the clients of the Capital</p>	<p>confirming the Authority's power to direct the Capital Market Institution to take any measures that it considers necessary based on the Capital Market Law and its implementing regulations for the protection of clients of the Capital Market Institution, including completing any outstanding business or transferring it to another capital market institution, and taking the necessary measures to transfer the clients' money and assets and protect their rights.</p>



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	<p>Market Institution, including completing any outstanding business or transferring it to another capital market institution, and taking the necessary measures to transfer the clients' money and assets and protect their rights, and pay back any shortage in the clients' money or assets - if any- from the Capital Market Institution's own money.</p> <p>j) A capital market institution that does not hold clients' money or assets nor manage investment funds, must notify the Authority in writing at least (30) days in advance of filing a petition for the initiation of any of the bankruptcy procedures or the judicial depository with the competent court. Such notification must be accompanied by a written acknowledgement from an auditor registered with the Authority in accordance with the Rules for Registering Auditors of Entities Subject to the Authority's Supervision, that the Capital Market Institution does not hold clients' money or assets nor manage investment funds.</p> <p>k) The Authority may, within the thirty days period mentioned in Paragraph (j) of this Article, impose on the Capital Market Institution the requirement for obtaining the Authority's written consent in accordance with the provisions of Paragraph (a) of this Article.</p> <p>l) A capital market institution that holds clients' money or assets or manages investment funds, must obtain the Authority's written consent prior to take a decision to dissolve it in accordance with the Companies Law.</p> <p>m) The Authority is an interested party for the purposes of any proceedings relating to a capital market institution under the Bankruptcy Regulations.</p>	
<p>Article 98: Liquidation Proceedings</p> <p>a) If a capital market institution enters into the stage of liquidation under the Bankruptcy Regulations, the capital market institution must:</p>	<p>Article 98: Bankruptcy Proceedings</p> <p>a) The Capital Market Institution that initiate any of the bankruptcy proceedings under the Bankruptcy Law must:</p> <p>1) notify the Authority of the bankruptcy procedure and of the proposed date of any</p>	<p>The proposed amendments aim to amend the scope of this Article to include all the bankruptcy proceedings (including protective settlement procedure, financial restructuring procedure and liquidation procedure).</p>



Current Provisions	Provisions after Proposed Amendments	Clarification
<p>1) notify the Authority of the liquidation and of the proposed date of any meeting of members or creditors relating to the liquidation;</p> <p>2) provide the Authority with any documentation it requests in relation to the liquidation proceedings; and</p> <p>3) cooperate with the Authority prior to initiating settlement proceedings in order to ensure that client money, client assets and all other claims of clients relating to their accounts are resolved.</p> <p>b) No appointment of a liquidator in respect of a capital market institution will be effective unless the Authority consents to it.</p> <p>c) The Authority may attend and be heard at any proceedings relating to the insolvency or bankruptcy of the capital market institution, including:</p> <p>1) any meeting of members or creditors of the capital market institution; and</p> <p>2) any liquidation proceedings under the Bankruptcy Regulations.</p> <p>d) From the initiation of liquidation under the Bankruptcy Regulations, the capital market institution may not, without the prior consent of the Authority, undertake any of the following actions:</p> <p>1) accept further client money or client assets; or</p> <p>2) dispose of client money or client assets; or</p> <p>3) compromise, effect a mortgage, charge or pledge, give a guarantee, donate any part of its assets or effect a transfer of ownership in relation to its assets.</p> <p>e) The Authority may direct the liquidator to take such steps as the Authority considers fit to establish the entitlements of clients of the capital market institution at any time, or to appoint a third party to take such steps.</p>	<p>meeting of members or creditors relating to the bankruptcy procedure; and</p> <p>2) provide the Authority with any documentation it requests in relation to the bankruptcy proceedings.</p> <p>b) The Authority may request from the competent court to dismiss the trustee and appoint a new trustee from the list of trustees or others.</p> <p>c) The Authority may attend and be heard at any proceedings relating to the bankruptcy of the Capital Market Institution, including:</p> <p>1) any meeting of members or creditors of the Capital Market Institution; and</p> <p>2) any bankruptcy proceedings under the Bankruptcy Regulations.</p> <p>d) From the date of issuance of the Authority's consent to filing a petition for the initiation of any of the bankruptcy procedures or the judicial depository and until a court ruling on such initiation of procedures and appointment of a trustee under the Bankruptcy Law, the Capital Market Institution may not, without the prior consent of the Authority, undertake any of the following actions:</p> <p>1) accept further client money or client assets; or</p> <p>2) dispose of client money or client assets, except if such disposal was upon a prior written consent of the concerned client; or</p> <p>3) compromise, effect a mortgage, charge or pledge, give a guarantee, donate any part of its assets or effect a transfer of ownership in relation to its assets.</p> <p>e) The Authority may direct the trustee to take such steps as the Authority considers fit to establish the entitlements of clients of the Capital Market Institution at any time, or to appoint a third party to take such steps.</p>	<p>The proposed amendments also aim to replace the current provision that stated that no appointment of a liquidator in respect of a capital market institution will be effective unless the Authority consents to it, with a provision stated that the Authority may request from the competent court to dismiss the trustee and appoint a new trustee from the list of trustees or others.</p> <p>In addition, the proposed amendments aim to exclude the case in which a capital market institution has disposed the client money or assets after obtaining the prior written consent of the client to whom the money or assets belong; from the requirement of obtaining the Authority's prior consent to dispose any clients' money or assets.</p>



D) Proposed amendments to the Glossary of Defined Terms Used in the Regulations and Rules of the Capital Market Authority compared with the current provisions:

Current Provisions	Provisions after Proposed Amendments	Clarification
<p>- Insolvency: actual insolvency, or the commencement of any proceedings in respect of insolvency, liquidation or a voluntary arrangement under the Bankruptcy Regulations, or the commencement of any equivalent procedures in the Kingdom or in any other jurisdiction outside the Kingdom.</p>	<p>- Insolvency or Bankruptcy: actual insolvency or bankruptcy, or the commencement of any proceedings in respect of insolvency or bankruptcy under the Bankruptcy Regulations, or the commencement of any equivalent procedures in the Kingdom or in any other jurisdiction outside the Kingdom.</p>	<p>The proposed amendments aim to be consistent with the terms and phrases used in the Bankruptcy Law in light of the terms used in the Authority's other regulations.</p>