

KINGDOM OF SAUDI ARABIA

Capital Market Authority

**INSTRUCTIONS ON ISSUING DEPOSITARY RECEIPTS OUT OF
THE KINGDOM**

English Translation of the Official Arabic Text

Issued by the Board of the Capital Market Authority

Pursuant to its Resolution Number 2-86-2020

Dated 19/1/1442H Corresponding to 7/9/2020G

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

The current version of these Instructions, as may be amended, can be found at
the CMA website: www.cma.org.sa

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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 and listed in the Exchange or shares issued in the Kingdom and its Issuer has made the necessary arrangements for listing them in the Exchange.
- 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 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:
 - Depositary Bank: A financial institution of legal personality authorised to issue and cancel Depositary Receipts out of the Kingdom, appointed by the Issuer in accordance with the provisions of these Instructions.
 - Foreign Market: A regulated market for the trade of securities out of the Kingdom.
 - Depositary Receipts: Financial instruments listed and traded in a Foreign Market, issued by the Depositary Bank for shares issued in the Kingdom and listed in the Exchange, or for shares issued in the Kingdom and its Issuer has made the necessary arrangements for listing them in the Exchange.
 - Ratio of Shares to Depositary Receipts: The number of Depositary Receipts for each of the Issuer’s issued shares in the Kingdom.

Part 3: Waivers

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

Part 4: General Provisions

- a) The issuance of Depositary Receipts out of the Kingdom must 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 or any other related laws, including the provisions stipulated in the Rules on the Offer of Securities and Continuing Obligations and the Listing Rules.

- b) The Depository Bank must be licensed (or otherwise subject to regulatory oversight) by a regulatory authority, and must be incorporated in a jurisdiction that applies regulatory and monitoring standards equivalent to those of the Authority or acceptable to it. The Authority may determine, at its sole discretion, whether such regulatory and monitoring standards are equivalent to those of the Authority or acceptable to it.
- c) Prior to listing the Depository Receipts in the Foreign Market, the Depository Receipts must be offered out of the Kingdom.
- d) As an exception to the provisions of the Instructions for Book Building Process and Allocation Method in Initial Public Offerings, if the offering of shares in the Kingdom occurred simultaneously with the offering of the corresponding Depository Receipts out of the Kingdom, the financial advisor, in agreement with the Issuer, may take into consideration the subscription applications of the legal persons for the Depository Receipts out of the Kingdom during the book building process and the subscription price determination for the shares offered in the Kingdom, provided that the allocation for the shares that correspond to the Depository Receipts that are going to be issued out of the Kingdom are allocated to the Depository Bank.
- e) 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 shall be considered owned by the Public.
- f) The Rules for Qualified Foreign Financial Institutions Investment in Listed Securities shall not apply to the Depository Bank.

Part 5: 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 must submit an application to the Authority that includes the information and documents required in the Annex of these Instructions.
- c) In considering an application, the Authority may:
 - 1. carry on 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, upon receipt of all information and documents required, shall notify the Issuer in writing, and shall take any of the following decisions 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; or
 - 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 documents arises after its 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, when it decides to approve the application, may publish the identity of the Depositary Bank appointed by the Issuer.

Part 6: Issuer's Obligations

- a) The Issuer, after obtaining the Authority's approval to issue Depositary Receipts out of the Kingdom, must notify the Authority and the Exchange with no delay of the listing, suspension, or delisting of its Depositary Receipts in the Foreign Market.
- b) The Issuer must comply with the requirement that the maximum limit of the total number of shares agreed upon with the Depositary Bank that Depositary Receipts can be issued corresponding to it, does not exceed 10% of the total of its issued shares or the equivalent of one third of its shares owned by the Public, whichever is less.
- c) The Issuer, in agreement with the Depositary Bank, must establish a mechanism for the distribution of voting rights related to shares to the holders of the Depositary Receipts, in accordance with voting mechanism set by the Depositary Center.
- d) The Issuer must disclose to the Public in the Kingdom all information that must be disclosed to the Public under the Capital Market Law, its Implementing Regulations and the Exchange Rules, and all information disclosed in the Foreign Market simultaneously in a way that ensures that no information or material

developments are leaked to the Foreign Market before disclosing them to the Public in the Kingdom in accordance with the Listing Rules.

- e) If the Issuer submits a prospectus or any other equivalent document in the Foreign Market, the issuer must make such information available, with no delay, as a document available for the Public in the Kingdom.
- f) Upon the receipt of a notice from the Authority based on the occurrence of any of the events specified in paragraph (d) of Part 10 of these Instructions in respect of the Depository Bank, the Issuer must appoint an alternative Depository Bank within a period not exceeding (45) days from the date of receipt of such notice.

Part 7: Depository Bank's Obligations

- a) The Depository Bank, when the Issuer obtains the Authority's approval for issuing Depository Receipts out of the Kingdom, must open an account with the Depository Center and appoint a custodian authorised to carry out custody business in the Kingdom to hold the shares that correspond to the Depository Receipts that are going to be issued out of the Kingdom, in accordance with any regulations, rules or procedures the Authority, the Exchange or the Depository Center issues.
- b) The Depository Bank, when the Issuer obtains the Authority's approval for issuing Depository Receipts out of the Kingdom, must open an investment account with a Capital Market Institution in the Kingdom, in which the transactions shall be limited to the transactions related to the Issuer's corporate actions for the shares that correspond to the Depository Receipts.
- c) The Depository Bank may not dispose of the shares deposited in its account with the Depository Center, except for transferring the shares to a Capital Market Institution licensed to carry out dealing business, for the purpose of canceling the corresponding Depository Receipts; in accordance with any regulations, rules or procedures issued by the Authority, the Exchange or the Depository Center.
- d) The Depository Bank must comply with the requirement that the total number of shares that correspond to the Depository Receipts it issues, shall not exceed the maximum limit under the Depository Receipts program agreed upon with the Issuer.
- e) The Depository Bank must without delay, notify the Exchange, in the event of any change in the Ratio of Shares to Depository Receipts.
- f) Without prejudice to the provisions of paragraph (c) of this Part, the Depository Bank must enable the holder of Depository Receipts, if such holder is among the categories of investors allowed to invest in the listed shares in the Kingdom, to cancel such Depository Receipts to become the holder of the corresponding shares, provided that such holder of Depository Receipts holds an investment account with a Capital Market Institution in the Kingdom and an account with the Depository Center.

- g) Without prejudice to the provisions of paragraph (d) of this Part, the Depository Bank must enable the shareholder, if such shareholder is among the categories of investors allowed to invest in the Depository Receipts listed in the Foreign Market, to convert shares to Depository Receipts to become a holder of Depository Receipts in the Foreign Market.
- h) The Depository Bank must prepare and maintain correct records of all transactions related to Depository Receipts and corresponding shares. All records must, at all times, be current and sufficient to demonstrate compliance with the provisions of these Instructions.
- i) The Depository Bank must maintain the records as stipulated in these Instructions for a period not less than ten years unless the Authority specifies otherwise. Without prejudice to this period and in case of any litigation or claim (including any litigation pending or threatened) or any on-going investigations relating to these documents, the Depository Bank must retain such documents until the closure of that litigation, claim or on-going investigation.
- j) All records required to be maintained by the Depository Bank under the provisions of these Instructions must be available for review of the Authority at request.

Part 8: Capital Market Institution's Obligations

The Capital Market Institution, who deals or intends to deal with a shareholder or Depository Receipts holder for the purpose of issuing or canceling Depository Receipts by the Depository Bank, must designate an investment account and an account with the Depository Center, in which the transactions shall be limited to the transactions related to issuing or canceling Depository Receipts by the Depository Bank.

Part 9: Investment Limits

The shares held by the Depository Bank for the purpose of issuing or cancelling Depository Receipts shall be subject to the following limitations:

- a) The maximum proportion of the shares of any issuer whose shares are listed or convertible debt instrument of the issuer that may be owned by all foreign investors (in all categories, whether residents or non-residents, except the foreign strategic investors pursuant to the Instructions for the Foreign Strategic Investors' Ownership in Listed Companies) in aggregate is 49%.
- b) Other legislative limitations on foreign ownership in joint stock companies.
- c) The limitations set forth in the articles of association or by-laws of the listed companies or any instructions issued by the supervisory or regulatory authorities to which these companies are subject.

Part 10: Authority's Powers in Relation to the Depository 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 Depository Bank, the Authority may:
 - 1) Require the Depository Bank to provide such information, documents and/or written explanation as the Authority deems necessary to verify the relevant situation;
 - 2) Require the Depository Bank or its representative, to attend before the Authority to answer questions and explain any matter the Authority considers relevant;
 - 3) Carry on any enquiries that it considers appropriate;
 - 4) Take any action to verify any information provided by the Depository Bank, including communicating with foreign regulatory authorities;
 - 5) Prohibit the Depository Bank from disposing of shares held in its account with the Depository Center;
 - 6) Oblige the Issuer to appoint an alternative Depository Bank; and
 - 7) Exercise any of its other powers under the Capital Market Law and its Implementing Regulations.
- b) Prohibition under sub-paragraphs (5) of paragraph (a) of this Part shall be effective immediately upon sending a written notice of such from the Authority to the Issuer and the Depository Bank.
- c) The Authority may publish the identity of the Depository Bank, who has been prohibited from disposing of the shares held in its account with the Depository Center 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 stipulated in the Capital Market Law and its Implementing Regulations 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 the prohibition imposed under this Part, the Depository Bank may not dispose of any shares held in its account with the Depository Center without the prior consent of the Authority.

Part 11: Publication and Entry into Force

These Instructions shall become effective upon its publication date.

Annex: Required Information and Documents to Apply for the Authority's Approval for Issuing Depositary Receipts out of the Kingdom

The Issuer must attach to its application to the Authority electronic copies of the following documents (and must 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, 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 Issuer's bylaws, the Companies Law and its Implementing Regulations.
3. Name of the Depositary Bank, its place of incorporation, 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 that 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 total number of the Issuer's shares to be offered under the Depositary Receipts program.
6. The maximum value of Depositary Receipts that may be issued under the Depositary Receipts program.
7. The Ratio of Shares to Depositary Receipts.
8. The percentage of Depositary Receipts to be issued to the total number of Issuer's shares issued in the Kingdom.
9. The process and cost for canceling Depositary Receipts when a holder requests to be the owner of the shares corresponding to the Depositary Receipts, including the time needed for canceling Depositary Receipts and enabling the holder to trade the underlying shares in the Exchange.
10. The process and cost for issuing Depositary Receipts when a shareholder requests to be a holder of Depositary Receipts, including the time needed for issuing Depositary Receipts and enabling the holder to trade them in the Foreign Market.
11. Any other conditions or requirements determined by the Authority.