



Draft Rules for Foreign Investment in Securities

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 2/6/1424 H, the CMA Board issued its resolution to publish the Draft Rules for Foreign Investment in Securities (the "Draft Rules") for public consultation for a period of (30) calendar days.

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

The Draft Rules aims to develop the provisions regulating foreign investment in securities, which would contribute to raising the attractiveness and efficiency of the capital market and enhance its competitiveness regionally and internationally.

The main elements of the Draft Rules are as follows:

- a) Developing the qualification conditions that must be met by the qualified foreign investor.
- b) Removing the requirements on application for qualification and assessment agreement and only require opening an investment account for the qualified foreign investor in accordance with the Investment Accounts Instructions.
- c) Adding a new channel for foreign investment in securities listed on the main market by allowing foreign natural and legal persons to invest in securities listed on the main market through discretionary portfolio management by Capital Market Institutions.
- d) Developing the conditions on the investment of non-resident foreign persons in listed securities through swap agreements, including removing the requirement on the duration of such swap agreements, as well as removing the requirement to notify the CMA prior to entering into a swap agreement.
- e) Merging the provisions regulating foreign investment in securities into one regulatory document.



Proposed provisions of the Draft Rules for Foreign Investment in Securities:

PART 1: PRELIMINARY PROVISIONS

Article 1: Preliminary

- a) The purpose of these Rules is to state the provisions for foreign investment in listed securities, debt instruments and investment funds.
- b) These Rules shall have no prejudice to the provisions of the Law and its Implementing Regulations, including the Rules of Offering Securities and Continuing Obligations, the Market Conduct Regulations, the Capital Market Institutions Regulations, the Merger and Acquisition Regulations, the Investment Accounts Instructions, Listing Rules and other related laws.
- c) Foreign investors must, at all times, comply with the relevant provisions stipulated in the Law and its Implementing Regulations, Exchange Rules and its Regulations, and other related laws.
- d) Without prejudice to Paragraph (a) of Article (8) of these Rules, these Rules shall not apply to Citizens of the Cooperation Council for the Arab States of the Gulf.

Article 2: Definitions

- a) Any reference to the “Law” in these Rules shall mean the Capital Market Law issued by Royal Decree No. (M/30) dated 2/6/1424H.
- b) Without prejudice to Paragraph (c) of this Article, expressions and terms in these Rules have the meaning which they bear in the Law and the Glossary of defined terms used in the Regulations and Rules of the Capital Market Authority, unless the contrary intention appears.
- c) For the purpose of implementing these Rules, the following expressions and terms shall have the meaning they bear as follows unless the contrary intention appears:
 - **Authorisation Requirement:** authorisation requirement stated in Article (5) of the Securities Business Regulations.
 - **Foreign Portfolio Manager:** a foreign financial institution that has a legal personality which manages the assets of clients, which engages or intend to engage with the QFI for the purpose of investing on its behalf in listed securities.
 - **Qualified Foreign Investor (QFI):** A foreign investor that is qualified, in accordance with the provisions of Part (3) of these Rules, to invest in shares listed on the Main Market.
 - **Foreign Strategic Investor:** a foreign legal entity that aims to own a Strategic Shareholding in listed companies.
 - **Strategic Shareholding:** the direct ownership percentage in the listed company's shares, and through which the aim is to contribute in promoting the financial or operational performance of the listed company.
 - **Citizens of the Cooperation Council for the Arab States of the Gulf:** natural persons who hold the citizenship of one of the Cooperation Council for the Arab States of the Gulf countries, or legal persons that (i) capital of which is majority owned by citizens or governments of the Cooperation Council for the Arab States of the Gulf; and (ii) holding the citizenship of one of the Cooperation Council for the Arab States of the Gulf countries, in accordance with the definition set out in the resolution of the Supreme Council of the Cooperation Council for the Arab States of the Gulf in its 15th session approved by the Council of Ministers Resolution No. (16) dated 20/01/1418H.
 - **Government Related Entities:** central banks, and investment funds -including sovereign funds and funds which take the form of pension and endowments funds- fully owned (directly or indirectly) by a government entity.



Article 3: Waivers

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

Article 4: Right to 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: GENERAL PROVISIONS

Article 5: General Provisions

Foreign natural and legal persons, whether residing or not, may invest in listed securities, debt instruments and investment funds, with due consideration to the provisions stipulated in these Rules.

Article 6: Investment Restrictions

- a) Investments of non-residing foreign investors in shares listed on the Main Market shall be limited to the following categories:
 - 1) QFI.
 - 2) Foreign Strategic Investor.
 - 3) Ultimate beneficiary in swap agreement with a capital market institution.
 - 4) Foreign natural or legal person, which is a client of a capital market institution authorised by the Authority to conduct managing activity, provided that the capital market institution has been appointed on conditions that enable it to make all investment decisions on the client behalf without obtaining prior approval of the client.
- b) Investments of foreign investors shall be subject to the following restrictions:
 - 1) A non-residing foreign investor (except the foreign strategic investor), may not own (10%) or more of the shares of any issuer whose shares are listed or convertible debt instrument of the issuer.
 - 2) 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) in aggregate is (49%).
 - 3) The restrictions set forth in the articles of association of the listed companies.
 - 4) Any regulatory restrictions or instructions issued by the competent authorities to which listed companies are subject to.
- c) The Exchange shall publish on its website, as determined by the Authority in this regard, the following information:
 - 1) A statistic reflecting the ownership percentages specified in Subparagraph (2) of Paragraph (b) of this Article.
 - 2) A statistic reflecting the ownership percentage of the Foreign Strategic Investors in listed companies.
 - 3) The restrictions specified in Subparagraphs (3) and (4) of Paragraph (b) of this Article, according to the information received by the Exchange from listed companies in this regard.
- d) A foreign person who invests directly in debt instruments may not convert them into shares listed on the main market; Unless that person is one of the categories of investors who are allowed to invest directly in such shares, or becomes an ultimate beneficiary in a swap agreement in accordance with the provisions of Part (4) of these Rules.
- e) The Foreign Strategic Investor, may not sell any of the shares it owned in accordance with these Rules within a period of two years after the date of ownership of such shares. The Capital Market Institution shall not enable any procedure that may violate the provisions of this Paragraph.



PART 3: QUALIFIED FOREIGN INVESTOR INVESTMENT IN SHARES LISTED ON THE MAIN MARKET

Article 7: Qualification Conditions

- a) A foreign investor is required to be a QFI to invest in shares listed on the main market, provided that the following qualification conditions must be satisfied:
 - 1) shall have a legal personality.
 - 2) shall have assets under him or his group ownership or management or custody of SAR (1,875,000,000) one billion eight hundred and seventy-five million Saudi Riyals (or an equivalent amount) or more, at the time of submitting an application to open an investment account. And the Authority may reduce the minimum of these assets.
- b) The condition in Subparagraph (2) of Paragraph (a) of this Article shall not apply to the following categories:
 - 1) Pension funds in which their main objective is to collect fees or periodic contributions from participants or for their interest, for the purpose of compensating them according to a specific mechanism.
 - 2) Endowment funds in which their main objective is to making grants to organizations, institutions, or individuals for scientific, educational, cultural purposes, including university endowments fund.
 - 3) Market makers, provided that the Capital Market Institution verifies that the investment account is for market making purposes.
 - 4) Government entities and their affiliated institutions; and
 - 5) International organizations of which the Kingdom is a member and their affiliated institutions.

Article 8: Capital Market Institutions and Foreign Portfolio Managers Engaged with the QFI

- a) A QFI may engage with foreign capital market institutions, foreign portfolio managers, foreign custodians, or foreign advisors; for the purpose of investing in listed securities.
- b) The QFI is exempted from the authorisation requirement to engage in dealing activity, when dealing in his capacity as principal in the listed securities.
- c) The QFI and the Foreign Portfolio Manager are exempted from the authorisation requirement of the practice of management activity, when they manage listed securities belonging to a QFI.
- d) Foreign custodians are exempted from the authorisation requirement to practice custodial activity, when they safeguard listed securities belonging to a QFI.
- e) Foreign advisors are exempted from the authorisation requirement to practice advising activity, when they provide an advice to a QFI.



PART 5: NON-RESIDENT FOREIGNER INVESTMENT IN LISTED SECURITIES THROUGH SWAP AGREEMENTS

Article 9: Terms and Requirements for Entering into Swap Agreements

Capital Market Institutions are permitted to enter into swap agreements with Foreign Counterparties only for the benefit of non-resident foreign investors for the purpose of transferring the economic benefits of securities listed on the Exchange to these investors on their capacities as Ultimate Beneficiaries through swap transactions executed under the swap agreements, in accordance with the following conditions and requirements:

- 1) The money and assets of the Ultimate Beneficiary shall be deemed client money and client assets as stated in the Capital Market Institutions Regulations, including the provisions therein which provide that client money and client assets must be segregated from the Capital Market Institution's own money and assets, and the creditors of a Capital Market Institution do not have any claim or entitlement on the segregated money or assets of the clients.
- 2) The Capital Market Institution may not enter into any swap agreement or execute any swap transaction in which the Ultimate Beneficiary is any of the following parties:
 - a. QFI.
 - b. Citizens of the Cooperation Council for the Arab States of the Gulf.
 - c. Foreign investors residing in the Kingdom.
 - d. A foreign person other than the ones mentioned in Subparagraphs (a), (b) and (c) of Paragraph (2) of this Article, that owns securities of a company listed on the Exchange, in relation to swap transactions that involve the shares or convertible debt instruments of that listed company.
- 3) All orders to execute swap transactions must be submitted to the Capital Market Institution by the Foreign Counterparty only or by a third party who is authorised by the Foreign Counterparty.
- 4) Any swap agreement a capital market institution enters into must include a clear clause that grants it all the voting rights attached to the shares subject of the swap transaction executed under the swap agreement, without any voting rights given to the Foreign Counterparty or the Ultimate Beneficiary.
- 5) The Capital Market Institution that enters into a swap agreement is prohibited from exercising any of the voting rights attached to the shares subject of the swap transactions executed under the swap agreement.
- 6) The Capital Market Institution that intends to enter into a swap agreement must be authorised by the Authority to conduct dealing activity.
- 7) The Capital Market Institution must ensure full compliance with the requirements stipulated in the Anti-Money Laundering Law and its Implementing Regulations, and any other related laws.
- 8) All swap transactions must be fully covered during the whole period of the swap agreement through buying the underlying securities.
- 9) The Capital Market Institution must maintain systems and controls which are adequate enough to ensure the implementation of conditions and requirements of the swap agreement and ensure their validity.
- 10) The Capital Market Institution must purchase and sell the securities underlying the swap transactions through an investment portfolio under its name at the Depository Center. Such investment portfolio shall include an indication that it is for the purpose of executing swap transactions under the swap agreement, and an indication of the name, nationality and identity of the Ultimate Beneficiary.



Article 10: Other Provisions

- a) The Authority may, at its sole discretion, order any of the Capital Market Institutions to stop from entering into any swap agreements, or to impose any type of limitations, restrictions or requirements in relation to swap agreements entered into by the Capital Market Institution, the Foreign Counterparty or the Ultimate Beneficiary.
- b) with an exception to Subparagraph (a) of Paragraph (2) of Article (9) of these Rules, the Capital Market Institution may continue to execute swap transaction for a foreign investor who is accepted as a QFI for a period not exceeding (12) months from the date of opening an account with the Depository Center As a QFI.

PART 5: ENTRY INTO FORCE

Article 11: Entry into Force

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



C) Proposed amendments to the Investment Accounts Instructions compared with the current provisions:

Investment Accounts Instructions			
#	Current Provisions	Provisions after Proposed Amendments	Clarification
	<p>Article 7: Instructions for Opening Investment Accounts for Legal Persons</p> <p>...</p> <p>b) Opening Investment Accounts for Foreign Legal Persons</p> <p>The capital market institution may open an investment account for a foreign legal person who has no premises in the Kingdom for the purpose of investing in the permitted securities in accordance with the Capital Market Law and its Implementing Regulations and the relevant instructions issued by the Authority, including opening an investment account for a foreign legal person for the purpose of entering into a swap agreement in accordance with the Authority's instructions related to swap agreements.</p> <p>c) Opening Investment Accounts for Qualified Foreign Investors</p> <p>To open an investment account for a qualified foreign investor in accordance with the provisions of the Rules for Qualified Foreign Financial Institutions Investment in Listed Securities, the capital market institution may use the guidance list of documents provided in Annex (2) of these Instructions by obtaining</p>	<p>Article 7: Instructions for Opening Investment Accounts for Legal Persons</p> <p>...</p> <p>b) Opening Investment Accounts for Foreign Legal Persons</p> <p>The capital market institution may open an investment account for a foreign legal person who has no premises in the Kingdom for the purpose of investing in the permitted securities in accordance with the Capital Market Law and its Implementing Regulations and the relevant instructions issued by the Authority, including opening an investment account for a foreign legal person for the purpose of entering into a swap agreement in accordance with the Rules for Foreign Investment in Securities.</p> <p>c) Opening Investment Accounts for Qualified Foreign Investors</p> <p>1) To open an investment account for a qualified foreign investor in accordance with the provisions of the Rules for Foreign Investment in Securities, the capital market institution may use the guidance list of documents provided in Annex (2) of these Instructions by obtaining copies of the</p>	<p>The proposed amendment aims to confirm the capital market institution's duty to ensure that the foreign investor fulfills the relevant qualification conditions stipulated in the Rules for Foreign Investment in Securities before opening an investment account for the foreign investor as a QFI in the light of the proposed amendments in regard to removing the requirements on application for qualification and assessment agreement and only require opening an investment account in accordance with the Investment Accounts Instructions.</p>



Investment Accounts Instructions			
#	Current Provisions	Provisions after Proposed Amendments	Clarification
	copies of the documents and verifying them.	documents and verifying them. 2) The Capital Market Institution must ensure that the foreign investor fulfills the relevant qualification conditions stipulated in the Rules for Foreign Investment in Securities before opening an investment account for the foreign investor as a QFI.	
	<p>Annex 2: Guidance List of Documents for Opening an Investment Account for Qualified Foreign Investors</p> <ul style="list-style-type: none"> - The license or the commercial register for the foreign investor obtained from the relevant authority in the county of establishment. - The by-laws and its annexes, or a copy of the article of association and its annexes. - A list of the names of the legal entity's managers and authorised signatories on behalf of the foreign investor in regard to the account. - A delegation from the Board of Directors specifying names of authorised signatories in relation to the account. 	<p>Annex 2: Guidance List of Documents for Opening an Investment Account for Qualified Foreign Investors</p> <ul style="list-style-type: none"> - The commercial register for the foreign investor obtained from the relevant authority in the county of establishment and jurisdiction of establishment. - The by-laws and its annexes, or a copy of the article of association and its annexes. - A list of the names of the members of the board of director and senior executives. - A delegation from the Board of Directors specifying names of authorised signatories in relation to the account. - A copy of the most recent annual report and consolidated accounts of the foreign investor or its group. - Financial statements audited by the foreign investor's auditors or its group. 	The proposed amendment aims to add a number of documents to the Guidance List of Documents for Opening an Investment Account for Qualified Foreign Investors in the light of the proposed amendments in regard to removing the categories of the qualified financial institutions and only require the foreign investor to have a legal personality, and removing the requirements on application for qualification and assessment agreement and only require opening an investment account in accordance with the Investment Accounts Instructions.



D) Proposed amendments to the Regulatory Rules and Procedures issued pursuant to the Companies Law relating to Listed Joint Stock Companies compared with the current provisions:

Regulatory Rules and Procedures issued pursuant to the Companies Law relating to Listed Joint Stock Companies		
Current Provisions	Provisions after Proposed Amendments	Clarification
<p>Article 49: ...</p> <p>b) A shareholder who is a legal person established outside the Kingdom may send a proxy letter to the Company, attested by the Kingdom's diplomatic authorities and embassy in its country and the Saudi Ministry of Foreign Affairs, specifying its representatives who have the right to attend the Company's General Assembly or Special Assembly meetings on its behalf. Such proxy letter must be sent to the Company within the first three (3) months of the financial year or within one (1) month from the date of acquiring Shares in the Company. Such letter shall be deemed an official proxy letter which allows such representatives to attend General Assembly or Special Assembly meetings held within one (1) year from the date of the proxy letter. As an exception to the above, the qualified foreign investor may have the letter referred to in this paragraph attested by the assessing authorised person with whom he transacts, in accordance to the Rules for Qualified Foreign Financial Institutions Investment in Listed Securities.</p> <p>...</p>	<p>Article 49: ...</p> <p>b) A shareholder who is a legal person established outside the Kingdom may send a proxy letter to the Company, attested by the Kingdom's diplomatic authorities and embassy in its country and the Saudi Ministry of Foreign Affairs, specifying its representatives who have the right to attend the Company's General Assembly or Special Assembly meetings on its behalf. Such proxy letter must be sent to the Company within the first three (3) months of the financial year or within one (1) month from the date of acquiring Shares in the Company. Such letter shall be deemed an official proxy letter which allows such representatives to attend General Assembly or Special Assembly meetings held within one (1) year from the date of the proxy letter. As an exception to the above, the qualified foreign investor may have the letter referred to in this paragraph attested by the capital market institution with whom he opens his investment account, in accordance to the Investment Accounts Instructions.</p> <p>...</p>	<p>The proposed amendment aims to enable the QFI to attest the letter mentioned in this Paragraph by the capital market institution with whom he opens his investment account in accordance with the Investment Accounts Instructions, as an alternative provision of the current provision that enables the QFI to attest the aforementioned letter by the authorised person with whom he transacts, in the light of the proposed amendments in regard of removing the requirements on application for qualification and assessment agreement and only require opening an investment account in accordance with the Investment Accounts Instructions.</p>



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

Glossary of Defined Terms Used in The Regulations and Rules of the Capital Market Authority		
Current Provisions	Provisions after Proposed Amendments	Clarification
<p>- Qualified Investor: means in Part 8 of the Rules on the Offer of Securities and Continuing Obligations, Articles 46 and 47 of the Investment Funds Regulations and Article 45 of the Real Estate Investment Funds Regulations, any of the following:</p> <ol style="list-style-type: none"> 1) Capital Market Institutions acting for their own account. 2) Clients of a Capital Market Institution by the Authority to conduct managing activities provided that this Capital Market Institution has been appointed as an investment manager on terms which enable it to make decisions concerning the acceptance of an offer and investment in the Parallel Market on the client's behalf without obtaining prior approval from the client. 3) The Government of the Kingdom, any government body, any supranational authority recognised by the Authority or the Exchange, and any other stock exchange recognised by the Authority or the Securities Depository Center. 4) Government-owned companies, either directly or through a portfolio managed by a Capital Market Institution authorised to carry out managing activities. 5) Companies and funds established in a member state of the Cooperation Council 	<p>- Qualified Investor: means in Part 8 of the Rules on the Offer of Securities and Continuing Obligations, Articles 46 and 47 of the Investment Funds Regulations and Article 45 of the Real Estate Investment Funds Regulations, any of the following:</p> <ol style="list-style-type: none"> 1) Capital Market Institutions acting for their own account. 2) Clients of a Capital Market Institution by the Authority to conduct managing activities provided that this Capital Market Institution has been appointed as an investment manager on terms which enable it to make decisions concerning the acceptance of an offer and investment in the Parallel Market on the client's behalf without obtaining prior approval from the client. 3) The Government of the Kingdom, any government body, any supranational authority recognised by the Authority or the Exchange, and any other stock exchange recognised by the Authority or the Securities Depository Center. 4) Government-owned companies, either directly or through a portfolio managed by a Capital Market Institution authorised to carry out managing activities. 5) Companies and funds established in a member state of the Cooperation Council 	<p>The proposed amendment to the definition of the term "Qualified Investor" in the Glossary of Defined Terms Used in The Regulations and Rules of the Capital Market Authority aims to removing Paragraphs (7) and (8) of it, in the light of the proposed provision stated in the Rules for Foreign Investment in Securities that allows investment for foreign natural and legal persons whether residing or not, and taking into consideration the provisions of Part (8) of the Rules on the Offer of Securities and Continuing Obligations that stated that the offer in the Parallel Market shall be limited to the categories of qualified investors.</p>



Glossary of Defined Terms Used in The Regulations and Rules of the Capital Market Authority		
Current Provisions	Provisions after Proposed Amendments	Clarification
<p>for the Arab States of the Gulf.</p> <p>6) Investment Funds.</p> <p>7) Non-resident foreigners permitted to invest in the parallel market and who meet the requirements stipulated in the Guidance Note for the investment of Non-Resident Foreigners in the Parallel Market.</p> <p>8) Qualified foreign financial institutions.</p> <p>9) Any other legal persons allowed to open an investment account in the Kingdom and an account at the Depository Center.</p> <p>10) Natural persons allowed to open an investment account in the Kingdom and an account at the Depository Center, and fulfil any of the following criteria:</p> <ol style="list-style-type: none"> Has conducted transactions in security markets of not less than 40 million Saudi riyals in total, and not less than ten transactions in each quarter during the last twelve months His net assets is not less than 5 million Saudi Riyals. works or has worked for at least three years in the financial sector. Holds the General Securities Qualification Certificate which is recognised by the Authority. holds a professional certificate that is related to securities business and accredited by an 	<p>for the Arab States of the Gulf.</p> <p>6) Investment Funds.</p> <p>7) Any other legal persons allowed to open an investment account in the Kingdom and an account at the Depository Center.</p> <p>8) Natural persons allowed to open an investment account in the Kingdom and an account at the Depository Center, and fulfil any of the following criteria:</p> <ol style="list-style-type: none"> Has conducted transactions in security markets of not less than 40 million Saudi riyals in total, and not less than ten transactions in each quarter during the last twelve months His net assets is not less than 5 million Saudi Riyals. works or has worked for at least three years in the financial sector. Holds the General Securities Qualification Certificate which is recognised by the Authority. holds a professional certificate that is related to securities business and accredited by an internationally recognised entity. <p>9) Any other persons prescribed by the Authority.</p>	



Glossary of Defined Terms Used in The Regulations and Rules of the Capital Market Authority		
Current Provisions	Provisions after Proposed Amendments	Clarification
internationally recognised entity. 11) Any other persons prescribed by the Authority.		