

The Kuwait Capital Markets Authority (CMA) Amendments

Wassim Sassia

w.sassia@tamimi.com

The amendments were made to certain articles under Chapter 8 which deals with the following sections: (i) Types of Investment; (ii) Requirements of Investment Fund Incorporation; (iii) Articles of Association of the Fund; (iv) the Issuance Memorandum; (v) Investment Funds Incorporated outside Kuwait; (vi) the Obligations of Investment Fund Manager; (vii) Rules of Investment; (viii) Financial Statements; (ix) CMA power to Request Information; and (x) Cancellation of License (the "Amendments").

The Resolution also added two more articles under Chapter 8 which deals with Investment Fund Advisor and the Safekeeping of Investment Fund Assets.

Under the Types of Investment section, Article 294 was amended by adding the following Paragraph to the 2 forms of the Investment Fund.

The investment fund and according to the nature of its activity, must take one of the following forms:

- A) Securities Investment Fund.
 - B) Real Estate Investment Fund.
 - C) Cash Fund.
 - D) Debt Instruments Fund.
 - E) Private Ownership Fund.
 - F) Holding Fund
- Or any other type – approved by the CMA.

Article 295 of the Types of Investment, was amended by adding the following exception to the payment of units' value upon subscription, by allowing for the Real Estate Investment Funds and the Private Ownership Funds to pay the subscription value in installments as per the articles of association of the Fund. The amendment sets the minimum investment fund capital to be not less than KD 5 million or its equivalent in other currencies.

Under the Requirements of Investment Fund Incorporation section, a paragraph was added to Article 300, stating that the fund manager's participation ratio in the fund should not be less than 5% of the fund capital, and is not allowed to dispose of the subscribed ratio so long the fund is existent. Further, the certificates for this ratio shall be kept with the Fund Trustee.

Moreover, Article 301 under the Requirements of Investment Fund Incorporation, added that after a lapse of 3 months from the issue date of the license and the minimum limit of the fund's capital is not covered, then the fund manager is allowed to request from the CMA for similar period and, the CMA shall study the request and finalize it within ten (10) working days.

For the Articles of Association of the Fund section, Article 306 has been amended by adding the following information to the necessary information that shall help the investors on taking a sound and well-studies decision for the proposed investment:

- 1- Form and type of the Fund.
- 2- Name and address of the Fund manager.
- 3- Investment Controller and Fund Trustee.
- 4- The Fund period.
- 5- The Fund capital and its way of payment.

6- A statement stating that the Fund Manager is licensed by the CMA.

Under the Issuance Memorandum section, Article 308 has been amended by adding to the necessary information of the Issuance Memorandum to include the short description of not only the Fund Controller but also a short description on the Fund Manager and the Trustee, as per the form approved by the CMA.

Article 311, under the Investment Funds Incorporated outside Kuwait section, has been amended to allow to the CMA to cancel the marketing permission for an Investment Fund established outside of the State of Kuwait, in addition to the case when the Fund Manager or Investment Controller breaches any of provisions in the Law No. (7/2010) and this bylaw, or provides the CMA with an incorrect, inaccurate or misleading information. Such cancellation of the marketing permission includes the breach stated above made by the Trustee as well.

Under the Article 312 of the Obligations of Investment Fund Manager section, the said Article has been amended to include in clause 6, that the Investment Fund Manager shall ensure the existence of a system sufficient for settlement of the dealings entered in the accounting system with the cash and securities accounts opened in the Investment Fund name with the Trustee.

Article 346 of the Investment Rules section has been amended where the Investment Fund must invest a minimum of 75% of the net value of its assets - in realization of its basic investment objectives, instead of investing of 75% of the Investment Fund Capital as it was prior to the amendments.

Article 347 of the Investment Rules section has been amended to allow the CMA to lay down the investment rules for each type of the funds - under a decision - issued from the Board of Commissioners of the CMA.

Under Article 350 of the Financial Statements section, the Investment Fund Manager must submit to the CMA the audited statements of the financial year within a maximum period of thirty (30) working days from the end of the financial year of the Fund. Prior to the amendments, it was 30 days without specifying working days.

Under Article 356 of the CMA power to Request Information section, the capacity of the Trustee was added to the Fund Manager and the Investment Controller that must provide all of the information, documents and details which are required by the CMA.

Under Article 360 of the Cancellation of License section, the amendments made to the CMA must notify, in addition to the Fund Manager and/or Investment Controller, the CMA must also notify the Trustee, in writing, that it intends to cancel the license of Fund and the reasons justifying the same. The Fund Manager or Investment Controller and/or the Trustee, shall also submit undertakings within fifteen (15) days as of the date of notice - acceptable to the CMA, for avoidance of cancellation of the Fund's license.

In addition to the Amendments stated above, the Resolution added two more Articles; one Article was added to Articles 320 of the Investment Fund Advisor as follows:

The Investment Controller must abide by the following matters:

To make sure the Fund's assets are invested and managed as per the provisions of law No. (7/2010) and its bylaws ,decisions and instructions of the CMA regulatory thereof and further, are invested within limits of the methods and policies specified in the Articles of Association of the Fund, decisions and instructions of the Fund's Board of Directors.

The Investment Controller should inform the CMA and the Board of Directors of the Fund of any violations occurring by the Fund Manager.

Moreover, the Investment Controller shall evaluate shares or investment units in the method and on the

schedule times fixed in the Fund's Articles of Association.

Another Article was added to Article 339 of the Safekeeping of Investment Fund Assets section as follows:

The Trustee must abide by the following matters:

- To keep the Fund's money and assets in accounts -separate and independent from its accounts or accounts of third parties and must be under the watch of a key person.
- To receive, keep and deposit the cash profits and any other distributions arising from the Fund activity.
- To inform the Fund Manager of any offers or rights caused by the Fund's assets and send any notices he receives within the period prescribed for it.
- To execute the Fund Manager's instructions relating to the scope of work of the Trustee.

In our opinion, the Amendments above were essential, particularly the changes made to Article 347 of the Rules of Investment, by allowing the Investment Fund to invest in more than 10% of their net value of investment fund assets in the field of securities.