

Kuwait: Requirements for obtaining approval of a private placement memorandum from the Capital Markets Authority

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Chapter 9 of the Capital Markets Law governs the placement memorandum of securities issued by companies. Pursuant to Article 370 of the CMA Bylaws, no person may offer securities for public offering or private placement unless a placement memorandum is submitted in accordance with the data and procedures set forth in the CMA Bylaws and as approved by the CMA. Therefore, the CMA will request the submission for review of a private placement memorandum (the “PPM”), which must contain the following:

- Name, address of the head office, date and place of incorporation of the issuing entity.
- Name and address of the subscription agent if the issuing entity is not the subscription agent.
- Names and positions of the board members of the issuing entity.
- Subscription period.
- Statement that the placement memorandum was prepared in accordance with Law No. 7 and the CMA Bylaws and, was approved by the CMA.
- Statement that the CMA shall not be a party in any case related to the damages resulting from any placement memorandum registered by the CMA.
- If the placement memorandum contains a statement by an expert or statement based upon an opinion prepared by an expert, the placement memorandum shall refer to the fact that the expert has given its approval, that such approval was submitted to the CMA and that the expert did not withdraw this approval before submission of the memorandum for registration with the CMA.
- The memorandum shall clearly include the following notice: “about the contents of this document, we advise you to consult a legally authorized advisor, and specialized in providing advice about purchase of shares and other securities before making the placement decision.”
- Names, addresses and positions of the individuals in charge of placement memorandum.
- Declaration from the board of the issuing entity or board of the subscription agent that they shall be responsible for any inaccurate information which could be included within the placement memorandum and that they declare, according to the best of their knowledge and belief, that the information in the placement memorandum was prepared in accordance with true facts and that the placement memorandum did not overlook any information which could affect the content thereof.
- Number of securities offered and the category they belong to.
- Statement of the rights related to the securities in the detail provided for below in numbers 27-29.
- Statement of profit distribution related to the issuing entity within the preceding five years, including the value of distributions and forms thereof.
- Procedures for exercising the rights of priority related to securities and indication of any restrictions on whether the securities offered are convertible into other forms of securities.
- Statement of whether or not the securities offered are listed in the Kuwait Stock Exchange (the “KSE”) and any reasons for the rejection of the listing application shall be mentioned.
- Giving a brief description of any future arrangements for trading securities offered.
- Objective of issuing securities.
- Authority for issuing and offering securities.
- Total revenue expected from the offering and the net revenues expected after deducting expenses.
- Details for using issuance revenues, specifically indicating the area of their use.

- Capital expense, reduction of debt, acquisition, operating capital or any other uses.
- Names of any persons in charge of covering the offering in case there are unsubscribed securities.
- Value of the offering expenses or estimated value thereof and, the party in charge of its payment.
- Procedures of refunding money to subscribers if their applications are totally or partially rejected and an indication of the time schedule for the same.
- Name and address of the transfer or registration agent, if any.
- Period of time for delivering securities after allocation. (Please note that the below
- 27 - 29 are rights associated with shares as referenced above in 12)

If the securities are shares, the rights related to them shall be as follows:

1. Price of offering securities or method of determining the price and time schedule for the same
2. Voting
3. Short-term profit rate of the share
4. Revenue of capital when liquidating the issuing entity
5. Redemption of value and summary of all the approvals necessary about the difference in any of the rights
6. Method of subscription in unsubscribed shares

- If the securities are bonds or deeds, the rights related to them shall be as follows:

1. Payable revenue
2. Date of payment
3. Date of payment of the original amount

- If the securities are convertible:

1. Conditions and maturity dates for holder of convertible securities to obtain
 - the promised securities.
 - Procedures for exercising the rights of the promised securities.
 - Any information related to the promised securities according to what is required in 27 and 28 above.
 - Legal form of the issuing entity, the legislation under which it was incorporated and the legislation it is operating under.
 - Summary of the provisions provided for by the articles of association or the regulations of the issuing entity in respect of determining its objectives.
 - Volume of permitted and paid-up capital and the number of shares distributed over each of them.
 - Number and details of any securities issued by the issuing entity, whether listed or unlisted in the KSE, along with indication of the conditions and procedures for their conversion and the number of promised shares after conversion.
 - Number and details of any securities listed or not listed in the KSE that are issued by the issuing entity but do not represent the shares of capital.
 - If the issuing entity is a member in a group, a brief description shall be submitted for the group and the position of the issuing entity therein.
 - Any information about persons directly or indirectly exercising control over the issuing entity.
 - Indicating the name of shareholders holding more than 5 % of the securities which have the right to vote in the capital of the issuing entity and the percentage of holding for each thereof.
 - Audited financial statements approved by the general assembly of the issuing entity for the three years preceding the date of subscription.
 - Statement submitted by the board members of the issuing entity proving the commitment of the issuing entity to prepare the said financial statements in accordance with the Law of Commercial Companies and acceptance of responsibility therefore.
 - If a period elapses exceeding nine months as of the date of the preparation of the last auditors' report, a new report of the auditors shall be submitted for the said period and shall include the status of work

progress, the status of profits and losses with the issuing entity, an indication of its approval to publish such report in the placement memorandum and that it assumes full liability therefore.

- Brief description of the present or suggested contracts of the board members with the issuing entity or any of the affiliated companies.
- Disclosure of the contracts wherein any of the board members of the issuing entity have a valid interest during the issuance of placement memorandum.
- Total financial and “in kind” benefits granted to the board members of the issuing entity during the previous financial year for the date of issuing the placement memorandum plus the estimated value of such benefits to be issued to board members of the financial year of subscription.
- Number and percentage of shares held by each board member of the issuing entity out of its capital and indication of the type of such shares, if any.
- Resumes of each of the present or suggested board members of the issuing entity and nature of any family relationships among such board members.
- Disclosure of any other administrative position held by any board member or suggested board member.
- Description of the main businesses of the issuing entity and any exceptional factors influencing the businesses thereof.
- Statement about the reliance of the issuing entity on any specific clients or suppliers; on any patent rights, other intellectual property rights, licenses; or on any special contracts gaining an overriding importance in the business of the issuing entity.
- Statement of the factors the issuing entity considers as risks affecting any investor in this offering.
- Information relating to current investments, if any.
- Information related to any judicial procedures, arbitration proceedings, whether effective or pending, being prepared therefore, taken by or against the issuing entity or any member in the group of the issuing entity which has or might have a great influence upon the financial position of the issuing entity.
- Main information for all the main contracts and parties thereof, whether related to the issuing entity or companies affiliated thereto, within two years as of the date of issuing the placement memorandum and such contracts shall not include contracts that are standard in carrying on the business thereof.

In conclusion, the Capital Markets Law sets forth the requirements for obtaining approval from the CMA for a PPM. However, please note that the CMA may require other conditions and requirements given the relatively recent implementation of the CMA and its procedures.