

Marketing units of investment funds in Oman

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The country is a stable and attractive market in which to offer securities due to its steady GDP growth rate of 5% over past years and an estimated USD 29,600 GDP per capita.

As units of investment funds are considered 'securities' under Omani law, in this article we take you through the general issues to be aware of when contemplating marketing units of investment funds to potential investors in Oman.

LEGAL FRAMEWORK

In general, the marketing of units in Oman is governed by:

1. Royal Decree No. 80/98 of 9 November 1998 promulgating the Capital Market Law ('Market Law'); and
2. The Capital Market Law Implementing Regulation issued by the Capital Market authority under decision number 1/2009 ('Market Regulations').

MARKETING REGULATORY REQUIREMENTS:

The following requirements need to be adhered to before units can be sold to and acquired by Omanis and non-Omani nationals:

1. Units in a close-ended fund (i.e. a fund that raises a fixed amount of capital) must be listed on the Muscat Securities Market, and the offering of such units must be approved by the Capital Market Authority of Oman. Upon approval, the units shall be listed on the Muscat Securities Market and then registered with Muscat Clearing & Depository Company that has been acting as securities clearing and depository body in Oman.
2. Units in an open-ended fund (i.e. a fund that does not have restrictions on the amount of shares it will issue) do not have to be listed on the Muscat Securities Market, but:
 - If the units are to be listed on the Muscat Securities Market, the offering must be approved by the Capital Market Authority. The listing on the Muscat Securities Market shall then take place and the units shall be registered with the Muscat Clearing & Depository Company.
 - If the units are not to be listed on the Muscat Securities Market, there is no explicit legal requirement to apply for the offer approval to the Capital Market Authority. However, the management of the fund is then required to keep proper records of the fund, as per Omani law, in case local authorities wish to inspect these.

Marketing activities carried out from outside Oman, whereby investors based in Oman are targeted, may be considered as conducting business in Oman for the purposes of Omani law.

Omani law requires that:

- the units marketing be approved by the Capital Market Authority, in advance; and
- only a duly Capital Market Authority-licensed distributor, appointed by a foreign fund, be permitted to carry out the marketing activities for it or on its behalf in Oman.

“MARKETING” OR “OFFER” TO INVESTORS

Under Omani law, the marketing of securities to the public (public offers) is referred to as a ‘public subscription’, and is defined by Capital Market Authority as an invitation to the public generally to subscribe for securities in a joint stock company under incorporation or upon the increase of the capital of an existing company in accordance with the conditions and provisions appearing in the prospectus approved by the Capital Market Authority.

Private subscription, in contrast, is defined by the Capital Market Authority as an invitation directed to a particular class or to particular persons to subscribe for securities in a public joint stock company or upon the increase of the capital of an existing company in accordance with the conditions and requirements which the Capital Market Authority prescribes.

There is no legal definition of what the ‘marketing’ of securities means under Omani law. Practically speaking, however, it is believed to encompass the arranging of conferences, roadshows or one-to-one presentations (i.e. direct contact with a potential investor). These activities therefore require prior approval from the Capital Market Authority.

PRIVATE PLACEMENT PROCESS:

Every fund in the form of a public joint-stock company that is interested in increasing its capital through private placement of units to specific persons is obliged under Omani law to:

1. convene an extraordinary general meeting to obtain the approval on such a proposal;
2. send to the target investors the summary of the capital increase proposal;
3. obtain an undertaking from the persons to whom the private placement is addressed confirming they would pay the units consideration upon allotment;
4. disclose to the unit-holders the fact the persons to whom the units are to be allotted are ‘related parties’ to the fund and its existing unit-holders and managers, and to clarify the nature of interests related to the fund; and
5. resolve to approve the private placement.

Other steps to be taken under Omani law include the following:

1. The fund shall collect the subscription amounts within 60 days from date of the general meeting.
2. Where the subscription amounts have not been collected within the 60-day period, the investment committee of the fund shall invite the unitholders for another extraordinary general meeting to re-approve the private placement.
3. The issue price of the units being offered through private placement shall not be less than the average of the weekly high and low closing prices of the relevant units quoted by the Muscat Securities Market in the last 26 weeks or such average during four weeks before the date of the official disclosure of the private placement, whichever is higher.
4. The issue price of the units being offered through private placement shall not be less than the issue price at which it was offered in the rights issue.
5. The privately placed units shall be locked in for a period of one year from the date of listing on the Muscat Securities Market.

SANCTIONS

Should any of the rules be breached by a party marketing units, under the Omani law governing securities (and without prejudice to any more severe penalty provided for in any other law) the party in breach may be subject to:

- imprisonment for up to three years;
- a fine of not less than OMR 5,000 (USD 13,000)
- sanction of not being able to conduct the activity or the profession which is the subject matter of the crime for a period of up to three years; and/or
- paying damages towards an investor who has suffered loss.

CONCLUSION

Although authorities in Oman are in general open to new financial products being available to its nationals and residents, they have the interests of investors at heart. There is only a limited understanding of such products in Oman and so the Capital Market Authority has taken the view that investors are best protected if the Capital Market Authority acts as a monitoring authority whenever units of funds are offered to investors in Oman.

This does not mean, however, that the legal position under Omani law is unduly burdensome on investment funds or their managers. Provided proper legal advice is taken, both fund managers and investors can have confidence in Oman's robust securities market.