Global Financial Services Regulatory Guide - Saudi Arabia

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# 1. Who regulates banking and financial services in your jurisdiction?

## Who regulates banking and financial services in your jurisdiction?

The Kingdom of Saudi Arabia has two regulators responsible for the authorization and supervision of banks, insurance companies and other financial institutions. These are the Saudi Central Bank (previously known as the Saudi Arabian Monetary Agency but retaining the acronym "SAMA") and the Capital Market Authority (CMA). The allocation of responsibilities between the SAMA and the CMA is as follows:

The SAMA regulates the following entities:

Conventional banks (deposit takers)

Insurance companies that engage in any insurance and re-insurance activities, including general insurance, health insurance and protection and savings insurance

Finance companies that engage in real estate finance, production asset finance, small and medium enterprise finance, financial lease services, credit card finance, consumer finance, micro finance, and any other financial activity approved by the SAMA

Given that the above entities are regulated by the SAMA, no banking business, insurance or re-insurance activity or finance activity may be conducted in Saudi Arabia without obtaining a license from the SAMA. Carrying out any of the activities listed above without obtaining a license from the SAMA is strictly prohibited.

The CMA regulates financial institutions that conduct securities business (“**Capital Market Institutions**”), including investment banks, asset managers, brokers, custodians and financial advisers. (For more details on what constitutes securities business, please see Section 3 below.)

Conducting any securities activity in Saudi Arabia without obtaining a license from the CMA is strictly prohibited.

# 2. What are the main sources of regulatory laws in your jurisdiction?

## What are the main sources of regulatory laws in your jurisdiction?

The paramount body of law in Saudi Arabia is The Shariah (Islamic Law). The Shariah is derived from the Holy Quran and the Sunna (words and deeds) of the Prophet Mohammed, as interpreted by influential scholars of Islamic jurisprudence. The Shariah consists of precepts that are often expressed as general principles. This leaves a Saudi Arabian court (or other adjudicatory authority) with considerable discretion regarding how to apply such precepts. Moreover, there are different schools of Islamic jurisprudence and they construe certain precepts differently. The Hanbali school of Islamic jurisprudence is followed in Saudi Arabia, and within the Hanbali school, there are majority and minority views on various issues, either of which may be applied in any particular case. In addition, there are certain instances in which precepts of other schools of Islamic jurisprudence have been applied by the courts where such application was deemed by such courts to be appropriate in the interests of justice and fairness with respect to the particular matter in question. In general, Saudi courts and other adjudicatory authorities do not report their decisions and previous decisions. Such decisions are not considered to establish a binding precedent for the decision of later cases.

The secular authorities are permitted to supplement the Shariah. The Saudi government does so through the issuance of statutes, regulations, decrees and circulars, as well as the adoption of policy positions, all of which can be, and frequently are, changed from time to time to adapt to changed circumstances or to take into account other considerations. However, royal decrees, ministerial decisions and resolutions, departmental circulars and other pronouncements of official bodies of Saudi Arabia having the force of law are not generally or consistently indexed and collected in a central place or made available as a matter of public record.

**SAMA rules and regulations**

Conventional banking, insurance and re-insurance, and finance activities in Saudi Arabia are governed and regulated through the following main laws:

The Banking Control Law promulgated by Royal Decree No. M/5 dated 22/02/1386H (corresponding to 12/06/1966G) – The SAMA has also issued a number of secondary implementing regulations that further govern banks in Saudi Arabia.

The Finance Company Control Law promulgated by Royal Decree No. M/51 dated 13/08/1433H (corresponding to 03/07/2012G) – The SAMA has also issued a number of secondary implementing regulations that further govern finance companies in Saudi Arabia.

The Cooperative Insurance Companies Control Law promulgated by Royal Decree No. M/32 dated 02/06/1424H (corresponding to 31/07/2003G) – The SAMA has also issued a number of secondary implementing regulations that further govern insurance companies in Saudi Arabia.

**CMA rules and regulations**

The Capital Market Law promulgated by Royal Decree No. No. M/30 dated 02/06/1424H (corresponding to 31/07/2003G) as amended by the Royal Decree no. M/16 dated 19/01/1441H (corresponding to 18/09/2019G) is the main law that regulates the investment banking sector in Saudi Arabia.

The CMA has also issued a number of secondary implementing regulations that provide further governance rules for the capital markets regime and regulation of other securities activities in Saudi Arabia, such as the Securities Business Regulations issued by the CMA board resolution no. 2-83-2005 dated 21/05/1426H (corresponding to 28 June 2005G) and as amended by the CMA board resolution no. 2-75-2020 dated 22/12/1441H (corresponding to 12/8/2020G) and the Capital Market Institutions Regulations issued by the CMA board resolution no. 1-83-2005 dated 21/05/1426H (corresponding to 28 June 2005G) and as amended by the CMA board resolution no. 3-85-2017 dated 27/12/1438H (corresponding to 18/09/2017G) and resolution no. 2-75-2020 22/12/1441H (corresponding to 12/8/2020G).

Both the SAMA and the CMA have also issued a number of circulars that offer guidance to all banks, insurance companies, finance companies and financial institutions operating in Saudi Arabia. However, not all of these circulars are publicly available.

# 3. What types of activities require a license in your jurisdiction?

## What types of activities require a license in your jurisdiction?

The SAMA regulates a range of activities. These include licensing and regulating the following:

Banks that carry out conventional banking activities, such as accepting money on current or fixed deposit accounts, the opening of current accounts, opening letters of credit (L/C), issuing letters of guarantee, payment and collection of cheques, orders and similar other papers of value, discounting of bills, promissory notes and other commercial papers

Entities carrying out foreign exchange business

Insurance companies carrying on insurance business (effecting and carrying out contracts of insurance)

Finance companies that provide real estate financing solutions, financial lease services, credit cards, and financing and leasing of equipment and machinery

The CMA regulates financial institutions carrying out the following securities business:

Dealing – This covers a person dealing in security as principal or as an agent, and dealing includes selling, buying and managing the subscription of or underwriting securities.

Arranging – This involves a person introducing parties in relation to securities business or arrangement of its underwriting or advising on corporate finance business.

Managing – This means a person managing security belonging to another person in the circumstances involving the exercise of discretion or a person operating investment funds.

Advising – This involves a person advising another person in relation to a security, which includes advising on the merits of that person dealing in security, exercising any right to deal conferred by security, or financial planning and wealth management in security.

Custody – This covers a person safeguarding assets belonging to another person, including security, or arranging for another person to do so, and custody includes taking the necessary administrative measures.

# 4. How do the licensing requirements apply to cross-border business in your jurisdiction?

## How do the licensing requirements apply to cross-border business in your jurisdiction?

Any firm outside Saudi Arabia wishing to act for or deal with a client or counterparty located in Saudi Arabia would typically be subject to Saudi laws and regulations. The service provider will need to consider whether they are triggering a local licensing obligation and complying with local marketing rules.

**SAMA licensing requirements**

Foreign banks that are not licensed by the SAMA to operate in Saudi Arabia are not permitted to carry on any banking business or to engage in cross-border electronic banking activities in the Saudi market. The same restriction applies to insurance and financing activities where such activities may not be conducted in Saudi Arabia without being authorized or licensed by the SAMA. Insurance activities may only be conducted by a public joint-stock company listed in the Saudi Stock Exchange, which means that other than SAMA rules and regulations, insurance companies are also subject to CMA rules and regulations.

In relation to marketing, the Banking Control Law prohibits any entity not licensed by the SAMA from conducting any banking business in Saudi Arabia. Advertising, marketing, contacting of clients and offering of any banking products may fall under the definition of "banking business" under the “other banking business” category, as the Banking Control Law defines "banking business" as “the business of receiving money on the current or fixed deposit account, the opening of current accounts, the opening of letters of credit, issuance of letters of guarantee, payment and collection of cheques, payment orders, promissory notes and similar other papers of value, discounting of bills, bills of exchange and other commercial papers, foreign exchange transactions and other banking business.” Any aggressive marketing, advertising, or offering of banking products and contact with clients in Saudi Arabia is likely to result in investigations and/or penalization by the relevant authorities. It should be noted that the use of the word “bank” by any entity not licensed by the SAMA is also prohibited.

In relation to exemptions from the SAMA authorization to conduct banking business in Saudi Arabia, the Banking Control Law prohibits any unlicensed person, natural or juristic, from carrying on any banking business. However, the Banking Control Law excludes juristic persons licensed in accordance with another law or special decree to carry on banking business as such persons may practice such business within the limits of their intended purposes, and licensed moneychangers may practice the exchange of currency in the form of notes and coins, but no other banking business.

**CMA licensing requirements**

The CMA strictly prohibits any person from conducting securities business in Saudi Arabia or for a person in Saudi Arabia without authorization and licensing from the CMA.

In relation to marketing, the Securities Business Regulations regulate the issuance of securities advertisements, which is defined as any form of verbal, electronic, broadcast or written communication made in the course of business to invite or induce a person to engage in securities activity. Given that the definition of a securities advertisement is so broad, most forms of communications with counterparties or clients located in Saudi Arabia will most likely constitute securities advertisement. A securities advertisement is made or communicated to a person in Saudi Arabia if it is available to persons in Saudi Arabia, including advertisements made via the internet. Various exclusions exist in relation to both the need to be authorized and in relation to marketing to persons in Saudi Arabia.

The Securities Business Regulations provide various exclusions from authorization regarding conducting securities activities in Saudi Arabia and authorize the CMA to exempt any other person from the authorization requirement. These exclusions vary depending on the type of securities business the unauthorized person wishes to conduct and the client that the services are being provided to.

By way of example, the Securities Business Regulations provide that the activities of arranging, managing, advising and custody are excluded from the authorization requirement where the service provider is a member of a group and the services in question are provided for a member of the same group, or the person is or proposes to become a participator in a joint enterprise and the services in question are provided for the participant in the joint enterprise. The activity of dealing is excluded from the authorization requirement if the transaction is between two persons acting as principals who are members of the same group or propose to be or are participants in a joint enterprise (provided that the transaction is for the purpose of the joint enterprise). There are a number of other exclusions listed in the Securities Business Regulations.

In addition to the exemptions listed in the Securities Business Regulations, there are two further exemptions from obtaining prior authorization to engage in the securities business in Saudi Arabia.

The first applies when engaging in securities activities in Saudi Arabia with or for certain Saudi Arabian government entities and bodies. This exemption is derived from a CMA resolution dated 19/05/1434H (corresponding to 31/03/2013G), which entitles the unauthorized foreign investment bank to provide services to each of the Ministry of Finance (Public Investment Fund), the SAMA, the General Organization of Social Insurance, the Public Pension Agency and the Saudi Arabian Investment Company (Sanabil Investments).

The second is set out in a CMA resolution dated 23/05/1437H (corresponding to 3 March 2016), which exempts foreign financial institutions from its authorization requirement when dealing with certain clients who have initiated contact on a reverse inquiry basis. The exemption applies where the client is either: (i) an "institution" (defined in the CMA regulations as an entity or group with net assets to a value of at least SAR 10 million); or (ii) an individual whose total investments exceed SAR 50 million or who owns not less than SAR 50 million worth of net assets, provided that the reverse inquiry request was initiated by the client and was not as a result of the foreign financial institution marketing its activities in Saudi Arabia, and that further the relevant transactions concern securities that are not issued or listed in Saudi Arabia.

As explained above, certain exclusions are available under Saudi law, which enables unauthorized financial institutions and persons inside and outside Saudi Arabia to deal with Saudi-based clients. This is on the basis that the activities in question will be regarded as being carried on based on a specific exemption that covers the relevant activities.

# 5. What are the requirements to obtain authorization in your jurisdiction?

## What are the requirements to obtain authorization in your jurisdiction?

In order to obtain a license to conduct banking, insurance, financial leasing or securities activities, an applicant must satisfy the relevant regulator that it meets the conditions set out by the regulator.

The threshold conditions can vary depending on the particular regulated activities that the applicant intends to carry on and, in particular, whether the applicant will be CMA- or SAMA-authorized. Broadly, however, the following conditions will need to be satisfied:

**Location of offices** – For Saudi-incorporated companies, both the management and head office must be located in Saudi Arabia. This can have implications for the composition of the board of directors so that a majority of the board will need to be resident in Saudi Arabia and the administrative center will also need to be located in Saudi Arabia.

**Effective Supervision** – The applicant must be capable of being effectively supervised. This emphasizes the need for firms to have a substantive presence in Saudi Arabia that is accessible to the Saudi Arabian regulators and enables the regulator to supervise the firm. The regulator will also consider whether there are any impediments to the supervision of the applicant, including the group structure and any relevant laws restricting access to information.

**Appropriate resources** – Applicants must satisfy the regulator that they have adequate resources to carry on the relevant regulated activities. Resources include financial resources as well as human resources (including management with the required skills, qualifications and integrity) and infrastructure.

**Suitability** – The requirement is that applicants must be fit and proper to be authorized, having regard to all the circumstances.

**Business model** – The regulator will examine the applicant’s business model. In addition to understanding the economic aspects of the business, the impact of the model on consumers and on the Saudi economy will also be considered.

# 6. What is the process for becoming authorized in your jurisdiction?

## What is the process for becoming authorized in your jurisdiction?

To obtain authorization, an applicant must complete a formal process, which involves the completion of required application forms and the submission of supporting information.

**CMA authorization process**

In relation to timing, the CMA will notify the applicant of receipt of the completed application and all required documents and information, and it will have 30 days from the date of the notice to determine whether or not to approve the application. In practice, it could take several months (if not longer) for the CMA to process an application and license a Capital Market Institution.

The particular forms that must be completed for submission to the CMA will depend on the nature of the regulated activities to be conducted. In general, the following forms[1](https://resourcehub.bakermckenzie.com/en#SA_ftn1) will be required to be completed:

**Application form** – This is the main licensing application form, which sets out factual background information relating to the applicant. Whilst the applicant will complete this form and submit it as part of its hard documents submission, the CMA requires the application form to be completed online.

**Controllers** – Details must be submitted about identity, ownership (if applicable), integrity, regulatory status, business record and financial position of each proposed controller persons/entities who control or exert influence over the firm.

**Close links** – Details about all persons who have, or are proposed to have, close links with the applicant must be submitted, and details of the identity, ownership (if applicable), integrity, regulatory status, business record and financial position of each such person must be provided.

**Governing body resolution** – The applicant must submit to the CMA a resolution in the form prescribed by the CMA, approving the application and its contents and certifying the accuracy and completeness of the accompanying information and documents.

**Business profile** – The applicant must submit a proposed business profile, including full details of all services the applicant proposes to provide for each securities activity that it is applying to carry on.

**Business plan** – The applicant must submit a business plan, setting out a detailed description of the securities business activities that the applicant proposes to undertake during, at least, the first 12 months after authorization, as well as a description of the nature of the proposed clients of the applicant, and a list of any exchanges, clearing houses or depositaries of which the applicant is or intends to become a member.

**Financial statements** – The applicant must submit audited financial statements in accordance with the standards issued by the Saudi Organization for Chartered and Professional Accountants and presented in the format prescribed by the CMA. Also, an applicant must submit projected financial statements that state the expected financial position 12 months after the promised date of commencement.

**Registered person form** – The applicant must submit a list of each person who is to be a registered person (as required under the Authorized Persons Regulations) and an application form for registration for each such person in the format prescribed by the CMA, including details of their qualifications and experience.

**Systems and controls** – The applicant must submit systems and controls documentation, such as risk management policies and systems, anti-money laundering and anti-terrorism financing procedures, compliance manual, compliance monitoring program, and code of conduct.

**Operations manual** – The applicant must submit an operational procedures manual detailing the procedures and systems to be employed in relation to all material business and administrative operations.

**Terms of business** – The applicant must submit a copy of the proposed terms of business and of proposed forms.

**Fees** – The applicant must submit a list of proposed fees, commissions, charges and other expenses payable by clients.

**Contracts** – The applicant must submit any agreements, arrangements and understandings with third parties to provide any material services or operations.

**Insurance** – The applicant must submit details of professional indemnity insurance policies in accordance with the requirements prescribed by the CMA.

**Incorporation documents** – The applicant must submit a copy of its proposed articles of association and/or by-laws.

**Structure chart** – The applicant must submit an ownership structure chart showing the group of which the applicant forms part, including each controller and each person with whom the applicant has close links.

**Organization chart** – The applicant must submit an organization chart identifying the applicant’s governing body, the CEO and senior management, the compliance officer, and the MLRO. The chart must outline the reporting lines of each department within the business.

**Business continuity plan** – The applicant must submit a copy of the applicant’s business continuity plan.

**SAMA authorization process**

All applications will be processed within a reasonable time, considering the particular circumstances applicable to each application, including the completeness of information and documents submitted to the SAMA.. Applicants should expect to receive written acknowledgment (by email) of receipt of their application from SAMA along with confirmation of their case officer/s name within 15 business days. The preliminary approval expires within six months from its issuance. An applicant must establish the entity as a joint-stock company within that period in order to obtain a license. Approval does not constitute a license. In most cases, the processing largely depends on the SAMAs discretion, though it is generally a lengthy process.

The particular forms that must be completed for submission to the SAMA will depend on the nature of the regulated activities to be conducted.

In general, the following forms will be required to be completed:

**Application form** – The applicant must submit a completed application form.

**Acknowledgment letter** – The applicant must submit an acknowledgment letter in the form prescribed by the SAMA, whereby the applicant certifies that the shared information is accurate and correct.

**Incorporation documents** – The applicant must submit draft articles of association and by-laws.

**Organization structure** – The applicant must submit a description of the bank's organizational structure, including all departments and necessary positions, as well as the main focus of each.

**Founding shareholders** – The applicant must submit a list of the founding shareholders, setting out the number and percentage of shares of each founding shareholder.

**Financial statements** – The applicant must submit the latest financial statements of any proposed owners.

**Business plan** – The applicant must submit a business plan covering at least the background of the applicant, the opportunities identified in the Kingdom of Saudi Arabia, and the business planning (e.g., products and services, target markets, type of clients, three-year financial projections, marketing approach, innovative products and services).

**Risk management and control framework** – The applicant must submit any proposed management plan or manual covering how the applicant or applicant's parent (for foreign branch applications) will evaluate and mitigate key risk areas.

**Management/control and outsourcing** – The applicant must submit a chart on the allocation of responsibilities and reporting lines, a job description for compliance oversight function, a chart on reporting lines for compliance functions, a compliance manual, a policy on complaints handling, a document on business continuity procedures, and a staff handbook.

**Financial crime and anti-money laundering (AML)** – The applicant must submit AML policies and procedures, as well as the job description of the AML officer.

**Human and IT resources** – The applicant must submit the organization chart of the back office operations function and the information security policy.

**Fit and proper forms** – The applicant must submit the fit and proper form for founding shareholders signed by each founding shareholder and for each candidate for board membership and signed by each candidate of board membership.

**Bank guarantee** – The applicant must submit an irrevocable bank guarantee that is at a minimum equal to the minimum capital of the financing activities to be licensed, to be issued by any local bank for the benefit of the SAMA, and automatically renewable until such date the capital is paid in full.

**Contracts** – The applicant must submit draft agreements and contracts with third parties, especially those with related parties or external service providers.

**Additional documents** – The applicant must submit any other documents or information that the SAMA may request.

[1](https://resourcehub.bakermckenzie.com/en#SA_ftnref1) Certain amendments to Annex 3.1 of the new Capital Market Institutions Regulations provide that these requirements are removed altogether for applicants whose activities will be limited to 'Managing Investments', 'Arranging' and 'Advising'.

# 7. What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

## What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

Authorization in Saudi Arabia does not permit locally licensed banks or financial institutions to passport their authorization into European Economic Area member states. Saudi Arabia does not have any financial services passporting arrangements with any other country. In order to provide financial services/securities activities in Saudi Arabia, an entity must be licensed by the relevant Saudi authority.

# 8. Authors and contact information

## Authors and contact information

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