Global Financial Services Regulatory Guide - Saudi Arabia

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

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# 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.

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