QFMA Issues New Listing and IPO Rules for Qatar’s Alternative Market

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Client Alert

Latham & Watkins Corporate Department

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Introduction

The Qatar Financial Markets Authority (QFMA) Offering and Listing Regulations (the Primary Market Regulations) were issued in November 2010 to regulate the offering and trading of securities in the primary market of the Qatar Exchange. Recently, the Qatar Exchange created an alternative market targeting companies with capitalization smaller than QR 40 million, which is the minimum share capital required for entry into the primary market. The QFMA has now issued the Offering and Listing Regulations for the alternative market of the Qatar Exchange (the Alternative Market Regulations).

According to the QFMA, the secondary market is intended for small to medium companies, but it remains to be seen if the modified requirements associated with the alternative market will result in siphoning issuers from the primary market, without necessarily increasing the number of issuers over the spectrum of listing options in Qatar. This client alert concludes that the secondary market’s lower entry requirements must be balanced against the seemingly higher continuing obligations and conflict of interest requirements that are imposed on companies listed on the alternative market.

Requirements for Entry Into the Secondary Market

The Alternative Market Regulations stipulate that a company listed on the secondary market must meet the following requirements:

1. Its share capital should not be less than QR 5 million (compared to QR 40 million under the Primary Market Regulations);
2. It must have been operating for a minimum of one year prior to listing (compared to three years under the Primary Market Regulations);
3. Its number of shareholders should not be less than 20 (compared to 30 under the Primary Market Regulations); and
4. It has invested at least 75 percent of its capital into commercial activities related to its objective.

Listing Requirements for Secondary Markets

A reading of the Primary and Alternative Market Regulations brings out several differences, but an overarching point is that the QFMA is not treating the alternative market as a lightly regulated venue, rather it is imposing continuous obligations and conflict of interest requirements. Such requirements seem aimed at assuring...
that the investors in the secondary market are not shortchanged in terms of available information.

The issuance and listing process on the alternative market must be accompanied by an information memorandum (compared to a prospectus for the primary market). There are circumstances, however, when an information memorandum is not required by the QFMA, which include:

1. Private offers that are made to (i) existing shareholders, or (ii) to 100 investors or less, and
2. Offers made exclusively to sophisticated investors which include: financial services companies licensed by the QFMA or the Central Bank of Qatar, insurance companies, investment funds, governments and governmental entities, high net worth individuals and strategic investors.

In terms of content, an information memorandum contains all the sections of a prospectus, with the exception of the following information:

1. List of newly developed products
2. Description of the main markets for the company
3. Any intellectual property owned by the company
4. Environmental issues associated with the company’s work
5. General sales, costs, and inventory information
6. Description of the labor force
7. Any material change in the company’s financial or commercial position since the date of the last audited financial statements
8. Any material contracts signed outside the scope of doing business by the company
9. Issuance costs, the change to the distribution of the capital after the issuance, and any capital movement restrictions imposed by Qatar; and
10. Taxes that the shareholders will be subject to in Qatar.

On the other hand, the information memorandum does have additional requirements that are not within the prospectus:

1. The company’s website should include the following information:
   - the articles and memorandum of association
   - any expert reports that are used or referred to in the application to the QFMA; and
   - the company’s financial history.
2. The information memorandum must include a detailed description and explanation of any conflict of interest in the company’s activities.

The differences between a prospectus and an information memorandum illustrate that the QFMA is doing away with requesting some information in an information memorandum (e.g. description of main markets, intellectual property, costs, sales and inventory and material changes in the company’s financial and commercial position), while asking for it in another form by having the company list its financial history and expert reports on its website.

The table below provides a detailed comparison of the differences between the Primary Market Regulations and the Alternative Market Regulations:
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<thead>
<tr>
<th>Primary Market Regulations</th>
<th>Alternative Market Regulations</th>
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<tr>
<td>Once the listing is completed, the issuer need not continuously retain the listing and issuance advisor.</td>
<td>Requires the appointment of a listing and issuance advisor by the company for the duration of its listing on the alternative market. If replaced, a new advisor must be appointed within 2 months.</td>
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<td>The duties of the advisor are increased to include: 1. Providing a written affidavit that it had meet the qualifying conditions under article 12 of the Alternative Market Regulations 2. Affirming as needed to the Qatar Exchange (QE) that the company is in compliance with the Alternative Market Regulations 3. Being held jointly liable with the company’s board members for the veracity of the information in the information memorandum 4. In the case of non-compliance, providing the QE with evidence that the non-complying company is actively seeking compliance.</td>
<td></td>
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<td>Allows for a business or family relation between the issuance and listing advisor and board members and executives of the issuer if not detrimental to objectivity of the advisor.</td>
<td>Places an absolute bar on any business or family relationship between the advisor and the executive and board members of the issuer.</td>
</tr>
<tr>
<td>Exempts the issuer, who is a governmental entity, from providing proof of meeting the incorporation and registration requirements in the country where it is established, and from providing audited financial statements in conformity with IAS and IFRS.</td>
<td>Removes that exemption.</td>
</tr>
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<td>Requires proof that a Sharia product is approved by a Sharia board approved by the QFMA.</td>
<td>Removes that requirement but states that securities should be properly licensed in accordance with the issuer’s own articles and memorandum of association.</td>
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<td>Exempts the issuer from resubmitting information required for listing if such information has been provided for the issuance of the same securities less than 90 days prior.</td>
<td>Removes that exemption.</td>
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<td>Requires three years of audited financial statements.</td>
<td>Requires only one year of audited financial statements.</td>
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<td>For securities of non-Qatari issuers, requires that such securities be listed in the country of incorporation of the non-Qatari company or the country where the majority of the company’s shareholders reside.</td>
<td>Removes that requirement.</td>
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<td>The application to the QFMA must be in Arabic.</td>
<td>The application for the QFMA can be in Arabic or English, but if in English, an Arabic translation should be provided and the Arabic text is binding.</td>
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<tr>
<td>Primary Market Regulations (continued)</td>
<td>Alternative Market Regulations (continued)</td>
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<tr>
<td>1. Non-QFMA Qatari regulations applicable to local issuers shall apply to foreign issuers.</td>
<td>1. Those requirements and exemptions are not available.</td>
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<tr>
<td>2. A foreign issuer can be exempt from Non-QFMA Qatari regulations applicable to local issuers if (i) there is a similar requirement in the QFMA-regulations and the foreign issuer abides by the them, or (ii) if the issuers country of incorporation prohibits abiding by the Non-QFMA Qatari regulations.</td>
<td>2. Those requirements and exemptions are not available.</td>
</tr>
<tr>
<td>3. A foreign issuer listed on a foreign exchange must deliver to the QFMA the same information provided to its home regulators.</td>
<td>3. Those requirements and exemptions are not available.</td>
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<tr>
<td>4. Banks wishing to list bonds must secure approval of the Central Bank of Qatar.</td>
<td>4. Those requirements and exemptions are not available.</td>
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<td>Requires that shareholders’ rights are not less than the paid capital.</td>
<td>Requires that shareholder’s rights are not less than 75 percent of the paid capital.</td>
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<td>Requires the company to have minimum capital of QR 40 million.</td>
<td>Requires the company to have minimum capital of QR 5 million.</td>
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<tr>
<td>The company has been in business for three years and issued audited annual financial statements for each year.</td>
<td>The company has been in business for one year and issued audited annual financial statements for that year.</td>
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<td>No equivalent requirement.</td>
<td>The company has invested 75 percent of its capital in activities related to the activities of the company.</td>
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<td>Minimum 40-80 percent of the share capital must be offered.</td>
<td>Minimum 10 percent of the share capital must be offered, which must be offered in less than a year after the permission to offer is granted by the QFMA.</td>
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<td>The company must have minimum 30 shareholders.</td>
<td>The company must have minimum 20 shareholders, and that minimum number must be maintained at all times after the listing.</td>
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<td>Contains a section on the requirements for bonds and sukuk.</td>
<td>No section on the requirements for bonds and sukuk.</td>
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<tr>
<td>No equivalent requirement.</td>
<td>Requires a specific disclaimer in the information memorandum related to the dangers of investing in companies listed on the alternative market and that proper legal and financial advice should be sought.</td>
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<td>No equivalent requirement.</td>
<td>The issuer can be asked by the QFMA for quarterly ‘liquidity reports’.</td>
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<td>Provides for an exemption from disclosing information if that information can be harmful to the public welfare.</td>
<td>No such exemption.</td>
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<td>Limits the suspension period for a company on the primary market to no more than six months.</td>
<td>There is no limit on the duration of the suspension of a security on the alternative market.</td>
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Summary

The creation of an alternative market can be a positive step by Qatar’s financial regulators to develop a more sophisticated capital markets architecture in Qatar, and to help companies with smaller capitalization to raise funds and broaden their shareholder base. The success of the secondary market will largely depend on whether it can attract issuers to the market by offering a more streamlined listing process and creating liquidity for investors seeking investments with a higher risk profile. Overall, the Alternative Market Regulations provide for lower market entry thresholds, which is what is expected, however, there is no commensurate reduction in the continuing obligations and conflict of interest requirements compared to the primary market. Such requirements can be more stringent than the ones for the primary market, and while there are differences in the prospectus/information memorandum disclosure requirements, they are not considerable in terms of materiality.

Overall, the QFMA seems to be striking a balance between opening an alternative market for companies with higher risk premiums, while at the same time keeping companies seeking entry into that market under a more watchful eye than otherwise in the primary market. That should provide potential investors in the alternative market with some added measure of confidence, and it should encourage potential issuers not to think of the alternative market as a lightly regulated venue.

Endnote

1 Our reading of the primary and the secondary market regulations is based on the official Arabic text and not on the English translation, which we have found to be inconsistent at places.

If you have any questions about this Client Alert, or would like to discuss any matters arising in relation to the QFMA listing and IPO rules for the secondary market, please contact one of the authors listed below or the Latham attorney with whom you normally consult:

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