

PASSPORTING OF FINANCIAL PRODUCTS IN KUWAIT

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Passporting of Financial Products in Kuwait

with

Tarek Yehya

Partner, Meysan Partners



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With Suzan Taha

The Kuwait Capital Markets Authority (the "CMA or Authority") has recently issued a new resolution no. 3 of 2023 regarding Passporting of Financial Products, issued on January 8, 2023, outlining the regulations for financial products passporting within the Gulf Cooperation Council (GCC) region ("Resolution").

LegalcommunityMENA sat down with partner **Tarek Yehya** (pictured) and associate **Sara Awaly** from Meysan Partners, who walked us through the recent changes and their impact on businesses.

What is the purpose of this new regulation?

The Resolution introduced nine new salient (9) concepts and definitions relating to financial products passporting, which were added under the provisions of Module 1 (Glossary) of the CMA Executive Bylaws issued by virtue of Law No. 7 of 2010 and its amendments regarding the establishment of the Capital Markets Authority and regulating securities activities. In addition, the Resolution enacted Module 18 (Passporting of Financial Products), which reflects the conditions and criteria for the

management and operation of passported financial products in the GCC financial markets.

Under this newly created GCC passporting regime, upon completion of a notification and registration procedure in its jurisdiction of establishment or domiciliation, a financial product that is domiciled and registered with a financial authority within the GCC (the "Home Regulator") can be promoted and marketed in the other GCC jurisdictions governed through its own regulators (the "Host Regulator") without the need to (a) obtain a license from the Host Regulator, or to (b) appoint a distributor located in the Host Regulator jurisdiction.

In this respect, the enacted passporting scheme defines "passporting" as the process of registering financial products in the register relevant for such products established under the jurisdiction of the Home Regulator and the Host Regulator. The Resolution also defines "financial products" as securities and other financial instruments traded on a financial market and establishes the framework for cross-border offering of these products within the GCC region, aiming at improving the regulation and integration of Kuwait's financial market. As such, it is now permitted that funds registered in GCC countries to market the registered financial product in the country where they wish to offer their products, within the GCC region exclusively, and to comply with the process for cross-border fund distribution and marketing established under the provisions of Module 18, which includes (i) maintaining sound risk management practices, (ii) ensuring adequate disclosures, and (iii) strict adherence to the relevant accounting and reporting standards and the appointment of a local representative in the target GCC country.

How does this new law impact business?

The Resolution targets the enhancement of the competitiveness of Kuwait's financial sector, while maintaining the integrity and stability of the GCC financial markets and aims to make the GCC a prominent financial center for the establishment and marketing of investment funds and other financial products, which will result in the flow of global investment and financial products to the local markets. In addition, this Resolution supports the CMA's efforts to create a conducive environment for the growth of Kuwait's financial sector and to attract foreign investments, thereby contributing to the growth and development of the country's economic and business sector and marking an important milestone in Kuwait's capital markets practice.

Are there any potential challenges or difficulties that might arise in implementing this new law or amendment?

Despite the many benefits of financial products' passporting in Kuwait, there are also certain challenges that need to be addressed. Implementing the new financial products' passporting regulation in Kuwait is not without challenges. GCC financial institutions may struggle to comply with the conditions and criteria set out in the Resolution, including maintaining adequate capital and complying with periodic reporting requirements. Technical difficulties in investing in technology and infrastructure for cross-border offering of financial products and regulatory challenges could also arise, particularly for smaller institutions, as they may find it challenging to implement and maintain compliance with multiple regulations. The increased competition from other financial institutions offering cross-border financial products could also put pressure on existing market participants.

Regulatory oversight must be always present, to ensure that the practice is conducted in

accordance with the laws and regulations of the relevant country, as set out by the CMA and the Central Bank of Kuwait. Additionally, there is also a need for increased transparency and disclosure in the market, to help ensure that investors are well-informed about the risks and benefits associated with investing in financial passported products.

Are there any potential impacts on international relations or trade as a result of this new law or amendment?

The Resolution is likely to have the potential to impact international relations and trade by fostering closer economic cooperation between the GCC countries similar to the EU that has known a similar framework that launched the idea of an EU passport for financial services in the 1970s, where a passport for investment funds was granted in 1985 under the first Undertakings for Collective Investment in Transferable Securities directive as part of the creation of a unified regulatory framework for investment fund.

In essence, the Resolution may provide a new financial products' licensing process comparable to the EU Passporting regulations, which in itself may have an impact on the movement of financial products in the GCC region through the (i) increased investment flows where the Resolution may lead to an increase in investment flows between the GCC States, which could have a positive impact on the economies of the region and may (ii) improve financial services where the Resolution could result in an improvement in financial services offered in the GCC region, as investment fund managers are able to market their funds in the entire GCC region and may also (iii) boost trade between the GCC States by increasing the demand for financial services in the GCC markets.

In summary, the Resolution has the potential to enhance economic cooperation and improve the financial products' promotion and marketing between the GCC States by making it easier for investment fund managers to market their funds across borders of their initial host GCC State. However, it is important to note that the extent of impact of the Resolution will depend on its implementation and enforcement, as well as the reaction of market participants and other relevant stakeholders.

About Tarek Yehya

Specializing in Capital Markets and Projects, Tarek Yehya brings over 15 years of experience to his role as partner and head of the Capital Markets practice at Meysan Partners. He has extensive experience advising local and international clients on complex matters under regional laws in the Middle East. Yehya provides counsel on various capital markets transactions, including equity and debt issuances, initial public offerings, and fund offerings, as well as advising on compliance matters related to corporate governance.

Additionally, he focuses on projects, privatization initiatives, public financial scheme reforms, and regulatory processes.

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