

# The UAE's New SCA Licensing Regime

In 2020, the Securities and Commodities Authority (SCA), which is the UAE's financial and capital markets regulator, published a draft new rulebook on financial activities regulated by the SCA. The SCA's consultation on the draft new rulebook was a very positive development welcomed by businesses and professionals alike. It signaled a clear departure from the SCA's then licensing framework and offered the public an opportunity to comment and provide their opinion on the SCA's proposed regulatory framework.

In May 2021, the SCA issued the long-awaited rulebook (for which the consultation was sought from the public last year) on the financial activities and mechanisms of status regularisations (the "New Rulebook") pursuant to SCA Decision No.13/RM/2021. This article discusses the most significant highlights and changes made following the SCA's issuance of the New Rulebook.

En 2020, la Securities and Commodities Authority (SCA), qui est l'organisme de réglementation des marchés financiers et des capitaux des Émirats arabes unis, a publié un projet de nouveau recueil de règles sur les activités financières réglementées par la SCA. La consultation de la SCA sur le projet de nouveau règlement a été une évolution très positive saluée par les entreprises et les professionnels. C'est le signal d'une rupture claire avec le cadre actuel d'octroi de licences par la SCA, qui offre au public la possibilité de commenter et de donner son avis sur le cadre réglementaire proposé par la SCA.

En mai 2021, la SCA a publié le très attendu règlement (pour lequel la consultation du public a été sollicitée l'année dernière) sur les activités financières et les mécanismes de régularisation des statuts conformément à la décision de la SCA n°13/RM/2021. Cet article traite des faits saillants et des changements les plus importants apportés à la suite de la publication par la SCA du nouveau règlement.



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## Introduction

The New Rulebook, which is effective from 17 May 2021, has revamped the entire licensing and regulatory framework under the SCA in relation to the activities regulated by the SCA.

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## Repeal of Previous Regulations

The New Rulebook has repealed in its entirety the previous regulations issued by the SCA (Article 7, preamble of New Rulebook). These include, without limitation, the 2017 introduction and promotion regulations, the 2018 credit rating agencies licensing regulations, 2014 securities brokerage law, and the 2008 financial advisory rules,

As far as the marketing of funds in and from the UAE are concerned, the New Rulebook has consolidated all the relevant information into a single document. Before the issuance of the New Rulebook, it was essential to follow promotion and registration of funds requirements across the vast SCA's legislative framework.

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## Compliance with New Regulations

The New Rulebook gives SCA-licensed firms a grace period of one year from the date of its issuance to comply fully with its provisions (Article 2, New Rulebook).

### A. CATEGORISATION OF LICENSED ACTIVITIES UNDER THE NEW RULEBOOK

The New Rulebook categorises licensed activities and structured it under the categories mentioned in the table below (Article 2, Chapter 2, Section 2, New Rulebook).

CATEGORY	TYPE
Category 1	Dealing in securities
Category 2	Dealing in investment
Category 3	Custody, clearing and registration
Category 4	Credit rating agencies
Category 5	Arrangement and advising

These are similar to the prudential categories that exist in the regulatory handbooks of the financial free zones of Abu Dhabi Global Market (ADGM) and Dubai International Financial Centre (DIFC).

### B. PAID-UP CAPITAL REQUIREMENTS OF LICENSED ACTIVITIES

The New Rulebook has stipulated the minimum paid-up capital requirement for each licensed activity as mentioned in the table below (Addendum 1, New Rulebook).

CATEGORY	TYPE	LICENSED ACTIVITIES	MINIMUM PAID-UP CAPITAL (AED)
Category 1	Dealing in securities	Trading and clearing broker Trading broker in global markets Trading broker of OTC derivatives and currencies in spot markets Trading broker Dealer	30 million (approx. USD 8.2 million)
Category 2	Dealing in investment	Mutual funds investment management Security portfolios management Mutual fund administrative services	50 million (approx. USD 13.6 million)
Category 3	Custody, clearing and registration	Custody General clearing Covered warrants issuer Deposit certificates bank of deposit Agent of deposit certificates bank of deposit Registrar of private joint stock companies	50 million (approx. USD 13.6 million)
Category 4	Credit rating agencies	Credit rating firms	5 million (approx. USD 1.36 million)
Category 5	Arrangement and advising	Financial advisory Financial advisory (lead manager) Listing advisor Introduction Promotion	No minimum requirement

## C. ADDITION OF NEW LICENSED ACTIVITIES: BROKERAGE ACTIVITIES

The New Rulebook expands the range of brokerage and securities dealing activities, which were previously limited to brokerage firms who were members of the stock exchanges.

The new activity under Category 1 "trading broker in OTC derivative contracts and forex spot market" is expected to allow the existing and new monetary intermediaries to move under the SCA's regulatory ambit.

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This licence is expected to allow the monetary intermediary companies previously licensed by the UAE Central Bank to move under the SCA's regulatory umbrella. We expect further clarification from the SCA on this point.

We look forward to further guidance from the SCA on the scope of the new regulated activities as the New Rulebook is implemented in letter and in spirit.

## D. INTRODUCTION OF APPROVED FUNCTIONS

The New Rulebook introduces approved functions for SCA-licensed firms (Article 1, Chapter 6, Section 2, New Rulebook). The full list of over dozen approved functions are set out in the New Rulebook with the description in detail of each such function and the eligibility criteria.

Some of the approved functions are as follows:

- a) compliance officer;
- b) risk management officer;
- c) operations officer;
- d) credit rating analyst; and
- e) financial analyst.

## E. CHANGES TO THE DEFINITION OF PROFESSIONAL INVESTOR

*One of the significant changes introduced by the New Rulebook is the requirements in relation to promotion of securities.*

The New Rulebook has redefined the concept of "Professional Investor" (Article 5, Chapter 2, Section 3, New Rulebook). The following important changes have been introduced:

- a) Promotions to all types of Professional Investors are now exempt. Previously, this was limited to only those Professional Investors who were corporate entities.
- b) Companies listed on the capital markets have also been added.
- c) Broader investor classes have been added. These include governmental entities, entities wholly owned by the governmental institutions, central banks and national monetary authorities in other jurisdictions, banks and financial institutions (including mutual funds and pension funds), single family offices, trusts and other investment vehicles, partnerships and private establishments possessing assets of at least AED 25 million (approx. USD 6.8 million).
- d) Natural persons with a net worth of at least AED 4 million (approx. USD 1.1 million) (excluding the value of such natural person's main accommodation) or, following assessment, those with sufficient experience and understanding of the relevant investments (or those represented by a financial advisor) are now categorised as Professional Investors. This also includes natural persons who have worked for a regulated financial institution (such as banks) for a period of at least last two years;
- e) Joint account holders (required to be family members) have also been added in the definition of Professional Investors.

## F. EXEMPTIONS IN RELATION TO PROMOTION OF SECURITIES

One of the significant changes introduced by the New Rulebook is the requirements in relation to promotion of securities (Article 6, Chapter 5, Section 3, New Rulebook). This also includes financial promotions that are now exempt from requiring a licence from the SCA.

The New Rulebook includes detailed requirements for SCA-licensed firms offering and marketing their services in the UAE. Marketing materials of these SCA-licensed firms must be clear, fair and not misleading. Furthermore, they should be specific and limited only to the Professional Investors where the target clientele includes Professional Investors only.

Securities offerings and marketing to certain Professional Investors are now exempt from the above requirements, along with offerings and marketing any in response to any reverse solicitation (where the initiative is made by the UAE-based investor).

The New Rulebook also exempts promotions of financial products listed in capital markets from the requirements.

Unlike the SCA's previous introduction and promotion regulations, the New Rulebook does not limit the exemption for promotions to Professional Investors. Promotions made to natural persons falling within the definition of Professional Investors (such as high net worth individuals or joint account holders – see above) will be exempt under the New Rulebook.

Promotions made between an entity and its financial group (or the related parties), the parties related to mutual funds, or associated group are now captured under the exemptions available under the New Rulebook.

## G. OUTSOURCING OF FUNCTIONS BY SCA-LICENSED FIRMS TO THIRD PARTY SERVICE PROVIDERS

Under the New Rulebook, SCA-licensed firms are allowed to outsource their certain functions to a corporate entity incorporated in or outside the UAE (Article 2(21), Chapter 4, Section 2, New Rulebook).

However, the SCA's prior approval will be required prior to SCA-licensed firm outsourcing any of its function with the relevant service level agreement (or outsourcing agreement) proved to the SCA for its review and approval. The SCA will maintain its oversight over outsourcing activities.

*SCA-licensed firms deploying cloud computing services must ensure a clear understanding of the risks and robust protection of its information held with cloud services providers from loss and unauthorised access.*

As part of the outsourcing regulations under the New Rulebook, cloud computing services are also specifically included. This means that SCA-licensed firms deploying cloud computing services must ensure a clear understanding of the risks and robust protection of its information held with cloud services providers from loss and unauthorised access. An external data security audit is required on annual basis and the findings of such audits must be submitted to the SCA on annual basis. SCA-licensed firms are also required to keep and protect data and information (zero data loss) from any breach for 10 years in connection with each data or information. The backups of such data and information are also required to be kept for 10 years. Further, the data servers of the cloud computing services providers must be located in the UAE.

#### H. SCA-LICENSED FIRMS MAY BE SET UP IN FINANCIAL FREE ZONES OF ADGM AND DIFC

The New Rulebook allows an applicant applying for a licence from the SCA to be set up in the financial free zones of ADGM or DIFC (Article 2, Chapter 4, Section 2, New Rulebook). However, this remains subject to a specific legal form to be adopted by such applicant as required by the SCA for particular type of licensed activity.

The activities for which an entity established in an FFZ could obtain an SCA licence are yet to be identified thoroughly. We expect further guidance from the SCA on the types of licensed activities for which licences can be obtained from the SCA by an applicant wishing to be incorporated in the financial free zone of ADGM or DIFC. As of now, the New Rulebook expressly states that applicants wishing to obtain a licence to perform the activity of a credit rating agency may set up in the financial free zone of either ADGM or DIFC.

#### I. LIMITATION OF LIABILITY

Licensed entities are now restricted from limiting their liability for carrying out financial activities, and any such provisions included in agreements or terms and conditions with clients will be invalid, unless it arises as a result of force majeure or state of emergency (Article 8, Section 1, New Rulebook).

#### J. NON-COMPLIANCE OF NEW RULEBOOK AS A STATE OF EMERGENCY

Non-compliance with the New Rulebook by an SCA-licensed firm may be waived, if it is due to a "state of emergency" that is beyond the control of the firm and cannot reasonably be avoided (after taking all reasonable measures to avoid it). However, the New Rulebook does not expressly define what constitutes a state of emergency (Article 9, Section 1, New Rulebook).

#### K. CAREFUL DILIGENCE

The New Rulebook has introduced the concept of "careful diligence" (or duty of care) (Article 6, Chapter 4, Section 3, New Rulebook). All SCA-licensed firms are required to exercise careful diligence when undertaking the licensed activities with the care of a diligent person using their expertise and specialisation by performing the tasks accurately and without any negligence. SCA-licensed firms are further required to take all reasonable actions according to the circumstances, their expertise, and future expectations. Licensed entities should have procedures in place to ensure their employees act in accordance with this "careful diligence" duty of care towards all the clients of SCA-licensed firms.

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## Conclusion

*The New Rulebook is a first step in right direction towards combining and restructuring the licensing and regulatory framework of the SCA into a single document.*

The New Rulebook has certain provisions for which further guidance is expected from the SCA in future; however, the New Rulebook is a first step in right direction towards combining and restructuring the licensing and regulatory framework of the SCA into a single document. We eagerly await further clarity on the New Rulebook from the SCA and anticipate that the SCA may issue further guidance (or rules) as the provisions of the New Rulebook will be complied with by the existing SCA-licensed firms from this point forward.

في عام 2020، نشرت هيئة الأوراق المالية والسلع، وهي الجهة المنظمة لأسواق المال ورأس المال في دولة الإمارات العربية المتحدة، مسودة كتاب جديد حول القواعد النازمة للأنشطة المالية التي تنظمها هيئة الأوراق المالية والسلع. وكان طرح الهيئة لكتاب القواعد الجديد تطوراً إيجابياً للغاية رحب به رجال الأعمال والمهنيون على حدٍ سواء. وقد أشار إلى تغير واضح في إطار عمل إصدار التراخيص الذي كانت تتبعه هيئة الأوراق المالية والسلع آنذاك، حيث قدمت الهيئة للجمهور فرصة للتعليق وتقديم رأيهم بشأن الإطار التنظيمي المقترح من قبلها.

في مايو 2021، أصدرت هيئة الأوراق المالية والسلع كتاب القواعد الذي طال انتظاره (والذي طرح للتشاور مع الجمهور العام الماضي) المتعلق بالأنشطة المالية وآليات تنظيم الوضع ("كتاب القواعد الجديد") وفقاً لقرار هيئة الأوراق المالية والسلع رقم 13//RM 2021. تناقش هذه المقالة أهم النقاط البارزة والتغييرات التي أجريت بعد إصدار الهيئة لهذا الكتاب.

## BIOGRAPHY

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Prior to joining BSA Ahmad Bin Hezeem & Associates, Musab worked in the Qatar office of a large Middle East law firm, where he primarily advised clients on financial regulatory matters, debt restructuring and lending transactions. He has also worked in Oman at one of the oldest law firms of the country and advised on a range of issues as diverse as banking, corporate and M&A, and at a top-tier law firm in Pakistan where he was involved in transactional and advisory work in relation to banking, corporate and M&A, JVs, capital markets, and investments and divestments. He has also been seconded in past to the Qatar office of a global bank.

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