

**Resolution No. (35) of 2022**  
**Regarding**  
**The Calculation of the Minimum Value for Submitting the Request of Initiating the**  
**Procedures of Preventive Settlement, Restructuring or Declaring Bankruptcy**

**Having Perused:**

- Law No. (7) of 2010 Regarding the Establishment of the Capital Markets Authority and Regulating Securities Activities and its Executive Bylaws, and their amendments; and
  
- Law No. (71) of 2020 Regarding the Issuance of the Law of Bankruptcy and its Executive Bylaws; and
  
- CMA Board of Commissioners Resolution passed in its meeting No. (7/2022) of 2022 held on 23/02/2022.

**The Following Was Resolved:**

**Article (1):**

The minimum value for submitting the request of initiating the procedures of preventive settlement, restructuring, or declaring bankruptcy for securities exchanges, clearing agencies, and persons licensed by the CMA shall be calculated pursuant to annex (1) attached to this Resolution.

**Article (2):**

The equations included in the annex attached to this Resolution are considered as part of the Executive Bylaws of Law No. (71) of 2020 Regarding the Issuance of the Bankruptcy Law, pursuant to the provisions of Articles (3), (4), and (5) thereof.

**Article (3):**

The concerned bodies shall execute this Resolution, each within its jurisdiction. This Resolution shall come into force from the date of its issuance, and it shall be published in the Official Gazette.

**Prof. Ahmad A. Al-Melhem**  
**Issued on: 07/03/2022**

## Annex (1)

### Appendix Regarding

#### “Mechanism of Calculating the Minimum Value for Submitting the Request of Initiating the Procedures of Preventive Settlement, Restructuring or Declaring Bankruptcy”

Based on Law No. (71) of 2020 Regarding the Issuance of the Bankruptcy Law and Resolution No. (81) of 2021 Regarding the Issuance of the Executive Bylaws of the aforementioned Law, and Articles (3), (4), and (5) of the Executive Bylaws that assigned to the Capital Markets Authority (CMA) the function of determining the minimum value of debt that a debtor had stopped or is expected to stop paying to submit a request for initiating the procedures of preventive settlement, restructure, or declaring bankruptcy for the exchanges, clearing agencies, and persons licensed by the CMA, the equation set for calculating the minimum value for initiating the procedures of preventive settlement, restructuring or declaring bankruptcy was determined in accordance with the following:

**First: the equation for calculating the minimum value for submitting the request of initiating the preventive settlement procedures, restructuring, or declaring bankruptcy of licensed persons (except the securities exchanges and clearing agencies):**

$$\begin{array}{ccc} \textbf{The Risk Factor} & & \textbf{The Capital Factor} \\ \text{(According to the licensed person's licenses and} & \times & \text{20\% of the minimum capital or 5\% of the paid-} \\ \text{activities)} & & \text{up capital} \\ & & \textbf{whichever is higher} \end{array}$$

Each element of the equation above is calculated as follows:

1. The risk factor according to the licensed person's licenses and activities:

The risk factor is used for measuring the degree of the risks related to the licensed person's activities through allocating a number of points according to the following standards:

- 1- The nature of the licensed person's activity and their role in the capital markets' system.
- 2- The degree in which the licensed person deals with the clients' funds and assets.
- 3- The operational risks and burdens resulting from the capital markets system or any of the participants in this system as a result of the licensed person's inability to practice their activity in the required manner.

This factor is determined pursuant to the following steps:

- a. Table (1) below is used for determining the total number of points of the licensed person.

Table (1) – Allocation of the Risk Factor Points for Licensed Persons:

Allocation of the Risk Factor Points for Licensed Persons						
Activity	Broker Registered in the Exchange	Market Maker	Broker Not-Registered in the Exchange	Investment Advisor	Investment Portfolio Manager	Collective Investment Scheme Manager
Points	61	12	6	3	12	12
Activity	Custodian	Investment Controller	Subscription Agent	Assets Valuation	Listed in a securities exchange that is licensed by the CMA	
Points	6	3	6	3	3	

- b. The number of the points calculated in step (a) is used to specify the risk factor of the licensed persons in accordance with the classification included in table (2).

Table (2) – Distributing the points of the risk factor according to the classification points of the licensed person:

The classification points of the licensed persons according to their risks' degree			
From (point)	To (point)	Risks degree	The risk factor according to the classification
1	15	Low	1
16	30	Moderate	1.25
31	60	High	1.5
61	And more	Very high	2

To view the list of companies licensed by the CMA and their activities, kindly click on the following link:

<https://cma.gov.kw/ar/web/cma/licensed-companies>

## 2. The Capital Factor:

The higher value of the following values is applied:

- **The minimum capital multiplied by 20%:**

If the company practices more than one licensed activity, the highest value of the capital requirements among the activities practiced by the company will be applied pursuant to the minimum capital requirements of the licensed persons stipulated in Module Five of the CMA's Executive Bylaws. The fixed percentage is set out at 20% for this criterion.

- **Paid-up capital multiplied by 5%:**

The value of the paid-up capital is applied in accordance with the latest audited periodic financial statements or annual audited financial statements or upon the occurrence of any change to them. The fixed percentage is set out at is 5% for this criterion.

Whichever is higher.

**Second: the equation for calculating the minimum value for submitting the request for initiating the procedures of preventive settlement, restructuring, or declaring bankruptcy of licensed securities exchanges and clearing agencies:**

Due to the importance that the securities exchanges and the clearing agencies maintain as central institutions upon which the financial system relies, and the potential disruption to the workflow in any of them may lead to instability in the financial market system, which may result in the occurrence of systemic failures that could affect capital markets. The minimum limit value for submitting the request of initiating the preventive settlement, restructuring, or declaring bankruptcy for each of the securities exchange and the clearing agency was determined differently than the rest of the licensed persons according to the following:

**The equation for calculating the minimum value for submitting the request of initiating the preventive settlement, restructuring, or declaring bankruptcy of the securities exchanges and clearing agencies:**

**Value of the paid-up capital multiplied by a fixed percentage**

- a. Value of the paid-up capital: value of the paid-up capital pursuant to the latest reviewed periodic financial statements, audited annual financial statements, or upon the occurrence of any change to them.
- b. Fixed percentage: a fixed percentage that is equal to 50%.