

## **Resolution No. (123) of 2021**

### **Regarding**

### **Regulating the Division of Licensed Companies or Companies Listed in the Securities Exchange**

#### **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
- CMA Board of Commissioners Resolution passed in its meeting No. (38) of 2021 held on 27/10/2021.

#### **The Following Was Resolved**

##### **Article (1)**

Module One (Glossary) of the Executive Bylaws of Law No. (7) of 2010 is hereby amended pursuant to Annex (1) attached to this Resolution.

##### **Article (2)**

Chapter Five (Division) of Module Nine (Mergers and Acquisitions) of the Executive Bylaws of Law No. (7) of 2010 is hereby added pursuant to Annex (2) attached to this Resolution.

##### **Article (3)**

Appendix 11 (Procedures of Executing the Division) of Module Nine Mergers and Acquisitions) of the Executive Bylaws of Law No. (7) of 2010 is hereby added pursuant to Annex (3) attached to this Resolution.

##### **Article (4)**

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 Almelhem**

**Issued on: 01/11/2021**

**Annex (1)**  
**Amending Module One**  
**(Glossary)**  
**of the Executive Bylaws**

## Module One

### Glossary

Division	<b>Segregation between the company's assets and activities, and its related obligations and ownership rights into two or more separate companies.</b>
Dividing Company	<b>The company wishing to divide, whether it continues through the same corporate entity or terminates as a result of the Division.</b>
Divided Company	<b>A company or companies established as a result of the Division of the Dividing Company, whether as a company or companies existing or resulting from the Division.</b>
Draft Division Contract	<b>The contractual terms and conditions proposed to execute the Division in accordance with the procedures specified by law.</b>

**Annex (2)**  
**Amending Module Nine**  
**(Mergers and Acquisitions)**  
**of the Executive Bylaws**

## Chapter One

### Introduction and Scope of Application

Article 1-5

The provisions of Division stipulated in Chapter Five of this Module shall apply to the Companies Licensed by the Authority or the Companies Listed in the Exchange.

## Chapter Five

### Division

Article 5-1 The company may be divided, even if it is under liquidation, into two or more companies, with the company's termination or its survival. The Divided Company may take any form of legal companies.

Article 5-2 Conflict of Interest

A Member of a Board of Directors of a Dividing Company shall not vote in the Board of Directors, its subcommittees, or the general assembly of the company if they have an interest in the Division. It shall not be construed as an interest if the Member of the Board of Directors has a participation in the Dividing Company if the percentage of such participation does not reach 5% of the voting shares in the general assembly.

Any indirect interest or in alliance with others shall be in disclosed in accordance with the provisions of Module Ten (Disclosure and Transparency) of these Bylaws.

Article 5-3 Announcement of the Division

The Dividing Company shall announce the Division phases in the following form:

1. Immediately after the approval of the Board of Directors of a Dividing Company on the Division.
2. Upon obtaining the approval of the Authority on the Draft Division Contract.
3. Upon the general assembly's issuance of its resolution regarding the Division.
4. Upon the completion of the Official Announcement of the Division resolution.

Article 5-4 The announcement mentioned in Article (5-3) of this Module shall be as follows:

1. If the Dividing Company is a member in the Exchange, the announcement shall be in the Exchange and the company's website.
2. If the Dividing Company is licensed by the Authority and is not listed in the Exchange, the announcement shall be in the company's website.

In all cases, the announcement of obtaining the approval of the Authority on the Draft Division Contract shall be in at least two daily newspapers, in addition to the other means stipulated in this Article.

Article 5-5

Draft Division Contract

The Dividing Company shall submit to Authority the Draft Division Contract for its approval. Approval of the Central Bank is required for the Units Subject to the Supervision of the Central Bank. The Draft Division Contract shall not be published or circulated to shareholders or partners before obtaining these approvals. Each shareholder or partner shall have the right to receive a copy of the Draft Division Contract after obtaining the Authority's approval on the Draft Division Contract.

Article 5-6

The Draft Division Contract shall include the following information:

1. Adequate information about the Dividing Company.
2. Details of the shares of the Dividing Company, and any rights or restrictions associated with them.
3. The Division plan and its reasons and purposes.
4. Statement of the financial arrangements for the financing of the Division.
5. Details of the Divided Company or Companies.
6. If the Dividing Company is a Listed Company, the company's plan to continue listing its shares in the Exchange and the plan to list the Divided Company or companies in the Exchange shall be determined. The company shall undertake to abide by the provisions of Module Twelve (Listing Rules) of the Executive Bylaws.
7. Information about the Investment Advisor and the Person responsible for the evaluation.

8. The date of the evaluation.
9. The initial report of the values of assets and liabilities of the Dividing Company, taking into consideration the assets' fair value, and the assets, liabilities, and nominal value of the Divided Company or companies.
10. Number of the shareholders or the partners, their names, and the share of each one of them in the Divided Company or companies, and these companies' rights and commitments and the mechanism of distributing the assets and liabilities between them.
11. The timeline of the Division.
12. Details of all the procedures necessary to be followed in order to execute the Division.
13. Details of any Effective Control the Dividing Company may have over other companies.
14. Any other details or information requested by the Authority.

Article 5-7

The following information shall be attached to the Draft Division Contract:

1. The full report of the Investment Advisor, including the asset evaluation report that evaluated assets and liabilities.
2. A report of the basis on which the initial evaluation of the assets and liabilities, determining the number of shareholders or partners, their names, and the share of each one of them in the Divided Company or companies, and these companies' rights and obligations and the mechanism of distributing the assets and liabilities between them.
3. The audited financial statements of the Divided Companies for the past three years.
4. The procedures to be followed in the event of forming a New Company or companies as a result of executing the Division.
5. The procedures to be followed in the event of the Dividing Company's termination as a result of executing the Division.
6. The expected and estimated balance sheets (Pro-Forma) for the first financial year of the Dividing Company and the Divided Company or companies, attached with the Auditor's opinion.

Article 5-8

A Person with an Effective Control



In the event of a Person with an Effective Control over the Dividing Company before executing the Division, the Draft Division Contract shall include the following additional information:

1. Name of persons with Effective Control and names of any Subsidiary or persons with whom they are Acting in Concert with.
2. Statement of the current ownership of the party with Effective Control in the Dividing Company, including any shares owned or controlled, or any Subsidiary or persons with whom they are Acting in Concert with, or where a person with Effective Control or any Subsidiary or persons with whom they are Acting in Concert with has the option of buying thereof.
3. A statement of whether a person with Effective Control holds a position of employment or serves as a Member of a Board of Directors in the Dividing Company.
4. The opinion of the Members of a Board of Directors regarding the Division and whether it is fair and reasonable for the rest of shareholders other than the party with Effective Control, and a statement that the Members of a Board of Directors have developed this opinion without any role by this party.
5. Any reservations made by Members of a Board of Directors regarding the Division, if any

Article 5-9

Conditions for appointing an Investment Advisor

An Investment Advisor shall be independent, not a Stakeholder, and shall be licensed by the Authority; and may not subscribe for or purchase Shares in any of such companies or transact in the Financial Derivatives of such Shares for their own account unless they create and maintain a Chinese Wall separating the Licensed Activities in accordance with the provisions of Module Five (Securities Activities and Registered Persons), Module Six (Policies and Procedures of Licensed Person) and Module Eight (Conduct of Business) of these Bylaws.

Article 5-10

Conditions for Appointing a Person Responsible for Asset Valuation

**A Person who will be responsible for the valuation of the assets of the Dividing Company shall be independent, not a Stakeholder, and shall be licensed by the Authority and may not subscribe for or purchase Shares or stakes in any of such companies or transact in the Financial Derivatives of such Shares for their own account.**

Article 5-11

Documents Available for Review

**The Dividing Company shall make the following documents available to be reviewed by the stakeholders of the companies involved a Division:**

- 1. The Draft Division Contract and its attachments.**
- 2. The resolution of the Boards of Directors of the Dividing Company concerning the Division.**
- 3. The contract of the Dividing Company or any other similar documents.**
- 4. The audited financial statements of the Dividing Company for the past three financial years.**
- 5. Any report, letter, assessment or any other document presented or referred to in the Draft Division Contract.**
- 6. Documentation of the financial arrangements for the financing of the Division.**
- 7. Any other documents requested by the Authority.**

Article 5-12

Resolution of Shareholders in the General Assembly

**The documents set out in Article (5-11) of this Module shall be made available for review at the Dividing Company's headquarters no later than ten Business Days before the commencement of the general assembly for the consideration of the Division.**

Article 5-13

**The resolution to divide the company shall be issued pursuant to a resolution by the extraordinary general assembly which includes the number of shareholders or partners, their names, and the share of each one of them in the Divided Company or companies, and these companies' rights and obligations, and the mechanism of distributing the assets and liabilities.**

- The Dividing Company shall provide the Authority with a semi-annual report on the updates of implementing the resolutions of the general assembly regarding the Division.
- Article 5-14 If the Dividing Company withdraws from the Division, it shall be prohibited from executing any Division for a period of one year from the date of announcing its withdrawal from completing the Division.
- Article 5-15 Contracts of Financial Derivatives in the Exchange shall include provisions regulating the rights of such contracting parties upon executing the Division.
- Article 5-16 Companies addressed by the provisions of this chapter shall follow the procedures of executing the Division as set out in Appendix (11) of this Module.

**Annex (3)**  
**Appendix (11)**  
**(Procedures of Executing the Division)**

## Appendix (11)

### Procedures of Executing the Division

1. The Dividing Company, whether listed in the Exchange or licensed by the Authority, shall submit the Division request to the Authority. The Authority notifies the Ministry of Commerce and Industry of the Division request.
2. The Dividing Company shall disclose its readiness for Division in accordance with the disclosure announcement mechanism set out in Article (5-4) of this Module; and once this disclosure is completed, trading Shares of the Dividing Company shall be suspended for only one hour.
3. The Dividing Company shall obtain advice by an independent Investment Advisor that is prepared in accordance with the provisions of Article (5-9) of Chapter Five (Division) of this Module, and the shareholders or partners shall be informed of the details of such advice; provided that the study of the Investment Advisor shall be written in Arabic language, and shall include an asset valuation report of the Dividing Company, and determines the number of shareholders or partners, their names, and the share of each one of them in the Divided Companies, and these companies' rights and obligations and the mechanism of distributing the assets and liabilities between them.
4. The Dividing Company shall prepare a Draft Division Contract and submit it to the Authority, in accordance with requirements of the Draft Division Contract set out in Chapter Five of this Module.
5. The Dividing Company shall pay the Division fees upon submitting the Draft Division Contract to the Authority.
6. The Authority shall issue its resolution within fifteen Business Days commencing from the date of receiving the Draft Division Contract, complete with all required data and conditions by the Dividing Company; the Authority's approval shall be announced by these companies through the disclosure mechanism referred to in Article (5-4) of these Bylaws.
7. A Division application form shall be completed and submitted to the Ministry of Commerce and Industry; the Draft Division Contract shall be attached alongside the report of Investment Advisor who is licensed by the Authority, which includes an asset valuation report.
8. The Ministry shall study the Division application form, after which it shall issue its approval to initiate the execution of the Division's process.
9. The Dividing Company shall call for an extraordinary general assembly meeting for its shareholders in order to issue a resolution regarding the Division, after no less than fifteen days from the date of the Ministry of Commerce and Industry's approval of the Draft Division Contract.
10. The extraordinary general assembly of the Dividing Company shall issue its resolution of approving the Division including the number of shareholders or partners, their names, and the share of each one of them in the Divided Companies, and these

companies' rights and obligations and the mechanism of distributing the assets and liabilities between them.

11. The Dividing Company shall submit to the Ministry of Commerce and Industry the approval of the Bondholders Association or Sukukholders Association of the process, in addition to the approval of all companies and shareholders, if Division resolution would lead to an increase in financial obligations.
12. The Ministry of Commerce and Industry shall undertake procedures for the official announcement and will consider the objections of the debtors.
13. In the event that the Dividing Company was listed in the Exchange and the Division resolution included the termination of the Dividing Company, the Dividing company shall provide the Authority with the resolutions of the extraordinary general assembly approving the Division and the winding-up of the company upon their publication in the Official Gazette. The Authority shall suspend the shares of the Dividing Company to trade in the Exchange, commencing from the working day following the acquisition of shares specified by the general assembly of the Dividing Company in accordance with the Exchange's rules.
14. The establishment of a new legal entity or more and the termination of the legal entity of the Dividing Company shall be marked in the Commercial Register at the Ministry of Commerce and Industry, as the case may be.
15. In the event that the Dividing Company was listed in the Exchange and the Division resolution included the termination of the Dividing Company, the Dividing Company shall provide the Authority with a copy of the notation in the Commercial Register at the Ministry of Commerce and Industry to initiate the procedures of delisting the company's shares from the Exchange.
16. The companies involved in the Division shall submit the Division execution application form to the Authority, after the defined fees are paid.
17. The Authority shall issue its approval of executing the Division after assuring that the procedures are valid, and that the concerned companies have met the criteria specified by the Authority.
18. The companies involved in the Division shall edit their shareholders' register at the Clearing Agency.
19. The companies involved in the Division shall send the new memorandum and articles of association to the Authority.
20. The companies involved in the Division shall disclose the end of the Division in accordance with the announcement mechanism stipulated in Article (5-4) of this Module.