

NEW RULES AND REGULATIONS 2021 (FREQUENTLY ASKED QUESTIONS FOR IPO)

Introduction

On 2 November 2020, the UAE Securities & Commodities Authority (**SCA**) announced that it had amended its offering rules (**Offering Rules**) to allow free zone companies to list and offer their shares (an initial public offering or **IPO**) in the United Arab Emirates (**UAE**). Subsequently, on 14 March 2021, Dubai Airport Free Zone Authority (**DAFZA**) issued new DAFZA Implementing Regulations (New Regulations) to facilitate Dubai Airport Free Zone (**DAFZA** or the **Free Zone**) companies to IPO in the UAE in response to the changes to the Offering Rules. DAFZA has published this Circular containing Q&As to explain how DAFZA companies can now proceed to raise equity capital through an IPO in the UAE.

SCA amended its existing Offering Rules by issuing Chairman of SCA Decision No. (25/Chairman) of 2020. The New Regulations were approved by Administrative Resolution No. (ADM 004 2021) Regarding Approving DAFZA Implementing Regulations 2021.

This is a summary only of some of the main provisions of the Offering Rules and New Regulations and you should not rely on this summary in place of reading the Offering Rules and the New Regulations in their entirety. If you are unsure as to the contents of the Offering Rules, you should consult your professional adviser and, in relation to the New Regulations, you should consult DAFZA using the contact details listed below or your professional adviser.

- Call Centre Team on 600-5-DAFZA (32392)
- WhatsApp Service on 056-9922290
- Raise any 'Inquiry' through our New Client Portal > 'Customer Support' tab

1. What is an IPO?

An IPO is when a company offers shares to the public in order to raise equity finance. The shares offered in an IPO are either new shares issued by the company with the proceeds of the issue going to the company for working capital or growth purposes or are existing shares held by the pre-IPO shareholders of the company who wish to sell some or all of their shares in the IPO. The proceeds of a sale of shares go to the selling shareholder(s). An IPO can be either an issuance of new shares or a sale of existing shares or a combination of both. An IPO is therefore an opportunity for a company to raise new funds and/or an opportunity for existing shareholders to sell-out and realise/monetise some or all of their original equity investment in the company.

2. What is listing?

Listing is the process whereby the shares of a company are “listed” on the official list of securities held by the relevant financial services regulator and admitted to trading on the relevant securities exchange. This means that the company's shares post-IPO are eligible for trading and settlement by investors on the relevant public securities market. The listing requirements for a company are slightly different for each securities exchange.

3. What has SCA changed?

In order to assist free zone entities that are incorporated in the UAE to raise equity capital on the UAE's public securities markets, SCA amended its existing Offering Rules (Chairman of SCA Decision No. (11/Chairman) of 2016 by issuing Chairman of SCA Decision No. (25/Chairman) of 2020. Among other changes, this expressly enabled companies that are incorporated in UAE free zones to offer their shares in the UAE, subject to various eligibility requirements. Previously, only public joint stock companies incorporated in the UAE could offer their shares in the UAE. In principle, historically, free zone companies could list on Nasdaq Dubai only however they are now entitled to list on the Dubai Financial Market (**DFM**) and the Abu Dhabi Securities Exchange (**ADX**). However, the corporate regulations of a particular free zone also need to specifically allow for the incorporation of the right corporate vehicle to allow for a public offering (a public limited company).

4. What has DAFZA changed?

So as to facilitate DAFZA companies to be able to list and offer shares to the public on the UAE's securities exchanges, we needed to create a new type of entity being a “public limited company” (**PLC**) which crucially has no limit on the number of shareholders it can have. The New Regulations for PLCs provide for corporate governance and requirements that are expected of public companies to reflect international best practice.

5. Which UAE securities exchanges can I list on?

In the UAE a free zone company may list its shares on any of the three following exchanges:

- Dubai Financial Market (regulated by SCA)
- Abu Dhabi Securities Exchange (regulated by SCA)
- Nasdaq Dubai (regulated by the Dubai Financial Services Authority (**DFSA**))

Each one of these exchanges will have its own additional eligibility requirements for a free zone company to list on its exchange but it should be noted that in February 2021 the DFM issued its own listing rules for free zone companies (regulations for Listing Free Zone Companies in Dubai Financial Market).

Further, DFM and ADX are regulated by SCA and so SCA's approval of the IPO of a DAFZA PLC will be required in accordance with the Offering Rules and various other SCA rules. Nasdaq Dubai is regulated by the DFSA and so the DFSA's approval of the IPO of a DAFZA PLC will be required in accordance with the DFSA's Markets Rules (**Markets Rules**).

The listing requirements for a company wishing to IPO and list are determined by SCA and DFM for a listing on the DFM, by SCA and ADX for a listing on the ADX and DFSA and Nasdaq Dubai for a listing on Nasdaq Dubai.

6. What are the basic requirements to IPO a DAFZA PLC?

You need to fulfil all of SCA's eligibility requirements which are set out in the Offering Rules and any other SCA requirements if the IPO and listing is on DFM or ADX.

You need to fulfil all of DFSA's eligibility requirements which are set out in the Markets Rules if the IPO and listing is on Nasdaq Dubai.

You need to fulfil all of the listing requirements of the securities exchange on which you are going to list. DFM has its own listing rules specific to free zone companies (regulations for Listing Free Zone Companies in Dubai Financial Market), Nasdaq Dubai has its own Admission and Disclosure Standards and ADX has Guidelines for listing securities.

You will need to be a DAFZA PLC incorporated under the New Regulations.

7. How do I become a DAFZA PLC

If you are an existing free zone company with limited liability (Regulations 8 and 16 of the New Regulations) you can convert to become a PLC (Regulation 102).

Alternatively, you can incorporate as a public limited company with limited liability (Regulations 8 and 16).

If you are an existing free zone branch, you can convert your branch to become a PLC by incorporation (Regulation 104).

8. What are the New Regulations?

The New Regulations are the corporate rules and regulations that determine the different legal structures that can be incorporated in the Free Zone (including a PLC) and how they legally operate once incorporated. Together with a DAFZA company's memorandum and articles of association (Regulation 21), the New Regulations provide the legal and contractual basis upon which a DAFZA company manages its affairs. Importantly, the New Regulations allow for the incorporation of PLCs to enable DAFZA entities to benefit from the changes to the Offering Rules allowing free zone entities to list in the UAE.

9. When do the New Regulations come into force?

The New Regulations came into force on 14 March 2021 and should be applied by existing and new DAFZA entities from that date onwards. The New Regulations apply to existing branches and companies that were incorporated in the Free Zone under the old implementing regulations. They will also apply to any new entity that wishes to establish itself in the DAFZA after 14 March 2021.

10. What are the most significant changes in the New Regulations to cater for PLCs?

References to “Regulations” are to specific regulations in the New Regulations.

PLC – the New Regulations provide for a new corporate entity, a public limited company. This type of entity is suited to a company that wishes to list and/or offer its shares on a securities market. A PLC is subject to more stringent reporting and corporate governance requirements. Some of the key provisions for a PLC are as follows:

- (i) If a PLC wishes to issue new shares it must first offer them to existing shareholders (pre-emption rights/anti-dilution – Regulation 28).
- (ii) PLCs have the facility for treasury shares (Regulation 34).
- (iii) A PLC must seek shareholder approval at its annual general meeting for the reappointment of new directors if they have been appointed by the Board between general meetings (Regulation 40).
- (iv) A PLC must have a secretary with the requisite experience to fulfil the role (Regulation 49).
- (v) A PLC must prepare a Directors' report (including a corporate governance report (Regulation 63)) for each financial year which must include the names of the directors, a fair view of the PLC's business and the risks associated to it and analysis of the development, performance and position of the PLC's business (Regulation 61).

- (vi) The New Regulations also require publication of the PLC's annual report and accounts on the PLC's website (Regulation 62).
- (vii) PLCs will either have to comply with the corporate governance code which applies to the securities market on which it is listed (for example, the SCA Corporate Governance Code 2020 if the PLC is listed on DFM or ADX) or have the discretion to adopt another corporate governance code. Either way, a PLC must comply with a corporate governance code and must state which one in its annual report (Regulation 63).
- (viii) A PLC must appoint its auditors annually (Regulation 65).
- (ix) In the event of a takeover of a PLC, there are squeeze-out provisions and also tag-along provisions for minority shareholders (Regulations 74 to 81 inclusive).
- (x) There are also statutory merger provisions that ensure shareholder and creditor rights (Regulations 82 to 93 inclusive) and the facility for schemes of arrangement (Regulations 94 to 96 inclusive).

PLCs are expressly permitted to make a public offer of shares (Regulation 16).

Different classes of shares – the New Regulations allow PLCs to have different classes of shares (Regulation 30).

Authorised share capital – the New Regulations make it clear that a PLC can have an authorised and issued share capital. This means that if a PLC wishes to issue new shares it may have sufficient authorised share capital to issue such new shares without seeking shareholder approval to increase the share capital of the company (Regulation 21).

Share currency denomination and par value – PLCs may denominate their share capital in any currency (usually US dollars or UAE dirhams) and with any par value (Regulation 24).

Appointment and Removal of Directors, the General Manager and Auditors – the directors, the general manager and the auditors of PLCs may be appointed or approved by an ordinary resolution at a shareholder meeting (Regulations 40, 48 and 65).

Annual General Meetings - must take place on at least 21 days' notice in writing.

Conversion – there are provisions allowing for FZCOs to convert to a PLC (Regulation 102), from a PLC to a FZCO (Regulation 103) and from a branch to a FZCO or a PLC (Regulation 104). This makes it easy to convert into a PLC in the event that you wish to IPO.

Unfair prejudice – a shareholder of a PLC has the right to apply to the courts in relation to an act or omission by the company which would be prejudicial to the shareholder.

11. What is the role of the Registrar?

The role of the Registrar remains broadly the same in that it will administer, supervise and enforce the New Regulations, but its role has been further clarified (Regulations 9 to 12 inclusive). For example, there is greater flexibility for the use of electronic means in relation to information and documentation required under the New Regulations.

12. What are SCA's eligibility requirements for an IPO on DFM or ADX?

SCA's eligibility requirements for a DAFZA PLC to list and offers its shares on DFM or ADX are set out in the Offering Rules, as follows:

- The DAFZA PLC must have a registrar (DAFZA has a Registrar by virtue of the New Regulations)
- There must be a Memorandum of Understanding between SCA and the DAFZA Registrar
- No objection letter from the DAFZA Registrar to the listing and offering of the DAFZA PLC
- Shareholder approval by the DAFZA PLC of the listing and offering (this will be by way of an ordinary resolution)
- Shares offered in the public subscription by the DAFZA PLC must be listed on DFM or ADX
- Satisfaction of all listing requirements required by SCA and the relevant securities exchange (DFM or ADX)
- The DAFZA PLC must have a paid-up capital of at least AED 20,000,000
- The DAFZA PLC must have net shareholders' equity representing at least 100% of the company's paid-up capital
- A minimum 25% / maximum 75% of the issued shares must be offered (100% if offer only to qualified investors)
- DAFZA PLC has undertaken, directly or indirectly, an independent activity as its main activity for at least 2 financial years prior to applying for the offering
- The DAFZA PLC must have at least 2 financial years of audited financial statements prior to applying for the offering. The gap between the most recent audited financial statements and the date of the prospectus should not exceed 3 months
- The DAFZA PLC must have net profits for at least 2 financial years prior to applying for the offering

- Submission of a prospectus in the form approved by SCA
- Appointment of (i) listing adviser (minimum one year post-listing and subject to extension); (ii) financial adviser; and (iii) subscription receiving institution
- The DAFZA PLC must have management with sufficient competency and experience to manage the business
- The DAFZA PLC must have sufficient working capital for a period of 12 months from the prospectus date
- The DAFZA PLC must provide any additional information/document requested by SCA
- Payment of the subscription fee for the offering.

13. What are the DFM's eligibility requirements for an IPO on DFM?

The DFM has set out in its Regulations for Listing Free Zone Companies on DFM the listing requirements for a free zone company (including a DAFZA PLC) on DFM, as follows:

- DFM approval of the listing of the shares in the DAFZA PLC
- The DAFZA PLC must operate under the regulation and supervision of the DAFZA Registrar (if the free zone company is incorporated in the DIFC it must be under the regulation and supervision of DFSA). Such regulating entity must provide a no objection certificate to the listing
- The DAFZA PLC's capital must be divided into shares with equal rights for shareholders of the relevant share class
- The DAFZA PLC must have net shareholders' equity representing at least 100% of the company's paid-up capital
- DAFZA PLC has undertaken, directly or indirectly, an independent activity as its main activity and have audited accounts on its main activity for at least 2 financial years prior to applying for the listing application, unless the DAFZA PLC has Government (Federal or Emirate) ownership of 25% or more
- The DAFZA PLC must have net profits for at least 2 financial years prior to applying for the listing
- The DAFZA PLC must have a paid-up share capital of no less than AED 20,000,000

- The DAFZA PLC must have a minimum of 100 shareholders (post-IPO). Each shareholder must have at least 100 shares in the event that the DAFZA PLC offers its shares inside or outside the UAE or if the DAFZA PLC is listed on a market outside the UAE or on Nasdaq Dubai
- The DAFZA PLC must have sufficient working capital for a period of 12 months from the date of listing
- The DAFZA PLC must appoint an SCA-licensed Listing Advisor for a minimum of one year after listing
- Submission of a prospectus in the form approved by SCA
- Preparation of a Board of Directors report including any interim financial statements up to the last quarter preceding the date of the listing application
- The DAFZA PLC must comply with the same ongoing disclosure reporting requirements that a public joint stock company listed on DFM would have to comply with, along with SCA's Corporate Governance Code of 2020.

14. What are DFSA's eligibility requirements for an IPO on Nasdaq Dubai?

DFSA's eligibility requirements for a DAFZA PLC to list and offer its shares on Nasdaq Dubai are set out in the Markets Rules. DFSA has slightly different eligibility requirements for companies that are small or medium enterprises (SME). A DAFZA PLC will be a SME if the aggregate market value of all of its listed shares on admission is reasonably expected to be less than US\$ 250 million.

- The DAFZA PLC must be validly incorporated
- The DAFZA PLC must have at least three years (one year if a DAFZA PLC SME) of audited financial statements prepared in accordance with IFRS or such other standard acceptable to DFSA (or such longer period of time that the applicant has been operating)
- The DAFZA PLC must have sufficient working capital for 12 months from the date of listing
- The DAFZA PLC must demonstrate to DFSA's satisfaction that it and its business are suitable for listing
- The DAFZA PLC must demonstrate to DFSA's satisfaction that its Directors have appropriate experience and expertise in the business operations of the DAFZA PLC
- A DAFZA PLC which has one or more controlling shareholders must be able to demonstrate to DFSA that it can operate its business independently of such controlling shareholder

- The DAFZA PLC must ensure prior to listing that it has adequate systems and controls to eliminate or manage material conflicts of interest in its business prior to listing
- To be admitted to the list, the DAFZA PLC's shares must be valid, fully paid and freely transferable
- The DAFZA PLC must ensure that the shares which it seeks to list have an expected aggregate market value at the time of listing of at least US\$ 250 million (not applicable to a DAFZA PLC SME)
- If an application is made for the admission of a class of shares, at least 25% of the shares of that class must, no later than the time of admission, be distributed to the public
- The whole class of shares must be listed
- An applicant's shares must be eligible for electronic settlement
- Additionally, a DAFZA PLC SME must ensure that all of its pre-listing shareholders agree to a 12-month lock in period
- DFSA may require a DAFZA PLC SME to appoint a compliance adviser to assist with the listing and on an ongoing basis after listing (a minimum of 3 years).

15. What are Nasdaq Dubai's eligibility requirements for an IPO on Nasdaq Dubai?

Nasdaq Dubai has set out in its Admission and Disclosure Standards the listing requirements for a free zone company (including a DAFZA PLC) on Nasdaq Dubai, as follows

- There must be sufficient liquidity in the DAFZA PLC's shares to facilitate a reliable price formation process (a minimum of 250 shareholders each holding at least US\$ 2,000 of shares, and the appointment of one or more market makers)
- The DAFZA PLC must comply with all of the requirements of DFSA (eg produce a prospectus on an IPO) and any other relevant regulator or stock exchange on which the DAFZA PLC's securities are admitted to trading
- The entire class of shares must be eligible for trading
- Provide holders of the DAFZA PLC's shares with secure methods of recording ownership and registering changes in ownership (this is done through Nasdaq Dubai's clearing and settlement system).

16. Who do I need to help me IPO?

In the event that a DAFZA PLC wishes to list on ADX or DFM, the following advisers are required under the Offering Rules to conduct the IPO:

- A subscription receiving institution (Receiving Bank)
- A Financial Advisor (responsible for the offer and marketing of shares)
- A Listing Advisor (responsible for advising the company on complying with the listing requirements)

All of the above three appointees must be approved and licenced by SCA to fulfil their applicable role. The Financial Advisor and the Listing Advisor may be the same institution (often an investment bank or financial adviser). The Listing Advisor must be appointed for a minimum of one year from the date of listing on the relevant securities market.

In the event that a DAFZA PLC wishes to list on Nasdaq Dubai, if the DAFZA PLC has an expected market capitalisation of less than US\$ 250 million, it will qualify as an SME meaning that it is required to appoint a Compliance Adviser for a minimum of 3 years post-IPO. If it has an expected market capitalisation of more than US\$ 250 million, DFSA may require the DAFZA PLC to appoint a Sponsor (usually an investment bank).

A DAFZA PLC looking to IPO will also need to appoint:

- A legal adviser
- A reporting accountant
- On larger IPOs, a financial PR adviser is also recommended to assist with the marketing of the IPO.

17. How long will an IPO take?

Every IPO is different in terms of how long it takes from deciding to IPO to actually completing the offering. The basic rule is that the earlier that you start preparing for an IPO the quicker the IPO process will be in the long run. For example, ensure that you have audited accounts in IFRS, that you incorporate good internal reporting, transparency and corporate governance as a cultural and practical mindset and that all of the company's papers and records are up to date and kept in an orderly and easily accessible fashion. Bringing advisers on board sooner rather than later also helps. It is important that the IPO timetable is realistic and kept as short as possible so as not to take up management time over a prolonged period. A well prepared and managed IPO can take between 4-6 months, with IPOs commonly taking up to 12 months or more. It should be noted that external factors can come into play that could delay the timetable such as regulatory approvals, a deterioration in the business of the company or delay due to an unforeseen deterioration in market conditions or significant world events, such as COVID-19.

18. How much will an IPO cost?

The costs of going public can vary widely. They are affected by a number of factors, such as the complexity of the IPO structure, company size (for example, multiple subsidiaries and business lines) and offering proceeds, as well as the company's readiness to operate as a public company. Regardless of the nuances surrounding a private company's transformation into a public one, all IPOs have a common theme: a substantial investment of time and resources.

The main sources of IPO costs are:

- Underwriting fees
- Legal fees
- Accounting fees
- Listing/admission fees of SCA/DFSA/DFM/ADX/Nasdaq Dubai – as appropriate

The costs associated with going public are often the key focus of boards of directors. However, the costs required to prepare the business to operate as a public company, or the costs of being public, may be even higher. Most private companies have rightly focused historical investment on scaling their business and often postponed investment in systems, people, processes and broader infrastructure that will be required to operate as a public company. There are also other incremental, annual costs borne by a public company, primarily relating to additional regulatory compliance obligations. These costs include incremental audit costs, investment in investor relations/financial PR, financial reporting, legal and regulatory and compliance costs.

19. Are there standard form documents that will assist in establishing a PLC

DAFZA has prepared the following standard form documents to make the establishment process for a PLC quicker and easier:

- (i) PLC standard form memorandum and articles of association
- (ii) PLC standard form resolution

You do not have to use the standard form memorandum and articles of association but they must comply with the particular contents requirements of Regulation 21. Deviations from the standard forms are permissible.

20. Where can I find the Offering Rules and the New Regulations and other useful documents?

The below documents can be accessed on the following weblinks:

- The New Regulations - <https://www.dafz.ae/en/download/#rulesregulations>
- The Offering Rules - <https://www.sca.gov.ae/en/regulations.aspx>
- The Markets Rules - <https://www.dfsa.ae/laws-rules>
- The DFM Regulations for Listing Free Zone Companies in Dubai Financial Market
<https://www.dfm.ae/regulations/market-rules>
- The Nasdaq Dubai Admission and Disclosure Standards –
<https://www.nasdaqdubai.com/exchange/regulatory-framework/admission-disclosure-standards>
- This Q&A - <https://www.dafz.ae/en/download/#rulesregulations>

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