



REGULATORY GOVERNANCE AND FIT & PROPER ASSESSMENTS IN THE CAPITAL MARKETS

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ROLE OF CAPITAL MARKET AUTHORITY

The Capital Markets Authority (CMA) is a statutory institution established in 1989 through an Act of Parliament with the core responsibility of:

1. Licensing and supervising all capital market intermediaries
2. Ensuring proper conduct of all licensed persons and entities
3. Regulating the issuance of capital market products
4. Regulating securities, derivative and spot commodity exchanges
5. Promoting market development through the creation of a conducive environment for product innovation

ROLE OF CAPITAL MARKETS CONT.

1. Supporting institutional capacity development
2. Supporting robust market infrastructure
3. Promoting investor, issuer and intermediary education and awareness
4. protecting investors

LICENSE CATEGORIES

License category	Number as at 31st October 2021
Fund Managers	25
Stockbrokers	9
Investment Banks	15
Investment Advisers	17
Authorized Depositories	14
Authorized Securities Dealers	2
REIT Trustees	3
REIT Managers	10

LICENSE CATEGORIES CONT.

License category	Number as at 3st October 2021
Non-Dealing Online Forex Exchange Brokers	4
Online Foreign Exchange Money Manager	1
Coffee Brokers	1

APPROVED INSTITUTIONS

Category	Number as at October 30, 2021
Securities Exchange	1
Central Depository	1
Credit Rating Agency	5
Collective Investment Schemes	27
Real Estate Investment Trust	3

PRODUCT OFFERING IN CAPITAL MARKETS

1. Initial Public Offerings
2. Unit trusts /Collective Investment Schemes
3. Real Estate Investment Trusts (REITS)
4. Exchange Traded Funds (ETFs)
5. Asset Backed Securities
6. Takeovers and mergers documentation
7. Corporate bonds
8. Listing of Treasury Bonds
9. Innovative products

Highlight of the Presentation

Regulatory Governance	Policies, tools, processes and institutions concerned with developing , implementing and enforcing new rules/decisions and reviewing regulation over time
Objective	Regulatory quality and policy coherence, responsibly and accountability
Policies of regulatory Governance	De-regulation
	Self-regulation
	Risk-based regulation, Principles-based regulation
Tools and processes	Regulatory filings, Due diligence
Institutions	Central Government, Policy Makers, Regulators and Self Regulatory Organizations (SROs), Advisory and Advocacy bodies (Think Tanks, Non-Government Organizations) , Self Regulatory Organizations (SROs), International Standard Setting Bodies/Committees for Regulatory Reforms, Ad Hoc Institutions

Highlight of the Presentation

Regulatory Governance	Policies, tools, processes and institutions concerned with developing , implementing and enforcing new rules/decisions and reviewing regulation over time
Mandate of CMA in fit and proper assessment	Licensing market intermediaries
	Ensuring proper conduct of licensed persons and institutions
	Ensuring that the market is fair, orderly and efficient
	Protection of investor interests
	Regulating issuance of capital market products (IPOs, bonds, REITs etc)
Fit and proper assessment	One of the tools for ensuring proper conduct and order in the market by boards and key personnel
Regulatory returns	They provide a basis for market stability, compliance and investor protection CMA RBSS (Risk-Based Supervision System) provides the platform for risk-based assessment and filings

Fit & proper assessments

Section 24A of the Capital Markets Act and Reg 52 of the Licensing Regulations	Provides measures for CMA to consider in determining whether a person is suitable and proper to be a director or key personnel in a market intermediary
Who undergoes fit and proper assessment?	For market intermediaries- <ul style="list-style-type: none">- Board members- Key personnel- Substantial shareholders Consultations ongoing for mechanisms to assess fitness and propriety of boards and key personnel of listed companies
Key personnel?	Means a person who manages/controls activities of a regulated person- <ul style="list-style-type: none">- CEO- CFO- Internal auditor- Any manager
Substantial shareholder	Person owning or exercising control over 15% or more

Criteria for fit & proper assessment	Considerations
Honesty, integrity and reputation	<ul style="list-style-type: none"> ▪ Any conviction for dishonesty, fraud, money laundering, theft, financial crime? ▪ Undergoing civil or criminal proceedings? ▪ Key person submits a self-declaration and Police Clearance Certificate ▪ May require a confidential due diligence report from other regulators (domestic and external)
Competence and capability	<ul style="list-style-type: none"> ▪ Competence to undertake regulated activities ▪ Possession of skills and qualifications ▪ Diligence ▪ Soundness of judgment ▪ Relevant experience ▪ Any conflict of interest?
Financial soundness	<ul style="list-style-type: none"> • Prudent financial controls • Ability to pay debts as they fall due • Satisfactory credit reference
Substantial shareholder	Person owning or exercising control of 15% or more of the market intermediary

Mechanisms for fit and proper assessments

Calls and inquiries to referees

Good conduct certificate from the Police

Inquiries to other relevant regulators, local and international

Due diligence by CMA

Others



Who is unfit/improper?

A person be deemed unfit and improper if the person-

- Has demonstrated lack of willingness to comply with legal obligations
- Has breached fiduciary responsibility
- Has been reprimanded, disqualified or removed from professional body
- Has been substantially involved in the management of a business that failed as a result of deficiencies in management
- Is the subject of criminal/civil proceedings which adversely reflects on the persons competence, diligence and judgment



Regulatory returns for market intermediaries and issuers

Type of return	Considerations
Market intermediaries	<ul style="list-style-type: none"> ▪ Monthly and quarterly reports and account ▪ Half-yearly reports and accounts ▪ Annual audited accounts ▪ Quarterly reports of assets under management
Corporate bonds and commercial papers	<ul style="list-style-type: none"> • Quarterly returns in prescribed format • Semi-annual report of use of proceeds from issuance
Listed companies	<p>Monthly returns of-</p> <ul style="list-style-type: none"> ▪ Foreign investors ▪ Individual local investors ▪ Institutional local investors <p>Annual and Semi-annual financial statements</p>
Corporate governance reports by issuers	<ul style="list-style-type: none"> ▪ Issuers required to submit to CMA a self-assessment of its state of corporate governance annually ▪ Self-assessments independently reviewed by CMA ▪ A report with scores, key observations and recommendations for each issuer issued by CMA ▪ State of Governance Report published summing up the governance assessment of issuers



Challenges of Regulatory Governance

- Multiple regulators for similar services e.g. fund managers (overlapping mandates on regulatory filings and due diligence)
- Long turnarounds on submissions of due diligence reports, duplication
- Capacity: Delegation of Supervision to Self-Regulatory Organization
- Transposition of International Standards
- Co-regulation, lobbying, revolving doors and regulatory capture



Areas to enhance Regulatory Governance

- Need for closer collaboration with professional bodies such as ICPAK
- ICPAK to continue promoting professionalism, accountability, good conduct and integrity of its members
- Collaboration in capacity building and training of the market
- Better public consultations and communications
- Continuous research on combination of policies and tools to promote smart regulation
- Regulatory Impact Assessments
- Use of technology- RegTech, SupTech to regulate high technology products and services



THANK YOU

Q&A

