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Saudi Arabian Monetary Agency restricts cross-border electronic banking services

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Key Issues

If you would like to know more about the subjects covered in this publication or our services, please contact:

Mohammed Al-Jadaan + 966 1 478 0220

Mohamed Hamra-Krouha + 966 1 478 0220

Abdulaziz Al-Abduljabbar + 966 1 478 0220

Peter Stansfield + 966 1 478 0220

Tim Plews +44 20 7006 1411

Andrew Henderson +971 4 362 0687

Muna Motaleb +971 4 362 0630

Max Rohrig +971 4 362 0665

Al-Jadaan & Partners Law Firm*
P.O. Box 3515
Riyadh 11481
Kingdom of Saudi Arabia
www.aljadaan.com

Clifford Chance,
3rd Floor, The Exchange Building
Dubai International Financial Centre
PO Box 9380
Dubai, United Arab Emirates
www.cliffordchance.com

Introduction

The Banking Technology Department of the Saudi Arabian Monetary Agency ("**SAMA**") recently published a new set of rules governing the offering of electronic banking services in the Kingdom of Saudi Arabia ("**KSA**") (the "**e-Banking Rules**").

For the purposes of the e-Banking Rules, "electronic banking services" are defined widely, and include any process by which a client may perform banking transactions electronically without visiting a branch. ATM machines and telephone banking services are expressly exempted.

SAMA licence required

Most importantly, the new rules prohibit cross-border e-banking activities in the Saudi market without a SAMA licence. We understand this to mean that SAMA require a bank to have a SAMA licence in order to offer and provide electronic banking services to clients resident in KSA. We also understand that there would not be a separate SAMA licence for cross-border electronic banking but that such licence would be part of the general commercial banking licence issued by SAMA. There is a further question as to whether a bank holding a SAMA licence can provide electronic banking services from a location outside KSA. The e-Banking Rules are silent on this point. SAMA have not issued banking licences since the second quarter of 2008, as they are currently examining the liberalisation of the Saudi Arabian banking sector.

Accounts offered from, and maintained, outside KSA

The e-Banking Rules apply even where the electronic banking services are offered from a permanent establishment outside KSA on a cross-border basis into KSA. A literal reading suggests that merely granting a KSA resident client access to an electronic banking portal (even where the portal is hosted in, and operated from, the bank's home jurisdiction or a third country and the services have not been marketed in KSA) would be sufficient to bring the service in question and the bank operating that service within the territorial scope of the e-Banking Rules.

Clearly, the e-Banking Rules will have a different effect on banks offering electronic banking services to KSA clients on a cross-border basis and on banks operating in KSA under a SAMA licence. We provide an overview of the relevant issues below.

Banks without a SAMA licence

Previously there was some doubt as to whether allowing a Saudi client to access an account held outside KSA over the internet would be caught by KSA regulations. The e-Banking Rules now make it quite clear that any electronic banking service provided to a client resident in KSA is subject to the e-Banking Rules. This is the case irrespective of where the service is offered from, and there does not appear to be any exemption for accounts that were opened abroad, e.g. while the client was physically present or resident outside KSA.

Under the e-Banking Rules, cross-border electronic banking services may only be offered by banks that have been licensed by SAMA to operate in KSA and to offer such services in the Saudi market. Consequently, any foreign bank offering electronic banking services to Saudi clients without holding a SAMA licence may now find itself potentially in breach of applicable Saudi regulations.

Risk Mitigation for banks without a SAMA licence

It remains to be seen whether SAMA will permit foreign banks to offer e-banking services to certain types of client or in certain circumstances (e.g. where the account in question is a "legacy account" that was opened while the client was resident abroad) without a SAMA licence. However, any bank wishing to minimise its regulatory risk in the meantime may wish to consider whether existing clients resident in KSA can be moved, perhaps on an interim basis, to an alternative service model, e.g. by requiring such clients to use telephone banking rather than online services.

Services offered to banks holding a SAMA licence

It seems unlikely that SAMA would object to an arrangement pursuant to which a foreign bank offers electronic banking services to SAMA licensed banks in KSA. However, the position in this regard remains to be confirmed. In the interim, we would suggest that offshore banks providing services to or for SAMA licensed banks through an electronic platform ask the SAMA licensed bank to confirm that having such electronic access to the foreign bank's platform does not give rise to a breach of the e-Banking Rules or any other SAMA rules.

Banks holding a SAMA licence: SAMA's new product approval process

Banks that are in possession of a valid SAMA licence can continue to offer electronic banking services to their KSA clients. However, any new electronic banking product or service and any significant modification to an existing electronic banking product or service now requires a prior "no objection" statement from SAMA. Additionally, any electronic banking service (whether new or existing) will need to comply with the provisions of the e-Banking Rules; these are largely based on the *Risk Management Principles for Electronic Banking* published by the Basel Committee on Banking Supervision, but also contain a number of additional provisions.

Conclusion

Although the e-Banking Rules will affect differently banks with a SAMA licence and banks without a SAMA licence offering cross-border electronic banking services to clients in the KSA, they are clearly relevant to both groups:

- banks with a SAMA licence will need to ensure that their systems and controls and account documentation comply with the ongoing requirements set out in the e-Banking Rules;
- banks without a SAMA licence will need to re-consider whether electronic banking services should be offered to clients resident in KSA at all and, if so, how the regulatory risk in relation to such services can be minimised; and
- global financial institutions that have developed securities business regulated by the Capital Market Authority in KSA, but which do not have an entity that holds a SAMA banking licence, will have to look very closely at these new SAMA requirements, as the extent to which such organisations may have been able until now to offer some measure of integration between their offshore electronic banking services and their onshore securities product offerings must now be open to question.