

**DRAFT**

**CAPITAL MARKET AUTHORITY LAW NO. 83 OF 2001**

**PALESTINE**

## CHAPTER ONE

### SCOPE AND DEFINITIONS

#### Article (1)

##### Scope

- a. This Law shall govern the activities of the Capital Market Authority (hereinafter “CMA”).
- b. The Capital Market Authority shall be responsible for the licensing, regulation and supervision of all non-banking related financial activities and functions, including but not limited to the Palestine Securities Exchange, all and any legal and natural persons providing financial services within the meaning of the Securities Law No. \_\_\_ of 2000; insurance related services provided by and all legal and natural persons within the meaning of existing insurance laws and/or, as amended or enacted; any and all legal and natural persons providing housing finance services within the meaning existing regulations and/or future legislation; any and all legal and natural persons engaged in or providing services within the meaning of the financial leasing chapter of the Secured Lending Law No. \_\_\_\_ of 2000.

#### Article (2)

##### Definitions

Unless the context otherwise requires, this Law defines the following terms as follows:

"**CMA**" shall mean the Capital Market Authority.

"**Board**" shall mean the CMA's Board.

"**Minister**" shall mean Minister of Finance.

#### **OR**

"**Ministerial Committee**" shall mean the three member Ministerial Committee appointed by Presidential Decree on \_\_\_\_\_.

"**Law**" shall mean this Capital Market CMA Law.

"**Regulations and Rules**" shall be defined as any regulations and rules developed by the CMA according to this Law.

## CHAPTER TWO

### **ESTABLISHMENT, OBJECTIVES AND POWERS**

#### Article (3)

##### **Establishment**

The Capital Market Authority is hereby established to administer this Law. The CMA shall be an independent and autonomous self-regulatory governmental organization. It shall be a body corporate with full legal personality and shall enjoy full administrative and financial autonomy. As such it may carry out all legal actions, including entering into contracts, accepting assistance, contributions, grants and donations, and acquiring movable and immovable property required to accomplish its purposes. The CMA shall have the right to litigate and the right to be represented in legal procedures.

#### Article (4)

##### **Objectives**

(One)The objective of the CMA is to:

- (1) provide an environment conducive to achieving a stable and sound non-banking financial market activities and functions, including but not limited to the securities market; insurance; housing finance and financial leasing activities,
- (2) safeguard the interest of the investors and the public, and
- (3) regulate all non-banking related activities, functions and entities.

(One)The CMA shall promote general awareness of price and competition conditions as well as acting towards creating favorable development of the non-banking financial sector in Palestine.

(Two)The CMA shall be responsible for the implementation of and enforcement of this Law and the Securities Law No. \_\_\_ of 2000; the existing Insurance Laws, as amended, or subsequently enacted insurance legislation; the Financial Leasing Chapter of the Secured Lending Law No. \_\_\_\_ of 2000; and the Housing Finance regulations or subsequently enacted legislation (collectively known as the “Laws”).

(Three)The CMA shall take the necessary measures to achieve its objectives, including but not limited to:

- (1) Regulate and supervise the activities of non-banking financial institutions; and securities activities and functions performed by banks as provided in the Laws;

(2) Regulate disclosure of any adequate information and data of the non-banking financial sector; and

(3) Monitor the development of non-banking financial institutions to the extent it is deemed necessary for carrying out its supervisory objectives.

#### Article (5)

The CMA shall not engage in commercial activities or have a special interest in any enterprise and/or project; borrow or lend funds for commercial purposes; acquire, own or issue any securities; or undertake any activities in insurance; housing finance and/or financial leasing activities.

### CHAPTER THREE

## **THE BOARD OF DIRECTORS OF THE CMA**

#### Article (6)

### **Members of the Board**

(One) The CMA shall have a Board of Directors responsible for the management of its of its affairs.

(Two)The Board shall be comprised of five (5) members who shall be experts and specialists in the financial markets.

(Three)The Board shall have a Chairman and a Deputy Chairman, who shall be members of the Board *ex officio* .

(Four)The Chairman and Deputy Chairman of the CMA shall be appointed for a five year period renewable by a Ministerial decision.

(Five)Members of the Board other than the Chairman and Deputy Chairman shall serve a term of four years renewable.

(Six) The first Board, upon the entry into force of this Law, shall be formed accordingly:

(Seven)one Member shall be appointed for a two year term, another Member for a three year term, and a third for a four year term. The Deputy Chairman shall be appointed for a four year term, while the Chairman shall be appointed for a five year term.

#### Article (7)

### **Meetings of the Board of the CMA**

(One) At its initial meeting, the first Board of the CMA shall formulate the rules governing its meetings. Such rules shall require approval by at least four members of the Board. The first and subsequent Board shall not alter such rules except with approval by at least four Board members. The first board shall be guided by the following:

1. The Board shall convene a minimum of four times a year;
2. Additional meetings may be called as the Board deems necessary;
3. The Chairman of the Board shall call the meetings of the Board;
4. Any two Board members may call the Board to convene by a written request; the Chairman shall convene such a meeting within fifteen (15) days from receipt of request;
5. All Board members shall be voting members.
6. The Chairman shall have the casting vote.
7. Quorum shall be constituted when two thirds (three out of five) members are present.
8. Proxy voting is not permitted in Board meetings.
9. All Board meetings shall be minuted.
10. Board meetings shall be closed, unless the Board decides otherwise.

#### Article (8)

#### **The Chairman, Deputy-Chairman and other Officers**

(One) The Chairman shall have executive powers and authorities.

(Two) The Chairman shall implement and enforce the CMA's policies.

(Three) The Chairman shall supervise all director generals subject to Article (17) below.

(Four) The Chairman may delegate its powers and authorities to the Deputy-Chairman.

(Five) The Chairman may appoint other management staff as be necessary subject to board approval.

(Six) The Chairman shall appoint the general directors of the department in accordance with Article (17) below.

#### Article (9)

#### **Powers**

The CMA shall have the powers and shall exercise the functions set forth in this Law and the Laws and/or the regulations issued pursuant thereof, including but not limited to:

(One) formulate and set the CMA policy guidelines for conducting its functions;

(Two) issue regulations to implement this Law and the Laws;

(Three) review and approve the annual budget prepared by its individual directors;

(Four) adopt the CMA's annual budget;

(Five) set the fee structure to be charges for services rendered by its various Directorates and review from time to time as it deems necessary;

(Six) set the minimum and maximum penalty charges;

- (Seven)direct financial market policies to safeguard public interest;
- (Eight)Specify supervision and on-site inspection rules over legal and natural persons subject to the this Law and the Laws;
- (Nine)Adopt international accounting, auditing and performance evaluation standards for legal and natural persons subject to its supervision and licensing;
- (Ten) direct financial market policies to safeguard public interest;
- (Eleven)Specify supervision and on-site inspection rules over legal and natural persons subject to the this Law and the Laws;
- (Twelve)Adopt international accounting, auditing and performance evaluation standards for legal and natural persons subject to its supervision and licensing;
- (Thirteen)set the regulations for the administrative appeal from lower decisions made at the Directorate General level; and
- (Fourteen)hear and rule on matters appealed from lower decisions made at the general directorate level including, but not limited to, cancellation, suspension, revocation of license and penalty charges.

#### Article (10)

#### **Activities of the Members of the Board**

- (One)The Chairman and Deputy-Chairman of the Board of the CMA shall be full-time employees, and shall not be engaged in any other profession or work.
- (Two)No Member of the Board of the CMA shall:
  - (1) occupy or run for a Ministerial post or membership of the Palestine Legislative Council, or be an employee of the Government or a Public Enterprise;
  - (2) have any direct influence on the taking of investment and financial decisions of any supervised entity, or provide related services to any person;
  - (3) provide financial, accounting or managerial services on financial sector activities or the CMA's operations to any person or entity; or
  - (4) have a pecuniary or proprietary interest in, or occupy any position or post in, any entity supervised the CMA.
- (Three)If an interest prohibited by any of the Laws vests, such as securities, in or for the benefit of a Member of the Board by gift, will or succession, such Member shall disclose such interest to the CMA.

#### Article (11)

#### **Disclosure of the Board Members Interest**

- (One)In addition to any other information requested by the CMA, and immediately upon assuming the duties of the Board, each Member of the Board shall declare the following in writing:

- (1) Securities owned by or at the disposal of such Member or at the disposal of such Member's relatives; and
- (2) Shares or contributions owned by or at the disposal of such Member or Manager and/or owned by or at the disposal of such Member's relatives in any regulated financial entity.
- (3) Interests in an Insurance, housing finance, leasing or other financial services entity.

(b) Each Member shall submit to the CMA a written declaration of any material change in the items mentioned in Article (11) within three days of being cognisant of such change.

(c) Should any Member of the Board have or suspect that another such Member may have an interest in any transaction or contract to which such Member is a party, such interested Member shall declare such interest to the Board and withdraw from the meeting in which such a transaction or contract is considered, and shall not participate in voting thereon.

#### Article (12)

#### **Confidentiality; Code of Conduct**

(a) No Member or person employed or contracted by the CMA shall make use of any confidential information obtained as a result of such person's relationship to the CMA for such person's own benefit.

(One) Neither the CMA, nor any Member or person employed or contracted by the CMA shall disclose confidential information obtained as a result of such person's relationship to the CMA to any person other than an official or employee or expert of the CMA in the Laws.

(Two) The CMA shall adopt a code of conduct and specify the penalties for violating such code in respect of present and former Members of the Board of CMA and employees and contractors in order to avoid conflicts of interest and other prohibited practices.

#### Article (13)

#### **Compensation**

(One) The Chairman, Deputy-Chairman and Senior Officers shall not be civil servants for the purposes of compensation. The CMA board shall set and adopt its own salary and compensation scales.

(Two) Members of the Board shall be reimbursed for travel and living expenses actually incurred in the performance of their duties.

#### Article (14)

### **Termination, Continuance in Office, Replacement of Members of Board**

- (a) Members of the Board shall be terminated in the case that such Member:
- (1) submits a written resignation;
  - (2) is sentenced in a felony or misdemeanour involving moral turpitude;
  - (3) is incapacitated and a court of competent jurisdiction so rules;
  - (4) goes bankrupt, has requested relief in bankruptcy under applicable law, or makes an arrangement with creditors;
  - (5) violates any of the provisions of this Law and a court of competent jurisdiction so rules.
  - (6) fails to attend three consecutive meetings of the Board or six non-consecutive meetings of the Board, without a legitimate reason accepted as such by the Board.

(One) The members of the Board may continue to carry out their duties to the end of their terms until they are replaced or re-appointed.

(Two) In the event that a Member dies or a Member's service is terminated prior to the end of such Member's specified term, another person shall be appointed by the Council upon a suggestion by the Minister to complete the remainder of such Member's term of service.

### Article (15)

#### **Delegation and Experts**

(a) The Board shall exercise its powers as specified in the Law, and shall have the power to delegate any of its powers or authorities, excluding the power to issue Regulations, to any committee of its members. The Board may review the conduct of any of its Members or any committee, if so requested by any Member.

(b) The Board may contract experts to assist it in any manner that it considers appropriate and such experts shall be bound by the same rules of conduct and confidentiality as apply to the Board and employees of the CMA.

### Article (16)

#### **Immunity**

No action or other proceeding for damages shall be instituted against the CMA or any Member of the Board, employee, agent or contractor of the CMA for any acts or omissions

made in good faith in the performance of a duty or in the exercise of a power under this Law or Regulations.

## CHAPTER FIVE

### **DIRECTORATES OF THE CMA**

#### Article (17)

- (One) The CMA shall be organized of various departments known as "Directorates General" including a Securities Directorate, an Insurance Directorate, Other Financial Services (including but not limited to Housing Finance and financial Leasing) Administrative and Personnel Directorate.
- (Two) Each Directorate General shall be managed by a Director General who is a specialist.
- (Three) The Director General shall be appointed by the Board of the CMA.
- (Four) Directors General will be compensated pursuant to a scale set by the Board.

#### Article (18)

##### **Powers of the Directorates**

- a) Each Directorate General shall have the following powers:
  - (One) follow the policies and instructions set by the Board;
  - (Two) be responsible for the licensing and monitoring and supervision of any and all natural and legal persons subject to its supervision respectively:
  - (Three) public offerings of securities within the meaning of the Securities Law;
  - (Four) legal and natural persons participating in the Palestine Stock Exchange as provided in the Securities Law;
  - (Five) insurance business activities and functions; and
  - (Six) housing finance and financial leasing activities and functions.
  - (Seven) Review any request for investigation subject to the provisions provided in the Laws;
  - (Eight) Upon reasonable doubt initiate investigation(s) into actions, activities and functions of any legal or natural person subject to supervision under the Laws; and
  - (Nine) Other powers as the Board delegates or deems necessary.
  - (Ten) Suspend, sanction and place prohibitions on the legal and natural persons subject to its supervision and licensing;
  - (Eleven) Impose administrative penalties in terms of fines in accordance with the Laws, take corrective action or suspend any and all of the activities or functions the legal and natural persons subject to its supervision and licensing;
- b) Decisions of the Directorates are subject to appeal.
- c) The CMA shall set out regulations for the appeal process for its own decisions and those of its directorates

## **FINANCES AND BUDGET OF THE CMA**

### **Article (19)**

#### **Finances and Budget**

- (a) The financial resources of the CMA shall consist of the following:
- (1) Fees charged to licensees;
  - (2) Fees charged for use of its facilities, returns on its funds and revenue from the sale of its assets;
  - (3) Assistance, contributions, grants and donations received by the CMA, provided they are approved by the Board;
  - (4) Appropriations allocated by the Government to cover any deficit in its revenues and expenditures; and
  - (5) Any other resources approved by the Board.

(One) Any monetary surplus realised by the CMA and not required for its purposes shall be transferred to the Public Treasury.

(Two) The CMA shall prepare, within three months from the end of its fiscal year, a report summarising its operations during the preceding year, in addition to a copy of its general annual budget and the revenue and expenditures account certified by its auditors. This annual budget shall be submitted at the Ministerial level.

### **Article (20)**

#### **Fees**

(One) The CMA shall have the power to charge fees, which over a period of time, should correspond to costs for supervision of financial entities subject to its supervision and the costs of other activities of the CMA provided for in this Law and the Laws. The fees shall be kept in a fund subject to an external auditor appointed by the Board.

- (b) Fees should be charged for the following:
- (1) Application fees for licensing under the Laws;
  - (2) Application fees for providing additional services which are subject to the provisions of the Laws;
  - (4) Annual supervisory fees for the licensed legal and natural persons; and
  - (5) All other fees provided for in the Laws.

5

(One) Fees of the CMA shall be set forth in a regulation.

(Two) The principle of charging fees should be based on the neutrality within the same category of the supervised financial entities. The fees shall be structured as follows:

- (1) An annual minimum level of supervisory fee shall be determined independent of the size of the balance sheet of the supervised entity or activities.
- (2) The supervisory fees shall be related to the total size of the balance sheet of the supervised entity or activities of the previous year. An annual maximum level of supervisory fee

shall, however, be determined independent of the size of the balance sheet of the supervised entity or activities.

(Three) It is the obligation of the CMA to calculate the total annual fees and to submit invoices for each supervised entity. Payment of the fees shall be done to the fund directly.

#### Article (21)

### **Exemptions and Audit**

(One) The CMA shall enjoy the exemptions and facilities granted to Government ministries and agencies, and shall be exempt from all taxes and customs duties, including import stamps and the general sales tax.

(Two) The CMA shall appoint an external auditor to audit the CMA's accounts.

(Three) Debts owed by others to the CMA shall be considered as State Funds and shall be collected in accordance with the Law for Collection of State Funds and in accordance with the tax collection ordinance.

#### Article (22)

### **Cooperation with Other Government Agencies**

(a) The CMA shall co-operate with other agencies that exercise regulatory or supervisory jurisdiction over financial institutions and their operations in Palestine. In connection with supervision or investigation of such institutions, the CMA may share with such agencies confidential information received in connection with the work of the CMA.

(b) All persons and employees in Ministries and Government departments and institutions must comply with the CMA's requests and furnish it with such documents and information as it may require for the purposes of carrying out its duties and activities in accordance with the provisions of this Law and Regulations.

#### Article (23)

(b) The CMA may maintain membership in and participate in the work of inter-governmental, national and international organisations concerned with the regulation of securities markets.

#### Article (24)

### **Compensation of Staff of CMA**

Subject to the notification of the Minister, the CMA shall issue Regulations covering its administrative and personnel affairs, including the remuneration and other monetary and non-monetary benefits of employees and the fees of contractors and experts. The CMA may by Regulation establish programs for improving the academic and professional skills of its staff,

including on-site and off-site training, scholarships and secondment of staff to other agencies and entities within and outside Palestine.

Article (25)

**Investigations**

**Civil Liabilities, Prosecution; Statute of Limitation**

- (One) The Provisions of the Laws on prohibitions, violations, civil and criminal liabilities, penalties, prosecution, statute of limitation shall be applicable under this Law.
- (Two) In the absence of such provisions or insufficiency thereof, the provisions of the general laws on criminal and civil liabilities shall be applicable.

Article (26)

**Transitional Provisions**

- (One) All licenses issued prior to the coming into force of this Law shall remain effective and valid
- (Two) The Supervisor of Insurance shall upon the coming into force of this Law, and within a period of ninety days, assume its powers, authorities and functions within the Insurance Directorate under this Law.
- (Three) The oversight by the Ministry of Finance over the Palestine Stock Exchange shall cease upon the coming into force of this Law and shall be replaced by the CMA.
- (Four) Any and all housing finance and or leasing finance legal or natural persons shall obtain licensing from the CMA within a period of 90 days from the coming into force of this Law.

**Final Provisions**

Article (27)

Regulations of the CMA under this Law shall be presented to the Council of Ministers for approval and shall become effective upon such approval and upon their publication in the Official Gazette.

Article (28)

This Law shall come into effect thirty days after publication in the Official Gazette.

**Issued in the City of Gaza on this \_\_\_\_\_ day of \_\_\_\_\_, 2001**