

# The role of The Ministry of Commerce and The Capital Market Authority (CMA) in Protecting Shareholders and Holding Directors accountable in Saudi's Corporations

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## Summary:

The law gives the Ministry of Commerce the power of monitoring, oversight, and accountability for corporations in general. However, Article 219 of the Companies Law has made oversight of listed companies within the jurisdiction of the Capital Market Authority, but this exception, in the author's opinion, is not clear because the law obligated the Ministry of Commerce to monitor and account for joint-stock companies, whether they were listed or not included in some cases.

## Keywords:

*law, Saudi Law, Ministry of Commerce, Capital Market Authority (CMA), Corporation*

## 1. Introduction

A question arises regarding what competent authorities have the right to monitor and hold members of the board of directors accountable. In fact, the Companies Law is not clear about this, whereas the law expressly stipulates that the Ministry of Commerce and the Capital Market Authority are among the competent authorities that have the right to monitor companies. There is no doubt that these two bodies bear the greatest burden in the monitoring process. However, the law did not limit this authority to such bodies; there are other bodies that have the right to control and oversight. Often, the supervision of these authorities over the company's activities is not of the members of the board of directors. Therefore, these government agencies are concerned with following up with companies that have activity related to the work and supervision of these government agencies. Based on this, competent

authorities that have the power to oversee and hold directors accountable will be divided into four sections:

- 1 The Ministry of Commerce
- 2 The Capital Market Authority
- 3 Judicial Control
- 4 Relevant Regulatory Bodies

This research will only focus on the Ministry of Commerce and The Capital Market Authority.

## 2. The importance of government agencies' involvement in protecting investors

Despite the significant role exercised by internal oversight and accountability through the tools that have been explained in the previous chapter, all of these tools are not without weaknesses that may be exploited to thwart the monitoring and accountability process. Therefore, there is an urgent need for oversight bodies that have strong power that cannot be affected by influential stakeholders in companies.

Also, listed and unlisted corporations usually consist of huge capital that has an impact on the national economy and reviving the economic situation in the country. In the last statistic, the capital of the listed companies amounted to 610.89 billion Saudi riyals<sup>1</sup> and the total capital

<sup>1</sup> See <https://www.argaam.com/en/monitors/ratios-summary/marketcap/3>.

of closed companies exceeded 23 billion Saudi riyals.<sup>2</sup>

Given the complexity and overlapping nature of financial transactions in a the more mature market economy, a single loss afflicting a financial institution or corporation can soon have multiple repercussions in the rest of the economy; the deficit of one of these institutions can cause a domino effect of bankruptcies and financial imbalances elsewhere.

Hence the term “too big to fail” appeared because the government will intervene to protect these institutions. The government’s goal may be not to protect the corporation or its shareholders, but to protect the national economy, and the matter may even amount to the government contributing to reviving the economy of these institutions and companies as well as monitoring them. <sup>3</sup> Therefore, leaving oversight over corporations to shareholders or other parties that have the authority of oversight may be insufficient to protect companies from collapse. Thus a strong external party must be present to oversee them, to ensure they adhere to the policy set forth, and follow up with them.

In addition, the external auditor or independent member of the board of directors often does not perform their role as it should. Although the general belief is that they would not be under pressure from board members and the board would not have much influence on them, people in these roles may collude to achieve personal goals. Additionally, they may not stop corruption in the company due to a conglomerate of major shareholders who are members of the board of directors at the same time.

The recent financial crisis revealed that the money is not always concentrated in the hands of the big capitalists, but rather that it is distributed in many companies among large audiences of small investors. Therefore, those affected by the crisis are the large segment of the small shareholders who have neither power nor influence, and the beneficiaries of this exploitation were not the capitalists as much as the directors in these corporations.<sup>4</sup> The modern phenomenon today is the rise in the bonuses, salaries, and incentives of directors. In the five years preceding the financial crisis these managers obtained more than a third of the profits made in their companies in the form of salaries, incentives, allowances, and benefits. For example, O. Neill, president of Merrill Lynch, received \$158 million in end-of-service bonuses when he resigned as a result of the company going bankrupt. Additionally, R. Fuld, president of Lehman, received \$466 million over the course of 14 years.<sup>5</sup> It is very important to complete the image of supervision over members of the board of directors and their executive management so that the presence of another party does not fall under any influence.

Saudi Vision 2030 aims to encourage foreign investors to invest in Saudi Arabia.<sup>6</sup> Also, the Capital Market Authority specifically aims to motivate foreign companies to invest in the Saudi

<sup>2</sup> See Al-Sharq Al-Awsat newspaper, November 24, 2017 issue number 14241,

<https://aawsat.com/home/article/1092916/أموال-رؤوس-المغلقة-المساهمة-شركات-السعودية-في-49-تقن-المغلقة-المساهمة-شركات>

<sup>3</sup> See Michael C. Munger & Richard M. Salsman, *Is Too Big to Fail Too Big*, 11 GEO. J.L. & PUB. POL’Y 433 (2013).

<sup>4</sup> Al-Beblawy, Hazm, *The Capitalist System and Its Future*, Dar Al-Shorouk, 50 (2011).

<sup>5</sup> Johan A. Lybeck, *A Global History of the Financial Crash of 2007–10*, 119(2011).

<sup>6</sup> See The Saudi Arabia Vision 2030, <https://vision2030.gov.sa/en/themes/2>.

stock market.<sup>7</sup> <sup>8</sup> Therefore, the presence of external oversight bodies sends a message of reassurance to these investors that their money will enjoy protection and oversight by entities that are not under the influence of the greed and fraud of some boards of directors.

All of the above explains the importance of external accountability and oversight over boards of directors in corporations and shows that neither internal and external oversight can be dispensed with. Therefore, external oversight is effective only if there is cooperation from parties that can exercise their oversight role in the company.

### 3. The Ministry of Commerce

The Ministry of Commerce has many tasks entrusted to it, as it supervises establishments and all types of companies stipulated by the Companies Law. With regard to joint-stock companies, the law gives the Ministry of Commerce the power of monitoring, oversight, and accountability for the corporations in general. However, Article 219 of the Companies Law has made oversight of listed companies within the jurisdiction of the Capital Market Authority – but this exception, in the author’s opinion, is not clear because the law obligated the Ministry of Commerce to monitor and account for joint-stock companies, whether they were listed or not included in some cases.

For example, the Ministry of Commerce monitors listed companies in connection with the

holding of the incorporation assembly.<sup>9</sup> The law also obligated listed companies to inform the Ministry of Commerce and the Capital Market Authority in the event that a new board member is appointed as a result of the resignation of one of the members.<sup>10</sup> In addition, a copy of the financial statements of the company, the report of the board of directors, and the auditor’s report should be sent to the Ministry of Commerce fifteen days before the date of the general assemblies.<sup>11</sup> Also, if the General Assembly approves the financial statements, the report of the board of directors, the report of the auditor, and the report of the audit committee, the board of directors must send the approved copies to the ministry.<sup>12</sup> Also, in the event of amending the company’s articles of association, the listed corporations must be published on the website of the Ministry of Commerce.<sup>13</sup>

In the author’s opinion, the Ministry of Commerce should only be competent with oversight for unlisted corporations in order to be able to perform its work to the fullest. These dual powers may create a conflict and overlap between the Ministry and the Authority and may lead to neglect of both sides in oversight.

One of the most important works of the Ministry of Commerce in the framework of oversight of the boards of directors in companies is oversight of the general assembly, which was mentioned in the previous chapter in a brief way. The Ministry has the right to send a delegate as an observer to attend the general assembly of the

<sup>7</sup> See Tadawal, Foreign Ownership [https://www.tadawul.com.sa/wps/portal/tadawul/markets/reports-%26-publications/market-reports/foreign-ownership/!ut/p/z1/pZFRT4MwEMc\\_iw88Sq-l29C3hrpSYcTFMbEvBgx2JlWuHYp-e9I0D0s21Ni3a36\\_u9z\\_kEIZUk3-Vum8rUyT1339qMZP8k5QLH0SQcIxMMxnCzYFLARFD3uAkMDHVxRiiCc9MBYg5zPqAR0h9SdfyGOCbM7C5XS58EB4\\_OB\\_s6HM4\\_BT\\_59bvseao8IYRyEsMNCwvSUbqKIByMCnH4DQzEdAydyGATgMGJgk1ukdG2Kr6uyvB8jZQtX0pbWvfV9t-rttI\\_srxIwoOs6Vxuj69J9NmsHTikrs21RdkyizTpN0-](https://www.tadawul.com.sa/wps/portal/tadawul/markets/reports-%26-publications/market-reports/foreign-ownership/!ut/p/z1/pZFRT4MwEMc_iw88Sq-l29C3hrpSYcTFMbEvBgx2JlWuHYp-e9I0D0s21Ni3a36_u9z_kEIZUk3-Vum8rUyT1339qMZP8k5QLH0SQcIxMMxnCzYFLARFD3uAkMDHVxRiiCc9MBYg5zPqAR0h9SdfyGOCbM7C5XS58EB4_OB_s6HM4_BT_59bvseao8IYRyEsMNCwvSUbqKIByMCnH4DQzEdAydyGATgMGJgk1ukdG2Kr6uyvB8jZQtX0pbWvfV9t-rttI_srxIwoOs6Vxuj69J9NmsHTikrs21RdkyizTpN0-)

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<sup>8</sup> See Capital Market Authority, The Capital Market Authority Announces the Adoption of the Amended Rules on the Offer of Securities and Continuing Obligations, 06 / 10 / 2019. <https://cma.org.sa/en/MediaCenter/PR/Pages/RULES-ON-THE-OFFER-OF-SECURITIES.aspx>

<sup>9</sup> Saudi Companies Law, Art. 62, ¶ 3.

<sup>10</sup> Saudi Companies Law, Art. 70, ¶ 1.

<sup>11</sup> Saudi Companies Law, Art. 126, ¶ 4.

<sup>12</sup> Saudi Companies Law, Art. 128.

<sup>13</sup> Saudi Companies Law, Art. 65 and 94, ¶ 5.

company in order to ensure that regulations are duly applied.<sup>14</sup> The law does not require the Ministry to attend all general assemblies of corporations but rather gives it the right to attend, whether this attendance is based on prior coordination with the board of directors or if the attendance is without coordination.

Also, the Ministry, within the framework of control over companies and boards of directors, has the authority to call the General Assembly to convene.<sup>15</sup> The law gives the Ministry the power to call for the assembly to be held in the following cases:

a. If the annual meeting does not take place after the period specified in Article 87 of Companies law;

b. If the number of members of the board of directors is less than the minimum validity of the board meeting – taking into account what is mentioned in Article 69 of the Companies Law;

c. If there have been found any violations to the provisions of these Regulations or to the corporation's bylaws, or any mal-management;<sup>16</sup>

d. If the board of directors did not invite the general assembly to convene within 15 days of the date of the request by a number of shareholders – representing at least 5% of the capital, the audit committee, or the auditor.

Also, based on the cooperation between the minority shareholders and the Ministry of Commerce, these shareholders are entitled to submit an application to the Ministry to call a meeting in certain cases that were explained in the previous chapter.<sup>17</sup>

Due to the large number of tasks that fall on the Ministry of Commerce, these tasks are distributed among deputies that are under the supervision of the Minister of Commerce. The issues related to joint-stock companies are assigned to the Deputy Ministry of Business and Investment and there are several departments that fall under this deputy, one of which is the General Department of Corporate Governance and Compliance that aims to ensure that corporations are compliant with the relevant laws. Also, this department is divided into two sections: The Corporate Governance section and the Compliance Management section.<sup>18</sup>

The author has visited the General Department of Corporate Governance and Compliance Department in the Ministry of Commerce and met with the head of the Corporate Governance section, Mr. Faisal Al-Seif, who informed the author that they divide their work with regard to monitoring corporations and their board members into three sections: preserving shareholders' rights, disclosure and transparency, and the obligations of the board of directors.

Under preserving shareholders' rights, the section has many task such as ensuring that the annual meetings of the corporations are held within the six months following the end of the fiscal year and that the shareholders are notified of the date of the meeting in accordance with Articles 87 and 91 of the Companies Law. It also makes sure to prepare the financial statements in accordance with Article 126 and 175 of the Companies Law and that there is no violation of the law in this regard. In addition, the section ensures that cumulative voting is applied in the election of boards of directors in accordance with Article 95 of the Companies Law. The department

<sup>14</sup> Saudi Companies Law, Art. 86, ¶ 4.

<sup>15</sup> Saudi Companies Law, Art. 90, ¶ 2.

<sup>16</sup> *Id.*

<sup>17</sup> Saudi Companies Law, Art. 90, ¶ 3.

<sup>18</sup> *See* Ministry of Commerce, General Department of Corporate Governance and Compliance

<https://mci.gov.sa/en/about/departments/bi/departments/pages/03.aspx>.

also reviews the minutes of the general meetings and makes sure that they were drafted in accordance with Article 97 of the Companies Law.

With regard to the obligations of the board of directors, the Corporate Governance section makes sure that the board called the annual assembly meeting. It also makes sure that the membership of directors is still valid. In the event that any new member is nominated, the section will make sure that he meets the regulatory requirements for membership in the board in accordance with Ministry Circular No. 3245, which was explained in the second section. It also verifies that the presidency of the board of directors is not combined with any executive position in the company in the implementation of Article (81) of the Companies Law. It also verifies that company executives are not members of the audit committee in accordance with Article 101 of the Companies Law. It also verifies the commitment of companies that are under incorporation or are in the process of transfer to a joint-stock company with the provisions of Articles 62, 64, and 65 of the Companies Law. It also monitors joint-stock companies whose losses exceed half of the paid-up capital and obligates them to hold an extraordinary general assembly to consider the continuation or liquidation of the company in accordance with Article 150 of the Companies Law.

With regard to transparency and disclosure, the section follows up on companies in relation to disclosing transactions and interests of members of the board of directors in accordance with Article 71 of the Companies Law. It also checks the rewards obtained by members of the board of directors so that the reward does not exceed five hundred thousand riyals, as stated in Article 76. Also, it makes sure the corporation publishes the

disclosures stipulated by the law on the business portal website.<sup>19</sup>

As for the second section, which is the Compliance section, the author has met the head of the Compliance Department, Mr. Faisal Al-Khulaifi, who shared that the department deals with the transactions referred to it by the Corporate Governance section. In general, the Compliance section deals with the violations committed by the members of the board of directors or their corporations, whether the violations are referred to them from the corporate governance section or received through complaints or communications from the stakeholders. What is meant by violations here are the violations related to corporate governance that was mentioned in chapter two. As for other violations, such as violations of safety requirements and so on, these violations are for other deputies.

Violations may be administrative violations or they may amount to a crime, as indicated in chapter two. In the case of administrative violations, the Compliance section takes the statement from directors and performs an examination of the case and then reaches a result by either charging the board of directors, canceling the case, or taking a pledge.

In the past, the Compliance section was imposing the financial penalty stipulated in the law, but recently a decision was issued on 11/24/1437H to form a committee called the Committee for the Examination of Violations of the Companies Law. The role of the Compliance Department is limited to taking the testimony of the accused and investigating the case until it reaches its conclusion. It then raises its recommendation to the Committee to determine the appropriate punishment in accordance with

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<sup>19</sup> See Ministry of Commerce

[https://companycr.mci.gov.sa/?landingpage=3&referrer=.](https://companycr.mci.gov.sa/?landingpage=3&referrer=)

the penalties stipulated in the Companies Law. If the board of directors or any of its members believes that he is innocent or that the violation is disproportionate to the punishment, he has the right to file a case against the Ministry of Commerce in the Board of Grievances.<sup>20</sup> If the type of violation is one of the violations that requires referring it to the Public Prosecution, then the Compliance section takes the testimony of the accused and examines the case and then, in the event that it concludes that the accused committed the violation, it writes a report, attaches the necessary documents, and refers it to the Public Prosecution Office.

As it was indicated earlier, one of the most difficult obstacles that lead to the poor performance of external oversight of board members is the weak cooperation between the parties of internal oversight. Perhaps the solution to alleviate this obstacle is to encourage or require some of these internal oversight parties to report the board's violations to the competent authorities. It is possible to take advantage of the UAE Commercial Companies Law, as the external auditor of the joint-stock companies is obligated to notify the Authority of the violations he finds while performing his duties in reviewing the company's financial lists – whether these are violations of the UAE Commercial Companies Law's provisions or they constitute a criminal crime.<sup>21</sup> In the event that the auditor violates this duty, the authority may suspend his license for a period not exceeding one year, write his name off

the list of accredited by the authority, or refer him to the Public Prosecution if necessary.<sup>22</sup>

This idea can be applied to the Saudi Companies Law and will directly contribute to improving the performance of the external oversight bodies represented by the Ministry of Commerce and the Capital Market Authority. This will be done through the cooperation of the internal oversight parties with these bodies – especially if we consider the fact that the external auditor, who is a party outside the company system, is not subjected to pressures as much as others.

Some directors or employees of the corporation may try to place some obstacles or conceal the facts in order to prevent the Ministry of Commerce or CMA from discovering the violations committed by the board of directors. To prevent this, the law gives the Ministry the right to impose penalties – not exceeding SR 500,000 – through its specialized committees on anyone who deliberately hinders or impedes the task of persons entitled to access the company's papers under the Law.<sup>23</sup>

#### 4. The Capital Market Authority (CMA)

The Capital Market Authority is specialized in monitoring and following up with the listed corporations. Completing all the tasks specific to the Ministry of Commerce regarding oversight of members of the boards of directors in an unlisted corporation is considered the competence of the

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<sup>20</sup> Article 13 of the Law of the Board of Grievances provides: "Administrative courts shall have jurisdiction to decide the following . . . (b) Cases for revoke of final administrative decisions issued by persons concerned when the appeal is based on grounds of lack of jurisdiction, defect in form or cause, violation of laws and regulations, error in application or interpretation thereof, abuse of power, including disciplinary decisions and decisions issued by quasi-judicial committees and disciplinary boards as well as decisions issued by public benefit associations – and the like – relating to their

activities. The administrative authority's refusal or denial to make a decision required to be made by it in accordance with the laws and regulations shall be deemed an administrative decision." *See Also* Law of the Board of Grievances issued by Royal Decree No. M/78 dated 19/9/1428H.

<sup>21</sup> UAE Commercial Companies Law, Federal Law No. (2) of 2015 regarding Commercial Companies, Art. 249, ¶ 1.

<sup>22</sup> UAE Commercial Companies Law, Art. 249, ¶ 2.

<sup>23</sup> Saudi Companies Law, Art. 213, ¶ M.

Capital Market Authority with respect to listed companies.<sup>24</sup>

The most significant task of the Capital Market Authority is to find an organized, fair, and transparent financial market that protects all investors from all irregular practices, or practices that involve fraud, deceit, forgery, or manipulation. Within this framework, the tasks and responsibilities of the CMA can be summarized in the following points.

The CMA organizes and monitors the actions and activities of the entities that are subject to its supervision. It is also concerned with protecting citizens and investors in securities from unfair or improper practices that involve fraud, injustice, or manipulation. In general, the Authority is based on achieving fairness, sufficiency, and transparency in securities transactions. <sup>25</sup> Accordingly, the financial market law and its regulations are required to demonstrate transparency and disclosure of all financial and material information related to the listed companies, in a complete and accurate manner and at a specific time and without discrimination.

It is indeed an investor's right to know the full truth of the company's performance and to know all the information that might affect the value of their shares. Therefore, the Companies Law gave the Capital Market Authority the right to ask the issuing body of any securities for any information or data related to it, and it must be provided within the period specified in the order. In order for the CMA to perform its work, the law grants the members and employees of the CMA to call witnesses, take evidence, and request the presentation of any records, papers, or any other documents that the CMA deems relevant or important to achieving the investigation.<sup>26</sup>

Also, the listed company must inform the CMA in writing upon being aware of significant developments that may affect the value of the securities issued by it.<sup>27</sup> In all cases, the CMA's board may, after reviewing the facts, request the issuing corporation to announce any information or data related to it. The CMA's board or market also has the right to publish that information or data at the expense of the issuing party.<sup>28</sup>

Hence the role of the Capital Market Authority is its oversight of the boards of directors, as they are responsible for their corporations. One of the actions that the CMA monitors is fraud and trading based on internal information – “insider trading” – as some members of a board of directors may intentionally act or participate in activity that creates an incorrect or misleading impression about the value of any security, prices, or the market, with the intention of creating that impression or the intent to urge others to buy, sell, subscribe, or refrain from any of those things.<sup>29</sup> Also, they may provide information to a person until he buys or sells in the stock securities. Information leakage is illegal if such information is not available to the public and that, if available to them, they would do the same act as a response to this information that was leaked by a member of the board of directors.<sup>30</sup>

As an overview, it can be seen that the Capital Market Authority has been making great efforts to protect investors by activating corporate oversight. It can be said that the oversight over companies and their boards of directors occurs in two ways. The first way is the authority's initiative to monitor through its competent departments. The second way is to rely on complaints and communications from stakeholders.

<sup>24</sup> Saudi Companies Law, Art. 90, ¶ 3.

<sup>25</sup> Capital Market Law, Issued by Royal Decree No. (M/30) dated 7/31/2003, Art. 15.

<sup>26</sup> Capital Market Law, Art. 5, ¶ c.

<sup>27</sup> Capital Market Law, Art. 5, ¶ A.

<sup>28</sup> Capital Market Law, Art. 5, ¶ C.

<sup>29</sup> Capital Market Law, Art. 49.

<sup>30</sup> Capital Market Law, Art. 50, ¶ A.

There are several departments and deputies that are concerned with the follow-up and oversight of listed companies to make sure they are committed to the regulations and instructions. Among the most important of these deputies is the Listed Companies and Investment Products Deputy. Under this deputy are several departments, the most important of which are the Corporate Governance Department and the Investment Products Issuance Department. This department is concerned with overseeing the governance, disclosure, and advertising of listed corporations, and following up on companies' commitment to the Capital Market Law and all related laws. Also, through its specialized departments the CMA monitors the boards of directors and raises awareness among them through supervisory visits to corporations.

The author considers that visits and inspections are among the most important means of monitoring that bear fruit. However, it appears that these visits have not received sufficient attention from the Capital Market Authority. In 2016 the CMA made only two visits,<sup>31</sup> and in 2017 it made four visits.<sup>32</sup> In 2018 there was only one visit.<sup>33</sup> The author believes that this is a failure of the authority, which should intensify supervisory visits in order to achieve the goal of the authority, which is protecting the investor. The author believes that this is a failure of the Capital Market Authority, perhaps because the Authority has focused on inspecting financial stockbrokers more than on boards of directors in joint-stock companies. The supervisory visits should be intensified, and the visits should be carried out by experts so that the aim of monitoring and accountability is achieved.

In view of the importance of stakeholders in achieving oversight, the Capital Market Authority

organized the process of cooperation with stakeholders in monitoring companies through two ways: submitting a complaint or submitting a communication.

With regard to submitting a complaint, any person has the right to file a complaint if the issue is related to problems with the financial markets or listed companies. It appears that the Investor Protection Department that is concerned with receiving complaints and notifications does not limit those who have the right to submit a complaint to shareholders only, but also made everyone who has an interest to submit his complaints whether the complainant is individual investor, listed corporation, or any other company. All of these categories have the right to file a complaint, regardless of their nationality. The complaint could be against a specific person, listed company, other company, deposit center company, the Committee for the Resolution of Securities Disputes (CRSD), or the Capital Market Authority itself.

If a complaint is submitted, the complainant must disclose his correct information and is required to attach a copy of the ID; otherwise, the complaint will not be considered. Also, the complainant shall establish his complaint against a specific person or party, and the complaint must be clarified and explained and supported by the attachments. The complaint is also considered incomplete if the complainant does not specify his requests.

The Capital Market Authority has facilitated the procedures for submitting a complaint, and, therefore, there are several options for the way to submit a complaint. It can be submitted through the website, sent to the CMA mailing address, or sent by fax, or it can go directly to the Capital

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<sup>31</sup> Annual Report of Capital Market Authority 2016, 87, [https://cma.org.sa/Market/Reports/Documents/cma\\_2016\\_report.pdf](https://cma.org.sa/Market/Reports/Documents/cma_2016_report.pdf).

<sup>32</sup> Annual Report of Capital Market Authority 2017, 143, [https://cma.org.sa/en/Market/Reports/Documents/cma\\_2017\\_report.pdf](https://cma.org.sa/en/Market/Reports/Documents/cma_2017_report.pdf).

<sup>33</sup> Annual Report of Capital Market Authority 2018, 132, [https://cma.org.sa/Market/Reports/Documents/cma\\_2018\\_report.pdf](https://cma.org.sa/Market/Reports/Documents/cma_2018_report.pdf).



Market Authority building, to the Investor Protection Department. It is interesting that this department is located on the ground floor, immediately after the main entrance. This may be intended to facilitate the complaint process and send a message to shareholders that their protection is its first goal. Also, recently, the Capital Market Authority launched the investor protection application on smart devices. The Authority stated that one of the goals that the Authority seeks by launching this service is to enhance the Authority's procedures towards illegal practices and to facilitate complaints and communications as it engages the community in developing and raising the performance of the Capital Market Authority and promotes investor confidence in the Saudi Stock Exchange. Therefore, according to the report of the Capital Market Authority, communication and complaints received by the Authority increased, as the total number of complaints received reached 2,555 complaints in 2018 – an increase of 49.5% over the previous year.<sup>34</sup> In 2018 477 communications were received, while the number was 221 in 2017.

It is worth noting that before filing a lawsuit with the Committee for the Resolution of Securities Disputes (CRSD) the plaintiff must file the complaint with the CMA, in which case the CMA tries to settle with the defendant.<sup>35</sup> If the CMA is unable to settle because one of the parties refuses then the case is referred to the committee to hear the case and decide on it. According to the annual report of the Capital Market Authority in 2018, it is found that 25% of the complaints were referred to the judiciary, while 64.3% were settled by the Authority.<sup>36</sup>

With regard to submitting a communication on a violation, any person has the right to submit a communication to the CMA regarding any practice that constitutes a violation of the Capital Market Law and its implementing regulations. It

is not required for the person submitting the communication to be a stakeholder, as any person is entitled to report any violation.

Given that many informants may be employees of the company or may be among the minority shareholders, and when submitting the communication their interests may be at risk, therefore the Capital Market Authority does not require the reporter to write his name or any means of communication. Rather, the reporter has to clarify and define the communication so that the relevant authorities can follow up on the case. In this case, the reporter cannot follow up on the case he reported unless he discloses his information. Then he has the right to follow up on the notification procedures. However, the CMA confirms to all whistle-blowers that their information is completely confidential and no one can see it.

The notification is required to be specified against a specific person, company, or any other entity where any person can report violations committed by the board of directors of any corporation and must specify the violation committed. Hence, the CMA will investigate the communication and exercise its role in monitoring and accountability towards the accused person or persons. It will also prepare reports on these violations and transfer them to the competent authorities to address them.

The Ministry has facilitated the process of submitting the communication, just as it has facilitated the process of submitting a complaint. The communication can be submitted through the Authority's website or by the protection of the investor application, or by sending it to the CMA mailing address, by fax, or by going directly to the investor protection office.

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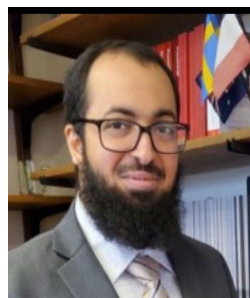
<sup>34</sup> *Id.*

<sup>35</sup> Capital Market Law, Art. 30 , ¶ F.

<sup>36</sup> Annual Report of Capital Market Authority 2018.

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