



# **Raising Capital on Arab Equity Markets**

Legal and Juridical Aspects  
of Arab Securities Regulation

Lu'ayy Minwer Al-Rimawi



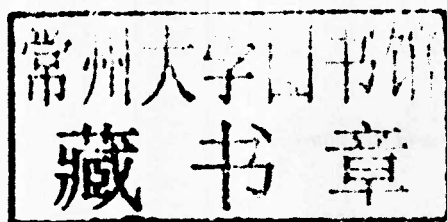
**Wolters Kluwer**

Law & Business

# **Raising Capital on Arab Equity Markets**

Legal and Juridical Aspects of Arab Securities Regulation

**Lu'ayy Minwer Al-Rimawi**



**Wolters Kluwer**

Law & Business

*Published by:*

Kluwer Law International  
PO Box 316  
2400 AH Alphen aan den Rijn  
The Netherlands  
Website: [www.kluwerlaw.com](http://www.kluwerlaw.com)

*Sold and distributed in North, Central and South America by:*

Aspen Publishers, Inc.  
7201 McKinney Circle  
Frederick, MD 21704  
United States of America  
Email: [customer.service@aspublishers.com](mailto:customer.service@aspublishers.com)

*Sold and distributed in all other countries by:*

Turpin Distribution Services Ltd.  
Stratton Business Park  
Pegasus Drive, Biggleswade  
Bedfordshire SG18 8TQ  
United Kingdom  
Email: [kluwerlaw@turpin-distribution.com](mailto:kluwerlaw@turpin-distribution.com)

*Printed on acid-free paper.*

ISBN 978-90-411-2837-9

© 2012 Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA.  
Email: [permissions@kluwerlaw.com](mailto:permissions@kluwerlaw.com)

Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

## **Raising Capital on Arab Equity Markets**

## The Author

Dr Lu'ayy Minwer Al-Rimawi hails from the 'Al-Rimawi' clan which finds its historic roots in the picturesque town of Beit Rima [believed to be known by its Roman name '*Remeth*' which means 'heights' or the 'great cliff'] and the Syrian city of Aleppo, some of whose Arab Muslim fighters came to Palestine with Saladin in the Twelfth Century, residing in Beit Rima. The town of the Al-Rimawi clan, Beit Rima or *Remeth*, may have also been one of the historic towns mentioned in the Bible as another form of '*Ramah*' (q.v.) or '*Ramoth*' (1 Chr. 6:73; Josh. 19:21), and probably also of Jarmuth (Josh. 21:29).

Over many generations, the Al-Rimawi clan has boasted of poets who performed at the Court of the Ottoman Sultan, intellectuals, prominent journalists, eminent religious scholars, university professors, members of the judiciary as well as founders of non-profitable Jordanian orphanage organisations – the Jordan Joud Foundation (JJF). The Al-Rimawi clan has also boasted of talented musicians (Syria), innovative movie producers (USA), award-winning short story Arab novelists (Jordan), chess Arab championships finalists (Jordan) and regionally acclaimed technology and non-technology entrepreneurs (Jordan, Palestine, Latin America, Canada, USA). It has equally boasted of world-class technical professionals in nuclear physics (including a former Head of the Bureau of Environmental Radiation Protection of the State of New York) and competent medical doctors (Jordan, Palestine, USA, Canada). Added to the above is the Al-Rimawi clan's deep history of involvement in regional pan-Arab nationalist movements, with some of its members having been significant leaders in the Palestinian national movement as well as ministers of state (Jordan), parliamentarians (Jordan), senators (Jordan), members of the National Consultative Council (Jordan), Speaker of the Jordanian Parliament (1967) as well as Prime Minister of the Hashemite Kingdom of Jordan (1980).

Dr Lu'ayy Al-Rimawi is well known for his strong views against the manner in which the majority of so-called Arab elites have lacked the courage, confidence or

the goodwill to set true examples in self-reliance – (as he puts it) capitalising lethargically instead on a heavily skewed Arab status quo that entrenches nepotism at the expense of transparency and open competition. This, he adds, has devalued the worth of genuine hard work across the Arab world – resulting in unfair dominance of the unpalatable few whose *raison d'être* has, over many decades, been to suffocate hope, instil fear, cynicism and corruption while wilfully destroying noble values and high ideals that ordinary Arab citizens have long coveted to espouse. His motto is '*No matter how high it may leap, a frog can never reach an eagle's sky*', quoted from an English short story entitled '*Did the Eagle Ever Fly Again?*', which he wrote and published during his early studies at the London School of Economics (LSE).

Dr Lu'ayy Al-Rimawi finished his bachelor of law (LLB) in Amman – being the first Jordanian from the Law Faculty in the University of Jordan to study for the Master's in Law (LLM) at Cambridge University. He then finished his Master's of Science (MSc) in International Relations from the Faculty of Economics and Political Science at the LSE, where he was a Chevening Scholar – a distinguished international scholarship awarded by the UK Foreign & Commonwealth Office. He then proceeded to study for his Ph.D in law in comparative aspects of financial services regulation at the LSE – having been awarded by the LSE (through open competition with UK, EU and international doctoral researchers) a prestigious teaching scholarship to teach public international law. During his doctoral studies at the LSE he was also awarded (through open competition) the very prestigious Lord Wedderburn Scholarship, granted by the Law Department at the LSE, for 'excellence' in doctoral research in areas including capital market studies and financial services law. His Ph.D in law is considered among the top doctorates, having been awarded outright by the LSE without the requirement of a single change or amendment.

Dr Lu'ayy Al-Rimawi has been a part-time lecturer in public international law at the LSE, a guest lecturer in Islamic financial law at Cambridge University and is a former executive civil servant at the UK Home Office in London. He is a Senior Research Fellow in comparative law at the British Institute of Securities Law and the Director of the Master's programme in Islamic financial law (LLM) at the prestigious BPP University, London – one of EU's largest academic institutions that specialises in professional legal education. He is also scheduled to be a Visiting Fellow in Islamic legal studies at Harvard University.

He has submitted a number of legal reports to various UK immigration tribunals that examined in detail various aspects of nationality laws in the Arab region. At the invitation of Mr Peter Harris, the then Official Solicitor to the UK Supreme Court, and in conjunction with the Institute of Advanced Legal Studies in London, Dr Lu'ayy Al-Rimawi has chaired a working group (comprised of eminent UK lawyers, academics and senior enforcement officers) to advise UK judges on cross-border issues pertaining to child abduction in the Middle East. He is also the founder, proprietor and director of the *Cambridgeshire Multimillion Residential Fund* – a project that was set up through the ethos of self-reliance, while at the same time highly valuing the human input of staff. It has now grown exponentially since



its short inception, spanning various English counties in Cambridgeshire, Lincolnshire and Cumbria.

Dr Lu'ayy Al-Rimawi has published extensively in UK/EU financial legal journals and books on various areas pertaining to comparative aspects of Arab/EU financial services regulation, international law and Islamic financial law in *The Yearbook of Islamic and Middle Eastern Law*, *Journal of Money Laundering Control*, *Arab Bank Review*, *CCH: Financial Services Reporter*, *European Business Law Review*, *European Financial Services Law*, *International and Comparative Corporate Law Journal*, *Journal of Financial Crime*, *Journal of Financial Regulation and Compliance*, *Millennium: Journal of International Studies* and *The Company Lawyer*. He has particularly published on the illegality under international law of Israeli civilian settlements on the Occupied Arab Palestinian Territories (including Arab East Jerusalem and the Arab Syrian Golan Heights) – where such papers were taught to his LSE undergraduate students during the various seminars he had conducted when teaching public international law at the LSE. Many of his published UK papers on Islamic financial law and comparative aspects of Arab/EU financial services regulation have equally been taught to postgraduate students during his seminars/lecturers at Cambridge University as well as BPP. Much of his academic work and published papers are found in many EU universities as well as the LSE, Senate House (University of London), Institute of Advanced Legal Studies in London, the British (National) Library, etc.

Dr Lu'ayy Al-Rimawi is also a strong proponent and a well-known advocate of democracy, socio-economic reform and equitable applicability of the rule of law in Arab countries. He has had a considerable number of articles, letters to the press and opinions published in various Arab and international newspapers including *The Times*, *The Guardian*, *The Observer*, *The Independent*, *The Independent on Sunday*, *The Sunday Times*, *The Manchester Guardian Weekly*, *The International Herald Tribune*, *The New York Times*, *The Washington Post*, *The Jerusalem Post*, *Al-Hayat* (London), *Al-Sharq Al-Awsat* (London), *Al-Quds Al-Arabi* (London), and *The Jordan Times*.

Dr Lu'ayy Al-Rimawi is a regular speaker at the Cambridge International Symposium on Economic Crime, held annually at Jesus College/University of Cambridge. His latest presentation there was in September 2011, when he spoke on the question of *Shari'a* and its protection of investors in financial services. In September 2010 he had spoken on *Shari'a* as a constitutional source to Arab legislation (civil and commercial), delineating the practical legal implications that stem from this. He has made various televised and radio appearances in the UK commenting on diverse aspects pertaining to the Middle East on the BBC, MBC, Sky News, Press TV and various London-based Arab satellite stations. He enjoys enduring physical exercise and disciplined training and has briefly trained with the UK Territorial Army – the Royal Marine Commando SBS (Special Boat Service) and the Royal British Navy.

## List of Abbreviations

AC	Appeal Cases, UK
ABR	Arab Bank Review
ADR	American Depository Receipts
ADX	Abu Dhabi Securities Exchange, UAE
AFM	Amman Financial Market, Jordan
AFML	Amman Financial Market Law
AIBD	Association of International Bond Dealers
AIM	Alternative Investment Market, UK
All ER	All England Law Report, UK
ALQ	<i>Arab Law Quarterly</i>
AMF	Arab Monetary Fund
AML/CFT	Anti Money Laundering/Combating the Financing of Terrorism
Art.	Article
Arts	Articles
ASE	Amman Stock Exchange, Jordan
BSE	Baghdad Stock Exchange, Iraq
	Bahrain Stock Exchange, Bahrain
	Beirut Stock Exchange, Lebanon
BVMT	Bourse des Valeurs Mobilières de Tunis, Tunisia
CA	Companies Act, UK
	Court of Appeal, UK
CBJ	Central Bank of Jordan
CCD	Court of Cassation Decision, Jordan
CDVM	Conseil deontologique des valeurs mobilières, Morocco



## List of Abbreviations

CEBS	Committee of European Banking Supervisors
CEIOPS	Committee of European Insurance and Occupational Pensions Supervisors
CESR	Committee of European Securities Regulators
Ch. D.	Chancery Division, UK
CLR	Commonwealth Law Reports
CMA	Company Law Review
CMF	Capital Market Authority, Kingdom of Saudi Arabia
CP	Conseil du Marche Financier, Tunisia
DFSA	Commercial Paper
DIFC	Consultation Paper, FSA
DIFX	Dubai Financial Services Authority, UAE
DFM	Dubai International Financial Centre, UAE
DSM	Dubai International Financial Exchange, UAE
EASRA	Dubai Financial Market, UAE
EBA	Doha Securities Market
ECC	East African Securities Regulatory Authorities
ECMH	The European Banking Agency
EIOPA	Egyptian Civil Code
ESA	Efficient Capital Markets Hypothesis
ESFS	European Insurance and Occupational Pensions Authority
ESMA	European Supervisory Authorities
ESRB	European System of Financial Supervisors
EU	European Securities and Markets Authority
FDI	European Systemic Risk Board
FEAS	European Union
FESCO	Foreign Direct Investment
FSA	Federation of Euro-Asian Stock Exchanges
FSA 1986	Forum of European Securities Commissions
FSMA	Financial Services Authority, UK
FT	Financial Services Act 1986, UK
FTSE	Financial Services and Markets Act 2000, UK
	<i>Financial Times, UK</i>
	An independent company jointly owned by The Financial Times and the London Stock Exchange. It specialises in index calculation.
GCC	Gulf Cooperation Council: Founded on 26 May 1981. It comprises: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates

GDP	Gross Domestic Products
GDR	Global Depositary Receipts
HL	House of Lords, UK
IBTF	International Bank for Trade and Finance
ICM	Islamic Constitutional Movement
IFC	International Finance Corporation, World Bank
IMF	International Monetary Fund
IOSCO	International Organisation of Securities Commissions
IPO	Initial Public Offering
ISMA	International Securities Market Association
JACPA	Jordanian Association of Certified Public Accountants
JCA	Jordanian Commercial Act
JCC	Jordanian Civil Code
JD	Jordanian Dinar (1 USD: 0.71 JD)
JSC	Jordanian Securities Commission
KB	King's Bench, UK
KCC	Kuwaiti Civil Code
KIA	Kuwait Investment Authority
KSE	Khartoum Stock Exchange, Sudan
LQR	Kuwait Stock Exchange
LSJ	<i>Law Quarterly Review</i>
MENA	<i>Law Society Journal</i> , Jordan
MENAP	Middle East and North Africa
	Middle East, North Africa, Afghanistan and Pakistan
MENAP oil exporting countries	Algeria (ALG), Bahrain (BHR), Iran (IRN), Iraq (IRQ), Kuwait (KWT), Libya (LBY), Oman (OMN), Qatar (QAT), Saudi Arabia (SAU), Sudan (SDN), the United Arab Emirates (UAE), and Yemen (YMN)
MENAP oil importing countries	Afghanistan (AFG), Djibouti (DJI), Egypt (EGY), Jordan (JOR), Lebanon (LBN), Mauritania (MRT), Morocco (MAR), Pakistan (PAK), Syria (SYR), and Tunisia (TUN)
MLR	<i>Modern Law Review</i>
MMoU (IOSCO)	Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information

## List of Abbreviations

MSCI	MSCI is an index created by Morgan Stanley Capital International (MSCI), designed to measure equity market performance in global emerging markets. In this respect, one states that the Emerging Markets Index is a float-adjusted market capitalisation index. As of March 2011, it consisted of indices in twenty-two Emerging Economies: Brazil, Chile, China, Colombia, Czech Republic, Egypt, Hungary, India, Indonesia, Malaysia, Mexico, Morocco, Peru, Philippines, Poland, Russia, South Africa, South Korea, Taiwan, Thailand, Turkey and Ukarine
MSM	Muscat Securities Market, Oman
No.	Number
OECD	Organisation for Economic Construction and Development
OTC	Over-the-counter
PADICO	Palestine Development and Investment Company
para.	Paragraph
paras	Paragraphs
PCS	Potash Corporation of Saskatchewan
PRGF	Poverty Reduction and Growth Facility
PSE	Palestinian Securities Exchange
Pt.	Part
QB	Queen's Bench, UK
QFC	Qatar Financial Centre
QFMA	Qatar Financial Market Authority
s.	Section
ss	Sections
SA 1933	Securities Act 1933, USA
SA 1997	Securities Act 1997, Jordan
SA 2002	Securities Act 2002, Jordan
SAMA	Saudi Arabian Monetary Agency
SCA	Securities and Commodities Authority, UAE
SCFMS	Syrian Commission on Financial Markets, Syrian Arab Republic
SCC	Supreme Constitutional Court, Egypt
Sched.	Schedule
SDC	Securities Depository Centre, Jordan
SE 1934	Securities and Exchange Act 1934, USA
SEC	Securities Exchange Commission, USA

*List of Abbreviations*

SIB	Securities Investment Board, UK
SMC	Securities Market Commission, Kuwait
S&P	Standard and Poor's
SSC	Social Security Corporation, Jordan
UAE	United Arab Emirates
UKLA	United Kingdom Listing Authority
USD	United States Dollar
UNCTAD	United Nations Conference on Trade and Development
VAT	Value Added Tax
WB	World Bank
WLR	<i>Weekly Law Reports</i>
WP	Working Paper
XBRL	Extensible Business Reporting Language: A global standardised technology for financial information, widely recognised and promoted across the world because it is readable and comparable in computers and easy for data flow and data treatment

## Foreword

### **Foreword by the Honourable Mr Justice Blair, High Court Judge in England and Chairman of the Qatar Financial Centre Regulatory Tribunal.**

Because 2011 has been the year of the 'Arab Spring', it is good to be able to welcome a new book that (at least so far as publications in the English language are concerned) takes a fresh look at securities markets in the Arab world, and their regulation. The book discusses in particular the role of investor protection as regards disclosure when issuers are offering securities to the public, taking Jordan as its primary point of reference.

However, the book goes beyond any one country. It contains a description of Arab securities markets through the stock exchanges of seventeen countries (eighteen including both Abu Dhabi and Dubai), of which the Saudi Stock Exchange (*Tadawul*) is the largest in terms of capitalisation, and those in Iraq, Libya and Syria are relatively new, offering, as the author puts it, 'promising potential'.

There follows a discussion of the regulation of the markets, with an eye to international standards, and the policy issues involved. There is a discussion of the relationship between the secular law and the principles of the *Shari'a*, showing both how full and frank disclosure has played an important role in Islamic law, and also how conventional regulation along modern lines is essential.

More generally, in the wide-ranging chapter entitled '*Shari'a*'s Juridical Risks in the Context of Arab Securities Regulation', the author expresses the view that the relationship between the *Shari'a* and contrary provisions in modern commercial laws (e.g., as to the charging of interest) remains unresolved.

Finally, there is a detailed analysis of the Jordanian regime for public offers and the listing of securities. This is considered from the perspective of the regulatory law and general civil law of Jordan, as well as that of the *Shari'a*. The author

## Foreword

suggests various changes that should be made to the securities laws in order to provide better investor protection for shareholders.

Among the strengths of Dr Lu'ayy Minwer Al-Rimawi's book is the fact that at all times he adopts a comparative approach, not only as between different Arab systems, but also with an appreciation of the legal position in the UK and the European Union and elsewhere. This book will commend itself to all those with an interest in securities markets in the Arab world, and in particular to those concerned with a central question in all such markets – how the law can properly protect investors.

Sir William Blair

London

January 2012



## Acknowledgements

... This book is dedicated to the Almighty God from a deeply grateful heart for His very many gracious blessings: generously granting health and strength; benevolently tipping the balance in favour of beautiful and noble values which I have always wholeheartedly espoused...

... To the memory of HM King Hussein of Jordan (may the Almighty rest his soul) in deep appreciation for all his gentle messages of 'friendship' as officially then conveyed to me during my early studies at the LSE... His Late Majesty's formal appreciation of my national efforts on behalf of Jordan and the defence of His Late Majesty in the international press (even though I was only in my early 20s) has always been deeply cherished...

... To HM King Abdullah II for his genuine efforts to build an exemplary Jordan hallmarked by the rule of law within an institutionalised setting. His Majesty's gracious personal appreciation of my national efforts has always been deeply relished... May the Almighty God grant His Majesty continued strength and grit to solidify Jordan's national unity, bringing about justice, equality and meaningful change...

... To HRH Prince El-Hassan bin Talal of Jordan for his precious interest over the years in my activities in the UK: My intellectual role model, well before I embarked on my existentialist UK odyssey; a toweringly substantial Arab and Jordanian national asset... It was no surprise that I have always deeply treasured His Royal Highness' warm congratulations upon obtaining my doctorate from the LSE in 2004...

... To HRH Prince Ghazi bin Muhammad of Jordan for being a genuine older brother during our studies at Cambridge University and beyond: A redoubtable spirit and a conglomerate of dignified humility rapped in assertively noble self-deprecation that has resonated deeply with my own ethos... Thank you for being a genuinely caring older brother when I needed an older brother the most...

... To HRH Princess Rahma bint El-Hassan of Jordan and HRH Prince Zeid bin Ra'ad of Jordan for being graceful colleagues in Cambridge...

## Acknowledgements

... To my (Greek) family in London: Michael, Tona, Eleni, George and Kat... It is really hard to imagine that I would for one second ever forget Michael's and Tona's precious hearts: Thank you both most heartily for all you have done for me... To my (Greek) family in Cyprus: Demetra, Stavroulla, Kostas, Yorgus, Antonis and Didi... My (Jordanian) family in Amman: My parents for their unshakable confidence and gracious love. My brother Rami, his wife Majida and their children: Taleen and 'Little' Lu'ayy... My sister Hadeel, her husband Majdi and their children: Yzen, Rahaf, Razan, Rawan and Ya'eesh...

... To Professor John Tiley Q.C. of Cambridge University, Professor Christopher Forsyth of Cambridge University, Dr Martin Dixon of Cambridge University, Dr Peter Brooks of Cambridge University, Dr Christopher Constable of Cambridge University, Dr Christopher Hughes formerly of Cambridge University, Professor Michael Zander, Q.C. of the LSE, Professor Christopher Greenwood, Q.C. of the LSE: Thank you all for entrenching my staunch belief in the value of hard work at such an early stage of my life...

... To Sir (Professor) Ross Cranston, Q.C. (Judge of the High Court, ex-MP, ex-Solicitor General/UK government, my first doctoral supervisor) and Professor Paul Davies, Q.C. of Oxford University (my second doctoral supervisor), a distinguished academic and a family friend. Thank you both most heartily for your critical and stimulating legal input that ensured my legal-intellectual development...

... To the memory of a tutor and a friend, Professor Fred Halliday of the LSE: A highly respected international intellectual figure, with whom I enjoyed numerous personal and academic discussions...

... To all my friends and colleagues from Cambridge University, the LSE and beyond who shared their most inner thoughts with me, particularly Ms Alissa Katherine Bell and Ms Sally Thelma Woodford... My 'Robinsonian' Cambridge colleagues for their true friendship during our mutual studies at Robinson College/Cambridge University: Dr Jonathan Greenland (formerly of the Brooklyn Museum, NY), Ms Anna Borzello (formerly of the BBC), Mr Andy Lewis (of HM Treasury, UK), his wife Rose, the Rev. Dr. Ashley Null, Canon Theologian of the Diocese of Western Kansas (USA), Mr Andy Davies...

... To my staff and friends who have supported the *Cambridgeshire Multimillion Residential Fund*, particularly my dearest friend Ms Justyna Gwozdz, Ms Klaudia Kawalik, Mr Pawel Cyniak, his wife Malgorzata and their daughter my little Olivia, Mr Zbigniew Ogonek, Mr Hubert Ogonek, Mr Piotr Czumak, Mr Rafal Werkus, my friend Magda, her mother Krestina and little daughter Emilia... Mr Nick Wilson, my accountant Mr John Allen of Harvey Winning & Co., Mr Angus Adams of Forresters Solicitors, his efficient team, especially Emma and Helen...

... To all former colleagues and my staff at HM Home Office: Thank you all for your friendship...

... To His Excellency Mr Muhammad Tash, the new Chairman of the Jordanian Securities Commission (JSC), a true friend with whom I have shared many Jordanian regulatory concerns; both courageously enduring the wrath of vested interests yet representing a genuine hope for a fresh and world-class performance that restores integrity and dynamism...

## *Acknowledgements*

... To Professor Barry AK Rider of Cambridge University for being a deeply trusted friend: a most congenial and very dear colleague ...

... To all my students in the various UK universities I have been teaching for their input and constant enthusiasm ...

**Lu'ayy Minwer Al-Rimawi**  
January 2012