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Saudi Arabia's New Companies' Law

Legal Briefing (04 October 2022)

The Kingdom of Saudi Arabia ("KSA") is one of the largest markets in the Middle East with great potential for foreign investors. Recent years have seen heightened activity from the Kingdom's law makers which manifested in meaningful reforms of the different areas of law – a testament to the country's appetite for increased foreign direct investment and integration into the global markets.

One of the most fundamental and recent legal reforms is the enactment of a new Companies Law by virtue of Royal Decree M/132 dated 01/12/1443 (30 June 2022) ("CL"). The CL will replace the current Companies Law from 2015 at the beginning of 2023. In this brief, we provide a high-level overview of some key features of the CL:

1. Company Types

Besides commercial companies, the CL now also governs professional companies and nonprofit entities.

The CL no longer recognizes silent partnerships (joint ventures) as a company type. On the other hand, the CL introduces a simplified joint stock company (SJSC) as a new company type. The SJSC combines the flexibility of management structures of an LLC with the negotiability of stocks in comparison to other kinds of company shares. However, SJSC-stocks cannot be divided into different classes like those for a fully-fledged joint stock company. An SJSC is not subject to the minimum capital requirement which remains the case for fully-fledged joint stock companies.

2. Framework for Incorporation Procedures, Mergers & Acquisitions (M&A)

The CL creates common and more reliable standards for the incorporation of companies in KSA. For M&A transactions, the CL now provides for more clarity in terms of related procedures and requirements.

3. Recognition of Joint Venture / Shareholders Agreements

Depending on the nature of their cooperation, shareholders of a company often decide to enter into a joint venture agreement ("JVA", often also referred to as Shareholder Agreement) in addition to the official company charter document which needs to be registered with the competent authorities. JVAs are not registered and therefore allow greater flexibility in terms of contents and formal requirements. While many courts across Middle Eastern countries do recognize JVAs (as long as they do not contravene mandatory statutory requirements) there is always a certain risk associated with their legal validity, especially in comparison to the registered company charter. KSA now recognizes JVAs as binding and assigns them a clear position vis-à-vis other corporate documents especially the company charter (e.g., vis-à-vis a company's Memorandum/Articles of Association). This provides for greater clarity in terms of shareholder relations in KSA.

4. Managers' / Directors' Liability

Until now, managerial duties – especially a fiduciary duty towards the company – have been the object of ongoing debate in KSA corporate law. The CL now clearly outlines and confirms such duties. It furthermore outlines the legal framework and procedures, under which managers / directors can be held liable for contravening such duties.

5. Audit Requirements for Micro & Small Enterprises

The CL establishes clear audit requirements and exemptions. In many cases micro and small enterprises are generally exempted from audit requirements.

6. Specific Regulations for Limited Liability Companies (“LLC”)

The most popular investment vehicle for foreign investors in KSA is the LLC. This company type has been subject to several major reforms in the new CL, e.g.:

- **Removal of maximum numbers of Shareholders**. Formerly an LLC could only have up to 50 shareholders.
- **Removal of restrictions on One-Shareholder-LLCs**. This meant a body corporate could only incorporate one single shareholder LLC in KSA and a single shareholder LLC could not establish further LLCs as subsidiaries. Amongst others the removal now allows for the incorporation of project LLCs. This is a significant improvement in terms of structuring options for projects in KSA**.**
- **Removal of restriction on issuing bonds/Sukuk**. Under the current legislation the issuance of bonds/sukuk is a privilege granted mostly to joint stock companies. By opening this possibility beyond this company type, corporate legislation allows e.g., for the incorporation of LLCs as Special Purpose Vehicles for certain transactions.
- **Payment of capital into blocked accounts during incorporation removed.** The CL confirms a practice already established under the current legislation facilitating the administration of incorporation of LLCs in KSA.

In an international context, the CL further aligns the KSA corporate landscape with international standards and global practices. It also enables investors to have bespoke solutions to their corporate needs similar to what they are applying globally. In a GCC context, the CL aims to position KSA’s corporate framework at the forefront in order to make it more attractive for foreign investors. This goes hand in hand with other (planned) reforms, such as the envisaged new distribution and agency law and the new Commercial Code as well as other proposed vital pieces of legislation.

*The **dedicated KSA team at SCHLÜTER GRAF** can gladly assist you in connection with any topics relating to the CCL and any other Saudi legal matters.*

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