Yesterday. Today. Tomorrow.

Linklaters

Year in review,
Year to come
Saudi Arabia Law

December 2018
Year in Review 2018 and Year to Come 2019 summarises some of the major developments in Saudi Arabia last year, and a selection of key changes that we anticipate over the coming year.

Saudi Arabia is undergoing a period of transformational change. 2018 has seen significant changes to the legal landscape, including in the areas of companies’ law, foreign investment, tax and insolvency. These changes build on an extensive programme of modernisation, in line with the Vision 2030.

**New bankruptcy regime:**
Modernised bankruptcy and reorganisation procedures are now available to financially troubled debtors in the Kingdom of Saudi Arabia. The new bankruptcy law (Royal Decree No.M/05 dated 28/05/1439H (corresponding to 13 February 2018)) and implementing regulations replace the existing bankruptcy regime in the Commercial Courts Law (Royal Decree No.32 dated 15/01/1350H (corresponding to 1 June 1991)) and the Settlement Against Bankruptcy Law (Royal Decree No.M/16 dated 04/09/1416H (corresponding to 24 January 1996)). The three new procedures are available under the Bankruptcy Law, which draw on aspects of international “best practice”: preventive settlement, reorganisation and liquidation. The bankruptcy procedures can be used by foreign or local natural persons performing commercial, professional or profit-seeking activities in the Kingdom, commercial and professional companies and non-Saudi natural or legal person investors with assets in the Kingdom.

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The implementing regulations issued by the Cabinet under the new bankruptcy law largely govern procedural matters.

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**Modernised movable assets security regime:**
Saudi Arabia’s modernised movable security regime should improve the ability for lenders to take effective security over a range of movable assets granted as credit support for commercial or professional debts. The new Commercial Pledge Law and supporting implementing regulations were issued pursuant to Royal Decree No.M/86 dated 08/08/1439H (corresponding to 24 April 2018). The regime allows lenders to take non-possessory security over a range of present and future moveable assets (including receivables, bank accounts, inventory, unlisted securities), to register that security at a new Unified Register for Commercial Pledges (which ensures priority) and the ability to enforce using self-help remedies or traditional court-led processes.

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**Revisions to the companies’ law regime:**
New provisions relating to limited liability companies (LLC) and joint stock companies (JSC) were enacted in April 2018, by way of an amendment to the Saudi Arabian Companies Law (Royal Decree No.M/03 dated 28/01/1437H (corresponding to 10 November 2015)). LLCs and JSCs may need to update their constitutional documents to reflect these changes. The amendments are set out in Royal Decree No.M/79 dated 25/07/1439H (corresponding to 11 April 2018).

**New rules for offering and listing securities:**
The Capital Market Authority’s (CMA) has issued new Rules of Offering Securities and Continuing Obligations pursuant to a resolution on 27 December 2017 made under the Capital Market Law (Royal Decree No.M/30 dated 2/6/1424H (corresponding to 31 July 2003)).

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**Revised corporate governance rules for listed companies:**
The CMA issued revised Corporate Governance Regulations for companies listed on the Saudi Stock Exchange (Tadawul). Key revisions to the Corporate Governance Regulations include (i) a revised definition of “Relatives”, which is relevant to related party transactions and conflict of interest situations, (ii) clarification on issues affecting the independence of “independent” directors, including financial consideration from the company above a specified threshold and tenure of more than nine years, (iii) revisions to the rules on director’s competing interests, to clarify that the board of directors must assess the board member’s competition with the company’s business (or branch activities) and (iv) permitting collective disclosure of the remuneration of the five highest paid senior executives (at present such disclosure must be made for each such executive individually). The Corporate Governance Regulations were issued pursuant to Resolution No. (8-16-2017) dated 16/5/1438H (corresponding to 13 February 2017).

2018 highlights
There have been several changes to the foreign investment regime, including eased restrictions in some sectors and the introduction of e-licences and an industry standard classification structure.

2018 highlights
Modernised bankruptcy and reorganisation procedures are now available in Saudi Arabia.

2018 highlights
The CMA has issued a range of new regulations and instruments relevant to companies listed on the Saudi Stock Exchange (Tadawul).
SAGIA launches foreign investment e-licences:
The Saudi Arabian General Investment Authority (SAGIA) has introduced e-licences for the first time as part of its ongoing efforts to allow for a more efficient and user-friendly process. There is a new online application procedure. In many cases, the application process will only require an online application form to be completed, a resolution to invest from the proposed foreign shareholder(s) and one year’s audited financial statements. SAGIA now offers five-year investment licences to existing and new investors (but this is discretionary). In the past, all licences were limited to one year and then had to be renewed. An “instant” licence issuance or renewal service is now being offered by SAGIA to foreign investors that are listed on a local or international stock market and meet certain conditions. The e-licence can be verified through SAGIA’s website which will be updated regularly to reflect any amendments to the licences. In line with targets set by Vision 2030 and National Transformation Plan 2020, the time to issue licences has reduced significantly over the last 12 months.

Foreign investment restrictions lifted for some sectors:
The Council of Ministers has revised SAGIA’s “Negative List”, following the recommendations of the Council of Economic and Development Affairs (Cabinet Resolution No.103 dated 14/02/1440H (corresponding to 25 October 2018)). The Negative List sets out the sectors in which foreign investors are prohibited from investing in Saudi Arabia. Under the revised regime, Saudi Arabia now permits foreign investors to invest in the following sectors, which have been removed from the Negative List: (i) road transport, (ii) real estate brokerage, (iii) audiovisual services and (iv) recruitment and related services. This development forms part of ongoing reform initiatives to liberalise foreign investment restrictions in order to encourage inbound investment and a thriving private sector, in line with the Vision 2030 goals. We expect SAGIA to revise its Services Manual to reflect this change.

Amendments to the Private Health Institutions Law to permit foreign investment:
The Private Health Institutions Law (Royal Decree No.M/40 dated 3/11/1423H (corresponding to 6 January 2003)) has been amended to remove the restriction on foreign ownership of private health institutions in Saudi Arabia. Previously, foreigners were only permitted to invest in hospitals. Foreign ownership is now permitted for other types of institutions in the healthcare sector (except clinics, which must be owned by a doctor who is a Saudi Arabian national). SAGIA should now be able to grant licences to certain providers of private health institutions subject to the relevant party obtaining the required pre-approval from the Ministry of Health. ISIC classifications adopted for foreign investment licences:
Foreign investors wishing to invest in Saudi Arabia for the first time, and those seeking a licence renewal for an existing business, will now see the regulator assess their applications for a foreign investment licence according to a new classification structure. SAGIA has this year adopted the International Standard Industrial Classification (ISIC) - a United Nations industry classification structure of economic activities used by many countries around the world – to be applied when issuing foreign investment licences. Read more...

Updated instructions on book building and allocation of shares in IPOs:
The CMA has issued updated “Instructions of Book Building Process and Allocation Method in Initial Public Offerings (IPOs)”, issued pursuant to CMA Resolution No.2-94-2016 dated 15/10/1437H (corresponding to 20 July 2016G) and amended pursuant to CMA Resolution No.4-4-2018 dated 23/4/1439H (corresponding to 10 January 2018G). The updated book building instructions broaden the categories of entities entitled to participate in the book building process to include private funds investing in the Saudi Stock Exchange (Tadawul), GCC companies and GCC funds which are majority owned by GCC nationals or governments. The updated rules also include changes to the determination of price range and subscription price (which may now be determined by a financial advisor in coordination with the issuer, subject to certain controls to protect investors), as well as a more flexible mechanism for share allocation.

VAT regime:
Value Added Tax (VAT) is now levied in Saudi Arabia, following the new regime coming into force on 1 January 2018 (14/4/1439H). The VAT Law was published on 4/11/1438H and the implementing regulations were approved on 4/12/1438H. This forms part of a regional introduction of VAT across the Gulf Co-operation Council (GCC) states (the United Arab Emirates, Saudi Arabia, Bahrain, Kuwait, Qatar and Oman), based on the principles agreed in the Unified GCC Agreement for Value Added Tax.

CMA issues closed-ended public investment funds instructions:
The CMA has issued new instructions governing the offering, registration and management of closed-ended investment traded funds in Saudi Arabia. They supplement the CMA’s Investment Funds Regulations. The new instructions, issued pursuant to CMA Resolution No.2-66-2018 dated 22/9/1439H (corresponding to 06/06/2018G), set out conditions for CMA approval to establish such a fund, including that the fund must have total assets of at least SR300 million (approximately US$80 million) and the minimum subscription must not exceed 1,000 unit per unitholder. The regulations also set out investment restrictions, offering requirements and disclosure requirements relating to such funds.

CMA issues Fintech Experimental Permit Instructions:
The CMA has issued rules regarding the regulation of innovative FinTech products, services and business models relating to securities activities. Under the Financial Technology Experimental Permit Instructions, issued pursuant to CMA Resolution No.1-4-2018 dated 23/4/1439H (corresponding to 10 January 2018), the CMA can issue a limited number of FinTech Experimental Permits or “ExPermits”, which will permit the holder to participate in the CMA’s FinTech Lab to deploy and test the relevant product or service. The CMA is accepting applications for the second batch of applications for FinTech ExPermits until 15 December 2018, following the first batch of applications in February 2018. The FinTech ExPermits regime does not affect the need to comply with the CMA’s existing authorisation regime if a party wishes to test a product in the wider market.

New cloud regulations:
The Saudi Communication and Information Technology Commission (CITC) has issued a Cloud Computing Regulatory Framework which came into force in March. Broadly, the regulations apply to any cloud service provided to customers that are resident in Saudi Arabia or have provided an address there. However, certain provisions in the regulations regarding reporting major security breaches and taking down certain content apply to customer content and data processed or stored in Saudi Arabia, regardless of the customer’s residence or address. Any person controlling data centres or cloud system infrastructure in Saudi Arabia, or controlling specified classified customer content, must register with the CITC. The regulations also include, amongst other matters, mandatory information security requirements, provisions for the protection of customer data, minimum content requirements for contracts with cloud customers and a prohibition on certain terms (for example, exclusion clauses regarding liability for loss or damage to customer content or data caused by a cloud service provider’s intentional or negligent acts or omissions is not permitted).

Female lawyers may now be public notaries:
Saudi Arabia’s Justice Ministry has announced that women can now apply for a licence to carry out public notary functions. The application procedure is the same for men and women. Increasing women’s participation and rights in the workforce is a key measure for Vision 2030 and several steps have been taken recently to achieve this aim.

Anti-corruption prosecution departments established:
The Government of Saudi Arabia is establishing new anti-corruption departments in the public prosecutor’s office, which are tasked with investigating and prosecuting corruption in the Saudi Arabia. The new departments will report to the Attorney-General. Saudi Arabia established the National Anti-Corruption Commission in 2011 and is a signatory to the United Nations Convention against Corruption.
Year to come

Saudi Arabia Law in 2019

2019 may see further significant changes in law and regulation in Saudi Arabia, if reform proposals take more solid form.

Regulations may permit foreign strategic investors:
In August 2018, the CMA consulted on draft regulations allowing foreign entities to become Foreign Strategic Investors (FSIs) in Saudi Arabian companies listed on the Saudi Stock Exchange (Tadawul). These regulations are likely to complement, but operate independently from, the regulations permitting Qualified Foreigner Investors (QFIs) to invest directly in companies listed on the Tadawul. In particular, the investment limits on QFIs contained in the CMA’s QFI regulations are expressly disapplied for FSIs (even though the draft regulations are stated to be without prejudice to the Capital Market Law, its Implementing Regulations and other related laws), but they will remain subject to any limits contained in a company’s bylaws, instructions issued by an applicable regulatory or supervisory authority or other legislation. Further, unlike QFIs: (a) a FSI must submit a “strategic plan” that includes (i) the targeted ownership percentage for the strategic investment, the stages of ownership and its time frame, and (ii) the FSI’s objectives by owning the strategic shareholding, and (b) any disposal by the FSI will require CMA approval. Like QFIs, FSIs must be established or licensed in a country that applies regulatory and supervisory measures similar to those applied by the CMA or are accepted by it. The consultation closed on 31 August 2018.

Draft Instructions on Issuing Depositary Receipts:
The CMA consulted on draft instructions on Issuing Depositary Receipts out of the Kingdom for Shares Issued in the Kingdom. The CMA does not currently permit Saudi Arabian listed companies to issue depositary receipts abroad for their shares. The draft regulations permit such issuances, subject to obtaining prior CMA approval. It also sets out certain requirements, including that the issuer must appoint a depositary bank that is licensed in a jurisdiction satisfactory to the CMA. The consultation closed on 25 September 2018. The instructions, if issued, would facilitate dual-listings of Saudi companies.

Draft Rules for Registering Listed Company Auditors:
Draft Rules for Registering Listed Company Auditors were issued by the CMA for consultation. The draft rules set out the requirements for an entity to act as the auditor for the Saudi Stock Exchange (Tadawul), the Saudi Securities Depository Center (Edaa), certain CMA authorised persons, investment funds and listed companies. The proposed regulations follow proceedings being brought by the CMA against the auditors of certain listed companies for failing to fulfil their duties in such role. The consultation closed on 12 September 2018.

Draft Private Sector Participation Law:
As part of the Vision 2030 “Privatisation Program”, Saudi Arabia’s National Center for Privatisation issued a consultation in 2018 on a draft Private Sector Participation Law to regulate partnerships between the government and the private sector on projects. The consultation closed on 29 July 2018. Key features of the draft law include special rules applicable to PSP projects, such as changes to the foreign investment regime for joint projects with the government, exemptions from some aspects of labour laws and from the government tenders and procurement law and the competition law, greater flexibility for private investors in owning real estate outside Mecca and Medina and certain other protections for private investors.

2019 highlights

New regulations may permit foreign strategic investors in Saudi listed companies, if the proposed regulations come into force.

2019 highlights

A draft Private Sector Participation Law may be enacted to regulate partnerships between the government and the private sector on projects.
What now?

Your contacts

This alert has been written in collaboration with Zamakhchary & Co, our alliance firm in Saudi Arabia.

We hope that you have found this guide useful. Please contact your usual Linklaters or Z&Co contact, if you would like to discuss any of these matters further.

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Important note: This publication highlights certain key developments in the laws and regulations in Saudi Arabia. The legislative process in Saudi Arabia can be opaque. Draft legislation is generally not made publicly available nor the subject of official consultations. Timescales for enactment of legislation are not typically published. In practice, laws and regulations may come into effect without being published. Accordingly, it is difficult to anticipate the pace and scope of legislative change.

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