

# SAUDI ARABIA: MAJOR CHANGES TO FOREIGN INVESTMENT REGIME WITH NEW INVESTMENT LAW

## 1. INTRODUCTION

On 11 August 2024, the new investment law of Saudi Arabia was published pursuant to Royal Decree No. (M/19) dated 16/01/1446 H (corresponding to 22 July 2024 G) (the “New Law”).

The New Law replaces the current Foreign Investment Law issued by Royal Decree No. (M/1) dated 05/01/1421 H (corresponding to 10 April 2000 G). The New Law will come into force one hundred and eighty (180) days from the date of its publication. This is expected to be on or around 07 February 2025. The executive regulations of the New Law (the “Executive Regulations”), which will provide greater detail on how the New Law will ‘work’ in practice, are expected to be issued within one hundred and eighty (180) days of publication of the New Law in Umm al-Qura (Saudi Official Gazette).

## 2. PURPOSE AND AIMS OF THE NEW LAW

The New Law seeks to (i) develop and enhance the competitiveness of the investment environment in the Kingdom, (ii) contribute to economic development in alignment with Kingdom's Vision 2030 and the National Investment Strategy, and (iii) create job opportunities by providing an attractive investment climate for both Saudi and non-Saudi investors alike. Minister of Investment, His Excellency Eng. Khalid Al-Falih said: “The law reaffirms Saudi Arabia’s commitment to creating a welcoming and secure environment for investors, driving economic growth, and enhancing the kingdom’s position as a premier global investment destination.”

## 3. WHAT ARE THE CHANGES?

Key changes in the New Law include the following:

- (a) will apply both to local (Saudi) and foreign (non-Saudi) investors, subject to relevant laws;
- (b) will apply to investors within special economic zones (“SEZs”) without prejudice to the specific legislation that applies to the SEZ sector;
- (c) has redefined share capital which shall not include loans, bonds, financing instruments and public and private debt instruments;
- (d) with the exception of some activities and national security matters (which will remain reserved to Saudi nationals, investors will enjoy the freedom of investment

The New Law also introduces the following concepts:

- (a) Registration mechanism: The current regime of requiring investors in Saudi companies with foreign shareholdings (100% foreign-owned or mixed Saudi / foreign joint ventures) to obtain a foreign investment licence (“FIL”, commonly known in the past as a ‘SAGIA licence’ or a ‘MISA license’) as a first step before incorporating a company will be replaced. According to the New Law, we understand the investors will be required to register themselves with the Ministry of Investment (“MISA”), a new procedure that is intended to provide more flexibility for investors;
- (b) Investment incentives: Subject to regulatory conditions and procedures (yet to be published), the New Law includes the possibility of granting investment incentives; and
- (c) Dispute resolution methods: Investors will be permitted to use methods of alternative dispute resolution (“ARD”) to resolve their disputes between themselves, such as arbitration, mediation and conciliation.

#### 4. APPLICATION

As mentioned above, and unlike the current Foreign Investment Law (which regulates only foreign investors), the New Law will apply to both local (Saudi) and foreign (non-Saudi) investors. This is to ensure clarity and streamlining the process by replacing 'licensing' with 'registration' derived from a single, unified law of investment that combines the rights and duties of national and foreign investors in line with best international practices.

By shifting the emphasis from 'foreign investment' to 'investment', this is one of the paradigm changes in the New Law.

The Saudi Commercial Registry is the issuer of companies' Commercial Registration certificates ("CR"), the 'birth certificate' of companies established in the Kingdom. Saudi owned companies can obtain a CR without the need of obtaining a FIL as it is inapplicable according to the current Foreign Investment Law, whereas foreign investors are required to obtain a FIL as a pre-requisite for obtaining a CR, and with the New Law applying to both Saudi and non-Saudi investors; this will result in having both types of investors register with MISA.

Further, given the New Law was silent about the requirement of obtaining a CR, and no official publication was made amending or repealing the Commercial Registration Law, we expect the CR to remain a requirement for doing business in the Kingdom, in accordance with the Commercial Registration Law that requires companies established in the Kingdom to be registered with the Saudi Commercial Registry. That said, with MISA's continuous efforts in creating a 'one-stop-shop' for foreign investors, it is possible to see the Commercial Registry linked with MISA's 'national register' that will hold investors' information and data related to their investments.

#### 5. EQUAL TREATMENT AND RIGHTS

Saudi investors and foreign investor are afforded equal treatment under similar circumstances. This is intended to ensure fair investment opportunities for both Saudi investors and foreign investors, subject to the relevant laws and regulations. Although the current Foreign Investment Law already contains a statement of equality between Saudi investors and foreign investors, this provision and the fact that its 'ethos' runs through the New Law is a significant development.

The New Law establishes a clear and transparent complaints handling mechanism, which aligns local and foreign investor rights with international investment principles and policies

#### 6. INVESTMENT INCENTIVES

Subject to certain eligibility and evaluation standards, various investment incentives and facilities will be made available to investors in order to attract both local and foreign investments. This will be key to attracting investors and creating competition within the investment environment.

#### 7. FREEDOM OF INVESTMENT

MISA will be aligning with competent authorities in the Kingdom to publish a list of activities that are limited to Saudi investors ("Excluded Activities"). However, if a foreign investor wishes to carry out an activity that is part of the Excluded Activities, the foreign investor will need to apply to MISA for an exception, and MISA will refer the request the relevant competent authority.

With the exception of the Excluded Activities, the New Law will provide investors with a high level of freedom of investment by expanding the economic activities foreign investors can invest.

#### 8. SETTLEMENT OF DISPUTES

The New Law will allow the use of alternative disputes resolution (ADR) to settle disputes, such as arbitration, mediation and reconciliation in addition to the right to seek recourse at competent courts. Investors can agree to resolve their disputes through ADR or at the competent local courts. Whereas disputes arising between the investor and the competent authority in Saudi Arabia shall be resolved via the competent local court, unless the parties agree otherwise.

This additional provision is to ensure that the investor's rights to resort to alternative dispute resolution methods is protected and guaranteed. Whereas Foreign Investment Law the only way to settle dispute was amicably between the foreign investor and the government.

## CONCLUSION

Developing a legislative framework that put Saudi nationals and foreign investors at an equal footing and creating a unified single registration system for both were discussed by the Saudi Arabian General Investment Authority ("SAGIA") the predecessor to the Ministry of Investment of Saudi Arabia and the Ministry of Commerce ("MOC"), as far as at the start of the current decade.

The New Law is set to replace and modernise the current investment framework under the Foreign Investment Law, which has been in force for almost a quarter of century (since 2000). The New Law will provide more efficiency and clarity to the regulatory environment, in line with the aims of Vision 2030 to diversity the economy of the Kingdom, increase its non-oil revenues and to encourage an influx of foreign investments into the country. It is evident that the Kingdom is developing legislations whether by issuing new laws or amending existing laws to support the growth and development of its economy that is maturing rapidly. The measures introduced by the Kingdom from a legislative sight includes (but not limited to): (i) the publication of the reformed Companies Law that came into force January 2023, (ii) the Saudi Civil Transactions Law that came into force December 2023, (iii) the new Personal Data Protection Law coming into force September 2024, and other laws and regulations, which will all have a significant impact and pivotal role in providing comfort and moderate disparities to current and potential investors in the Kingdom.

Although the New Law is still untested and the Executive Regulations of the New Law and further guidance materialise later on this year, we expect that investors will welcome the legislative changes as it is a fundamental step towards achieving a more 'business-friendly' and regulated environment in line with international trends and standards.



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