



## Saudi Arabia: New Companies Law 2015 Approved

The Saudi government recently unveiled a comprehensive update to the Saudi Companies Law that has been some time in the making. The new law will come into effect 150 days from the date of publication in the official gazette (*Um Al-qura*) and, when effective, will entirely replace the current Companies Law issued by Royal Decree M/6 dated 22/3/1385 Hijri, and it will override all rules that conflict with the new law. Companies already existing as of the date of the coming into force of the new law are required to effect such changes as to comply with the new law within a one-year period (subject to any rules set out by the competent authorities for such period).

The new Companies Law represents a significant overhaul and modernization of the Saudi Companies Law, aligning it closer to global trends and developments in corporate law and governance. Some of the key aspects of the new law are discussed below.

### Corporate Forms

The new law recognizes five corporate forms: (i) General Partnership, (ii) Limited Partnership, (iii) Joint Venture Company, (iv) Joint Stock Company (“JSC”), and (v) Limited Liability Company (“LLC”). Three of the corporate forms permitted by the current regime,

namely Cooperative Companies, Partnerships Limited by Shares, and Variable Capital Companies, have been eliminated, and it will no longer be possible to establish such companies. Subject to narrow exceptions, the companies with the eliminated forms that do not adopt one of the approved forms will be void, and the respective partners will be jointly and severally liable for the obligations of the void company.

The new law contemplates that the Ministry of Commerce and Industry (“MOCI”) will continue as the primary regulator of Saudi companies, although the Capital Markets Authority has been entrusted to oversee JSCs listed in the Saudi financial markets.

### Number of Shareholders

In perhaps the most significant departure from the existing regime, the new law removes the two-shareholders minimum requirement for LLCs, and it is now possible to establish an LLC with a single shareholder. Certain restrictions apply; for instance, it is not possible for a natural person to establish more than one single-shareholder LLC, and a single-shareholder LLC may not in turn establish or own another single-shareholder LLC. While the law is not explicit in this regard, it appears possible for body

corporates to establish one or more single-shareholder LLCs in the Kingdom, although it remains to be seen how flexibly the MOCI will administer this aspect.

JSCs now require a minimum of only two shareholders (down from five shareholders in the existing law). However, the government, juridical public entities, companies wholly owned by the government, and companies with a capital of more than 5 million Saudi Riyals will be able to establish a JSC with just a single shareholder under the new law.

## Share Capital

There continues to be no minimum capitalization requirement for LLCs. The minimum capital to establish a JSC has been reduced from 2 million Saudi Riyals to 500,000 Saudi Riyals. As a practical matter, the Saudi Arabian General Investment Authority (“SAGIA”), which licenses all foreign investment into the Kingdom, may impose additional capital requirements for foreign investors above and beyond the minimum requirements of the Companies Law, depending on the nature of the envisaged commercial activity.

## Electronic Publication

The law calls for various publications and proclamations to be made on the MOCI website electronically including the publication of Articles, Bylaws, and their amendments, thus potentially removing the requirement to publish such documents in the official gazette.

## Joint Stock Companies/Corporate Governance

In the event that the chairperson and members of the board of directors of a JSC resign or if the General Assembly has been unable to constitute the board of directors by voting, the MOCI, or the Capital Markets Authority (in the case of listed companies), may step in and form a temporary committee to oversee the company with the appropriate experience, specialization, and number of members.

Enhanced corporate governance provisions impose new restrictions on the combining of the post of chairperson of the board with executive positions. Further, an audit committee is required to be established to oversee the JSC’s

business, and the members of the audit committee—consisting of between three and five members—may not be composed of executive members of the board (whether from the shareholders or not). In the matter of voting rights, cumulative voting is permitted for the election of the board of directors provided that the voting rights per share may not be used more than once.

The holding of general meetings of shareholders and the participation of the shareholders in the deliberations and voting on decisions may now be conducted through “modern technological means” in accordance with the regulations set out by the competent authority. A similar facility for limited liability companies does not seem to be contemplated.

The new law permits a JSC to issue debt instruments and financing instruments (*Sukooks*). A JSC may also purchase or pledge its own shares pursuant to the rules set out by the competent authority; however, the shares so purchased by the company may not be voted at shareholder meetings.

## Concept of Holding Company Introduced

The new law introduces the concept of an LLC or JSC being used as a “holding company,” which is essentially a company whose purpose is to control other LLCs or JSCs as subsidiaries through the possession of more than half of the capital of such companies or by controlling the formation of the board of directors.

Holding companies can be used for a variety of purposes including investing in stocks and other securities, owning its own real estate and movables, and holding intellectual property. A holding company is required to prepare annual consolidated financial statements using recognized accounting practices for covering all its subsidiaries.

## Losses

If the losses of an LLC reach 50 percent of the capital, Art. 181 states that the manager must register this fact at the Commercial Register and call a general assembly of the shareholders within 90 days from the day of notifying them in order to consider whether to continue or dissolve the company. If the manager neglected to call the partners or if no

action is taken by the partners to continue or dissolve the company, the company will be dissolved by force of law. In the existing law, the shareholders could have been jointly and severally liable if no decision were made as to whether to continue or dissolve the company.

If the losses of a JSC reach 50 percent of the paid capital at any time during the financial year, Art. 150 requires the board to call an extraordinary meeting of the shareholders within prescribed timelines in order to decide whether to increase or decrease the share capital of the JSC or to liquidate it. If the extraordinary meeting of the shareholders does not occur on a timely basis, or if the meeting takes place and no decision is made, or if a decision was made to increase the capital and the raising of funds was not completed within 90 days of the issuance of the decision of the shareholders' meeting to increase the capital, then the JSC will be dissolved by force of law.

## Model Forms

The MOCI will publish on its website model forms of Articles and Bylaws for all types of companies within 120 days from the date of issuance of the law.

## Conclusion

The possibility of setting up single-shareholder LLCs is a welcome development, particularly for foreign investors who have long struggled with the additional paperwork and administrative burdens induced by the two-shareholder minimum requirement. The easing of capital and shareholder rules for JSCs could make JSCs a viable option for many businesses that would have otherwise sought the benefits of a JSC (including higher visibility, enhanced corporate governance framework, ability to seek access to the public markets) but for the associated administrative and financial burdens. The enhancement of the LLC's limited liability status is also a positive development.

It remains to be seen how the new law will benefit foreign investors, given that all inbound foreign investment (including

the establishment of companies in the Kingdom by non-GCC persons) is still subject to licensing pursuant to SAGIA rules. It will be interesting to see to what extent SAGIA updates its rules to accommodate the new Companies Law.

## Lawyer Contacts

For further information, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our "Contact Us" form, which can be found at [www.jonesday.com/contactus/](http://www.jonesday.com/contactus/).

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