

The Proposed KSA Companies Law

Hesham Al Homoud - Partner, Head of Corporate Structuring - Saudi Arabia - Corporate Structuring / Commercial / Corporate / Mergers and Acquisitions

h.alhomoud@tamimi.com - Riyadh

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It has been almost a decade since various governmental authorities in the Kingdom of Saudi Arabia started their discussions in relation to the issuance of new regulations that govern commercial companies in the Kingdom. This article is an effort to give an overview of the current position of the proposed companies' law and expected changes.

Since 2002, there have been discussions and deliberations to amend the current Saudi Companies Law, which was issued in 1965 ("SCL") in order to take into consideration the continuous development in various fields of the Saudi business environment, such as: the accession of the Kingdom of Saudi Arabia to the World Trade Organization; establishment of the Saudi Arabian General Investment Authority ("SAGIA"), the Saudi Industrial Property Authority ("MODON") and the Capital Market Authority ("CMA").

There are various government bodies discussing the Proposed Companies Law ("PCL"), in particular, the Ministry of Commerce and Industry ("MOCI") and the Bureau of Experts, at the Council of Ministers and Shura (Consultative) Council.

The PCL consists of 266 articles giving a greater role to the CMA, specifically, to have almost full supervision of listed joint stock companies. In accordance with corporate governance regulations issued by the CMA, the PCL provides that the minimum members of board of directors is three and maximum of 11, and owning a specified minimum number of shares of the relevant company will no longer be required. Further, the CMA will have the power to call for a general assembly in certain situations and to extend the lock-up period for share transfer from the founders of listed joint stock companies to any third party. The PCL also provides that debt instruments and Shari'ah compliance bonds (sukuk) could be converted into negotiable shares.

There are a number of forms of companies, valid in the old SCL that will not be permissible in the new PCL; specifically, Cooperative Company, Companies with Variable Capital and Partnerships Limited by Shares.

In light of technical developments, publication in the Ministry's website will be sufficient instead of publication in the official gazette or a local newspaper.

One of the most significant changes in the PCL is that the government; public juristic persons; companies that are totally owned by the government and companies of capital not less than SAR Five Million, may incorporate a one-person joint stock company, with full authority of the shareholders assemblies, including the foundation assembly.

Another important change is that when the company's losses reach half of its paid up capital, any executive of the company, or the designated auditor shall inform the chairperson of the board of directors of same, who is then obliged to inform all directors and ultimately, to call for an extraordinary general assembly. If the extraordinary general assembly fails to convene within the specified period, or remedy the losses using the appropriate methods in accordance with the relevant regulations, the company shall be considered dissolved under the PCL.

In connection with the limited liability companies, the PCL allows a natural or juristic person to incorporate

a Limited Liability Company (“LLC”) owned by one person. Also when the shareholders in an LLC exceed 50 shareholders, the company should be converted to a joint stock company within one year, otherwise the company shall be considered dissolved under the PCL, unless the excess of shareholders was as a result of an inheritance or provisions of a will.

Unlike the SCL, the PCL has expressly established the position of a holding company and provides that a holding company can be established in the form of an LLC or a joint stock company. Nevertheless, a holding company shall identify itself as holding company by adding in its name the word “holding”. A company would be considered as holding company if it controls other subsidiaries by owning more than half of the share capital of that subsidiary.

The PCL is still under discussion and the reciprocal views of the Shura (Consultative) Council, Ministry of Commerce and Industry and Bureau of Experts at the Council of Ministers. According to the latest news, the PCL, with its latest updating, was presented by the Ministry of Commerce and Industry to the Shura (Consultative) Council. Following completion of deliberations by the Shura (Consultative) Council, it will be sent to the Bureau of Experts at the Council of Ministers, to review any comments or proposals added by the Ministry of Commerce and Industry and/or the Shura (Consultative) Council on the final draft. If there are no comments, the Bureau of Experts, at the Council of Ministers, shall pass the PCL to the Council of Ministers for approval and issuance. Based on our discussion with a number of highly-placed officials, the PCL shall be issued sometime in 2011.