

The New Saudi Companies Law: What You Need to Know

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August 2016

The new Saudi Companies Law came into effect on 2nd May 2016 (“the Effective Date”).

Implementing Regulations clarifying the operation and effect of a number of the provisions of the new law have recently been through a consultation phase and are due to be issued in the coming months.

The renamed Ministry of Commerce and Investment (“MoCI”) and the Saudi Arabian General Investment Authority (“SAGIA”) are having to get to grips with the significant changes under the new law affecting how entities in Saudi Arabia are formed and regulated, against a background where Saudi Arabia is seeking to encourage more foreign investment in line with the National Transformation Plan 2020 and the Saudi Vision 2030, which are Saudi Arabia’s roadmap to diversify its economy and address the challenges brought by low global energy prices.

As with many new pieces of legislation it may take a while for the regulators and others to understand fully the new law and for it to be fully implemented in practice.

This article highlights some key issues relating to the implementation of the new law, signposts some new and impending regulations that Saudi, GCC and foreign investors need to be aware of and some of the steps that existing companies and managers now need to be considering.

The New Law

The important changes in the new law from the position under the old Saudi Companies Law are listed in the tables below.

Interim Period

Article 224 of the new law gives existing companies 12 months from the Effective Date to bring their affairs into compliance with the new law. However, this does not mean that existing entities do not have to comply with the new law until the end of the 12 months because penalties can be applied from the Effective Date. MoCI and the Capital Markets Authority (“CMA”) can also determine certain provisions of the new law which are effective during this interim period.

Template Constitutional Documents

MoCI has recently published template articles of association (“AoA”) and bylaws for the different forms of entity including LLCs and joint stock companies (“JSCs”).

Whilst it is not mandatory for a company to have constitutional documents in this format, it is likely to be easier, certainly for any companies formed after the publication of these templates, to obtain MoCI approval using constitutional documents based on this format and they should also be considered when existing companies are considering changes to their constitutional documents.

The new template AoA for LLCs reflect , for example, the following changes under the new law:

- Financial statements to be prepared within 3 months of year end and filed within a further 1 month (previously 4 months and 2 months);
- Suspension of set aside of statutory reserve when it reaches 30% of capital (previously 50%);
- Changes to statutory pre-emption process including added flexibility on valuation;
- New procedures and effects where losses reach 50% of capital.

JSCs-MoCI and Capital Markets Authority Statements

In April and May 2016 MoCI and the CMA issued two joint statements dealing with the implementation of the new law in relation to JSCs (and holding companies) and specifying certain provisions of the new law that must be implemented immediately and others which fall within the 12 month grace period.

Examples of provisions to be complied with are:

- Article 90 – regulating shareholders meetings;
- Article 95 – cumulative voting for board elections and certain situations where directors are prohibited from voting.

Examples of provisions where an extension can be granted are:

- Article 68.1 – the number of directors;
- Article 76 – directors’ remuneration;
- Article 81.1 – the functions of the Chairman, Deputy Chairman and Managing Director;
- Articles 101 – 104-certain provisions relating to Audit Committees;
- Article 150 – dealing with losses of JSCs (although listed companies have to make a monthly announcement of their plans and actions to comply if losses incurred equal or exceed 50% of capital in the interim period);
- Articles 182 – 186-dealing with holding companies.

However the MoCI/CMA statements make clear that any new action intended by a JSC must comply with the new law eg on appointing a new director Article 68.1 must be complied with.

Accordingly as well as bringing their procedures and affairs into line with the new law, all existing Saudi companies will need to review their existing constitutional documents and consider the changes required to be consistent with the New Law.

Foreign Investment

The Saudi Arabian General Investment Authority (“SAGIA”) announced in 2015 that international companies were being encouraged to establish 100% foreign owned trading companies. Shortly after the announcement of the Saudi Vision 2030, the Saudi Council of Ministers approved rules to implement this change in June 2016. Initial indications suggest that only very large international companies (who amongst other things will employ significant numbers of Saudi nationals) will qualify for 100% foreign ownership

On implementation of the new law, SAGIA has yet to clarify if, when and on what basis it will license foreign owned holding companies and foreign owned single shareholder LLCs.

These clarifications are likely to have a significant impact on foreign investors structuring their investments in Saudi Arabia.

New Implementing Regulations

The draft implementing regulations (“Implementing Regulations”) for the new law have also been

through a consultation phase which was completed in May 2016. The final version is expected in the next few months.

The draft Implementing Regulations cover areas such as:

- Use of technology at JSC meetings;
- Buy-back of JSC shares;
- Pledge of JSC shares;
- Preference shares

Corporate Governance

In April 2016 MoCI and the CMA issued a draft of proposed new Corporate Governance Regulations (“the CG Regulations”) which again have just been through a consultation phase. The CG Regulations will apply to both Saudi listed companies and on a best practice voluntary basis to closed JSCs (favoured by many Saudi Family owned groups). Once approved the CG Regulations will replace the existing CMA Corporate Governance regulations which apply to Saudi listed companies. Saudi family-owned groups will want to consider the CG Regulations and to adopt some or all of their provisions to reflect best practice, which as well as for family governance purposes may also be important in dealings with third parties.

We will comment further on the CG Regulations and the new Implementing Regulations when they have been finally approved.

Conclusion

With the numerous new and impending regulatory and procedural changes affecting Saudi companies it is vital that both existing companies and new investors make themselves fully aware of the changes made, review how they are conducting their procedures and affairs to bring them into line with the new law and review and make any changes required to their existing constitutional documents to be consistent with the new law.

Al Tamimi & Co’s offices in Saudi Arabia are currently assisting many clients with these matters.

If you wish to discuss any aspect of these changes please contact Hesham Al Homoud, Partner and Head of Corporate Structuring, Riyadh, h.hamoud@tamimi.com; Matthew Kelleher, Senior Associate, Corporate Structuring, Riyadh, m.kelleher@tamimi.com; Grahame Nelson, Partner and Head of Riyadh Office, g.nelson@tamimi.com; or Jonathan Reardon, Head of Al Khobar Office,, j.reardon@tamimi.com.

Table

JSCs-General Provisions

Article	Topic	New	Old
1	Competent Authority	MOCI, except for listed JSCs where it is CMA	MOCI
13	Electronic Publication	Requirement to publish documents in Official Gazette replaced by electronic publication on MoCI website.	Publication of AOA and changes to AoA etc. in Official Gazette
54	Capital	The capital of a JSC shall be sufficient to achieve its purpose and not less than SAR 500,000. The paid-in capital upon incorporation shall not be less than a quarter of the capital	Used to be SAR 2m for closed JSC or SAR 10m for Public and paid in capital was minimum of one half

55	Ownership	<p>A single shareholder closed-JSC can be established or owned by:</p> <ul style="list-style-type: none"> - Saudi Government; - Saudi Government establishments; - entities wholly owned by the Saudi Government; - Any company with a minimum SAR5m capital. <p>All JSCs can now be formed with a minimum of 2 shareholders.</p>	A closed JSC had to have at least 5 members.
-	No feasibility study required	No feasibility study required for incorporation. MoCI resolution still required.	MoCI resolution and feasibility study required
-	Guarantee shares	Guarantee shares no longer required from directors.	Shares to value of SAR 10,000 must be deposited with Saudi bank as a guarantee of director's liability.
86-2	Shareholder attendance	Every shareholder can now attend shareholder meetings.	Shareholders with less than 20 shares did not have right to attend shareholder meetings.
91 to 94	Shareholder meetings	<p>Minimum notice period for OGMs reduced to 10 days. New meeting can be held 1 hour after inquorate meeting. New quorum requirements for OGM of 25% of capital, or higher percentage provided by AoA (capped at 50% of capital) Quorum for EGM remains at 50% unless AoA prescribe a higher percentage but capped at two thirds of capital.</p>	25 days. Reconvened meeting within 30 days. Minimum quorum of 50% of capital or higher percentage (not capped) prescribed in AoA.
108	Founder Lock-up	Founder lock-up period remains at publication of 2 sets of financial statements but can be reduced by the CMA for listed or prospective listed companies	2 sets of financial statements.
112	Purchase/pledge of own shares	JSC may purchase or pledge its own shares	Only limited and restricted rights to purchase own shares and pledge of own shares by JSC generally prohibited.
114	Preference shares	Additional provisions around issue of preference shares.	Limited clarity resulted in no use of preference shares.
121-125	Debt and sukuk instruments	Confirms that all issues must observe Sharia principles. Additional clarification around issues of convertible debt instruments.	New law amplifies existing law.
129	Statutory reserve	The general assembly may suspend the assignment of 10% of net profits to statutory reserves once the reserve reaches 30% of paid capital.	Statutory reserves used to be 50% of paid capital.
133-1	External Auditor	The external auditors may not be appointed for more than 5 continuous years with minimum 2 years before re-appointment.	No restriction on length of appointment or on re-appointment.

150	Dissolution by operation of law.	if a JSC's losses are 50% or more of capital and prescribed requirements (as specified) not followed deemed dissolution occurs by operation of law if EGM is not held within 45 days or EGM fails to pass resolution or re-capitalisation not implemented within 90 days of resolution.	75% of capital. No automatic dissolution by operation of law. Less procedural requirements. No provisions on failure to complete a re-capitalisation.
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JSCs-Board of Directors “(BoD)”

Article	Topic	New	Old
68-1	BoD size	Size of the Board is a maximum of 11 members (3-11).	Only minimum size was mentioned.
68-2	BoD nomination	Every shareholder may nominate himself or any other person(s) within the percentage of his ownership	No equivalent provision
70-1	BoD succession planning	Specifies how succession to BoD membership will take place in the event that a position is vacant. Allows BoD to temporarily appoint another member as per the order of the number of obtained votes subject to such member having the experience and efficiency and subsequent OGM ratification.	If the position of a member becomes vacant, the BoD may appoint a temporary member to fill the vacancy, provided that such appointment shall be laid before the first meeting of the Ordinary General Assembly.
71-2	Conflict of Interest	If the director fails to disclose his interest, the JSC or any interested party may request the competent judicial authority to invalidate the contract and oblige the director to refund any profit or benefits earned as a result of such interest.	This liability was not specifically mentioned in Old Law.
76-2	Remuneration	Board remuneration should be commensurate to the number of meetings attended by the BoD members.	No equivalent provision
95-1	Cumulative voting	Cumulative voting shall be used by shareholders in BoD elections	No equivalent provision
76-3	Remuneration cap	The maximum remuneration for BoD members is SAR 500,000.	A circular had capped it at SAR 200,000.
81-1	Non-exec chairman	Chairman must be non-executive and cannot hold an executive role with the JSC.	No equivalent provision
83-1	Board Meetings	Minimum number of Board meetings is 2 per year.	There was no minimum.
83-3	Minutes	The minutes of board meetings shall be signed by the chairman, the board members, and the secretary of the board.	The minutes of board meetings shall be signed by the chairman and the secretary of the board.

JSCs-Audit Committee

Article	Topic	New	Old
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101	Composition	- Audit committee members shall be non-executives - The size of the Audit Committee shall be 3-5 members	No equivalent provision
102	Quorum	- Majority attendance constitutes a quorum - Resolutions are made by majority vote, and chairman has casting vote in case of a tie.	No equivalent provision
103-104	Authorities	Set out authorities and internal control duties of the Audit Committee.	No equivalent provision

JSCs– Accounts and other filings

Article	Topic	New	Old
122-3	Increase in capital	The BoD must publish any increase in capital.	No equivalent provision
126-2	Financial Statements and annual report	The BoD shall prepare financial statements, a report on its business and financial position, and suggestion for dividends and make this available to auditors at least 45 days prior to general assembly.	Same as under 'New' but with 55 day period.
126-3	Signature on Financial Statements etc.	Detailed signature requirements.	No equivalent provision
126-4	Disclosure to Shareholders	The chairman must provide the company shareholders with financial statements, Board report, and auditors' report unless they are published in a daily newspaper and a copy must be sent to MOCI and other authorities at least 15 days before the general assembly	Same as under 'New' but with 25 day period and with less detail.

128	Details of what to disclose	Within thirty days from the date of the general assembly filing with MOCI, and CMA in case of listed companies, of the financial statements, board report, auditor's report and the audit committee report.	No equivalent provision
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Single Shareholder LLCs

Article	Topic	New	Old
154-1	Ownership	LLCs can be owned by a single shareholder.	Minimum of two shareholders.
154-1	Management	- Single shareholder has all powers of the General Assembly and the Board of Managers. - Single shareholder can appoint directors/managers.	N/A
154-2	Limitations	- Individuals can only establish or own one single shareholder LLC. - A single shareholder LLC (whether owned by an individual or a company) may not establish or own another single shareholder LLC	N/A

LLCs-Shareholder Liability

Article	Topic	New	Old
155	Shareholder liability	A Shareholder is personally liable for LLC liabilities to third parties if in bad faith he liquidates the LLC or suspends its business before expiry of its term or achievement of its purpose; or - If he doesn't separate his own business from LLC business; or - If he conducts business in the LLC name before it is established.	N/A
181	Shareholder liability	Potential personal liability for LLC shareholders where losses reach 50% or more of capital abolished.	Shareholders were jointly liable under old Article 180 if the company continued in operation where losses were 50% or more of capital without re-capitalization.

181	Shareholder liability	If losses reach 50% or more of capital then within 90 days: - Directors must publish in commercial register at MoCI; - Convene a shareholders' meeting to decide whether to continue or liquidate the LLC. The shareholders resolution must be published on the MoCI website. Automatic dissolution by operation of law if the directors do not convene shareholder meeting or shareholders fail to pass resolution.	Managers must convene shareholder meeting within 30 days; no provision for publication of position on losses (only publication in Official Gazette of passing of shareholder resolution). Shareholder/interested party could apply to court to liquidate company.
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General LLC Provisions

Article	Topic	New	Old
157-2	Contribution in kind	All in kind contributions must be valued by an independent valuer (like JSCs)	No equivalent provision
158	Electronic publication	Requirement to publish documents in the Official Gazette replaced by electronic publication on MOCI website.	Publication of changes to AoA etc. in Official Gazette.
160	Capital	No minimum requirement) but capital must be sufficient to achieve the LLC's purpose.	No minimum requirement. No statutory capital sufficiency requirement.
161	Pre-emption	Statutory pre-emption retained on share transfer with fair value and 30 day time period but AoA may provide for different method of valuation and time period.	Statutory pre-emption on transfer with fair value basis with stipulated 30 day time period.
173-4	Confidentiality	LLC shareholders are subject to a duty of confidentiality on information received as shareholders.	No equivalent provision
175	Financial statements	Financial statements must be prepared within 3 months of year end and filed within 1 month of preparation.	4 months to prepare and filing within further 2 months of preparation.
176	Statutory reserve	The general assembly may suspend the assignment of 10% of net profits to statutory reserves once the latter reach 30% of paid capital.	Statutory reserves used to be 50% of paid capital.

Holding Companies

Article	Topic	New	Old
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182-1	Holding Company	The concept of a holding company is recognised for the first time. Defined as a JSC or an LLC controlling other JSCs or LLCs by holding a majority of their shares or controlling the formation of their boards of directors.	No equivalent provision
182-2	Holding Company	Must include word "holding" in its name.	No equivalent provision
183	Holding Company	Prescribed objects are to manage affiliates; invest in stocks/securities; provide loans/guarantees/ finance to affiliates; own/hold IP and other property and licence to affiliates /third parties; and anything else relevant to a holding company.	No equivalent provision
184	Holding Company	Subsidiary cannot hold shares in holding company.	No equivalent provision
185	Holding Company	Required to prepare annual consolidated financial statements.	No equivalent provision