

Client Alert

Middle East and Islamic Finance and Investment | M&A

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Saudi Arabia's New Investment Law

On August 11, 2024, the Kingdom of Saudi Arabia (the “**Kingdom**” or “**Saudi Arabia**”) issued the new Investment Law, pursuant to Royal Decree number M/19 (the “**New Investment Law**”), which is intended to replace the Foreign Investment Law which was issued pursuant to Royal Decree number M/1 dated 5/1/1421H (corresponding to 04/10/2000G) (the “**Foreign Investment Law**”). The New Investment Law will come into force one hundred and eighty (180) days from the date of its publication, which would be on or around February 7, 2025.

The implementing regulations to the New Investment Law (the “**Implementing Regulations**”) will be issued by the Ministry of Investment (“**MISA**”) within one hundred and eighty (180) days from the publication of the New Investment Law.

The aim of the New Investment Law is to enhance the competitiveness of the investment landscape in Saudi Arabia, contribute to economic development, and create job opportunities in the Kingdom.

WE HIGHLIGHT KEY PROVISIONS BELOW:

I. Applicability

Unlike the Foreign Investment Law, the New Investment Law applies to both local and foreign investors (whether natural or legal persons), including investors within special economic zones, without prejudice to the specific legislation that applies to such zones.

II. Licensing Requirement

The licensing requirement for foreign investors has been removed, however foreign investors will be required to register through a simplified registration process with a new national registry prior to commencing any investment activities (except for investments in listed securities which are subject to the Capital Market Authority rules and regulations). MISA will maintain a national register of both local and foreign investors.



III. Investors' Rights

The New Investment Law applies to both local and foreign investors, ensuring equal procedural treatment for local and foreign investors under similar circumstances. The New Investment Law reaffirms key rights for all investors, including the protection from expropriation, fair and equitable treatment, freedom to manage investments, and ability to transfer funds.

Foreign investors can derive additional comfort as the New Investment Law clearly states that an investor's investment may not be (a) fully or partially confiscated except pursuant to a final judicial ruling or (b) directly or indirectly expropriated except for public interest, in accordance with legal procedures, and in return for a fair compensation.

In addition, investors will have the right to transfer their funds within or outside the Kingdom without delay. This right includes but is not limited to transferring: (a) the proceeds of an investment and the profits gained therefrom; and (b) the proceeds of the sale or liquidation thereof, through legal channels using any recognized currency and disposing of such funds through any other lawful means.

Investors will also have the right to manage their investments, dispose of their investments, own the necessary property to conduct their business and have the necessary protection for their intellectual property and trade secrets.

IV. Freedom of Investment

The New Investment Law expands the economic activities foreign investors can invest in. Allowing investors to invest in any sector or any activity that is not on the "Excluded Activities" list, which will be developed by a ministerial committee and published by MISA. Similar to other countries, MISA reserves the right and authority to suspend a foreign investment for national security reasons.

However, if a foreign investor is interested in engaging in an excluded activity, it may seek MISA's prior approval. This is a departure from the Foreign Investment Law, which stated that the Council of Ministers has the authority to issue the list of excluded activities.

V. Investment Incentives

The New Investment Law introduces a framework for granting investment incentives based on objective and transparent eligibility criteria. This is intended to attract more domestic and foreign direct investment into the Kingdom. The Implementing Regulations will specify the provisions necessary to implement this grant of authority.

VI. Alternative Dispute Resolution

In addition to the right to seek recourse at competent courts, the New Investment law has permitted investors to seek alternative dispute resolution to settle disputes, including arbitration, mediation and conciliation. While the Foreign Investment Law has limited settlement of disputes with competent authorities in the Kingdom to amicable settlement, the New Investment Law has permitted agreeing to settle such disputes through alternative dispute resolution or through recourse at competent courts.

VII. Penalties

The New Investment Law differentiates between material and non-material violations.

Investors who commit non-material violations of licensing requirements or the practice of excluded activities will be notified by MISA to rectify the violation within a specified period, and failure to rectify such violation or committing a



material violation may result in penalties such as a warning, a fine up to SAR 300,000 (which can be doubled for repeat violations), or cancellation of the license.

The Implementing Regulations will provide details relating to the material violations and the procedures for detecting and recording such violations, and a committee formed by a decision of the Minister of Investment will be responsible for citing violations and imposing penalties, taking into account the gravity, frequency of the violation, and the size of the establishment. It is anticipated that the Implementing Regulations may also further clarify if the current capital and other requirements to engage in retail and wholesale trade of products in the Saudi Arabia will be revised.

The New Investment Law also provides for a right to appeal before the competent court for investors against whom a decision is issued by MISA. The right to appeal will be available within thirty (30) days from the date of the MISA notification of such decision.

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