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New Saudi Companies Law 2022: Key Changes, and Next Steps for Companies in KSA

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Background

On 28 June 2022, the Saudi Cabinet of Ministers approved the New Companies Law, and it was published in the official gazette (Umm Al Qura newspaper) on 4 July 2022 pursuant to Royal Decree No. (M/132) dated 01/12/1443H (the "**New Law**").

We anticipate that the New Law will come into effect on or around 1 January 2023, replacing the previous Companies Law issued pursuant to Royal Decree No. (M/3) dated 28/01/1437H (corresponding to 10/11/2015G) (the "**Old Law**") and the Law of Professional Companies issued pursuant to Royal Decree No. (M/17) dated 26/01/1441H (corresponding to 25 September 2019). The implementing regulations of the New Law (albeit are yet to be published) are expected to be released prior to the New Law taking effect.

This publication sets out our analysis on the key changes to be introduced by the New Law.

Key Changes of the New Law

Creating one unified legislation for Companies

The New Law largely unifies KSA rules related to commercial companies, professional, and non-profit companies under one law.

Company names

The New Law removes restrictions on company names and now allows for greater flexibility on naming a company.[1]

Family Business Charter

Family-owned companies may enter into a binding family business charter as part of the articles of association of a company, or create it separately, to regulate the family's ownership in the company, its governance, management, work policies, employment of relatives, and distribution of profits.

Joint Stock Companies (“JSCs”)

The New Law introduces a number of new changes to the rules of establishing and the governance of JSCs, which include:

- the ability to establish a JSC with only one shareholder;
- removing the requirement to conduct an incorporation assembly;
- removing the cap on the maximum number of board members;
- allowing the issuance of different class of shares such as ordinary, preference, and redeemable shares, with varying rights and obligations;
- removing the maximum cap for the remuneration of board members; and
- granting the general assembly with powers to determine the benefits and remuneration of board members according to fair standards.

Simplified Joint Stock Company (“Simplified JSC”)

The New Law introduces a new type of entity, being the Simplified JSC. The objective of introducing a Simplified JSC is to meet the needs and requirements of a fast-growing start-up and venture capital market in KSA.

The key features of a Simplified JSC include:

- no minimum capital requirements;
- issuance of separate classes of shares with varying rights and obligations;
- the company may be managed by one chief executive officer, one or more managers, or a board of directors; and
- general assemblies (ordinary and extraordinary) are replaced with simpler shareholders’ meetings.

Issuance of debt and finance instruments

The New Law allows limited liability companies (“**LLCs**”) to issue negotiable debt and finance instruments.[2]

Company Transformation, Merger, and Division

Chapter 10 of the New Law sets out rules in relation to the transformation, merger, and division of companies, and the new rules provide more clarity than the rules under the Old Law on the rights and obligations of interested parties on the conversion, merger, or dissolution of a company. The Implementing Regulations are intended to provide additional details in relation to Chapter 10 of the New Law.

Old Law vs New Law: comparison of key provisions

	Old Law	**New Law**	***Brief Commentary on Key Change***
Types of Companies	Article (3) list the types of companies approved under the law as the following: ▪ joint liability companies; ▪ limited partnership companies; ▪ partnerships; ▪ joint stock companies; and ▪ limited liability companies.	Article (4) lists the types of companies approved under the law as the following: ▪ joint liability companies; ▪ limited partnership companies; ▪ joint stock companies; ▪ simplified joint-stock companies; and ▪ limited liability companies.	Introducing a new type of company "Simplified JSC" and removal of an older type of company "partnerships".

Incorporation Documents and Details of Bylaws and Articles of Association ("AoAs")	*No corresponding article.*	Under Articles (61) and (158), the New Law provides the required documents and details to be included in the bylaws of JSCs and the AoAs of LLCs. Documents required for establishing new companies include: ▪ a declaration letter from the shareholders establishing the company of its compliance with all the requirements of the New Law in relation to its incorporation; and ▪ a statement or report prepared by an accredited valuer showing the fair value of the in-kind shares, if any.	The New Law introduces new declarations and deliverables to be provided by shareholders looking to incorporate a new company in KSA.

Shareholder Agreements and Family Business Charters	*No corresponding article.*	Article (11) states that shareholders may, during or after the incorporation process, enter into a shareholders' agreement or a family business charter to organize the relationship between the shareholders and/or family members between themselves and/or the company. The shareholder agreement and/or the family business charter are considered binding and shall form a part of a company's AoA or bylaws and they may not violate the AoA or bylaws.	This is an interesting development in the New Law which acknowledges that the contractually agreed provisions in a shareholders' agreement are considered binding and form part of a company's constitutional documents pursuant to this New Law. It is, and has always generally been, widely accepted in practice in KSA that any terms of a shareholders' agreement which violate the terms of the bylaws or the AoA would unlikely be enforceable. However, having the New Law recognize the shareholders agreement as being part of a company's constitution will be welcomed by stakeholders with complex shareholder arrangements in KSA whom rely on the bespoke contractual arrangements provided for in their shareholder agreements.

LLC Shareholder Annual Meeting	Article (167)(2) states that the general assembly shall convene an annual meeting at least once a year, to be held within four (4) months from the end of the fiscal year.	Article (165) states that the general assembly shall convene an annual meeting at least once a year, to be held within six (6) months from the end of the fiscal year.	Increasing the period required for holding the annual meeting from four (4) to six (6) months from the end of the fiscal year.
Debt Instruments	Article (153)(2) states that LLCs may not use an initial public offering to create or increase its capital or to obtain a loan, nor may it issue negotiable instruments.	Article (179) states that LLCs may issue, in accordance with the Capital Markets Law, debt instruments or negotiable financing instruments (Sukuk) by resolution of the shareholders pursuant to the conditions set by a company's AoA.	The change ought to provide LLCs with greater flexibility to pledge their shares, issue Sukuks or any other debt instruments.
LLC Share Buy-Back	*No corresponding article.*	Article (180) states that a company may buy-back its shares or mortgage such shares if allowed under a company's AoA. Such shares shall not grant a right to vote in general assemblies.	This share buyback framework will more readily enable LLCs to restructure their existing share capital and potentially facilitate an alternative exit route for existing shareholders of LLCs.

Drag-along and Tag-along Rights	*No corresponding article.*	Article (181) states that a company's AoA may include the following (*subject to the approval of one or more shareholders representing 90% of a company's shares*): ▪ the majority shareholders may oblige the minority shareholders to accept the offer of a purchaser to purchase the complete shares of a company at the same price, terms, and conditions for the purchase of majority shares; and ▪ the minority shareholders may obligate the majority shareholders to guarantee selling the minority shares at the same price, terms, and conditions for selling the majority shares.	The New Law now recognizes drag-along and tag-along rights, which were historically seen as quite challenging contractual rights to enforce in KSA.

Dissolution of LLCs by force of law due to losses	Article (181) states that: 1. if the losses of an LLC reach half its capital, the company's managers shall record such incident in the commercial register and call the shareholders for a meeting within ninety (90) days from the date of being aware of such losses to consider the continuation or dissolution of the company. 2. the shareholders' decision to continue or dissolve the company shall be published in the manner prescribed by the law. 3. the company shall be deemed terminated by the force of law if the company's managers fail to call the shareholders for a meeting or if the shareholders fail to issue a decision relating to the company's continuation or	Article (182) states that if the losses of an LLC reach half of its capital, the company's managers are required to invite the shareholders to meet within sixty (60) days from the date of being aware of such losses to consider the continuation of the company and implement the required procedures to resolve the losses or to liquidate the company.	Removal of the provisions that refer to the dissolution of LLCs by force of law due to losses, which was in practice often seen as problematic. That being said, the New Law reduces the period required for convening the shareholder meeting from ninety (90) to sixty (60) days.

Next Steps for Companies in KSA

Although the New Law is yet to come into force, it is anticipated it will provide greater flexibility for establishing and managing companies under a new regulatory framework that is more in line with well-established international standards. At this moment in time the Ministry of Commerce has not provided any deadlines for amending bylaws or articles of association of existing companies to ensure compliance with the New Law. We however recommend companies review their bylaws and AoAs in the context of the New Law to take a view on whether any amendments are required and to consider how they can best take advantage of the new regulatory framework as contemplated by the New Law.

If you would like to discuss any of the changes highlighted in this publication, or any potential impact that the New Law may have on your business, then please do not hesitate to reach out to your usual Bracewell contacts or the authors of this publication.

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1. Subject to the applicable commercial name regulations in KSA.

2. Issuance of the debt and finance instruments must be done in accordance with the Capital Market Law and Regulations.