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KSA Corporate Governance

Considerations for unlisted companies

A Ministry of Commerce and Investment (MoCI) resolution issued in 2017 set out new corporate governance regulations for unlisted joint stock companies and limited liability companies. Issuing this resolution is part of a wider movement in Saudi Arabia towards greater mandatory corporate governance for both listed and unlisted companies. This is driven in part by a wish to raise investor confidence in all types of Saudi companies to achieve Vision 2030's goals of increasing foreign direct investment and the private sector's contribution to GDP.

New fully mandatory and much more prescriptive Corporate Governance Regulations for listed Saudi companies, replacing previous regulations dating from 2010, also came into force in 2017. Examples of the new corporate governance requirements are (i) a number of new policies and procedures to be adopted, including for compliance with laws and regulations,(ii) an annual review by the Nominations Committee of the skills and expertise required by the Board and Executive Management, and (iii) establishment of a Risk Management Committee knowledgeable in risk management and finance, the chairman and majority of which must be non-executive directors.

Similar corporate governance regulations have been drafted by MoCI for closed (unlisted) joint stock companies (JSCs). Although these regulations are not mandatory, MoCI has publicly encouraged closed JSCs to adopt them to the extent appropriate having regard to the size and business of a company.

MoCI has now gone further in issuing a resolution that imposes mandatory requirements that previously only applied to listed companies on both closed JSCs and limited liability companies (LLCs) (the latter being particularly noteworthy given that LLCs are a relatively informal form of corporate structure, for example not requiring a Board unless there are more than 20 shareholders).

Some of the key provisions of the resolution are set out overleaf.

1

A closed JSC's chairman may not also be an employee of the company, including the CEO.

2

Any shareholder in an unlisted JSC or LLC gaining a 50%+ shareholding must make a mandatory offer for the remaining shares within 60 days.

3

Unlisted JSCs and LLCs must both seek shareholder approval before selling more than 50% of the assets of the company, whether in one or more transactions.

4

The existing provisions in the Companies Law prohibiting JSC Board conflicts without shareholder approval have been enhanced by the requirement for a special report from the auditors.

5

Any shareholder owning at least 5% of a closed JSC's shares may now add items to the agenda of a shareholder general assembly.

6

Specific protections for LLC shareholders have been added so that shares may not be issued to a new shareholder without unanimous shareholder approval and dividends must be paid within 30 days of the relevant shareholder resolution.

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