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Zamakhchary & Co.

**Year in review,
Year to come**
Saudi Arabia Law

December 2019



Year in review

Saudi Arabia Law in 2019

Year in Review 2019 and Year to Come 2020 summarises some of the major developments across Saudi Arabia last year, and a selection of key changes that we anticipate over the coming year. There are links to further reading, where available.



Year in Review and Year to Come:

In 2019, Saudi Arabia has taken steps to bring changes envisioned by Vision 2030 and the National Transformation Programme closer to reality. We have seen a wide range of changes to strengthen the legal and regulatory framework as Saudi Arabia blends global commercial standards into domestic rules. Many reforms support greater foreign inbound investment and private sector diversification, with new measures designed to encourage investment and to regulate competition across markets. The Kingdom is also looking to support businesses operating across newer markets, including in the Fintech space.

Explore our overview of key developments below.

Capital Markets: Foreign strategic investment in listed shares

The Capital Market Authority (CMA) issued new Instructions for Foreign Strategic Investors' Ownership in Listed Companies which allow Foreign Strategic Investors (FSIs) to own a controlling interest in Saudi Arabian companies listed on the Saudi Stock Exchange (Tadawul). The usual rules on foreign investment in Saudi listed shares do not apply to FSIs. These rules are set out in the CMA's Rules for Qualified Foreign Financial Institutions Investment in Listed Securities (QFI Rules) (read more [here](#) and [here](#)), which include a restriction on foreign ownership. The FSI's investment must be intended to help promote the financial or operational performance of the company. The FSI must also meet certain other conditions, including that it must be established or licensed in a country that applies regulatory and supervisory measures similar to those applied by the CMA or that are accepted by it. FSIs are also restricted from selling their shares for a two-year period after they acquire the shares. A foreign investor cannot be an FSI and a QFI owning shares in the same issuer. This development is one of a number of recent changes in ongoing efforts to open up Saudi Arabia's markets to international investors.

Tadawul to allow foreign company listings for the first time:

Foreign issuers will be able to list their shares on the Tadawul, following amendments to the CMA's Rules on the Offer of Securities and Continuing Obligations. Foreign issuers must comply with the Kingdom's listing rules. There is no restriction on foreign ownership of shares of a foreign issuer that are listed on the Tadawul (in contrast to restrictions for local issuers set out in the QFI Rules). The amended rules also include changes intended to develop the Parallel Market (Nomu). Complementing this development, the Tadawul signed an agreement with the Abu Dhabi Securities Exchange (ADX) earlier this year to encourage dual listings in Saudi Arabia and Abu Dhabi.

Emerging Market status now effective on MSCI Indices:

Saudi Arabia was included as an Emerging Market on the MSCI Indices, the global indices tracked by investors. This follows Saudi Arabia's reclassification as an Emerging Market, upgraded from Frontier Market status, by the MSCI in its annual review in 2018. The reclassification is a result of a series of reforms designed to modernise the stock market and encourage foreign investment in Saudi Arabia.

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Commercial:

New E-commerce Law:

A new E-commerce Law (Royal Decree No. M/126 dated 07/11/1440H, 10 July 2019) protects consumers by regulating e-commerce service providers located in Saudi Arabia and providers located outside of Saudi Arabia who offer goods and services to customers in the Kingdom.

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2019 highlights

Saudi Arabia is included on MSCI's Emerging Markets Index.

2019 highlights

Foreign investment reforms allow strategic foreign investors to acquire a controlling interest in Saudi Arabian listed companies and enable foreign issuers to list their shares on the Tadawul.

2019 highlights

A new competition regime regulates activities in Saudi Arabia and in other jurisdictions where the Saudi Arabian market is affected.

Competition: Modernised competition regime:

Anti-competitive agreements, economic concentrations and abuse of a dominant position are regulated by a new Competition Law (Royal Decree No. M/75 dated 29/6/ 1440H, 6 March 2019) and related regulations that came into force in September 2019. Any investor considering investing in a business in Saudi Arabia, such as by way of joint venture or acquisition of shares in a company, will need to seek advice as to whether competition clearance may be required. Where the transaction satisfies the definition of an “economic concentration”, it may be necessary to file an application with the General Authority for Competition (GAC) to have the transaction pre-approved within 90 days (increased from 60 days) prior to the completion date. A filing is required if the total annual turnover of the parties involved exceeds SAR 100 million (US\$ 27 million). The regime applies to activities in Saudi Arabia and may also have extra-territorial effect where competition in the Saudi market is affected. There are exceptions to the Competition Law (such as for government entities and certain state-owned companies) and exemptions are possible, for example, if the practice will enhance the market and is beneficial for consumers. Violations are punishable by fine. Recent experience indicates that there is increased scrutiny by the GAC of transactions with potential competition issues.

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Foreign consultants and expatriate workers: Rules on Saudi government engaging foreign consultants:

Saudi government engagements with foreign consultants are now restricted to limited circumstances where the relevant expertise cannot be provided locally in accordance with Royal Order No. 624 dated 5/1/1441H, 2 September 2019. The general position is that entry by government ministries and agencies into agreements for consultancy services should be limited to Saudi nationals and Saudi consulting establishments and companies.

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Expatriate residency permits enhanced:

The Saudi Arabian Government’s new Privileged Iqama Law, enacted by Royal Decree No. M/106 dated 10/9/1440H, allows a non-Saudi national to apply for a residency permit which gives the holder enhanced rights and benefits either on a permanent basis or for a one-year renewable period.

New Franchise Law:

A new Franchise Law (Royal Decree No. M/22 dated 09/02/1441H, 8 October 2019) was issued on 25 October 2019 and will come into effect, accompanied by implementing regulations, on 22 April 2020. The new law is intended to encourage franchise activities in Saudi Arabia by establishing a regulatory framework to govern the relationship between a franchisor and franchisee. It sets out the obligations, required to be carried out in good faith, of each of the franchisee and franchisor under a franchise agreement. The Franchise Law also sets out the circumstances in which the franchise agreement may be terminated for cause prior to its expiry. Any agreement which purports to waive any of the franchisor’s rights under the Franchise Law will be considered void unless the agreement is part of a final settlement agreement with the franchisor or is authorised by the implementing regulations. The Franchise Law also imposes penalties (not exceeding SAR 500,000) for violations.

Financial crime: Saudi Arabia and the UAE collaborate on financial intelligence:

In August, the Saudi Arabia Financial Intelligence Unit and the UAE Financial Intelligence Unit signed a Memorandum of Understanding to work closely together to combat money laundering and financial terrorism. The strategic partnership is supported by robust anti-money laundering and terrorism offences legislation in both jurisdictions.

Fintech: Fintech ecosystem developments

The Saudi Arabian Monetary Authority (SAMA) issued several trading licences this year to financial institutions and Fintech companies operating banking and digital payments activities. Some of the newly licensed companies have been accepted into the SAMA’s Regulatory Sandbox, launched in February, to test their products before launch. To date, the SAMA has issued licences to more than 20 Fintech companies, mostly operating in the digital payments and debt crowdfunding space. Businesses operating in the capital markets space need a licence from the CMA. Companies can apply to the CMA for a Financial Technology Experimental Permit in order to test their products, which must be related to securities activities, in the FinTech Lab ([read more...](#)). So far, there are three FinTech ExPermit Companies (two approved in 2018 and one in 2019), all of which operate in the equity crowdfunding space. This follows the launch in 2018 of Fintech Saudi, an initiative to develop the Kingdom as a hub for financial technology. The development of the Fintech ecosystem is a significant component of The Financial Sector Development Program (FSDP) and the Vision 2030.

Procurement:

A new Government Tenders and Procurement Law applies to all Saudi Arabian government projects with effect from November. Cabinet Resolution No. 649 dated 1440H (2019), Promulgating the Government Tender and Procurement Law Royal Decree No. M/128 dated 1440H, 16 July 2019 provides for more centralised tendering and procurement processes (including via an electronic portal) and contracting processes (for example, by using standard framework agreements). Other key provisions include new termination powers for the government, an increase in the maximum delay penalties to 20 per cent (up from 10 per cent) and the ability to refer disputes to arbitration (if approved by the Ministry of Finance). Alongside Vision 2030 initiatives, the new framework will support infrastructure development in the Kingdom.

Year to come

Saudi Arabia Law in 2020

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Capital Markets: CMA to relax rules on issuing depositary receipts:

Saudi Arabian listed companies may soon be able to issue depositary receipts abroad for their shares for the first time, subject to obtaining prior approval from the CMA and meeting certain requirements. The CMA consulted on draft Instructions on Issuing Depositary Receipts out of the Kingdom for Shares Issued in the Kingdom in 2018. The instructions, if issued, would facilitate dual listings of Saudi companies.

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CMA to revise Central Counterparties Regulations:

The CMA is expected to introduce revised regulations on central counterparties (CCPs) and securities clearing activities in Saudi Arabia, following a consultation in September. The updated Central Counterparties Regulations are expected to specify the requirements for obtaining an authorisation to carry out securities clearing activities, clearing, custody, collateral, measuring, monitoring and mitigating risks. They should facilitate the introduction of new securities classes and services to investors and guarantee the settlement and fulfilment of obligations of transaction parties. As a result of the proposed revisions, the rules should more closely align with international best practice and implement the Principles for Financial Market Infrastructures (PFMI) issued by the Committee on Payments and Market Infrastructures (CPMI) and the International Organisation of Securities Commissions (IOSCO), of which Saudi Arabia is a member.

Company law: New law relaxes requirements for professional companies:

A new Professional Companies Law will come into force in March 2020. The regime will regulate entities engaged in professions with specific requirements as to educational qualifications, registration and licensing, such as law, accounting and engineering. It will replace the current Professional Companies Law set out in Royal Decree No. M/4 dated 18/2/1412H, 28 August 1991 and related regulations. The new regime significantly relaxes the regime for professional companies. Unlike under the previous regime, a professional company will have a choice as to the legal form it will take. For example, it can be established as a limited liability company (including with a single shareholder), a joint stock company, general or limited partnership company. It must have at least one shareholder who is a Saudi national licensed by the relevant professional body, but it will also be able to have Saudi national shareholders who are not licensed. Foreign shareholders are still permitted, provided the required thresholds and licensing requirements under Saudi law are met. New implementing regulations, which are yet to be published, are expected to come into force at the same time.

2020 highlights

Legal reforms will support progress towards Vision 2030 goals.

2020 highlights

A privatisation programme is planned across a range of important sectors.

2020 highlights

Greater regional collaboration in Fintech is proposed.

Dispute resolution: Will Saudi Arabia adopt new international rules on the enforcement of foreign judgments?

The new 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters should simplify the recognition and enforcement of judgments for court judgments amongst states who become party to it. The Convention does not have any legal effect until it is ratified, and to date, no state has yet ratified it. Saudi Arabia is a member of the Hague Convention and it will be interesting to see if it will ratify the new convention in 2020. This would make litigation in Saudi Arabia, in the context of cross-border disputes quicker, more predictable and reduce costs. Complying with international treaties will continue to help inbound and outbound investment succeed, which is especially important in an era of cross-border regulatory scrutiny and political anxiety about foreign investments into strategic sectors

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Evolution towards Vision 2030 goals

In 2020, we expect the pace of change to quicken in Saudi Arabia. Reforms are expected to improve the investment climate and private sector growth as part of a wider programme of modernisation under Vision 2030 and the National Transformation Programme, which establish a framework for long-term economic development. Central to Vision 2030 is the diversification of Saudi Arabia's economy, moving from a public sector-based, oil-dependent economy towards a more balanced economy with a thriving private sector. Further changes to encourage a flourishing private sector and to increase foreign investment are expected. Continuing the trend seen in recent reforms, future reforms are expected to weave aspects of international best practice into the commercial legal landscape. We predict that efforts to further integrate the Saudi economy, regionally and globally, will continue. You can read more about foreign inbound investment in the Kingdom in our [Guide to investing in Saudi Arabia](#).

Fintech: Regional Fintech collaboration:

We expect increased momentum to drive the Fintech industry in the Gulf Cooperation Council (GCC) to support the diversification of regional economies. Increased collaboration is expected to materialise following the first GCC Fintech Roundtable and Summit in September in Riyadh, attended by Fintech Saudi, the ADGM, Bahrain FinTech Bay and DIFC FinTech Hive (the four largest Fintech hubs in the Gulf region). Areas of collaboration may include data sharing, open banking and strategies to support Fintech companies to grow (for example, through the Saudi Arabian Monetary Authority's Regulatory Sandbox and the CMA's FinTech Lab). The expansion of the Fintech sector is a priority under Saudi Arabia's Vision 2030 strategy.

Saudi Arabia and UAE plan new cryptocurrency:

Saudi Arabia and the UAE are preparing to launch a new common cryptocurrency, known as Aber. The plan was announced in January, but no launch date has been set. In its pilot phase, the use of the new cryptocurrency is expected to be restricted to financial settlements using blockchain technology by the Central Banks and a small number of banks in each of the UAE and Saudi Arabia.

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Privatisation programme:

Domestic private sector growth is set to be boosted by a comprehensive privatisation programme across a range of important sectors driven by the National Center for Privatization (NCP). Targeted sectors for privatisation include transportation, health, energy, industry and mineral resources, communication and information technology. This should lead to opportunities for M&A transactions and investment in initial public offerings (IPOs). The Kingdom is looking to transform Saudi Aramco, the state oil producer, into a global industrial conglomerate through an IPO by the end of 2019.

What now?

Your contacts

We hope that you have found this guide useful.
Please contact your usual Linklaters contact, if you would like to discuss any of these matters further.



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Important note: This publication highlights certain key developments in the laws and regulations in Saudi Arabia. The legislative process in Saudi Arabia can be opaque. Draft legislation is generally not made publicly available nor the subject of official consultations. Timescales for enactment of legislation are not typically published. In practice, laws and regulations may come into effect without being published. Accordingly, it is difficult to anticipate the pace and scope of legislative change.

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