

# E P 7' A L E X

## The New KSA Companies Law

The **Vision 2030** was one of the sparks that urged the KSA legislator to modernize the Company Law and lift some restrictions in order to embody this transformation. After various revisions, on June 28, 2022, the Saudi Council of Ministers has approved the **final version** of the company law (**New Company Law**), and it was issued on July 4<sup>th</sup>, 2022.

“The New Company Law comes to **reinforce the corporate legislative framework** in light of the implementation of its provisions. The encumbrances that have surfaced among companies and the business era, were guided by **leading international experiences and practices.**” —*Mohammed bin Abdullah El-Kuwaiz, President of the Capital Market Authority in KSA*

### I- Benefits of the New Company Law

#### Legislation Centralization



By providing a **single unilateral** legislation document for the regulation of commercial, non-profit, and professional companies

#### Dispute Resolution



**Arbitration** can now be agreed upon between the shareholders by an explicit provision in the by-laws of the company or its Articles of Association

#### Sustainability



By ensuring **fair treatment** between shareholders and developing provisions for companies' liquidation will undoubtedly enhance companies' sustainability

#### Family Businesses



By concluding the **family charter**, regulating the **ownership**, organizing the **administration**, setting-up **work & employment policies**, overseeing the **distribution of dividends** in family businesses, etc.

#### Commercial System



By facilitating companies' establishment and regulatory requirements, and thus empowering the private sector and **stimulating** the commercial system

#### SMEs



By supporting **investment** in SMEs, while **reducing** SMEs **statutory requirements & procedures**



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## II- Key Considerations

### General Provisions

#### Name of the Company

The New Company Law has eased constraints on company's name selection. The name can now be chosen from a language other than Arabic, and named after, (i) the company's purpose, (ii) its current or past shareholders/partners, or (iii) a mix of the two.

*Results:* As long as it abides by the Trade Names Law, it may also select a distinctive name.

Partners or shareholders are now allowed to offer their own shares or parts in the company to any person, in exchange for their work or service.

*Condition:* the work or the service should be for the benefit of the company.

#### Shares

Shares can be divided or subdivided into shares of lower nominal value, or consolidated to represent shares of a higher nominal value.

Under the previous law, companies may issue ordinary or preference shares only. The New Company Law expends share classes that may be issued to include:

- ✓ Ordinary Shares;
- ✓ Preferential Shares;
- ✓ Redeemable Shares; and
- ✓ Any other share class provided that the Articles of Association explicitly grant that right.

*Condition:* all shares of the same class must be granted equal (i) rights and (ii) obligations, under the company's Article of Association.

#### Distribution of dividends

Although the distribution of varying dividends among shareholders, regardless of their ownership percentage, was already permitted under the former Companies Law, the detachment from the Sharia Law operated by the New Company Law allows an effective implementation of this mechanism.

#### Drag-along & Tag-along Rights

The New Company Law introduces the distribution of dividends in interim or annual manner to partners and shareholders in **Limited Liability Companies** (LLC), **Joint-Stock Companies** (JSC), and **Simplified Joint Stock Companies** (SJSC).

#### Improving the automation process

Previously hardly enforceable, the **LLCs**, **Closed Joint-Stock Companies** (CJSC), and **SJSCs** now benefit from Drag-along and Tag-along rights that will enhance investors' confidence entering into joint venture agreements in KSA.

The attendance of the general assembly meetings, and the implementation of virtual voting is now possible. This makes the management of the companies seamless.

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## Shareholders' agreement

The relationship between shareholders is already governed by the company's articles of association, but shareholders' agreements were not previously properly recognized by courts, and court procedures in this area were inconsistent. However, under the New Company Law, such agreements may be included in the Articles of Association provided it does not conflict with both the New Company Law and the Articles of Association.

## Squeeze-out procedures

A greater influence for shareholders owning a minimum of 90% of the total voting shares of **JSC**, **CJSC**, and **SCJSC** is recognized by the New Company Law by granting them the ability to compel the remaining shareholders to sell their shares provided that the sale of minority shares will be made at the same price and terms as the sale of majority shares.

## Lifting Board Members' restrictions

The limitations on the number of the Board members and their annual compensation have been removed. This will impact the level of talents engaged at Board level, and allow an effective performance-based remuneration.

## Fiduciary Duties of Board Members & General Managers

It is now regulated thus limiting the ambiguity on the matter. With the New Company Law, a party may prove the presence of (i) personal interests, (ii) sufficient awareness and (iii) lack of reasonable belief that a decision is in the company's best interest, to engage any liability of board members and general managers for the adverse effects suffered by the Company.

## Certified Auditor Exemption

This exemption exclusively concerns **small/ very small sized Saudi-owned companies**. However, the exception is only effective for a company's first fiscal year following its incorporation or for two consecutive fiscal years. Foreign companies, even small sized ones, are still required to have auditors.

## Introduction of Family Charter

The New Company Law introduced the possibility for family-owned companies to insert in their Articles of Association a charter regulating various aspects, *inter alia* the ownership, governance, management, work policy, employment of family members, dividends' distribution, the disposal of shares, the mechanism for settling disputes.

## Arbitration

### *Introducing Alternative Mechanisms for the resolution of Shareholders' disputes:*

Upon their agreement, the New Company Law allows the shareholders to resort to arbitration for shareholders' disputes. The relevant provisions may be incorporated in the Articles of Association/Bylaws of the Company.

## Liquidation

Liquidation process simplification in accordance with KSA Bankruptcy Law.

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- More detailed procedures were set in motion by the New Company Law for the objections to mergers, by both parties to the merger and creditors.

## Re-structuring & merger provisions

- Additionally, it clarifies that the surviving company is treated as a successor with the rights, obligations, assets, and contracts being treated as transferred upon enforcement and it provides a more sophisticated framework regarding the practical aspects of the merger's completion (including when it takes effect).

## Simplified Closed Joint Stock Companies (SCJSC)

### Establishment and minimum capital

- One or more founder(s) can establish the SCJSC
- No minimum share capital required

- (i) Management and Incorporation,
- (ii) Ease of rendering shareholders' resolutions, which can be made by circulation as a substitute to a general assembly,
- (iii) Ease of trading shares, namely:

- Allowing its trade in-kind;
- Customization of special shares (non-voting shares/ premium shares);
- Admission of conditions added to the Bylaws on the transfer of shares:
  - ✓ The possibility of introducing the limitations on shares transfer, namely:
    - Lock-up Period* transfer restricted for a maximum period of ten years
    - Open-ended restriction* transfer requiring prior approval of shareholders
  - ✓ Forcing the sale of a shareholder's shares at a fair value. Alternatively, the value of the shares will be determined in the Bylaws.

### Flexibility

### Apparent Authority Concept

The general manager of a SCJSC can make any decision, even if it is outside the scope of his/her authority.

The notion of apparent authority of the general manager is acknowledged only for SCJSCs

## Limited Liability Companies (LLC)

### Issuance of tradable debt & financial instruments

LLCs may now issue *Sukuk*s or any other type of negotiable debt instruments or financing instruments, subject to the KSA Capital Market Law, or pledge their shares.

## Joint-Stock Companies (JSC)

### Abolition of Share Lock-in Period

Under the previous law, founders in a JSC were barred from transferring or selling their shares for 2 years. The transfer in this period was permitted only in case of (i) death of a founder or (ii) acquisition of the shares by another founder.

This limitation has been removed under the New Company Law.