

Client Alert

Commentary

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Saudi Arabia Issues New Regulations for Companies, Altering Regulatory Landscape

Innovative changes address company and investor concerns as Saudi Arabia moves to modernize its corporate legal regime.

On 9 November 2015, the Council of Ministers of the Kingdom of Saudi Arabia approved the long-awaited new Regulations for Companies¹ (the New Companies Regulations), which significantly updates the law applicable to corporations in the Kingdom. The New Companies Regulations replace the previous Regulations for Companies² (the Old Companies Regulations), and were published in the Official Gazette (*Umm Al Qura*) on 22/2/1437H (4 December 2015). The regulations will enter into force 150 days after the publication date, *i.e.*, beginning of May 2016 (the Effective Date). In addition, all current companies will be required to comply with the New Companies Regulations within one year from the Effective Date, *i.e.*, beginning of May 2017. The Ministry of Commerce and Industry (MoCI) will publish templates for the constitutional documents of each company type, and together with the Capital Market Authority (CMA), the rules for implementing the New Companies Regulations, prior to the Effective Date.

The New Companies Regulations reflect the Saudi Arabian economy's evolution in the years since the Old Companies Regulations were enacted, and the necessity for a new framework compatible with a more complex business environment. Factors that have affected the Saudi Arabian economy and necessitated the more robust legal regime include:

- Saudi Arabia's accession to the World Trade Organization in 2004, and the precipitous growth of foreign direct investment
- Growth of the Saudi Arabian stock market, including the recent opening of the stock market to foreign investment and the development of a vibrant sukuk market
- Diversification of the Saudi Arabian economy into new industries beyond the traditional hydrocarbon-based economy
- The larger role small and medium enterprises play in the economy, which requires a more efficient regulatory environment for their success
- The need for the private sector to play a larger role in the Kingdom's economic development

Key Features of the New Companies Regulations

The Annex to this article provides a more detailed summary of the New Companies Regulations. Some of the most salient features are:

- ***Piercing the corporate veil of an LLC.*** One aspect of the Old Companies Regulations that made Limited Liability Companies (LLC) a less attractive corporate form to certain investors was the possibility for shareholders to lose their limitation of liability protection if the LLC's losses exceeded 50% of its capital (Article 180). The New Companies Regulations no longer allow for the corporate veil to be pierced in such circumstances (Article 181). However, if losses exceed 50% of the capital, and the shareholders fail to take the necessary actions prescribed in the law within a specified time period, the LLC may be deemed dissolved as a matter of law. However, an LLC's manager or managers (and a Joint Stock Company's (JSC) board of directors for the corollary provision for JSCs, along with the company's external auditor), may be criminally sanctioned if the company fails to take the "appropriate actions" or make the required announcements where the company's losses exceed 50% of its capital.
- ***Transfer of LLC interests.*** Currently, any shareholder's transfer of LLC interests to any other party requires amending the LLC's articles of association, and *de facto* the approval of all other shareholders. Notaries public in Saudi Arabia require all shareholders to sign an amendment to the articles of association, effectively giving the non-transferring shareholders a right to veto any interest transfers. Under the New Companies Regulations, each LLC is required to maintain its own share register (lodged with the MoCI), and any share transfers must be recorded in the share register to be effective, as opposed to being reflected in an amendment to the articles of association. This provision should help to simplify the process for transfer of interests. However, under the New Companies Regulations, unless the articles of association state otherwise, if a shareholder intends to sell his or her interests to a party that is not currently a shareholder in the LLC, the shareholder must first notify the other shareholders, who will have a pre-emption right to purchase such shares at fair value within 30 days of notification. The New Companies Regulations also expressly allow an LLC's shareholders to agree, in the articles of association, to a valuation method for their interests in the company.
- ***Single shareholder LLCs and JSCs.*** The New Companies Regulations permit the formation of an LLC with only one shareholder, provided that any individual can only directly or indirectly own one single-shareholder LLC, and an LLC owned by a single shareholder may not in and of itself be a single shareholder in another LLC. The New Companies Regulations also permit certain state actors or companies with capital of not less than SAR 5 million to form single shareholder JSCs.
- ***Additional minority protection rights in JSCs.*** For both closed and public JSCs, there are a number of minority shareholder protections in the New Companies Regulations, including: (1) only permitting shareholders to nominate board members in accordance with the shareholder's share percentage; (2) mandating cumulative voting for board appointments; (3) requiring each JSC to have a general assembly-appointed audit committee separate from the JSC's board of directors; and (4) further empowering shareholders to bring actions against the board of directors, including the right of shareholders representing at least 5% of the shareholding in a JSC to require an investigation by a competent authority.
- ***Buy-back of shares.*** The New Companies Regulations permit JSCs to buy back their own shares. However, any such shares purchased by a JSC will be deemed non-voting shares. The New Company Regulations state that the "appropriate authority" will implement the specific rules for such buy-backs at a later stage. We presume the CMA will issue these rules for publicly listed companies.

- **Requiring Sharia'a compliance for all debt securities issuances.** The New Companies Regulations include a rather open-ended provision stating that all JSCs must “bear in mind Sharia'a rules for debt when issuing any debt securities or trading them [i.e. trading in the securities which they issued].” While the implementing rules may include additional guidance, this provision seems to suggest that JSCs may be prohibited from issuing conventional bonds (we note that neither this provision nor any other provision in the New Companies Regulations addresses whether JSCs may incur conventional loan indebtedness). This provision may also impact JSCs that currently have outstanding conventional bonds.
- **Issuance of convertible debt or sukuk instruments.** While the CMA-issued Listing Rules³ permit the issuance of convertible debt and sukuk instruments, the Old Companies Regulations (which require an extraordinary general assembly to approve any capital increase) made these issuances difficult. The New Companies Regulations have addressed this, providing that once an extraordinary general assembly approves issuing these instruments, when an instrument holder elects to exercise its right to convert, the board can issue shares in the JSC without having to revert to the extraordinary general assembly for another resolution.
- **Override of pre-emption right in capital increase.** While the default position remains that a shareholder has a right to participate in any issuance of additional shares in a JSC, the New Companies Regulations permit the extraordinary general assembly (if the JSC bylaws so specify) to override this pre-emption right and allot the newly issued shares or part of the shares to: (i) employees or (ii) new shareholders, when deemed by the board to be in the JSC's best interest, and give priority in a capital increase to new shareholders.
- **Removal of the qualification shares requirement for JSC board members.** A requirement in the Old Companies Regulations that has presented a compliance problem for most JSCs, particularly closed JSCs, is that every board member, including independent board members, must hold a certain amount of shares referred to as “qualification shares” in the JSC as a guarantee against the individual board member's liabilities. This is a particular issue because the consequences for non-compliance could result in the invalidation of the board member's appointment. The New Companies Regulations remove this requirement, and all JSCs should be able to release such shares after the Effective Date.
- **Holding companies.** The New Companies Regulations introduce the concept of a “holding company.” Any LLC or JSC can elect to be characterized as a “holding company” by adding the word “holding” to its corporate name. The New Companies Regulations state that a holding company shall either hold a controlling interest in its subsidiaries (representing 50% or more of another company's shares), or control the subsidiaries' board appointments. It will be interesting to see how the MoCI will apply this requirement to existing or new companies that may hold or acquire less than 50% of another company's shares. In addition, the New Companies Regulations authorize a holding company to enjoy certain powers, such as managing subsidiaries, granting loans and providing corporate guarantees to subsidiaries.
- **Decreasing statutory reserves.** While the New Companies Regulations still require both LLCs and JSCs to set aside 10% of their profits to fund statutory reserves, the minimum total statutory reserve requirement has been reduced from 50% to 30% of a company's capital. Therefore, unless the implementing rules indicate otherwise, companies with current reserves funded up to 50% of their capital may be able to release amounts from the reserves on the Effective Date to reduce the total amount of the reserves to 30%, if they choose.

- **Clearly defined penalties.** The New Companies Regulations specify the types of violations that may warrant criminal sanctions, prosecution by the public prosecutor's office or administrative sanction, which either the MoCI or the CMA (as appropriate) may impose.

Conclusion

The exact implications of the New Companies Regulations will not become clear until the MoCI and CMA issue the implementing rules. What is clear, is that the New Companies Regulations have changed the regulatory landscape for companies operating in Saudi Arabia in a number of key areas. There is still quite a bit of time before the New Companies Regulations become effective, and before existing companies will need to fully comply; however, any existing companies or new investors should keep the New Companies Regulations in mind as part of their strategic planning.

Annex

Summary of the Main Provisions of the New Companies Regulations

<p>General Rules</p>	<ul style="list-style-type: none"> • While under the Old Companies Regulations a company only acquires its juristic personality after its name is recorded in the Commercial Registry for Companies at the MoCI (Commercial Registry), under the New Companies Regulations, a company under formation will have a <i>de facto</i> juristic personality to the extent required for its incorporation [Art. 14 of the New Companies Regulations]. In practice, this should mean that a company under formation can now contract directly with third parties, such as employees and lessors subject only to completion of the formation process. • The MoCI's website has replaced the Official Gazette (<i>Umm AL Qura</i>) as the official publication platform for constitutional documents and their amendments [Art. 13.1 of the New Companies Regulations]. Furthermore, a company's articles of association and bylaws will only be effective vis-à-vis third parties once recorded in the Commercial Registry. Third parties will have access to the registry, and the MoCI-certified extracts from the registry are considered valid evidence [Art. 13.2 of the New Companies Regulations].
<p>Joint Stock Companies (JSCs)</p>	
<p>Formation, Capital and Shares</p>	<ul style="list-style-type: none"> • Single shareholder JSCs can now be formed by the government, public juristic persons, wholly government-owned companies and companies with a capital of no less than SAR 5 million. This shareholder will assume the authorities and responsibilities of the JSC's general assembly of shareholders (General Assembly) [Art. 55 of the New Companies Regulations]. • The Capital Markets Law and its Implementing Regulations now expressly govern the offering and subscription process for public JSCs' shares [Art. 219 of the New Companies Regulations]. • The minimum capital requirement has been reduced from SAR 2 million to SAR 500,000. However, a JSC's capital must, at incorporation, be "sufficient for it to realize its objects." [Art. 54 of the New Companies Regulations] • At formation, the paid up portion of a cash share must not be less than 25%, and the remaining portion must be paid up within five years from the date of issue of the share [Art. 54 and 106.2 of the New Companies Regulations]. • For in-kind shares, the formation application must contain a report by a certified appraiser on the fair value of the in-kind shares [Art. 61.1 of the New Companies Regulations]. In-kind shares must be paid up in full at issuance, and not transferred to its owner until completion of the underlying asset's title transfer to the JSC [Art. 106.3 of the New Companies Regulations]. • Any premium on issued shares must be held under a separate "shareholder

	<p>rights” provision and may not be distributed as dividends [Art. 105.3 of the New Companies Regulations].</p> <ul style="list-style-type: none"> • A JSC is now deemed formed from the date of publication of the MoCI resolution announcing the JSC’s formation and its registration in the Commercial Registry, as opposed to the date of issuance of the Ministerial Resolution announcing the JSC’s formation under the Old Companies Regulations [Art. 66.1 of the New Companies Regulations].
Nomination and Election of Board of Directors Members	<ul style="list-style-type: none"> • Cumulative voting, where a shareholder may only vote its shares once, is now mandatory when appointing members to JSC boards of directors [Art. 95 of the New Companies Regulations]. • Furthermore, the right of a shareholder to nominate himself or others for appointment to a JSC board of directors must correlate with such shareholder’s share ownership percentage in the capital of the JSC [Art. 68.2 of the New Companies Regulations]. • A director is no longer required to own “qualification shares.”
Conflict of Interest	<ul style="list-style-type: none"> • If a director fails to declare any direct or indirect interest he or she has in any of the JSC’s business, the JSC or any interested party may request the underlying contract’s nullification before a competent judicial body, and claim any related profits the director realized [Art. 71.2 of the New Companies Regulations].
Authorities of the Board	<ul style="list-style-type: none"> • A JSC’s board of directors now has, by operation of law, the widest authority to administer and manage a JSC’s operation, except for any authorities expressly excluded in the New Companies Regulations or the bylaws [Art. 75.1 of the New Companies Regulations]. In addition, a JSC is bound by all acts of its board of directors, even if such acts fall outside the limits of the board’s competence, except if the beneficiary of such acts is acting in bad faith or knew that such acts were outside the limits of the board’s competence [Art. 77 of the New Companies Regulations].
Remuneration of Directors	<ul style="list-style-type: none"> • The overall cap on directors’ annual compensation (attendance fee and salary (if any)) is now SAR 500,000 [Art. 76.2 of the New Companies Regulations].
Limitation of Directors’ Liabilities	<ul style="list-style-type: none"> • Generally, actions in liability are barred after the lapse of three years from the date of discovery of the damaging act. However, in any case, except in cases of fraud or forgery, any legal action against a director is barred after the latter of (i) five years from the end of the financial year during which the damaging act that the director is accused of occurred, or (ii) three years from the end of his or her directorship [Art. 78.3 of the New Companies Regulations].
Chairman, Vice Chairman	<ul style="list-style-type: none"> • In addition to a chairman, a JSC’s board of directors must now also appoint a vice chairman who will assume the chairman’s authorities when absent. A chairman of a JSC cannot hold an executive position in the same JSC [Art.

	81.1 of the New Companies Regulations].	
Board Meetings	<ul style="list-style-type: none"> • A board must now hold a minimum of two meetings per annum [Art. 83.1 of the New Companies Regulations]. • The General Assembly may, at the board of directors' recommendation, remove a director if he or she misses three consecutive board meetings without a valid excuse [Art. 76.5 of the New Companies Regulations]. • All attending directors, not only the chairman and secretary, must sign a board meeting's minutes [Art. 85 of the New Companies Regulations]. 	
General Assemblies	<ul style="list-style-type: none"> • Any shareholder, regardless of the number of shares he or she owns, has the right to attend General Assembly meetings [Art. 86.2 of the New Companies Regulations]. • The MoCI and the CMA, with respect to listed JSCs, may attend General Assembly meetings [Art. 86.4 of the New Companies Regulations]. • Participation in General Assemblies via electronic means is now permissible under guidelines that will be set by the MoCI and, with respect to listed JSCs, the CMA [Art. 86.3 of the New Companies Regulations]. 	
Calling for General Assemblies	<ul style="list-style-type: none"> • The time for publishing the General Assembly invitation in a daily newspaper has been reduced from 25 to 10 days prior to the date set for the meeting [Art. 91 of the New Companies Regulations]. • The MoCI or, with respect to listed JSCs, the CMA, acting alone or at the request of shareholders representing at least 5% of the capital, can convene the General Assembly if [Art. 90.2 of the New Companies Regulations]: <ul style="list-style-type: none"> – the board of directors does not call for a meeting within 30 days of the auditor's request to do so; – six months has lapsed from the end of the previous financial year without the General Assembly convening; – the number of directors drops below the number required to convene a board meeting; or – the board of directors does not call for a meeting within 15 days of being requested to do so by the auditor, the audit committee or a number of shareholders representing at least 5% of the capital. 	
Quorum and Adjournment of General Assemblies	Constituent General Assembly	<ul style="list-style-type: none"> • Quorum is attained by attendance of shareholders representing at least 50% of the JSC's capital [Art. 62.2 of the New Companies Regulations]. • If quorum is not attained, then a 15-day notice for

		<p>a second meeting must be issued. The second meeting may, however, be held one hour after the lapse of the time prescribed for the first meeting, if expressly allowed in the invitation for the first meeting. The second meeting is valid regardless of the number of shares represented [Art. 62.2 of the New Companies Regulations].</p>
	<p>Ordinary General Assembly</p>	<ul style="list-style-type: none"> • Quorum is attained by attendance of shareholders representing at least 25% of the JSC’s capital, unless the bylaws specify a higher threshold, which in any case must not exceed 50% of the JSC’s capital [Art. 93.1 of the New Companies Regulations]. • If quorum is not attained, then a second meeting must be held within 30 days from the date of the first meeting. The second meeting may, however, be held one hour after the lapse of the time prescribed for the first meeting, if expressly allowed in the invitation for the first meeting. The second meeting is valid regardless of the number of shares represented [Art. 93.2 of the New Companies Regulations].
	<p>Extraordinary General Assembly</p>	<ul style="list-style-type: none"> • Quorum is attained by attendance of shareholders representing at least 50% of the JSC’s capital unless the bylaws specify a higher threshold, which in any case must not exceed two-thirds (67%) of the JSC’s capital [Art. 94.1 of the New Companies Regulations]. • If quorum is not attained at the first meeting, then a 10-day notice for a second meeting must be issued. The second meeting may, however, be held one hour after the lapse of the time prescribed for the first meeting if expressly allowed in the invitation for the first meeting. The second meeting is valid if attended by shareholders representing at least 25% of the JSC’s capital. If quorum is not attained at the second meeting, then a 10-day notice for a third meeting must be issued. The third meeting is valid regardless of the number of shares represented, provided the meeting is approved by the MoCI or, with respect to a public JSC, the CMA [Art. 94.2 and 3 of the New Companies Regulations].

Shareholder Investigations	<ul style="list-style-type: none"> Shareholders representing at least 5% may initiate an investigation by the competent judicial authority if the acts of the JSC's directors or auditors have aroused the shareholders' suspicion [Art. 100 of the New Companies Regulations].
Audit Committee	<ul style="list-style-type: none"> A JSC must have an audit committee, established by the ordinary General Assembly, consisting of not less than three and not more than five of the non-executive directors, whether from the shareholders or others [Art. 101 of the New Companies Regulations]. The audit committee adopts its resolutions by majority approval, and the chairman of the committee can cast the deciding vote in case of a tie [Art. 102 of the New Companies Regulations]. The audit committee must review the financial statements of the JSC and the report and rates of its auditor, and it must prepare an annual report regarding the sufficiency of the internal audit policies and controls which must be made available to all shareholders 10 days before the annual General Assembly [Art. 104 of the New Companies Regulations].
Share Transfers and Lock-Up Period	<ul style="list-style-type: none"> A non-listed JSC may contract out the management of its shareholders register [Art. 109.1 of the New Companies Regulations]. Shares of listed JSC's are traded in accordance with the Capital Markets Law [Art. 109.2 of the New Companies Regulations]. The two-year statutory lock-up on founder shares does not apply in case of enforcement over the assets of an insolvent or bankrupt founder, provided the other founders are given priority to acquire such founder's shares [Art. 107.2 of the New Companies Regulations]. The CMA may extend or reduce the lock-up period with respect to companies looking to list on the Saudi stock exchange (Tadawul) [Art. 107.4 of the New Companies Regulations].
Buy-back of Shares	<ul style="list-style-type: none"> A JSC may buy back its shares, accept its shares as security, or pledge its shares in each case under guidelines to be set by the MoCI or, with respect to listed JSC's, the CMA. Such shares will not have voting rights [Art. 112.1 and 2 of the New Companies Regulations].
Debt Instruments and <i>Sukuk</i>	<ul style="list-style-type: none"> A JSC must observe debt requirements under the <i>Shari'a</i> when issuing or trading debt instruments [Art. 121 of the New Companies Regulations]. A JSC may, through single, multiple or a program of issuances, issue debt instruments that are convertible into shares provided the extraordinary General Assembly approves the exact number of shares that can be issued against such debt instruments [Art. 122.2 of the New Companies Regulations]. The JSC board of directors can then, without the need for further General Assembly approval, increase the JSC's capital and, in accordance with the Capital Markets Law, issue new shares to the holders

	<p>that request shares against their debt instruments, provided that:</p> <ul style="list-style-type: none"> - the debt instruments' underlying terms and conditions expressly allow for such conversion, and - the holder of the convertible debt instrument consents to such conversion [Art. 123 of the New Companies Regulations].
Accounts and Reports	<ul style="list-style-type: none"> • The timeline for the board of directors to provide the JSC's financial statements and the report on financial position, and operations to the auditor, has been reduced from a minimum of 55 days to 45 days prior to the General Assembly date [Art. 126.2 of the New Companies Regulations]. • The CEO and CFO of a JSC are now required to sign, together with the chairman of the board, the financial statements, and the report on financial position and operations [Art. 126.3 of the New Companies Regulations]. These documents must now be made available to shareholders at the JSC's head office at least 10 days prior to the General Assembly date, instead of 25 days under the Old Companies Regulations [Art. 126.3 of the New Companies Regulations]. • If not published in a daily newspaper, the JSC's board chairman must provide the MoCI and, with respect to listed JSC's, the CMA, with copies of the financial statements together with reports from both the board and the JSC's auditor, at least 15 days prior to the General Assembly date, instead of 25 days under the Old Companies Regulations [Art. 126.4 of the New Companies Regulations].
Statutory Reserve	<ul style="list-style-type: none"> • The minimum statutory reserve allocation has been reduced from 50% to 30% of the JSC's capital [Art. 129.1 of the New Companies Regulations].
Auditor	<ul style="list-style-type: none"> • A JSC is now restricted from reappointing the external auditor for more than five consecutive years. An auditor that has been appointed for five consecutive years may be appointed again after two years from the expiry of the five-year consecutive period [Art. 126.1 of the New Companies Regulations].
Increase of Capital	<ul style="list-style-type: none"> • A JSC may only increase its capital if the initial capital is fully paid up, except if the unpaid portion relates to convertible debt instruments or <i>sukuk</i> that have not matured [Art. 137.1 of the New Companies Regulations]. • If a JSC's capital is increased by way of issuing shares against the JSC's debts, the extraordinary General Assembly must, in its pricing for an issuance, seek the advice of an approved advisor or valuator [Art. 138 of the New Companies Regulations].
Pre-emption Rights	<ul style="list-style-type: none"> • A shareholder's statutory pre-emptive right to subscribe to newly issued shares in exchange for shares in a JSC will not apply if the extraordinary General Assembly:

	<ul style="list-style-type: none"> - expressly allots, in the capital increase resolution, all or part of the newly issued shares to employees of the JSC or its subsidiaries [Art. 137.2 of the New Companies Regulations]; or - considers it in the JSC's best interest to suspend such pre-emption rights in a cash capital increase or grant them to others, provided the bylaws expressly permit the extraordinary General Assembly to do so [Art. 140 of the New Companies Regulations]. <ul style="list-style-type: none"> • A JSC shareholder may now sell or assign its pre-emption right during the period from the date of the General Assembly resolution approving the capital increase until the subscription closing date, in accordance with the guidelines set by the MoCI and, with respect to listed JSCs, the CMA [Art. 141 of the New Companies Regulations].
Dissolution	<ul style="list-style-type: none"> • A JSC will no longer be deemed dissolved if all its shares transfer to a single shareholder, nor will such single shareholder be liable for the JSC's obligations and liabilities as under the Old Companies Regulations. Under the New Companies Regulations, if such single shareholder is not the government, a public juristic person, a wholly government-owned entity or a company with a capital of no less than SAR 5 million, then such single shareholder has one year from the date of becoming the single shareholder to convert the JSC to an LLC, failing which, the JSC will be deemed dissolved by operation of law [Art. 149 of the New Companies Regulations].
Losses	<ul style="list-style-type: none"> • If a JSC's losses reach 50% of its capital at any time during a financial year, the JSC's auditor or any of its officers must notify the chairman of the board immediately upon becoming aware of such losses, who in turn must immediately notify the board. The board of directors must convene the extraordinary General Assembly within no more than 45 days of becoming aware of the JSC's losses reaching 50% of its capital, to either increase or decrease the JSC's capital or, alternatively, dissolve the JSC. The JSC will be deemed dissolved by operation of law if the extraordinary General Assembly (i) does not convene within this period; (ii) convenes but is unable to adopt a resolution on the matter; or (iii) approves increasing the JSC's capital and the increase shares are not fully subscribed to within 90 days from the date of the capital increase resolution [Art. 150 of the New Companies Regulations]. As further discussed under "Penalties" below, any officer, auditor or board member that neglects to take the necessary action to convene the extraordinary General Assembly after becoming aware of the losses, may be subject to imprisonment for no more than five years and/or a fine of no more than SAR 5 million [Art. 211(d) of the New Companies Regulations].
Limited Liability Companies (LLCs)	
Formation and Capital	<ul style="list-style-type: none"> • If the number of shareholders in an LLC exceeds 50, the company must be converted to a JSC within a maximum of one year from such date. If the company is not converted, the LLC will be dissolved by operation of law except if such increase was a result of inheritance [Art. 151.2 of the New

	<p>Companies Regulations].</p> <ul style="list-style-type: none"> • Managers of an LLC are jointly liable for the company’s obligations if they do not include the phrase “Limited Liability Company” or the LLC’s capital next to the LLC’s name [Art. 152.2 of the New Companies Regulations]. • There is no minimum capital requirement; however, an LLC’s capital must, at incorporation, be “sufficient for it to realize its objective” [Art. 160 of the New Companies Regulations]. • In case of in-kind shares, the formation application must include a certified appraiser’s report on the fair value of the in-kind shares [Art. 157.2 of the New Companies Regulations]. • Shareholders will be jointly liable to third parties for the fairness of the in-kind shares’ evaluation. However, an action over such liability is barred after five years from the articles of association’s publication date on the MoCI website and registration date in the Commercial Registry [Art. 157.2 of the New Companies Regulations].
<p>Single Shareholder LLCs</p>	<ul style="list-style-type: none"> • The minimum number of shareholders in an LLC is two [Art. 2 of the New Companies Regulations]. However, individuals or companies can now form single shareholder LLCs. Such sole shareholder will assume the authorities and responsibilities of the LLC’s manager, board of managers and shareholders assembly (Shareholder Assembly) prescribed in the New Companies Regulations [Art. 154.1 of the New Companies Regulations]. • The sole shareholder may appoint one or more managers to manage the LLC and such manager or managers will, by operation of law, have the authority to represent the LLC before judicial bodies and to third parties [Art. 154.1 of the New Companies Regulations]. • A sole shareholder may only form one single shareholder LLC, and a single shareholder LLC may not own another single shareholder LLC [Art. 154.2 of the New Companies Regulations]. • A single shareholder LLC’s limitation of liability rights will be pierced, and the sole shareholder is personally liable for the LLC’s obligations to third parties if the sole shareholder: <ul style="list-style-type: none"> – acting in bad faith, liquidates the LLC or stops its activities before the end or completion of the company’s term or purpose; – does not segregate the LLC’s business from other personal business; or – conducts an activity in the LLC’s name before the LLC acquires a juristic personality [Art. 155 of the New Companies Regulations].

Share Transfers	<ul style="list-style-type: none"> • A shareholder has a pre-emptive right regarding other shareholders' transfer or sale of shares in an LLC exercisable at a consideration equal to the shares' "fair" value, and for a period of 30 days after notice has been provided to the LLC manager, unless the articles of association specify another valuation method or exercise period [Art. 161.1 of the New Companies Regulations]. If a pre-emption right is not exercised within the 30-day period, then the transferring shareholder is free to dispose of his or her shares to a third party [Art. 161.2 of the New Companies Regulations]. • An LLC must maintain a register containing the names of its shareholders and the number of shares each shareholder owns. A transfer of shares is not effective vis-à-vis the LLC or third parties until the reason for the transfer is recorded in the register. The LLC must notify the MoCI of any transfer in order for the transfer to be recorded in the Commercial Registry [Art. 162 of the New Companies Regulations].
Management	<ul style="list-style-type: none"> • An LLC is now bound, by operation of law, by its managers' acts that fall within the LLC's objectives [Art. 164.2 of the New Companies Regulations].
Limitation of Managers' Liabilities	<ul style="list-style-type: none"> • Any legal action against a manager is now barred after the latter of (i) five years from the end of the financial year when the damaging act occurred, or (ii) three years from the end of him or her ceasing to be a manager [Art. 165.4 of the New Companies Regulations].
Shareholder Assembly	<ul style="list-style-type: none"> • The period for holding the annual Shareholder Assembly has been reduced from six months to four months following the end of the fiscal year [Art. 167.2 of the New Companies Regulations]. • The agenda for the annual Shareholder Assembly must include: <ul style="list-style-type: none"> – presentation/reading of the managers' report on the LLC's activities and the company's financial position during the applicable fiscal year, the auditor's report and the supervisory board report (if any); – discussing and ratifying the financial statements; – determining the profit percentage to be distributed to shareholders; – appointing managers and supervisory board members (if any) and determining their remuneration; – appointing the auditor and determining its fees; and – any other matters that fall under the authority of the Shareholder Assembly pursuant to the New Companies Regulations or the articles of association [Art. 169 of the New Companies Regulations]. • The Shareholder Assembly can only deliberate on matters included in the agenda, except if an issue arises during the meeting [Art. 170 of the New

	<p>Companies Regulations].</p> <ul style="list-style-type: none"> • The manager must include in the Shareholder Assembly agenda any item a shareholder requests [Art. 171 of the New Companies Regulations]. • There is now an express obligation on managers, shareholders and shareholder representatives to maintain confidentiality of the documentation/information they receive from the LLC, with each being liable for any damage caused to the LLC or its shareholders as a result of breaching such obligation [Art. 173.4 of the New Companies Regulations].
Supervisory Board	<ul style="list-style-type: none"> • The shareholders of LLCs with 20 or more shareholders must appoint a supervisory board consisting of not less than three shareholders, to observe the LLC's activities and present an annual report to the shareholders at the end of each fiscal year [Art. 172.1 and 172.4 of the New Companies Regulations]. Managers are not entitled to vote on supervisory board members' appointment or removal [Art. 172.2 of the New Companies Regulations]. • Supervisory board members are not liable for the managers' actions except if the members are aware of wrongful acts and neglect to notify the Shareholder Assembly [Art. 172.5 of the New Companies Regulations].
Managers' Report	<ul style="list-style-type: none"> • The period for preparing the managers' report has been reduced from four to three months from the closing date of every financial year [Art. 175.1 of the New Companies Regulations].
Statutory Reserve	<ul style="list-style-type: none"> • The point at which the Shareholder Assembly may resolve to stop setting aside the statutory reserve has been reduced from when the reserve totals 50% to 30% of the LLC's capital [Art. 167 of the New Companies Regulations].
Term	<ul style="list-style-type: none"> • Unless the articles of association provide otherwise, an LLC's term may, under a Shareholder Assembly resolution approved by any number of shareholders representing 50% of the LLC's capital or by the majority of shareholders, be extended for another similar term before the LLC's expiration [Art. 180.1 of the New Companies Regulations]. • If no such decision to extend the term is passed and the LLC continues to operate, the LLC's term will be considered, by operation of law, extended for a similar term [Art. 180.2 of the New Companies Regulations]. • A shareholder not wishing to continue the LLC by extending its term, may withdraw from the LLC by selling its shares to the other shareholder(s) or others at the shares' "fair" value, or in accordance with the valuation method specified in the articles of association. The LLC term will not be extended until the withdrawing shareholders' shares are sold, and the shares' price received, except if the parties agree otherwise [Art. 180.3 of the New Companies Regulations].

	<ul style="list-style-type: none"> Any interested party may object to the extension of an LLC's term [Art. 180.4 of the New Companies Regulations].
Losses	<ul style="list-style-type: none"> If an LLC's losses reach 50% of its capital, the managers must record such event in the Companies Registry and, within 90 days from becoming aware of such losses, convene a shareholders meeting to consider either continuing or dissolving the LLC [Art. 181.1 of the New Companies Regulations]. Such resolution requires the approval of shareholders representing 75% of the LLC's capital, unless the articles specify otherwise [Art. 147.2 of the New Companies Regulations]. In both cases, the resolution must be published on the MoCI website [Art. 181.2 of the New Companies Regulations]. The shareholders are no longer personally liable if they are unable to resolve to either continue or dissolve the LLC; instead, the LLC will be deemed dissolved by operation of law [Art. 181.3 of the New Companies Regulations]. As further discussed under "Penalties" below, the managers that neglect to either call the shareholders for a meeting after becoming aware of the losses or publish the shareholders resolution on the MoCI website, may be subject to imprisonment for no more than five years, and/or a fine of no more than SAR 5 million [Art. 211(d) of the New Companies Regulations].

The Holding Company

	<ul style="list-style-type: none"> A holding company is a JSC or LLC that aims to control other JSCs or LLCs deemed as its subsidiaries by way of owning more than half of their capital or controlling the formation of their boards [Art. 182.1 of the New Companies Regulations]. A holding company's objectives are: <ul style="list-style-type: none"> to manage its subsidiaries or participate in the management of other companies the holding company has invested in, and to provide them with the necessary support; to invest its funds in shares and other securities; to own real estate and assets necessary to carry out its activities; to provide loans, guarantees and financing to its subsidiaries; to own and exploit trademarks, franchises, and other intellectual property rights and lease them to its subsidiaries and others; any other objective that suits the nature of its business [Art. 183 of the New Companies Regulations]. A subsidiary may not own shares in its holding company, and any act to transfer shares to such effect is deemed null and void [Art. 184 of the New Companies Regulations]. A holding company must prepare consolidated financials each fiscal year
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	[Art. 185 of the New Companies Regulations].
Penalties	
	<ul style="list-style-type: none"> • The following persons are subject to (i) imprisonment for no more than five years, and/or (ii) a fine of no more than SAR 5 million (with the right to prosecute such offenses being vested with the public prosecutors' office): <ul style="list-style-type: none"> - a manager, officer, member of the board of directors, auditor or liquidator who includes false or misleading information or omits to include material information in the financial statements or any reports prepared and submitted by them to the shareholders or the General Assembly, with the intention of concealing a company's financial position from its shareholders or others; - a manager, officer or member of the board of directors who knowingly uses a company's assets in a manner that is against such company's interests in order to achieve a personal objective or the objective of a third party, or to benefit from a project or transaction in which such individual such third party has a direct or indirect interest; - a manager, officer or member of the board of directors who knowingly uses authorities or voting power in a way that is against a company's interests, in order to achieve a personal objective or the objective of a third party, or to benefit from a project or transaction in which he has a direct or indirect interest; - a manager, officer, member of the board of directors or auditor who fails to call for, or take the necessary action to convene, an extraordinary General Assembly or a shareholders meeting upon becoming aware of the losses reaching 50% of the company's capital or, in the case of an LLC, fails to announce such event on the MoCI website; and - a liquidator in charge of liquidating a company who knowingly uses the company's funds, assets or rights in a way that is against the company's interests, or deliberately causes damage to shareholders or creditors whether for purposes of achieving a personal objective or the objective of a third party, or to benefit from a project or transaction in which the liquidator has a direct or indirect interest, or to favor one creditor over another with no legitimate reason [Art. 211 of the New Companies Regulations]. • The following persons are subject to (i) imprisonment for no more than one year, and/or (ii) a fine of no more than SAR 1 million (with the right to prosecute such offenses being vested with the public prosecutors' office): <ul style="list-style-type: none"> - an auditor who fails to inform the company of the violations the auditor discovers;

	<ul style="list-style-type: none"> - a government official who divulges company secrets; - a person appointed to inspect a company who deliberately falsifies information or omits mentioning material facts that will impact the results of the inspection; - a person who deliberately announces the registration of a company before the registration procedures are completed; - a person who invites others to subscribe to shares by falsely inferring that certain persons are or will be involved in the company; - a person who deliberately includes statements that are false or violate the New Companies Regulations in a company's formation application or constitutional documents, including a person who knowingly signs or publishes such documents; - a person who knowingly overestimates or provides false statements in connection with the valuation of in-kind shares, the distribution of shares between shareholders or the settlement of their full value, whether at formation or at a capital increase or decrease or at a redistribution of shares among shareholders; - a person who, whether in person or by proxy, impersonates a shareholder and votes at a General Assembly or shareholders' meeting; and - a person who uses a company for a purpose other than what the company was licensed for [Art. 212 of the New Companies Regulations]. <ul style="list-style-type: none"> • The public prosecutors' office may, in cases where it is unable to prosecute the person who committed any of the criminal offenses, bring an action against the relevant company for the damages [Art. 217 of the New Companies Regulations]. • The following persons are subject to a fine of no more than SAR 500,000 (which the MoCI or CMA may impose, as applicable) [Art. 213 of the New Companies Regulations]: <ul style="list-style-type: none"> - a person who, in bad faith, declares, distributes or receives profits or revenues in violation of the New Companies Regulations, the company's articles of association or bylaws, or an auditor who ratifies such distribution with knowledge of the violation; - a board of directors member who deliberately obstructs the calling or convening of a General Assembly; - a person who accepts appointment to the board of directors of a JSC, or remains in office, in violation of the New Companies
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	<p>Regulations, and any member of a JSC's board if such violation occurs with the member's knowledge;</p> <ul style="list-style-type: none"> - a JSC's board of directors member who obtains a guarantee or a loan from the JSC in violation of the New Companies Regulations, and the JSC's board chairman if such violation occurs with the member's knowledge; - a person that accepts or continues to act as auditor with knowledge of reasons precluding him from doing so under the New Companies Regulations; - a person who deliberately prevents a shareholder from participating in a General Assembly or shareholders meeting, or prevents the shareholder from exercising his or her right to vote his or her shares in violation of the New Companies Regulations; - a person who receives or is promised a benefit in return for voting his or her shares a certain way or abstaining from a vote, including the person(s) that granted or promised such benefit; - a person who neglects duties to call for the General Assembly or shareholders assembly within the periods prescribed in the New Companies Regulations; - a person who neglects duties to publish the company's financial statements in accordance with the provisions of the New Companies Regulations; - a person who fails to provide the shareholders with the documents required to be provided under the New Companies Regulations; - a person who neglects duties to provide the MoCI with the documents required to be provided under the New Companies Regulations; - a person who fails to prepare and record meeting minutes as required under the New Companies Regulations; - a person who deliberately obstructs the access to company documents of a person entitled to have such access under the New Companies Regulations; - a person who neglects duties to publish the company's articles of association, bylaws or any related amendments or to record them in the Commercial Registry; - a liquidator who fails to announce the liquidation or the completion of the liquidation in accordance with the New Companies
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	<p>Regulations;</p> <ul style="list-style-type: none"> - a person who fails to include information in a company's official documents that is required to be included under the New Companies Regulations; - an auditor that violates the New Companies Regulations; and - a company or a company officer that fails to comply with the rules and regulations applicable to the operations of such company, or the instructions and decisions of the competent authority, without reasonable justification. <ul style="list-style-type: none"> • The above penalties may be doubled for a repeat offense, and they are without prejudice to any other penalties that may be imposed under any other laws [Art. 214 of the New Companies Regulations].
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Endnotes

¹ Promulgated pursuant to Council of Ministers Resolution No. 30 dated 27/1/1437H. (9 November 2015) and Royal Decree No. M/3 dated 28/1/1437H. (10 November 2015).

² Promulgated under Royal Decree No. M/6 dated 22/3/1385H. (20 July 1965).

³ Issued by the Board of the CMA pursuant to Resolution Number 3-11-2004 dated 20/8/1425H. (4 November 2004) and amended by the Board of the CMA pursuant to Resolution Number 1-36-2012 dated 11/1/1434H. (25 November 2012).