

## Alert | Corporate



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### **Kingdom of Saudi Arabia Unveils New Law to Enhance Investment Landscape**

On 11 August 2024, the Kingdom of Saudi Arabia issued a new investment law (Law), pursuant to Royal Decree No. (M/19). The Law will take effect on or about 7 February 2025.

Once effective, the Law will repeal the Foreign Investment Law (Royal Decree No. (M/1) dated 5/1/1421 AH or 10 April 2000).

The Law is a key component of the Kingdom's Vision 2030 program and National Investment Strategy, supporting the continued diversification of the Saudi economy away from hydrocarbons. It is also part of wider legislative efforts by the Saudi government to make the Kingdom an attractive destination for foreign direct investment and increased domestic investment, and to enhance competition in the investment environment by updating laws to reflect best international practice, e.g., the civil transactions law, private sector participation law, companies law, bankruptcy law, and the creation of special economic zones.

The Law does so by (among other things):

- (a) granting investors a set of investor rights and protections;
- (b) affording equal treatment to foreign and domestic investors;

- (c) providing a basis for the grant of investor incentives;
- (d) promoting fair competition and ensuring equal investment opportunities;
- (e) providing effective means of dispute resolution;
- (f) easing regulatory restrictions on investments; and
- (g) introducing transparent, streamlined, and fair investment procedures and enhanced investment governance.

Put simply, the Law represents a significant overhaul of the existing investment regime in the Kingdom for both foreign and domestic investors.

### Key Features

The below provides an overview of the key features of the Law and the key differences with the foreign investment law that it will replace:

No.	Key Feature	New Investment Law	Foreign Investment Law
1.	<b>Enlarged Scope</b>	Regulates both foreign and local investors in the Kingdom. Foreign investors currently subject to the foreign investment law will be subject to the Law once it comes into effect.	Regulates foreign investment in the Kingdom only.
2.	<b>Qualified freedom of investment</b>	<p>Enshrines the principle of freedom of investment in the Kingdom, such that an investor may invest in any sector or activity available for investment.</p> <p>This principle does not apply to/is subject to:</p> <ul style="list-style-type: none"> <li>(a) investment activities that are included on the list of excluded activities, for which foreign investment is prohibited or restricted. In such circumstances, an investor may apply to MISA for approval to invest in the excluded activity; and</li> <li>(b) the power of MISA to suspend foreign investment in the</li> </ul>	<p>No equivalent principle enshrined in the law.</p> <p>The Council of Ministers issues the list of activities excluded from foreign investment.</p>

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		<p>interests of national security, acknowledging that MISA’s decision to do so must be based on objective grounds and consistent with the Kingdom’s international obligations.</p> <p>The list of excluded activities is determined by the “Competent Entity” which is defined in the Law as any independent ministry or public entity, and MISA will publish such list.</p> <p>It should be noted that there has been a significant narrowing of the list of excluded activities over the past few years and most activities are now open to foreign investment noting that certain activities require minimum Saudi participation. Further information can be found on the Services Manual issued and updated by MISA regularly.</p> <p>It is expected that the list of excluded activities under the new investment regime will continue this trend, reflecting a Kingdom open for investment.</p>	
3.	<b>Eased regulatory restrictions on investment</b>	Replaces the investment license regime with a simplified registration process. As such, investors will no longer require an investment license to invest in the Kingdom, but must, as a pre-condition to investing, register with MISA (excluding where investing in publicly listed securities subject to the capital markets law). MISA will be responsible for establishing and maintaining a national register of investors.	Foreign investors require an investment license to invest in the Kingdom. Depending on the activities engaged in, a foreign investor may require multiple licenses with differing requirements.

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4.	<b>Balanced set of investor rights and protections</b>	<p>Article 4(1) of the Law provides the following rights and protections for investors:</p> <ul style="list-style-type: none"> <li>(a) right to equal treatment vis-à-vis other investors, including domestic and foreign investors under similar circumstances;</li> <li>(b) right to fair and just treatment;</li> <li>(c) protection against confiscation and direct and indirect expropriation;</li> <li>(d) no restrictions on the transfer or repatriation of funds, both within and outside the Kingdom;</li> <li>(e) right/discretion to manage investment, dispose of such investment in accordance with the law, and own any property necessary for the conduct of the investor’s business;</li> <li>(f) protection of intellectual property and trade secrets; and</li> <li>(g) right to information and data and necessary services from competent entities to facilitate any administrative procedure relating to the investment.</li> </ul> <p>Further, in exercising its rights or taking measures in the public interest (including those necessary to fulfill the Kingdom’s international obligations, maintain public order, or protect national security), the competent</p>	<p>No provision for equal treatment.</p> <p>No provision for fair and just treatment.</p> <p>Protection against confiscation and direct expropriation only.</p> <p>Provides for the possibility for foreign investors to transfer or repatriate funds.</p> <p>Only provides for foreign investors to own necessary real estate as needed for operating the licensed activity or for the housing of staff, subject to existing provisions governing real estate ownership by foreigners.</p> <p>No express protection of intellectual property and trade secrets.</p> <p>Similar right afforded under Art. 10 of the law.</p>

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		entity must crucially take account of the above investor rights.	
5.	<b>Promoting fair competition</b>	Promotes the principle of competitive neutrality and fairness to ensure equal investment opportunities and that public and private sector competition is on a level playing field.	No equivalent provision in the law.
6.	<b>Grant of investor incentives</b>	Provides a clear basis for competent entities to grant investment incentives to investors, based on objective and fair eligibility criteria.	No equivalent provision in the law.
7.	<b>Transparent, streamlined, and fair investment procedures and enhanced investment governance</b>	Contemplates MISA establishing a “single window” to facilitate investors obtaining all required legal approvals, etc., for their investments in the Kingdom.	No equivalent provision in the law.
8.	<b>Means of effective dispute resolution</b>	Investors may have recourse to a competent court to resolve disputes, including disputes with competent entities, unless the parties agree otherwise.  Additionally, investors may agree to resolve disputes through alternative dispute resolution, including arbitration, mediation, and conciliation.	Provides for settlement of disputes amicably between the parties. Failing settlement, the dispute will be settled in accordance with relevant laws. Applies to both disputes with government and Saudi partners.
9.	<b>Penalties</b>	Introduces a regime for serious and non-serious violations of the Law, to	Art. 12 of the law provides for a basic violation/penalty regime, i.e., MISA can withhold incentives/privileges, impose a fine

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		<p>be further detailed in the implementing regulations.</p> <p>Non-rectified, non-serious violations and serious violations are subject to one or more of the following penalties: (a) a warning; (b) a fine of up to SAR 300,000; and (c) cancellation of investor registration.</p> <p>Provides for a committee to be formed to consider violations and determine the appropriate penalty, taking into account the gravity and frequency of the violation and size of the establishment.</p> <p>Investors have the right to appeal to the competent court any MISA decision within 30 days of notification of the decision.</p>	<p>of up to SAR 500,000, or revoke an investment license.</p>
<p><b>10.</b></p>	<p><b>International treaties and special economic zones</b></p>	<p>The Law is without prejudice to:</p> <ul style="list-style-type: none"> <li>(a) the Kingdom’s obligations pursuant to international treaties to which it is a party;</li> <li>(b) the Kingdom’s other laws regulating specific economic activities, including the laws of any special economic zones.</li> </ul> <p>As such, in the event of an inconsistency:</p> <ul style="list-style-type: none"> <li>(a) the Kingdom’s international obligations will apply;</li> <li>(b) those specific Kingdom laws will apply, provided that the investor enjoys, as a minimum, the rights stipulated in the Law.</li> </ul>	<p>No equivalent provisions in the law.</p>

## Conclusion

The Law demonstrates that the Kingdom is open for domestic and foreign investment alike, attempting to make it easier to invest by introducing a unified investment framework and more open, simplified, and transparent investment procedures.

The Law may provide comfort to both foreign and domestic investors considering investing in the Kingdom. However, investors are watching for the implementing regulations, which will contain details on the Kingdom's new investment regime and, importantly, how the Law will be interpreted and applied.

Overall, the Law is a significant development that may help the Kingdom achieve its objective of boosting both domestic and foreign investment over the next decade.

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