

Saudi Arabia

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A changing legal environment

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Saudi Arabian law is based on *shariah* (Islamic law). The two main sources of Islamic law are the Qur'an (a divine revelation to the Prophet Mohammed) and the Sunnah (writings detailing the Prophet Mohammed's sayings and actions). In Islamic law there are four main schools of jurisprudence, namely: *hanbali*, *hanafi*, *shafai* and *maliki*. The Saudi Arabian courts and judicial committees generally apply the *hanbali* school. The Saudi Arabian government, from time to time, issues rules and regulations with the objective of supplementing Islamic law when the need arises. In the event of a conflict between Islamic law and government rules and regulations, Islamic law will generally prevail. Where government rules and regulations are silent, reference is made to the relevant rules under Islamic law.

Comprehensive regulations

Saudi Arabia's legal framework has developed significantly in recent years as part of a concerted effort to increase foreign investment in the country and revisit perceived legislative obstacles in this regard. In the coming year, we expect to see further significant developments in Saudi Arabia's legal environment.

The much anticipated redraft of the Companies Law is likely to be issued this year. One of the most significant changes is expected to be the settlement of the jurisdictional conflict between the Capital Market Authority and the Ministry of Commerce and Industry in relation to the offer of securities, particularly in public offerings. Further changes are anticipated to the minimum capitalisation for limited liability companies, which is expected to be reduced from the current minimum requirement of SR500,000 (\$133,000) to a minimal amount.

The Saudi financial and mortgage sector is set to be revolutionised by the issue of comprehensive regulations in the course of this year. These regulations will target, amongst other areas, the Saudi real estate market and will pave the way for the growth of the country's mortgage industry. The new regulations are expected to cover issues such as instalment sales (deferred payment sales), leases, mortgages and real estate finance (including elements of project finance), and the enforcement of security. They would also offer guidelines to facilitate the easy registration of security over property and complement the existing procedures for registering and transferring title.

The Capital Market Authority will also be seeking to encourage greater investment in Saudi Arabia by issuing a raft of new regulations. The Authority has recently issued regulations and instructions concerning the trading of shares of companies listed in the Saudi stock market by investors based in the Gulf Cooperation Council. These regulations will provide greater opportunities for foreign investors to tap into the Saudi stock market. Also, towards the end of 2006, the Capital Market Authority issued the Investment Funds Regulations which clarified the regulatory requirements applying to investment funds.

From July 2007, commercial banks licensed in Saudi Arabia will need to have transferred their securities business activities to licensed subsidiaries. Accordingly, we expect there will be greater clarity in the delineation between the jurisdictions of the Saudi Arabian Monetary Agency and the Capital Market Authority.

Attracting foreign investors

We expect to see a continuation of the tremendous interest in Islamic financing in Saudi Arabia and particularly the use of *sukuks*. In response to this interest we expect to see changes in capital market regulations; in particular, the possibility of regulations that deal with the issuance of *sukuk*. These refinements should place Saudi Arabia at the forefront of the

Islamic finance industry and encourage the growth of what is already a multi-billion dollar industry in Saudi Arabia.

In late March 2007, Saudi Arabia's Supreme Economic Council issued a revised version of its "negative list" which lists those economic activities that are not permitted for foreign investors. The list of restricted activities decreases every year and the most notable change this time is the removal of the prohibition on wholesale, retail and commercial agencies or distributorships (although some restrictions may still apply). This was an extremely important move for foreign consumer product manufacturers as it will enable them to consolidate their presence in Saudi Arabia and have more control over the distribution of their products. This development is a direct result of Saudi Arabia's recent accession to the World Trade Organisation.

Finally, 2007 will most likely see the issuance of revised regulations in relation to the judicial regulatory framework including the establishment of a supreme court, division of general courts into specialist circuits, and control given to the general courts over certain types of disputes that are currently assumed by various judicial committees. This might also include the transfer of jurisdiction over commercial disputes from the Grievances Board (which currently assumes jurisdiction over such disputes on a temporary basis) to the general court.

This is part of the government's larger and long-term reform of the Saudi judicial system, which will also involve the admittance and training of more judges. The revised regulations are expected to speed up the processing of lawsuits filed in the general courts and the Board of Grievances. They will hopefully also increase the capacity and sophistication of the judicial system to be able to meet the ever increasing demands placed on it, both in terms of the volume of cases and the increasing complexity of Saudi transactions.

Whichever way one looks at it, 2008 promises to be a fascinating year for everyone

with an interest in Saudi Arabia's continuing development

Capital markets

Recommended firms

Tier 1

Al-Jadaan & Partners/Clifford Chance
Legal Advisors/Baker & McKenzie
Mohammed Al-Sheikh/White & Case

Tier 2

The Alliance of Abbas F Ghazzawi & Co and
Hammad Al Mehdar & Co

Tier 3

Abdulaziz Al-Assaf/Norton Rose
Abdulaziz AlGasim/Allen & Overy
Abdulaziz H Fahad
Feras Al Shawaf/Trowers & Hamblins
The Law Firm of Salah Al-Hejailan
The Law Offices of Dr Mujahid M Al-Sawwaf

Banking

Recommended firms

Tier 1

Al-Jadaan & Partners/Clifford Chance
Legal Advisors/Baker & McKenzie

Tier 2

Abdulaziz AlGasim/Allen & Overy
Mohammed Al-Sheikh/White & Case
The Alliance of Abbas F Ghazzawi & Co and
Hammad Al Mehdar & Co
The Law Offices of Dr Mujahid M Al-Sawwaf

Tier 3

Feras Al Shawaf/Trowers & Hamblins
Law Office of Hassan Mahassni
The Law Firm of Salah Al-Hejailan

Tier 4

Abdulaziz Al-Assaf/Norton Rose
Abdulaziz H Fahad
Mohammed Bin Saud Al-Rasheed/Baker Botts
The International Law Firm

Mergers and acquisitions

Recommended firms

Tier 1

Al-Jadaan & Partners/Clifford Chance
Legal Advisors/Baker & McKenzie
Mohammed Al-Sheikh/White & Case

Tier 2

The Alliance of Abbas F Ghazzawi & Co and
Hammad Al Mehdar & Co
The Law Offices of Dr Mujahid M Al-Sawwaf

Tier 3

Abdulaziz AlGasim/Allen & Overy
Feras Al Shawaf/Trowers & Hamblins
Law Office of Hassan Mahassni
Mohammad Al-Ammar/King & Spalding
The International Law Firm
The Law Firm of Salah Al-Hejailan

Project finance

Recommended firms

Tier 1

Al-Jadaan & Partners/Clifford Chance
Legal Advisors/Baker & McKenzie

Tier 2

Law Office of Hassan Mahassni
Mohammed Al-Sheikh/White & Case
The Alliance of Abbas F Ghazzawi & Co and
Hammad Al Mehdar & Co

Tier 3

Abdulaziz AlGasim/Allen & Overy
Feras Al Shawaf/Trowers & Hamblins
The Law Offices of Dr Mujahid M Al-Sawwaf

A confluence of factors - such as being the world's largest oil exporter, continuing market reform and privatisation, and even the sub-prime crisis - have led to conditions in the kingdom of Saudi Arabia where even hyperbole sometimes falters. "This is just a truly phenomenal market, it is exploding," says one partner. Another says: "It's like a sleeping giant suddenly waking up."

Headline-grabbing deals have been appearing in Saudi Arabia at a pace few other economies can match. One area where this is apparent is in equity capital markets, where large rights issues and IPOs have been plentiful. Witness the largest-ever IPO in the kingdom, that of Alinma Bank, raising \$2.8 billion.

Because of government requirements to link projects with IPOs, so that Saudi citizens can share in the economic benefits, the projects sector has seen a number of large flotations as well. The \$1.8 billion IPO of petrochemicals project Saudi Kayan, initiated by the Saudi Basic Industries Corporation

(Sabic) and Saudi Kayan Petrochemical Company caused a stir back in mid-2007, while more recently, the \$5 billion Ma'aden IPO, the largest mining IPO in the Middle East, stole the spotlight.

Project finance has similarly been a rapidly growing sector in Saudi Arabia across many areas, especially infrastructure, petrochemicals, water and power. And with the credit crunch, Islamic finance has become increasingly important to projects, an ever-increasing percentage of capital coming from *shariah*-compliant sources. In cases like the Red Sea Gateway Terminal project in Jeddah, the SR1.7 billion (\$454 million) financing was entirely *shariah*-compliant.

The rise of Islamic finance has made way for growth in the use and complexity of financial products. *Sukuk* Islamic bonds have been prolific, one example being real-estate developer Dar Al Arkan's \$1 billion *sukuk* issuance, the biggest-ever from a Saudi corporate.

With so many developments going on, international law firms are keen to be involved, which requires an association with a local firm. But as the tumultuous year of shifting alliances shows, establishing a good inter-firm relationship and presence in Saudi Arabia is difficult. Breaking ties and exiting Saudi Arabia this year were DLA Piper and Squire Sanders & Dempsey. Meanwhile Freshfields Bruckhaus Deringer, Herbert Smith and Norton Rose are the latest firms to officially enter the market.

But if the existing firms are concerned with the arrival of foreign competitors, they certainly aren't showing it. Says one local partner, "This is one of the few economies in the world where lawyers are saying: 'We need more competition.'"

Abdulaziz AlGasim/Allen & Overy

Associating with the Abdulaziz AlGasim Law Firm, Allen & Overy has hit the ground running since establishing its presence in Riyadh in July 2007 with a team of more than a dozen legal advisors headed by Julian Johansen and Anzal Mohammed. "We regard them as really the leading law firm in the region now, and they've established themselves across a broad spectrum of industries," says one client. "They've managed to build up a fairly sizeable footprint, particularly in Dubai and recently Saudi Arabia."

A banker gives praise to both Johansen and Abdulaziz AlGasim. "Julian is quite a unique individual in that he's a very special bridge between Arabic and English. He's a fluent Arabic speaker, he can draft in Arabic, and at the same time, is a western-trained lawyer." Of AlGasim, the client says: "He holds a pret-

ty unique place in the market as well. He's a former judge, and he's got very good inroads into the government infrastructure."

Another client praises Atif Hanif, a senior associate: "He stands out as one of the key players. He's born and bred in the region. He's bilingual, he's extremely accessible, and extremely good at what he does."

Although new to Saudi Arabia, the firm already has a growing list of large deals. Allen & Overy advised GE Medical Systems in relation to the joint venture between GE Healthcare Arabia and El Seif Development Co. On the project finance side, the firm advised the Samba Financial Group, the National Commercial Bank, and the Saudi British Bank, which were the financiers to telecoms operator Mobily in its SR1.5 billion acquisition of network services provider Bayanat Al Oula via a *murabaha* (deferred sale) facility.

Leading lawyers

Abdulaziz AlGasim
Julian Johansen

Al-Jadaan & Partners/Clifford Chance

The seamless cooperation between Al-Jadaan & Partners and Clifford Chance may look effortless, but the recent failed international-local associations should highlight just how much both firms have put into this practice. This year, partnership has brought in even more lawyers, such as banking and project finance partner Mohamed Hamra-Krouha from Clifford Chance's Dubai office. The firm is a leader in all practice areas, especially project finance and Islamic finance.

"It's always been a pleasure working with these guys. This is probably the best law firm in Saudi Arabia," says one banker. "It's the human capital they have: you need to have lawyers who are smart, and they understand the local laws and national laws. And they have the ability to structure complex transactions."

On the \$1.8 billion IPO of the Saudi Kayan petrochemicals project, the firm advised Saudi Kayan and Sabic on the IPO, as well as the rest of the project financing through conventional and Islamic means. The firm has been involved in many of the year's *sukuk* issuances, typically acting for the arrangers such as Mohammed Al-Jadaan and team's advice to HSBC Saudi Arabia and Calyon Saudi Fransi on Sabic's SR5 billion *sukuk* offering.

"I think Mohammed Al-Jadaan's knowledge of *shariah* matters is phenomenal," says a client of the leading local lawyer. "On structuring complex Islamic finance transactions,

his knowledge of *shariah* matters is extremely useful. The opinions that he gives are generally the same as a *shariah* scholar would give."

In another equity deal, the firm advised the banks on the Saudi International Petrochemical Company's rights issue of \$355 million. In addition, the firm has been involved with some privatisation work, like advising Saudi Arabian Airlines on the privatisation of its catering and cargo businesses.

"They are definitely still the leading local law firm in the market, the one with the most experience, particularly in the project finance space, and credibility," says one client.

Leading lawyers

Mohammed Al-Jadaan

Law Office of Hassan Mahassni

The Law Office of Hassan Mahassni has extensive experience on large regional projects, with leading lawyer Basel Barakat as a main driver behind the firm's momentum. "He's basically run the international side of that practice more or less singlehandedly," says one peer. "He's definitely a very solid lawyer who's done a lot for us."

One of the firm's recent noteworthy deals saw Barakat leading a team acting for the Saudi Binladin Group in its SR6 billion *shariah*-compliant financing facility to construction work for three campuses of King Saud Bin Abdulaziz University for Health Sciences in July 2008. The deal follows on the heels of the closing in March 2008 of the SR3.2 billion facility for construction work in a large housing complex at the King Abdullah University of Science and Technology, Saudi's first graduate research university. The deal included a *murabaha* facility.

Hassan Mahassni was involved in the Red Sea Gateway Terminal project, acting as counsel to lenders Al-Rajhi Bank and Banque Saudi Fransi on the \$450 million *shariah*-compliant project financing for the terminal at Jeddah Islamic Port. Another large deal the firm was involved in was the Hajj Terminal expansion, in which Barakat advised the Saudi Binladin Group and Hajj & Umrah Terminals Construction & Development Company on the \$205 million *shariah*-compliant project financing for the construction of a terminal at King Abdulaziz International Airport.

Leading lawyers

Basel Barakat

Legal Advisors/Baker & McKenzie

Legal Advisors in association with Baker & McKenzie gets a large share of the financial

and corporate work in Saudi Arabia thanks to a growing team headed by the likes of Karim Nassar, George Sayen and Ian Siddell. The firm took on partner Caroline Long from the London office, as well as a number of associates this year. Demonstrating the firm's ties to banks and large companies, some of those new hires came from in-house positions from entities like Saudi Aramco and the Dubai Islamic Bank.

"Baker remains one of our favourite referrals on our panel," says a client. "They've been excellent in that they are fully familiar with the regulations and the regulators, and have assisted in finalising a huge volume of basically business-standard documentation."

Nassar and team advised Kingdom Holding Company on its SR3.22 billion IPO, one of the biggest listings of the year. Of Nassar, one client says: "We find him to be very active, useful and accessible."

The firm's Islamic finance practice is of a high standard as well. This year, it advised the Saudi Electricity Company on its second *sukuk* offering in Saudi Arabia, worth SR5 billion. Project finance has perhaps been the firm's strongest area of late. It advised Ma'aden on the \$5.5 billion multi-tranche financing for a phosphate mine and beneficiation plant and a fertiliser production complex, as well as a bidder for the \$5 billion Landbridge rail project.

"Overall we are very comfortable and satisfied with Baker & McKenzie in Riyadh," comments a client. "Their documentation and service have been excellent."

Leading lawyers

Karim Nassar
George Sayen
Ian Siddell

Mohammed Al-Sheikh/White & Case

Mohammed Al-Sheikh in association with White & Case has been on a roll this past year, with an expanding team and some "serious capital markets work" according to rivals. "We use them for specialist work," says a client of the firm. "And a lot of the work we are giving them relates to local Saudi IPO and M&A-type work."

The firm was involved in the year's biggest flotation, scoring a lead role representing Alinma, a Saudi bank, in its SR10.5 billion IPO. On the debt side, the firm advised real-estate developer Dar Al Arkan on its second-ever *sukuk* issuance, and the largest-ever from a Saudi corporate, a \$1 billion *sukuk* to be listed on the DIFX and the Labuan International Financial Exchange in Malaysia. The firm had

not long previously advised Dar Al Arkan on its first *sukuk* issuance.

A notable M&A deal for White & Case was its advising mobile telecoms operator Mobily, a long-standing client, on its acquisition in Bayanat Al Oula, a local data service provider, and the SR1.5 billion Islamic facility to fund the purchase. In the bustling project finance sector, the firm was quite active too. Mohammed Al-Sheikh and Chris Langdon advised Arabian Centres, a shopping mall company, on the SR4.3 billion *murabaha* facility, demonstrating the firm's strength in Islamic finance work. Meanwhile, White & Case advised the lenders, Islamic Development Bank, Bank Al Jazira and Credit Suisse in the \$205 million debt financing of the Hajj Terminal.

"I like Mohammed Al-Sheikh," a client says. "He has knowledge in local regulations and provides service with high standards."

Leading lawyers

Mohammed Al-Sheikh

Saudi Landbridge rail link between Jeddah, Riyadh and Dammam, another \$5 billion project. Among its M&A work, Haberbeck and team have been busy advising a number of private-equity funds on investments in Saudi Arabia.

Leading lawyers

Ali Abedi

Asad Abedi

Andreas Haberbeck

The Alliance of Abbas F Ghazzawi & Co and Hammad Al Mehdar & Co

Commonly referred to as The Alliance, this Saudi firm has stayed association-free and has not suffered as a result. Led by Asad Abedi, Ali Abedi and Andreas Haberbeck, The Alliance has been the most successful of independent domestic law firms in the Saudi market. "The Alliance has a good team," one rival notes. "They have built their capital markets practice over the past years and they've acquired quite a bit of experience."

This is evidenced by one of the firm's recent deals, in which it was acting as counsel to Zain, a Saudi telecoms operator, in its \$1.86 billion IPO, one of the largest in the kingdom. On the real-estate and infrastructure side, The Alliance has been advising on the establishment of an economic city, including an offering of shares through an IPO.

"They turned things around in an unbelievably short timeframe; they were excellent lawyers - I tell you, it was a first-class effort," says one client. "They were doing translations and had 24-hour and overnight deadlines, translating prospectus comments and changes... Nothing was too much trouble; they worked very hard throughout the process."

The Alliance has seen its share of large project finance deals. It advised Chevron Phillips and its partner on the \$5 billion financing of the design and construction of a petrochemicals facility. In addition, the firm advised the Tarabot consortium as the preferred bidder for the 30-year concession to operate the