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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
Hatem Abbas Ghazzawi & Co
Tier 3
Abdulaziz Al-Assaf/Norton Rose Abdulaziz AlGasim/Allen & Overy Abdulaziz H Fahad Fares Al-Hejailan/Freshfields Bruckhaus Deringer Feras Al Shawaf/Trowers & Hamlin Khalid A Al-Thebity Law Firm/Dewey & LeBoeuf 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 Hatem Abbas Ghazzawi & Co Law Offices of Dr Mujahid M Al-Sawwaf Mohammed Al-Sheikh/White & Case
Tier 3
Fares Al-Hejailan/Freshfields Bruckhaus Deringer Feras Al Shawaf/Trowers & Hamlin Law Office of Hassan Mahassni
Tier 4
Abdulaziz Al-Assaf/Norton Rose Abdulaziz H Fahad International Law Firm Mohammed bin Saud Al-Rasheed/Baker Botts

Mergers and acquisitions

Recommended firms
Tier 1
Al-Jadaan & Partners/Clifford Chance Legal Advisors/Baker & McKenzie Mohammed Al-Sheikh/White & Case
Tier 2
Hatem Abbas Ghazzawi & Co Law Offices of Dr Mujahid M Al-Sawwaf
Tier 3
Abdulaziz AlGasim/Allen & Overy Fares Al-Hejailan/Freshfields Bruckhaus Deringer Feras Al Shawaf/Trowers & Hamlin International Law Firm Law Office of Hassan Mahassni Mohammad Al-Ammar/King & Spalding

Project finance

Recommended firms
Tier 1
Al-Jadaan & Partners/Clifford Chance Legal Advisors/Baker & McKenzie
Tier 2
Abdulaziz AlGasim/Allen & Overy Hatem Abbas Ghazzawi & Co Law Office of Hassan Mahassni Mohammed Al-Sheikh/White & Case
Tier 3
Fares Al-Hejailan/Freshfields Bruckhaus Deringer Feras Al Shawaf/Trowers & Hamlin Law Offices of Dr Mujahid M Al-Sawwaf

With the more developed GCC (Gulf Cooperation Council) economies still reeling from the credit crunch punch, Saudi Arabia's relative conservatism is now being seen as a boon. "We feel very fortunate to be in Saudi Arabia because this is the only place left standing," says one partner at an international firm.

The kingdom is still viewed as something of a sleeping giant economically. Investors are hungry for the country's vast natural resources and the potential of its youthful population, and there are signs that the government is loosening its strict economic controls. Investors in turn are becoming more targeted in their interests. "Companies coming into Saudi Arabia are coming into specific sectors now, rather than 'entering the Saudi market'," says one partner, "People are becoming more focused on their aims."

The legal market itself remains fairly fluid. International firms are still required to seek a link-up with a local firm; however, as with any relationship, finding a suitable partner can be

a challenge, and shifting allegiances are not uncommon. As one international lawyer says: "It's almost musical chairs in terms of associations."

Increasing market sophistication also leads clients to demand local contacts. "Saudi Arabia was a jurisdiction where lawyers on the ground were doing simple work, but the transactions are now happening on the ground," explains one partner. Yet getting staff in is easier said than done, due to the culture shock that confronts western lawyers. "Some law firms are recognising that it's a lot easier to get talent to move to Dubai than Saudi," explains a partner.

In the banking sector a reduction in new lending has coincided with a shift towards Islamic finance. "It is not a good time because the banks are becoming very difficult," says a lawyer. The rise in Islamic finance is due largely to greater liquidity, and as a result many partners see the increase as a phase, not a long-term shift. As one banking practitioner says: "In the short to medium-term Islamic finance has its attractions, but when liquidity comes back people won't be too fussed whether it is Islamic or something else."

Capital markets work has been slow to say the least. "The Saudi stock market has had quite a beating," says a partner: "There are a number of transactions that are pending but the transactions are not feasible any more." In the equity market the only work that is being done is in private placements while, on the debt side, *sukuk* (Islamic bond) deals have been slow due to the financial crisis and a decree by the AAOIFI (Accounting and Auditing Organisation for Islamic Finance Institutions) in February 2008 that changed the terms of classification. "It was declared that a lot of the *sukuks* were not *shariah*-compliant," says one Islamic finance partner: "That was a big blow to the *sukuk* market in general."

M&A activity in the kingdom is still not as prevalent as in other Gulf states. "Saudi companies like to establish their own subsidiaries rather than taking over companies in the country," explains a practitioner, while another adds: "It's a feature of the market that a buyer and a seller say, 'we trust each other, come in as a shareholder'".

In the private-equity area however this may be changing. "I know that private-equity houses are looking at opportunities," says a partner: "One of the biggest private-equity houses in the region moved to Saudi, which shows some potential."

Firms are also predicting a rise in work from privatisations as the government opens up the market.

The biggest development in project finance has been the government's decision to

put some projects back on the balance sheet. "We have seen a number of projects where the market expects to see project financing being taken back by the government," reports one partner. However this measure seems to be more out of necessity than choice, and private investors are still being encouraged to enter the market. "A lot of infrastructure is going to be secured through the government, but what Saudi Arabia is doing is [making] the jurisdiction more attractive for foreign investors," says a partner.

Al-Jadaan & Partners/Clifford Chance

Al-Jadaan's association with Clifford Chance is widely regarded as one of the strongest teams in the jurisdiction. "Clifford Chance has been dedicated. They have put a lot of time and investment in," says one rival Saudi partner: "I'm proud to have them as Saudi lawyers." Local partner Mohammed Al-Jadaan is consistently noted as one of the market's key players. "Al-Jadaan is a terrific lawyer. Their local people [are] good at everything," says a rival lawyer, and clients agree: "Mohammed Al-Jadaan is top class – the best in Saudi Arabia," says one.

The firm's banking team is involved in a number of matters that are still open, including acting for a telecoms provider on the arrangement of a \$3 billion syndicated commercial term facility as part of a \$4.4 billion financing package. Lead partner Mohammed Al-Jadaan is working on a number of restructurings, including representing the minority shareholders in the restructuring of a steel products company and acting for the financiers of two commercial groups on restructuring and default issues.

A stand-out deal for the equity capital markets team was the SR1 billion (\$267 million) Purple Island *sukuk* (Islamic bond). The firm acted for the Purple Island Corporation and the Saudi Binladin Group on the deal, which was notable as the first of its size to be issued by an offshore SPV through the Saudi stock exchange and the first issued entirely within the kingdom. Other highlights for the team include work for the Methanol Chemicals Company on its \$160 million IPO.

A highlight of the association's M&A practice last year was advising Saudi Arabian Airlines on the privatisation of its cargo business as part of the government's wider programme. This year the workload is showing no signs of letting up, with the firm advising on the proposed merger of its client al-Murai with the Hail Agricultural Development Company and a \$12 billion investment by

Jabal Omar Development Company in real estate company Makkah.

Leading the team on nearly all the firm's significant project finance deals is partner Abdulaziz Al-Abduljabbar. He was called in by 20 Islamic finance participants to advise on the \$5.52 billion Ma'aden phosphate mining and production project. The deal, which included both conventional and Islamic facilities, closed in June 2008 and netted the *International Financial Law Review's* 2009 Middle East Project Finance Deal of the Year.

Another highlight was the firm's work for Saudi Kayan in relation to a \$6 billion financing package for a petrochemical complex in the Jubail industrial city. When it was closed the deal included the largest *ijarah* (capital leasing) facility ever provided for a project finance deal. Another project in Jubail is the \$290 million Arabian Amines ethyleneamines scheme. The Al-Jadaan/Clifford Chance team advised the joint venture partners Huntsman and the Al-Zamil Group.

The firm has also been active in the education sector, advising the lenders on the financing of the SR12.5 billion Princess Noura University and the SR6 billion King Saud bin Abdulaziz University for Health Sciences.

Leading lawyers

Mohammed Al-Jadaan

Legal Advisors/Baker & McKenzie

The international partners at Legal Advisors/Baker & McKenzie handle work in both Saudi Arabia and Bahrain, and are split between those two offices. Of the Saudi-based partners, "George Sayen is a highly-regarded corporate lawyer," says one peer, while clients highlighted Bahrain-based Julie Alexander: "We see her as being the best project finance lawyer in the GCC (Gulf Co-operation Council) in terms of skills developed in Saudi deals and organisation, and advice that goes beyond the legal," says one client.

One of the firm's biggest clients is Banque Saudi Fransi, which the banking team advised as the agent bank, along with the other financing banks, over SR8.2 billion (\$21 billion) multi-option facilities for Arabian Bemco Contracting Company. The bank also called in the association to advise over a \$525 million loan from a syndicate of regional and international banks.

The firm showed its Islamic finance credentials by advising a bank syndicate, led by HSBC Saudi Arabia, in relation to a SR1 billion *murabaha* (deferred sale) for the Saudi Binladin Group. The team also acted for Al Faisal Holding company on its \$850 million financing provided by a bank consortium

including \$350 million of *ijarah* (capital leasing) and *murabaha* facilities.

A capital markets team led by Ian Siddell advised the Saudi Binladin Group on a SR1 billion *sukuk al mudaraba* (Islamic bond) issue. The deal was significant as the first *sukuk al mudaraba* of its size to be offered purely in the kingdom and the first to be issued by an offshore SPV registered on the Saudi Stock Exchange.

In the debt markets Karim Nassar has been active advising the Saudi Arabian Mining Company over its IPO of 463 million shares. Nassar also led the team advising Riyadh Bank on a rights issue of 875 million shares for SR13.1 billion and Global Consultants regarding a private placement of 800 million shares worth \$400 million.

One of the biggest M&A deals Legal Advisors/Baker & McKenzie acted on was the acquisition of a majority shareholding in the Saudi Industrial Gas Company (Sigas) by Linde for SR327 million, with the firm acting for the sellers. Bahrain-based Caroline Long worked on a deal for Gulf International Bank that involved the acquisition by certain shareholders of \$4.8 billion of non-performing assets.

In project finance, the firm had a key role advising the Saudi Arabian Mining Company (Ma'aden) and the Saudi Basic Industries Corporation (Sabic) as joint sponsors of the Ma'aden Phosphate Company in relation to \$3.86 billion of syndicated facilities as part of the \$5.52 billion financing of a phosphate project. The deal was closed in June 2008, winning the *International Financial Law Review's* 2009 Middle East Project Finance Deal of the Year.

Another highlight was the firm's work for Samba Financial Group and Arab National Bank as lead arrangers of a SR1 billion bridge finance facility for Al Safwa Cement Company to construct a plant in Rabigh.

Leading lawyers

Karim Nassar
George Sayen
Ian Siddell

Hatem Abbas Ghazzawi & Co

With local associations in such high demand from international firms it is getting rarer to find a truly independent domestic law office in the jurisdiction. In light of this it is impressive that Hatem Abbas Ghazzawi & Co (formerly aligned with Hammad Al-Mehdar & Co) retains its prominence in the market.

The firm's banking practice, led by partner Asad Abedi, advised a Saudi bank last year in connection with a working capital facility for a private electricity company. The alliance also

advised another bank client on a loan facility for a Saudi group in regard to the restructuring of the borrower's telecoms subsidiary.

Asad Abedi is the main contact in the firm's capital markets team and last year he was called on by an international insurance company over its \$40 million IPO. Abedi also advised an investment company in regard to the establishment of a \$400 million real-estate fund.

Both Asad and his brother Ali Abedi were involved when the firm advised a private-equity fund on the acquisition of a public utilities management company. Other highlights include counselling a government authority on the acquisition of large shareholdings in two international banks and acting for an engineering group over the purchase of a majority shareholding in a Saudi engineering group.

In the project finance area, the team worked alongside Ashurst on a mandate for the lenders to the preferred bidder for the \$5.5 billion Ras Az Zawr independent water and power project. Another highlight was the firm's advice to Tarabot/Tracc over a bid for the 30-year, \$7 billion concession to operate the Saudi Landbridge rail link between Jeddah, Riyadh and Dammam.

In the energy sector, Ali Abedi led a team advising Chevron Phillips Chemical Company and its Saudi partner on the \$1.1 billion financing of a petrochemical facility in Jubail. The deal included investment by the Saudi Industrial Development Fund (SIDF) and Partnership Investment Finance (PIF).

Leading lawyers

Ali Abedi
Asad Abedi
Andreas Haberbeck

Abdulaziz AlGasim/Allen & Overy

Alongside the associated lawyers of Abdulaziz AlGasim, Allen & Overy now has two partners on the ground in its Riyadh office after M&A specialist Johannes Bruski moved from its Frankfurt base in December 2008.

In the banking sector, a clear highlight was the firm's work for Samba Financial Group, Riyadh Bank and Banque Saudi Fransi as the lead arrangers of a SR3 billion (\$801 million) credit facility for Kingdom Holding Company. Al Rajhi Bank also called in the team to advise over a SR700 million *murabaha* (deferred sale) for the Investment Dar Company.

The firm's capital markets work is performed jointly with the Dubai office. This year the team acted for JPMorgan and the Samba Financial Group as financial advisor

and lead underwriter respectively of the SR9.25 billion IPO of the Saudi Arabian Mining Company. Another highlight saw A&O advise the Saudi British Bank over an issue of SR1.7 billion of floating rate notes.

Led by Johannes Bruski, the association's M&A practice advised two international financial institutions last year over the purchase of shares in Saudi Hollandi Bank. Changi Airports International also called on the team to advise over its bid for a six-year management contract for the King Fahd International Airport in Dammam, including the formation of a joint venture company.

In the lucrative project finance area AlGasim/A&O was heavily involved in the \$10 billion Saudi Kayan Petrochemical project, advising the lenders and export credit agencies over the financing of several ethylene, propylene and downstream production plants.

The team also closed a long-term project for the refinancing of the Jubail Acetyls Complex, advising the sponsors Saudi International Petrochemical Company, the National Power Company and Helm Arabia on the transaction, which closed in September 2008. Another notable petrochemical deal saw the practice advise the National Petrochemical Industrial Company over a \$750 million financing for the NatPet II propylene and polypropylene complex.

The firm demonstrated its Islamic finance capability when it acted for Saudi Hollandi Bank as the mandated lead arranger and underwriter of a \$195.4 million financing for the Arabian Amines Company and its construction of an ethylenamines plant.

Leading lawyers

Abdulaziz AlGasim
Julian Johansen

Other ranked firms

A prominent client of the Law Office of Hassan Mahassni is the Saudi Binladin Group, which the firm advised over Saudi law aspects of its SR3.7 billion (\$994 million) *shariah*-compliant financing of the King Saud bin Abdulaziz University for Health Sciences and the SR4.8 billion financing of the Princess Noura Bint Abdulrahman University for Women.

The same client called on the firm's Islamic finance experience in connection with a SR200 million *murabaha* (deferred sale) facility for the expansion of the Mosque of the Prophet Muhammad in Medina. Additionally, the team acted for Saudi Binladin and Hajj & Umrah Terminals Construction and Development Co on the \$205 million *shariah*-compliant financing for the Hajj terminal

extension at King Abdulaziz International Airport in Jeddah.

Other project work last year included acting for the sponsors in relation to the \$2.5 billion financing of the Rabigh Independent Power Plant and advising on the refinancing for the National Petrochemical Industrial Company of a propylene and polypropylene manufacturing complex in Yanbu. In the energy sector, the firm worked for ACWA Power Projects as part of a consortium bid for the \$5.4 billion Ras Az Zawr IWPP (independent water and power plant).

Leading lawyers: Basel Barakat

The leading lights at Mohammad Al-Ammar/King & Spalding are Isam Salah and Jawad Ali. It was Ali who took the lead role last year advising Eurx Properties on the €200 million acquisition financing of a commercial property in Dubai. In the same area the firm acted for a bank consortium as the lead arrangers of the \$75 million financing for the acquisition of shares in United Gulf Steel. Project finance highlights include representing Sahara Petrochemicals on the \$200 million financing of a proposed new facility in the country.

Mohammad Al-Ammar/King & Spalding scored a first by advising the Jadwa Investment Company over the formation of an investment fund – the first in the country authorised to invest in a single unlisted asset. The same client sought the advice of fund partner Nabil Issa regarding a *shariah*-compliant total return swap agreement. Issa concluded a similar deal for the Samba Financial Group in February 2009.

The firm's M&A highlights include acting for AK Al Muhaidib & Sons on a \$660 million privatisation deal for the cargo and ground-handling business of Saudi Arabian Airlines. The team also advised Arcapita Bank on a \$1 billion *shariah*-compliant joint venture with ProLogis.

Fares Al Hejailan/Freshfields Bruckhaus Deringer is one of the newest associations in the kingdom, having only been finalised in May 2008. The firm also has a strategic association with local firm Salah Al-Hejailan.

The finance team, led by Charles July, has a clear focus on the projects area and last year advised the Saudi Binladin Group, El Seif and Deutsche Bahn on the Saudi Landbridge rail project. The team also acted for the Ministry of Water and Electricity in relation to the Jeddah water and waste public-private partnership (PPP), and the Saline Water Conversion Corporation regarding the \$10 billion privatisation of 30 cogeneration and water desalination facilities and a water transmission system.

The firm has close connections to the Capital Market Authority and has advised on

the drafting of its trading and membership rules as well as the drafting of the Saudi Arabian Offers of Securities Regulations . Other highlights included a share swap agreement for Nomura and a SR1.2 billion (\$320 million) rights issue for Sahara Petrochemicals.

In M&A, Bruce Embley advised Saudi Telecom Company on the acquisition of 35% of shares in Oger Telecom for \$2.56 billion as well as a joint venture with two media companies . Embley also advised Chevron Phillips on a joint venture with Saudi International Industrials Group for the creation of the largest petrochemical plants in the region.

Feras Al Shawaf/Trowers & Hamlins is different from the other associations in the jurisdiction with the international partner not having an office in the jurisdiction. Leading the finance practice for Trowers is Dubai-based Leroy Levy, who acted in one of the firm's biggest project finance deals last year when he advised the Taiwan power, water and cogeneration companies along with Saudi Masader on the bidding phase of the Ras Azzour IWPP (independent water and power plant).

Levy also led a team advising the Shuaibah Water and Electricity Company on a SR93 million (\$24 million) working capital facility for the Shuaibah 3 IWPP.