

# Saudi Arabia

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## Fares Al-Hejailan

### The Law Firm of Salah Al-Hejailan Jeddah

The new Capital Markets Law (the CML) was passed in June 2003. This law is seen as a landmark for economic liberalization in Saudi Arabia, as it will create a legal and regulatory framework for all capital-related activities and trading in securities, increase transparency and accountability, and attract foreign investment.

The CML comprises 67 articles dealing with, among other things, setting up the Securities and Exchange Commission (Articles 4 to 19), the Securities Deposit Centre (Articles 26 to 30), broker regulations (Articles 31 to 38), investment funds and collective investment schemes (Article 39), rules on market manipulation and insider trading (Articles 49 and 50), sanctions and penalties (Articles 55 to 67) and the general conditions for the operation of the Saudi Arabian securities exchange (Articles 20 to 25). Additionally, Articles 1 and 2 include definitions of important terms and phrases used in the CML.

Article 2 defines the term *securities* as:

- convertible and tradeable shares of companies;
- tradeable debt instruments issued by companies, the government, public institutions or public organizations;
- investment units issued by investment funds;
- any instruments representing profit participation rights, any rights in the distribution of assets, or either of the foregoing; and
- any other rights or instruments that the board determines should be included or treated as securities, if the board believes that this would further the safety of the market or the protection of investors. The board can exercise its power to exempt from the definition of securities any rights or instruments that otherwise would be treated as securities under the above bullet points if it believes that it is not necessary to treat them as securities, based on the requirements of the safety of the market and the protection of investors.

Article 3 specifically excludes commercial bills, documentary credits, money transfers, instruments exclusively traded among banks and insurance policies from the definition of securities under the CML.

## The Capital Markets Authority

The CML envisages the creation of the Capital Markets Authority (the CMA) to regulate the capital markets and license foreign entrants into the market. The CMA has been set up for quite some time now, and has started to accept applications from qualified entities, allowing them to enter and participate in the Saudi securities market. The CMA has just approved the Listing Rules, which are available on the CMA website ([www.cma.org.sa](http://www.cma.org.sa)).

The CMA has a wide range of powers that are outlined under Articles 5 and 6 of the CML. These include the ability to set out policies and plans that are necessary in achieving the CMA objectives, to achieve fairness, efficiency and transparency in transactions, as well as the power to carry out inspections to determine whether any person has violated any provisions of the CML or any of the bylaws to be laid down by the CMA from time to time. Under Article 7 of the CML, the CMA is governed by a five-member board, who must all be Saudi nationals appointed by royal order for a term of five years, renewable once.

## The Stock Exchange

The Stock Exchange (the Exchange) will have the status of a joint-stock company and will be the sole entity authorized to operate the trading of securities in Saudi Arabia. Article 20(c) of the CML provides that the purpose of the Exchange includes:

- ensuring fair, efficient and transparent listing requirements, trading rules and technical mechanisms and information for securities listed on the Exchange;
- providing sound and rapid settlement and clearance rules and procedures through its Securities Depository Centre;
- establishing and enforcing professional standards for brokers and their agents; and
- ensuring the financial strength and soundness of brokers through the periodic review of the compliance with capital adequacy requirements, and introducing arrangements to protect the funds and securities in the custody of brokerage companies.

## Rules governing brokers

Some of the most important rules in the CML are those relating to the regulation of brokers in Saudi Arabia, which is of particular interest to international banks wishing to set up in the

Kingdom. Previously, the only way an international financial institution could enter the Saudi market was in association with a licensed Saudi banking facility, subject to approval by the Saudi Arabian Monetary Agency (the Sama). However, Article 31 of the CML clearly states that brokerage business is to be allowed, subject to the holding of a valid licence. A broker is defined as a joint-stock company that works as a broker, or any agent working for a brokerage company, and that carries out part or all of the following:

- acts in a commercial capacity as an intermediary in trading securities, other than persons working on the basis of contractual arrangements as defined in paragraph (b) of Article 32, including any person who commercially acts as a custodian for securities;
- presents in a commercial capacity an offer to others for obtaining financial assets in the form of securities by opening an account through which transactions in securities can be effected;
- effects in a commercial capacity securities transactions for its own account, other than by way of issuing securities, to create a market in securities and make a profit out of the difference between offer prices for securities and demand for those securities;
- acquires or places securities in a commercial capacity for an issuer, or a person who controls an issuer; or
- acts as an intermediary in a commercial capacity – other than persons who act on the basis of a contractual arrangement as defined in paragraph (b) of Article 32 – including in arranging currency and securities swaps.

The CML also makes a clear distinction between the roles of brokers and that of portfolio managers who, on the basis of a contractual arrangement (or otherwise), manages either securities owned by a person or investment funds owned by a natural or legal person that are intended for investment in securities. This illustrates a particular desire on the part of the Saudi legislature to regulate existing portfolio managers operating in contravention to existing restrictions laid out by the Sama.

One of the most interesting provisions is contained in Article 32(c), which effectively allows the CMA to provide exemptions from the application of paragraphs (a) and (b), which relate to the prerequisites for brokers and portfolio managers, as it believes consistent with the safety of the Exchange and the protection of investors. There has been a great deal of speculation on the application of this provision which, if exercised liberally, might effectively open the door to a wide range of potential participants in the market. However, in light of the new Authority Rule Book Regulations, the CMA has now provided detailed guidance for prospective applicants wishing to act as brokers in Saudi Arabia. It has also provided the prerequisites for entities and individuals wishing to be licensed in arranging, advising and acting as trustee custodian.

### Implementing regulations

As mentioned above, the CML seeks to regulate a wide range of activities in relation to the operation of the Saudi securities

exchange, such as investment funds and collective investment schemes, rules on market manipulation and insider trading. At the time of writing, implementing regulations on: (i) listing rules; (ii) market conduct; (iii) offers of securities; and (iv) the Authority Rule Book, have been finalized.

We hesitate to give a more complete analysis of the above regulations in this short overview, but it is essential that these and any future regulations are consulted by any entity wishing to offer securities or raise finance in Saudi Arabia.

## Banking and finance

### Recommended firms

Tier 1

**Law Office of Mohammed Al-Sheikh/White & Case**

**Legal Advisors Torki A Al-Shubaiki/Baker & McKenzie**

Tier 2

**The International Law Firm**

**The Law Firm of Salah Al-Hejailan**

Tier 3

**Abbas F Ghazzawi & Co and Hammad & Al-Mehdar**

**Law Offices of Dr Mujahid M Al-Sawwaf**

**Yousef & Mohammed Al-Jadaan/Clifford Chance**

Tier 4

**Law Office of Abdulaziz H Fahad/Akin Gump Strauss Hauer & Feld**

Tier 5

**Saud M A Shawwaf/LeBoeuf Lamb Greene & McRae**

### Law Office of Mohammed Al-Sheikh in association with White & Case

In July 2005 White & Case formed a new association with the Law Office of Mohammed Al-Sheikh, after a 16-year association with the Law Office of Hassan Mahassni.

Practice head Mohammed Al-Sheikh and his Riyadh team are involved in a range of high-profile banking transactions. Instructions from the past year include working for institutions such as the International Finance Corporation (IFC), Riyadh Bank, and Samba Financial Group (formerly Saudi American Bank). Mohammed Al-Sheikh led the firm's efforts in acting for the Saudi Electricity Company on one the largest-ever syndicated bank financings in Saudi Arabia. The SR3.5 billion (\$946 million) deal was an increase of a pre-existing Saudi Electricity loan that takes the company's total borrowing to \$2.57 billion.

The firm also advised Samba on the restructuring of its \$108 million bank financing for the Kingdom Centre, an office and mixed-use development in Riyadh, and at the time of writing was acting for the same client as placements agent in relation to the \$35 million equity financing for the Equestrian Club in Jeddah.

The office's banking team also advised Riyadh Bank in connection with its \$68 million loan facility to a subsidiary of the Saudi Arabian Basic Industries Company, and represented the IFC in connection with its \$50 million *murabaha* Islamic finance facility to the Saudi British Bank.

**Leading lawyer**

Mohammed Al-Sheikh

**Key contact partner**

Mohammed Al-Sheikh

**Legal Advisors Torki A Al-Shubaiki/Baker & McKenzie**

John Xefos heads up Baker & McKenzie's Saudi Arabian operations, and the firm's finance practice has had another strong year.

On the capital markets side of the business, partners Atif Hanif and Ian Siddell regularly team up with Chris Hogan in Baker & McKenzie's London office. Last year the firm advised the issuer, the Saudi British Bank, on its \$650 million euro medium-term note (EMTN) programme listed on the Luxembourg Stock Exchange, the first-ever EMTN programme established by a Saudi company.

The instruction followed Hanif's work on Aluminium Bahrain's \$200 million floating rate, Bahrain-listed note issue, in relation to which the firm advised the managers Bank of Bahrain & Kuwait, the Gulf Investment Corporation, the National Bank of Bahrain and the Securities Investment Company.

The Saudi British Bank, Saudi Basic Industries Corporation and the National Bank of Bahrain are all clients of the firm's capital markets practice. In addition to the firm debt capital markets work, Xefos and Karim Nassar also advised arranger Bemo on a \$26.1 million car leasing fleet securitization.

**Leading lawyer**

John Xefos

**Key contact partner**

John Xefos

**The Law Firm of Salah Al-Hejailan**

Salah Hejailan founded his law firm in Riyadh in 1967, and the firm is now one of Saudi Arabia largest practices. The banking and financial services practice represents local and international financial institutions across a range of activities, and also offers an impressive banking regulatory service, including advice on formation, licensing, examinations and new product development.

The firm's recent banking experience encompasses credit enforcement, syndicated and single-lender project financing, asset-based lending, sovereign, agriculture, aircraft and vessel financings, and letter-of-credit enhancements.

**Key contact partner**

Salah Hejailan

**Abbas F Ghazzawi & Co and Hammad & Al-Mehdar**

The Alliance of Abbas F Ghazzawi & Co and Hammad & Al-Mehdar is one of the larger groups of Saudi Arabian lawyers.

The alliance between the two firms was established in 1999 and has an emphasis on Saudi-qualified practitioners rather than overseas lawyers. Since its formation, the Alliance has been at the forefront of legal developments in Saudi Arabia, advising clients such as BP and Royal Dutch Shell. Alongside the banking department, the firm boasts an impressive securities practice that provides solid advice to arrangers, issuers and placement agents in relation to debt and equity capital markets, collective investment schemes, corporate trusteeship and general securities advice.

Recently the firm's banking and finance practice represented the Etisalat consortium, the second Saudi Arabian telecommunications operator, in connection with the issue of bank guarantees to the regulator for the first 3-G and second GSM licences in the country, worth \$2.8 billion. The practice's banking lawyers also acted for Etisalat International in relation to an Islamic financing valued at \$2.35 billion, reportedly the largest ever Islamic finance transaction in Saudi Arabia.

In other deals the firm represented the lenders in connection with an export credit agency financing of a Saudi Arabian Basic Industries Company subsidiary worth €352 million, and acted for the lead arrangers in relation to the \$480 million financing of a domestic company.

**Key contact partners**

Ali Abedi

Adli Hammad

**Other notable firms**

**Law Offices of Dr Mujahid M Al-Sawwaf** has developed a solid reputation among overseas firms, and wins plenty of referral instructions as a result. The firm is particularly well recommended for its projects work, and David Wells is said to be particularly active in the market.

**Mergers and acquisitions****Recommended firms**

Tier 1

**Law Office of Mohammed Al-Sheikh/White & Case****Legal Advisors Torki A Al-Shubaiki/Baker & McKenzie****Yousef & Mohammed Al-Jadaan/Clifford Chance**

Tier 2

**Abbas F Ghazzawi & Co and Hammad & Al-Mehdar****Law Office of Abdulaziz H Fahad/Akin Gump Strauss Hauer & Feld****The International Law Firm****The Law Firm of Salah Al-Hejailan**

Tier 3

**Law Offices of Dr Mujahid M Al-Sawwaf****Kadasah Law Firm/Bryan Cave****Law Office of Mohammed Al-Sheikh in association with White & Case**

Mergers and acquisitions activity remained strong in Saudi Arabia over the last year, but much of Law Office of

Mohammed Al-Sheikh/White & Case's work in the corporate arena was of a confidential nature. However, at the time of writing, the firm was advising on a number of mandates across the main sectors in Saudi Arabia.

A glance at the practice's client list reveals the calibre of the firm's corporate and M&A lawyers: among the institutions that have turned to the firm for advice in recent times include Computer Associates, the Dabbagh Group, General Machinery Agencies, Kimberly Clark Corporation, Nestlé Waters, Mohammed Yousef Naghi Motors, Saudi Aramco, Savola Group, Sete Technical Services, Switz Group, Tetra Pak Manufacturing Limited and Vodafone.

#### Leading lawyer

Mohammed Al-Sheikh

#### Key contact partner

Mohammed Al-Sheikh

#### Legal Advisors Torki A Al-Shubaiki/Baker & McKenzie

Legal Advisors Torki A Al-Shubaiki/Baker & McKenzie is one of the Kingdom's first choices for mergers and acquisitions advice, as well as for general corporate work. Much of the practice's work in this area remains confidential, but commentators feel the firm wins a good deal of corporate work, enjoys fantastic international connections through the Baker & McKenzie network and, in partner John Xefos, boasts one of the jurisdiction's leading lights.

The firm is also active on the private equity side, recently advising Athar Al-Majd on a number of transactions.

#### Leading lawyer

John Xefos

#### Key contact partners

George Sayen

John Xefos

#### Yousef & Mohammed Al-Jadaan/Clifford Chance

Yousef & Mohammed Al-Jadaan maintains an association with leading global finance firm Clifford Chance, ensuring it receives a steady stream of referral work from the international practice. The firm is also active in general domestic corporate work as well as acquisition finance, and project-, asset- and structured-finance matters.

#### Abbas F Ghazzawi & Co and Hammad & Al-Mehdar

With 14 practitioners active in corporate and financial advice, Abbas F Ghazzawi & Co and Hammad & Al-Mehdar is one of the Kingdom of Saudi Arabia's largest law firms. The firm has been known to work alongside UK firm Trowers & Hamlin on cross-border corporate deals. Clients of the firm's corporate practice include Coca-Cola, AIG, Abdul Latif Jameel, BG and Mitsui.

#### Key contact partners

Ali Abedi

Asad Abedi

Andreas Haberbeck

## Project finance

### Recommended firms

Tier 1

**Law Office of Mohammed Al-Sheikh/White & Case**

**Legal Advisors Torki A Al-Shubaiki/Baker & McKenzie**

**Yousef & Mohammed Al-Jadaan/Clifford Chance**

Tier 2

**Law Office of Abdulaziz H Fahad/Akin Gump Strauss Hauer & Feld**

**Saud M A Shawwaf/LeBoeuf Lamb Greene & McRae**

Tier 3

**Abbas F Ghazzawi & Co and Hammad & Al-Mehdar**

**Law Offices of Dr Mujahid M Al-Sawwaf**

**The International Law Firm**

**The Law Firm of Salah Al-Hejailan**

#### Law Office of Mohammed Al-Sheikh in association with White & Case

Law Office of Mohammed Al-Sheikh's ability to provide local law expertise mixed with the global approach of the White & Case network has proved popular with clients, and the practice has particular expertise in the power and water, oil and gas, and petrochemical sectors. Over the past year, notable new mandates have included those in relation to Saudi Aramco's Rabigh project, and from the Saudi Electricity Company and Saudi Hollandi Bank.

On the Rabigh project, the firm advised Saudi Aramco in relation to negotiating a joint venture for the development and implementation of a refinery upgrade and petrochemical complex at Rabigh, on Saudi Arabia's Red Sea coast. When completed, the Rabigh project is expected to be one of the largest olefins projects in the world. The practice's work for Saudi Aramco included advice on tendering a project to provide power, water and steam for Rabigh.

The office also acted as lenders' counsel in relation to the \$47 million commercial loan facility as part of the project financing of the Gulf Advanced Chemical Industries Company's Al-Jubail butanediol facility.

The White & Case network topped the table of legal advisers in the *Dealogic* Middle East & North Africa Project Finance Review for 2004.

#### Leading lawyer

Mohammed Al-Sheikh

#### Key contact partner

Mohammed Al-Sheikh

### **Legal Advisors Torki A Al-Shubaiki/Baker & McKenzie**

Baker & McKenzie's Riyadh office is home to one of Saudi Arabia's leading project finance practices, and the firm regularly wins roles representing leading international investment banks on a range of energy and power deals. One prominent example was the team's work advising the lenders on the \$500 million term loan forwarded to the Saudi Consolidated Electric Company in the Eastern Province (Secco-East) for the construction of a 2400MW power plant at Ghazlan. The firm also advised on the plant's subsequent restructuring.

In other recent instructions, Legal Advisors Torki A Al-Shubaiki/Baker & McKenzie advised the Saudi Chevron Phillips Company and the Jubail Chevron Phillips Company on the expansion of a petrochemical plant and the construction of a new \$1.1 billion facility, and represented the Saudi Iron & Steel Company (Hadeed) on a €352 million (\$433.1 million) term loan facility to finance the long and flat steel expansion projects. The firm also acted for the syndicated lenders in relation to the provision of a \$330 million facility to finance the expansion of Safco's existing fertilizer plant in Jubail.

Partners John Xefos and Ian Siddell are both well regarded in the market.

#### **Leading lawyers**

Ian Siddell  
John Xefos

#### **Key contact partners**

Ian Siddell  
John Xefos

### **Yousef & Mohammed Al-Jadaan/Clifford Chance**

The Law Firm of Yousef and Mohammed Al-Jadaan is a premier Saudi Arabian law firm, and boasts a good mix of domestic and international clients. The practice acts for financial institutions and corporations, combining the requirements of *Sharia* law with the demands of international cross-border transactions – an increasingly common mix in large cross-border project financings in this region.

The practice benefits from its close association with global project finance leader Clifford Chance. The tie-up with Clifford Chance gives Yousef & Mohammed Al-Jadaan the multi-jurisdictional capability to match its domestic rivals with similar associations. Clients of the firm include Sabic, the Saudi American Bank, the Saudi British Bank and Standard Chartered Bank.

Last year Clifford Chance came second in *Dealogic's* survey of global project finance activity; the firm advised on a total of 44 deals worth over \$12 billion.

#### **Other notable firms**

The alliance of **Law Office of Abdulaziz H Fahad** and US firm **Akin Gump Strauss Hauer & Feld** is one of the country's largest law firms active in project finance work, while

**Saud M A Shawwaf** enjoys an affiliation with global firm **LeBoeuf Lamb Greene & McRae**. LeBoeuf Lamb Greene & McRae is active in 10 countries, and in one local highlight the firm advised on the Saudi natural gas initiative. The eight-partner practice at **Abbas F Ghazzawi & Co and Hammad & Al-Mehdar** also enjoys a good reputation for project finance work and has recent experience in the telecoms sector, where the firm has worked alongside international firm Allen & Overy.

Lastly, it is worth noting that the **Law Office of Hassan Mahassni**, the former alliance partner of White & Case in Saudi Arabia, has teamed up with **Trowers & Hamblins**.