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The regulation of insurance in Saudi Arabia

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The first Saudi Arabian legislation regulating the country's insurance sector was enacted as the Control of Cooperative Insurance Companies Regulation, Royal Decree No M/32 dated August 1 2003, which came into force on November 20 2003 (the Regulation) and which became effective with the publication of its Implementing Rules on April 23 2004.

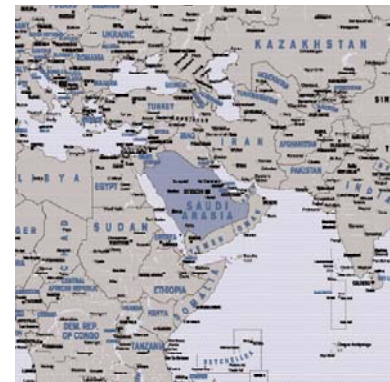
Under the new regime only Saudi-registered companies that are incorporated by Royal Decree as public joint-stock companies, with a minimum paid-up capital of \$26.66 million for primary insurers and \$53.33 million for reinsurers, may provide insurance cover in the Kingdom. The legislation also regulates insurance brokers, insurance agents, insurance consultants, surveyors, loss adjusters and actuaries, who must be licensed to carry on business in Saudi Arabia.

The regulator is the Saudi Arabian Monetary Agency (the SAMA), which has been given wide-ranging powers, including the licensing of insurance companies and insurance professionals, and the policing and control of the Saudi insurance market. Insurers must be licensed by the SAMA to underwrite specific classes of business, which are broadly grouped as general insurance (including accident, liability, motor, property, marine, aviation, energy and engineering), health insurance, and saving and life insurance, or for two or more of these.

It is further required that Saudi insurers must operate on a cooperative basis. As a model for what constitutes cooperative insurance, the Regulation has pointed to the articles of association of state-owned National Company for Cooperative Insurance (NCCI), which insurance companies registered in the country are supposed to use as a blueprint for their articles of association. However, there is no detailed framework as to how cooperative insurance is to be conducted. Rather, within the regulatory framework the only real restriction on an insurer's operations is the requirement to maintain separate profit and loss accounts for policyholders and for shareholders, and that there must be a distribution of part of the net surplus from the insurance operations among the policyholders. Therefore, insurers are free to write business essentially on a commercial basis, subject to the redistribution element on a semi-cooperative basis.

There are no restrictions on foreign participation in insurance companies registered under the new framework. However, under current regulations publicly traded stock in Saudi companies may only be owned by Saudi or GCC interests. Therefore, at present the participation of foreign interests in Saudi insurance companies is limited to that of founding shareholders. Neither the Regulation nor the Implementing Rules specify how much of an insurance company's stock must be floated, but there have been indications that it will be 25%.

The insurance legislation places several restrictions on transnational transactions. Thus the SAMA's consent must be obtained: (i) before a Saudi insurer associates with



non-Saudi insurance funds; (ii) should Saudi insurers, brokers and agents wish to place cover with Lloyd's or non-Saudi insurance companies; or (iii) if less than 30% of reinsurance cover is placed within the country.

The Implementing Rules also set out detailed guidelines concerning non-Saudi reinsurers with whom cover may be placed.

The SAMA has wide-ranging powers of control concerning the management and finances of insurance companies. For example: (i) board members and senior managers of insurance companies must be approved by the SAMA; (ii) mergers and takeovers of insurance companies must be approved by the SAMA; (iii) any change of ownership in a block of shares exceeding 5% must be notified to the SAMA; (iv) the SAMA has the right to set minimum and maximum limits of cover and of premiums; (v) retention of risk must not be below 30%, unless the SAMA's consent is obtained; and (vi) cover must be provided on standard form policies, the terms of which must be approved by the SAMA.

The Implementing Rules further set out detailed provisions governing legal deposits, the investment and valuation of assets, financial risk management, solvency margins, technical reserves and the distribution of profits. Unless the SAMA's approval is obtained, at least 50% of an insurance company's assets must be maintained in Saudi riyals, and not more than 20% of the assets may be invested outside of Saudi Arabia. The Implementing Rules include a detailed table outlining the permitted investments and the investment limits for each category, and a table outlining the permitted limits for evaluation of assets for the purpose of determining the company's solvency ratio.

The provisions of the Regulation and its Implementing Rules are limited to setting out a regulatory framework. There is not at present a comprehensive code of rules governing insurance contracts generally. As far as health insurance is concerned, the Implementing Rules of the Cooperative Health Insurance Regulation, which were published in 2002, set out a detailed set of rules, while the Commercial Court Regulation of 1931 contains detailed, if somewhat archaic, provisions that govern contracts of marine insurance. In general, however, in Saudi Arabia the rights of parties to insurance contracts must be determined by reference to the wording of the policy, without reference to an underlying body of law.

It is clear that the new legislation will prompt the exodus of several of the estimated 80 insurance carriers who have so far conducted business in Saudi Arabia without a regulatory framework. There are likely to be left a few highly capitalized and well-regulated companies.

Banking and finance

Recommended firms

Law Office of Hassan Mahassni/White & Case

Legal Advisors Torki A Al-Shubaiki/Baker & McKenzie

The International Law Firm

The Law Firm of Salah Al-Hejailan

Abbas F Ghazzawi & Co and Hammad & Al-Mehdar

Law Offices of Dr Mujahid M Al-Sawwaf

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

Saud M A Shawwaf/LeBoeuf Lamb Greene & McRae

Yousef & Mohammed Al-Jadaan/Clifford Chance

Law Office of Hassan Mahassni in association with White & Case

Banking partner and executive partner in charge of the Riyadh office, Richard Hayes, has left Law Office of Hassan Mahassni. He had joined the team from White & Case's New York office in October 2003. The banking team now comprises three partners and four associates.

The team's financial capabilities are closely linked with its projects work. Stand-out transactions of the year include advising Saudi Electricity Company on a SR6 billion (\$1.6 billion) syndicated bank financing that will probably involve nearly all the major financial institutions in Saudi Arabia, and advising Banque Saudi Fransi, Gulf International Bank, Riyadh Bank and the Saudi British Bank as arrangers of a \$180 million commercial loan facility for the design, construction, commissioning and operation of a methanol plant (and certain shared utilities and offsite facilities) in Al Jubail.

A third highlight of the year was advising Samba Financial Group (formerly Saudi American Bank) on two complex real estate financings – the SR400 million bank financing for the Kingdom Centre, one of the most prestigious office towers and mixed-use developments in Riyadh, and advising Samba as placements agent for the SR130 million equity financing for the Equestrian Club in Jeddah.

Key contact partner

Hassan Mahassni

Leading lawyers

Hassan Mahassni
Babul Parikh

Legal Advisors Toriki A Al-Shubaiki in association with Baker & McKenzie

Torki A Al-Shubaiki is considered by its competitors and the market to be very much a top-tier firm, with a stellar client list and excellent transactional skills. Managing partner John Xefos is prominent in the market and has the respect of his peers. Fellow partner Ian Siddell is described as “good with clients” and someone who “knows how to get things done”. Siddell is now based in the Bahrain office, but retains strong ties with Saudi clients.

One of the highlights of the year was advising Saudi Arabia’s National Petrochemical Industrialization Company (also known as Tasnee Petrochemicals) in connection with its \$1 billion joint-venture with Canada’s Acetex Corporation regarding the establishment of world-class acetic acid, vinyl acetate monomer (VAM) and methanol projects in Jubail, Saudi Arabia.

The firm’s impressive client list includes leading Saudi Arabian and foreign banks, Saudi Polyolefins Company and other major project sponsors.

Key contact partner

John Xefos

Leading lawyer

John Xefos

The Law Firm of Salah Al-Hejailan

Established in 1967, the law Firm of Salah Al-Hejailan has a solid reputation for banking and finance matters. A team of 15 lawyers from the Middle East, as well as western lawyers, represents local and international financial institutions in their various activities, including lending, project finance, collections, and acquisitions.

Abbas F Ghazzawi & Co and Hammad & Al-Mehdar

The alliance of Abbas F Ghazzawi & Co and Hammad & Al-Mehdar was formed to bring together two of the largest Saudi Arabian law firms, and was a start of a trend to move away from the traditional sole practitioners. Ali Abedi and Asad Abedi are the two key finance lawyers at the firm. Between them, they have 10 years’ experience working at White & Case in New York.

Previous transactions include acting alongside Allen & Overy as counsel to the lenders on the first Saudi independent power project, a power project planned by the Saudi Petrochemical Company in 2003. The firm has also cooperated with international law firms for a number of international banks, including Abbey National, Credit Suisse First Boston, Fortis Banks and Gulf International Bank.

Key contact partner

Ali Abedi

Law Offices of Dr Mujahid M Al-Sawwaf

Law Offices of Dr Mujahid M Al-Sawwaf is enjoying a good profile in the market and is highly regarded by the larger international players. David Wells is perceived to have been particularly active in the market this year and is well regarded both locally and internationally.

The firm recently acted as local counsel, in conjunction with Milbank Tweed Hadley & McCloy, to lead arrangers Arab National Bank, Banque Saudi Al-Fransi and Samba Financial Group, on the \$510 million financing of Saudi Aramco, the large independent power project in Saudi Arabia. The 1000MW project, comprising four plants, is by far the largest private finance initiative in Saudi Arabia’s power sector and is hoped to provide a template for much-needed investment.

Among the firm’s lawyers, David Wells, who has been “particularly active” of late, is highly regarded in Saudi Arabia and across the Middle East region.

Key contact partner

David Wells

Leading lawyer

David Wells

Mergers and acquisitions

Recommended firms

Law Office of Hassan Mahassni/White & Case

Legal Advisors Toriki A Al-Shubaiki/Baker & McKenzie

Yousef & Mohammed Al-Jadaan/Clifford Chance

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

Law Offices of Dr Mujahid M Al-Sawwaf

Kadasah Law Firm/Bryan Cave

Law Office of Hassan Mahassni in association with White & Case

Four partners and four associates have a focus on corporate and mergers and acquisitions law at Law Office of Hassan Mahassni, White & Case’s Saudi arm. Recent highlights include representing a major UK telecommunications company as one of the potential bidders in connection with the second mobile phone licence to be issued by the

government in Saudi Arabia, and advising Nestlé Waters on a range of M&A transactions throughout the Middle East.

Babul Parikh is liked and respected in the market and managing partner Hassan Mahassni is also recommended. Clients include 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.

Key contact partner

Hassan Mahassni

Leading lawyers

Hassan Mahassni
Babul Parikh

Legal Advisors Torki A Al-Shubaiki in association with Baker & McKenzie

As with banking, the firm remains at the very top of the table for its corporate work. Recent transactions include acting for the Ministry of Finance's Public Investment Fund on its \$4 billion offering of Saudi Telecom Company's share capital. It also acted for A Abunayyan Group, part of a consortium that included AK Al-Muhaidib & Sons and Saudi Tumpane Company, in connection with the Kingdom's first wastewater treatment BOT project. John Xefos remains a dominant personality in the market.

Key contact partner

John Xefos

Leading lawyer

John Xefos

Yousef & Mohammed Al-Jadaan in association with Clifford Chance

Yousef and Mohammed Al-Jadaan benefits from a close association with global law firm Clifford Chance, and is regularly involved in advising domestic and international clients on a range of matters, including cross-border M&A, acquisition finance, project asset and structured finance matters.

Previous highlights include acting for Saudi Basic Industries Corporation on the \$1.3 billion financing of its acquisition of a European petrochemical company. The firm's client base is essentially financial institutions and local and international corporations.

Abbas F Ghazzawi & Co and Hammad & Al-Mehdar

With 14 lawyers, the alliance of Abbas F Ghazzawi & Co and Hammad & Al-Mehdar is one of the largest firms in Saudi Arabia. The firm has had a busy year on the corporate front

and highlights included advising IDB Infrastructure Fund (alongside Trowers & Hamblins) in connection with a \$40 million purchase of a large block of shares in a Saudi Arabian joint-stock company. This was the first acquisition under the new Foreign Investment Regulation by non-Saudi interests of shares in a Saudi joint-stock company.

The firm also advised a Saudi financial institution on the acquisition of a 50% interest in a \$280 million chain of pharmacies, and advised a major multinational drilling company on the Saudi aspects of a bid to acquire assets of an international company with drilling operations in Saudi Arabia.

Clients of the firm include Coca-Cola, AIG, Abdul Latif Jameel, BG and Mitsui.

Key contact partners

Ali Abedi
Asad Abedi
Andreas Haberbeck

Project finance

Recommended firms

Law Office of Hassan Mahassni/White & Case

Legal Advisors Torki A Al-Shubaiki/Baker & McKenzie

Yousef & Mohammed Al-Jadaan/Clifford Chance

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

Saud M A Shawwaf/LeBoeuf Lamb Greene & McRae

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 Hassan Mahassni in association with White & Case

One of the top law firms in Saudi Arabia, with a stellar client base, Law Office of Hassan Mahassni is considered to be a key player in the project finance arena. The year's highlights include advising Abu Dhabi Water and Electricity Authority (ADWEA) on the \$1.78 billion Umm Al Nar project, a project that closed in July 2003 and that was recognized as the 2003 water/power deal of the year for the Middle East by *Project Finance Magazine*.

The firm also advised the same client on the \$2 billion Taweelah B project and advising the arrangers, Banque Saudi Fransi, Gulf International Bank, Riyadh Bank and The Saudi British Bank on a \$180 million commercial loan facility for the design, construction, commissioning and

operation of a methanol plant (and certain shared utilities and offsite facilities) in Al Jubail. A fourth deal was advising Saudi Aramco on a total of \$2 billion-worth of investments in connection with the Saudi Aramco Upstream Exploration project.

Clients include Abu Dhabi Water & Electricity Authority, Gulf International Bank, Samba Financial Group (formerly Saudi American Bank), HSBC and Saudi Hollandi Bank.

Key contact partner

Hassan Mahassni

Leading lawyer

Hassan Mahassni

Legal Advisors Torki A Al-Shubaiki

in association with Baker & McKenzie

A vast international capability and focused local expertise keeps Baker & McKenzie's Saudi operation, Legal Advisors Torki A Al-Shubaiki, at the top of the ranking table. John Xefos enjoys a high profile and works for an impressive array of clients, and Ian Siddell, although now based in the Baker & McKenzie's Bahrain office, is also well regarded in Saudi Arabia.

Recent matters include advising on the €2.5 billion (\$3.06 billion) acquisition financing of Saudi Basic Industries' (SABIC) purchase of several of the European Companies of DSM petrochemicals. It also acted for a national industrial company on a \$280 million secured finance facility in connection with a \$526 million petrochemical project.

Clients of the firm include Saudi Arabian Mining, Saudi Chevron Petrochemicals and the Saudi National Petrochemical Industrialization Company.

Key contact partner

John Xefos

Leading lawyer

John Xefos

Yousef & Mohammed Al-Jadaan

in association with Clifford Chance

A firm that is well regarded for its international financing work, Yousef & Mohammed Al-Jadaan benefits from being associated with global heavyweight Clifford Chance. Team leader Paul Mercer is respected by his peers for his local knowledge and ability to "get a deal done".

Previous work includes acting for Sabic and its wholly owned subsidiary in respect of the \$1.5 billion financing of a petrochemical complex. It also advised the agent, arrangers and lending banks on a \$125 million syndicated multicurrency revolving credit facility to Geophysical Services Saudi Arabia.

Clients include Sabic, Saudi American Bank, The Saudi British Bank and Standard Chartered Bank.

Law Office of Abdulaziz H Fahad

in association with Akin Gump Strauss Hauer & Feld

The alliance of Law Office of Abdulaziz H Fahad and US firm Akin Gump Strauss Hauer & Feld is one of the largest firms in Saudi Arabia and is considered to be active and competent in the project financing field. This year the firm advised on the \$20 million build-own-operate-transfer project to develop the 10,000cm/d desalination plant, which will serve Aramco's Rabigh refinery near Yanbu.

Saud M A Shawwaf

in association with LeBoeuf Lamb Greene & McRae

Saud M A Shawwaf enjoys an affiliation with LeBoeuf Lamb Greene & McRae which has 21 offices globally. The firm is therefore well-equipped to serve both local and international clients on project finance matters. Kalid Al-Thebity leads the practice, which advises on a number of areas, including privatization, energy, litigation and international trade and investment. At the time of writing the firm is advising the Kingdom of Saudi Arabia on the National Gas Initiative.

Key contact partner

Khalid Al-Thebity

Abbas F Ghazzawi & Co and Hammad & Al-Mehdar

The alliance of Abbas F Ghazzawi & Co and Hammad & Al-Mehdar has eight partners and six associates, and enjoys a good reputation on the finance side of project financing. The firm provided local advice for the first Telecom privatization in Saudi Arabia alongside Allen & Overy.