

# Legislation Preparation and Drafting

**First Edition (Guide)**

Muharram 1444 AH- August 2022 AD





**In The Name Of God,  
The Most Gracious,  
The Most Merciful**



This is a guidance Guide, it shouldn't be considered as an official or regulatory document or a statement of the regulatory authority's opinions in the Kingdom of Saudi Arabia. The Guide contents are guidance and supportive for specialists and those concerned with legislative projects. This Guide has been prepared by the Preparatory Committee for Preparing the Judicial Legislation and has been reviewed by the Legal Committee of Laws and Regulations Support Unit, and the like, at the National Competitiveness Center.

National Competitiveness Center  
Riyadh Front - Business, Airport Branch Road  
Riyadh 13414  
Kingdom of Saudi Arabia  
[www.ncc.gov.sa](http://www.ncc.gov.sa)

In case of comments, send via  
email [pc@ncc.gov.sa](mailto:pc@ncc.gov.sa)

Copyright and printing of this Guide are  
reserved

**The Kingdom is taking serious steps towards developing the legislative environment, by creating and reforming Laws that preserve rights, establish the principles of justice and transparency, protect human rights, achieve comprehensive development, and enhance the Kingdom's global competitiveness.**

His Royal Highness  
Prince Mohammed bin Salman bin Abdulaziz  
Crown Prince, Deputy Prime Minister



# Contents

Introduction to the Guide	13	Target Audiences of the Guide	17
The Guide's Objective	15	Sources of the Guide	17
Importance of the Guide	16		
Scope of the Guide	16		

## Chapter One

### The Legislation: Objectives, Foundations, Sources, Hierarchy and Tools

Legislation and Legislative Drafting	22	Judicial Precedents	31
1- Legislation	22	Third: Scientific Sources	32
2- Legislative Drafting	22	1- Jurisprudence Books	32
Objectives of the Legislative Process	23	2- Specialized Research	33
Foundations of Legislation	24	Hierarchy of Legislation	35
Sources of Legislation Building	26	First: Basic Laws	35
First: Regulatory Sources	26	1- The Basic Governance Law	36
1- Laws <i>and the like</i>	26	2- Other Basic Laws	36
2- Int. Treaties & Agreements	26	Second: Ordinary Laws	37
3- Model Laws	27	Third: Subordinate Legislation (Regulations and the like)	39
4- Comparative Laws	30	1- Regulatory Regulations	40
Second: Judicial Sources	31	2- Control Regulations	40
1- Judicial Principles	31		

3. Delegation Regulations	41	3. High Order	42
Scope of Law and Regulations in terms of Content	41	4. Royal Directive	43
Types of Legislation according to its sequence	41	5. Cabinet Decision	43
Legislative Tools	42	6. Shura Council Decision	43
1. Royal Order	42	7. Ministerial Decision	43
2. Royal Decree	42		

## Chapter Two

### Stages of Preparing, Drafting, Issuing and Interpreting the Legislation

Stage One: Studying the Existing Situation and Preparing the General Concept	48	Stage Two: Preparing Policies and Technical Studies for the Proposed Legislation	53
First: Studying the Existing Situation and Possible Solutions	48	First: Determining the Legislation Objectives	53
Proposed Sources for Studying the Existing Situation	49	Second: Determining the Legislative Policy	54
Second: Preparing Initial Proposals to Solve the Problem	50	Third: Studying Local Laws	55
Legislative Solutions	50	Fourth: Studying Regional and International Experiences	56
Benchmarking to select the most appropriate solution	51	1. Studying Relevant International and Regional Agreements	56

2. Studying Regional Laws	57	The Methodology of dealing with the indicator	71
3. Studying International Laws	57	Key international indicators	72
4. Methodology of studying regional and international experiences	59	Stage Three: Defining the scope of the legislation, and preparing the general structure	77
Fifth: The Reference mark	61	First: Forming a specialized Team work	77
Sixth: Studying and evaluating the Proposed legislation policies impacts	63	Second: Preparing the time plan	78
Objectives of assessing impact	63	Third: Formulating the general contents and the proposed legislative structure	78
1. Scope of impact assessment	64	Stage Four: Preparing and drafting the proposed legislation articles	79
2.Impact Assessment Methodology	64	First: The Legislation Name	80
Potential impacts of implementing the proposed legislation	65	Second: The Preamble	82
Economic Impacts	65	Third: The Introduction to the Legislation	86
Social Impacts	65	1. Definitions	86
Legal Impacts	66	2. Objectives	89
International Impacts	66	3. Scope of Enforcement and Implementation	90
Methodology of studying and analyzing impacts	67	First: Formulating the Provisions of the Spatial Enforcement	90
A. Risk Analysis	67	Second: Formulating the Provisions of the Temporal Enforcement	91
B. Benefit Analysis	67	Third: Formulating the Substantive Enforcement Contents	92
Means that contribute to analyzing risks and identifying benefits	68		
Seventh: International Indicators	69		
The Criteria for selecting indicators	70		



Fourth: The Text of the Legislation (The main provisions)	93	Fifth: Formulas of Stipulation	108
Fifth: The Conclusion of the Legislation	96	Sixth: Formulas for Granting Authority and Determining Jurisdiction	108
1. Repeal Provisions	96	Seventh: Conditional Formulas	110
2. The Order of Implementation	97	Eighth: Exception Formulas	111
3. Preservative Provisions	97	Second: Elements of Legislative Drafting	112
4. Transitional Provisions	98	1. The Legal Actor	112
5. Responsible Authorities for issuing the Subordinate Legislation	98	2. The Legal Act	112
6. The Legislation Enforcement Provisions and publishing in the Official Gazette	99	3. Case Description	112
Legislative Drafting: Types, Elements, and Rules of Clarity	102	Third: Rules of Clarity of Legislative Drafting	114
First: Types of Legislative Drafting	102	First: Rules of Clarity of Drafting in Sentences	114
1. Rigid and Flexible Drafting	102	The First Rule: Allocating a regular article for each idea	114
2. Mandatory and Supplementary Drafting	103	The Second Rule: Formulating the sentence in a regulatory form	114
Types of Formulas according to the content	105	The Third Rule: Using original meaning when formulating the sentence	115
First: Obligatory Formulas	105	The Fourth Rule: Wording the verbal sentence in the active voice	116
Second: Formulas of Permissibility and Discretionary Authority	106	The Fifth Rule: Wording the verbal sentence in the affirmative form	116
Third: Formulas of Prohibition and Prevention	107	The Sixth Rule: Wording the verbal sentence in a form that indicate the future	116
Fourth: Formulas of Granting and Invalidating the Right	107		

The Seventh Rule: Wording should include the intended meaning with brevity as much as possible.	117	The Third Rule: Being careful when Using Plural Forms when generalization is intended	127
The Eighth Rule: The singular has precedence on the plural form	118	The Fourth Rule: Being careful when Using Pronouns	127
The Ninth Rule: Related words should be as close in structure as possible	118	The Fifth Rule: Using the Masculine Form in General Provisions	128
The Tenth Rule: Being careful when using referral	119	The Sixth Rule: Using the Feminine Form in Women Specific Provisions	128
The Eleventh Rule: Observance of accuracy and clarity in legislative drafting	120	The Seventh Rule: Considering Grammatical and Spelling Provisions	129
Second: Rules for Drafting Clarity in terms of words	122	The Eighth Rule: avoiding Linguistic Errors	129
The First Rule: Using words with a specific meaning	122	Stage Five: Legislation Review	134
The Second Rule: Using usual and familiar words	124	First: Opinions of Concerned bodies, Experts and Stakeholders	134
The Third Rule: Avoid using the non-Arabic words	124	Second: Hearing Sessions	135
The Fourth Rule: Observance of terminology unification	125	Third: Verifying the Consistency of the Legislation contents	136
Third: Rules of Drafting Clarity in various linguistic issues	126	Fourth: Verifying the Consistency of the legislation with Other Legislation	136
The First Rule: Being careful when using overlapping or close-in-meaning words and letters	126	Fifth: Reviewing Linguistic formulation	137
The Second Rule: Being careful when using letters indicating several close meanings	127	Sixth: Reviewing Consistency with International Agreements	138
		Seventh: Public Opinions	138
		Stage Six: Submitting the Legislation for approval	141
		The Explanatory Memorandum	141

Drafting Instructions	142	2. Judicial Principles Decided by the Supreme Court General Authority	145
Legislative Policy Memorandum	142	3. Explanatory Memoranda	145
Justification Memorandum	142	4. Judicial Interpretation	145
Explanatory Memorandum	142	5. Administrative Interpretation	145
Stage Seven: Publishing the Legislation	143	Stage Nine: Assessing the Legislation Quality	146
Stage Eight: Subsequent Interpretation and Clarification to Issuance	144	The two Aspects of Legislation Quality	146
1. Implementing Regulations and Procedural Guides	144	Quality Standards Related to the Two Aspects of Legislation Quality	146

### Appendices and Forms

Appendices	151		
Appendix (1) Controls to be considered in preparing and studying draft Laws and Regulations and their amendments	152	Organizational impact Evaluation and Assessment Model	172
Appendix (2) Model Draft Laws signed by the Kingdom as a Guide	162	Third Stage Verification Model	177
Models	167	Fourth Stage Verification Model	178
First Stage Verification Model	168	Fifth Stage Verification Model	180
Model for identifying possible options to solve the problem and assessing its impact	169	Legislation Draft Review Model	181
Second Stage Verification Model	170	Quality Verification Model before adopting legislation	182
Reference Mark Selection Model	171	Key Performance Indicators: Post-legislation audit scores	183
		Article Study Model	184



- ▶ **The Guide's Objective**
- ▶ **Importance Of The Guide**
- ▶ **Scope Of The Guide**
- ▶ **Target Audiences Of The Guide**
- ▶ **Sources Of The Guide**





## The Guide's Objective

### The Guide aims to:

- 1 **Clarifying the foundations, rules and skills** that enable workers in the field of preparing and drafting legislation to prepare regulatory articles that express the regulator intention and achieve the legislation objectives.
- 2 **Unifying the procedures of the legislative process** in the Kingdom of Saudi Arabia according to the best modern methodologies in preparing and drafting legislation.
- 3 **Contributing to raising the quality of preparing Regulations** in the Kingdom of Saudi Arabia in terms of formulation and content, in a way that befit its status and achieve its development goals.
- 4 **Contributing to capacity building of those who works** in the field of preparing and drafting legislation, and provide them with the knowledge and skills that raise their efficiency in the assigned tasks, and enhance their experience.

### The Guide's Objective

1

Clarifying the foundations, rules and skills that enable workers to prepare legislation

2

Unifying the procedures of the legislative process in the Kingdom of Saudi Arabia

3

Contributing to raising the quality of preparing Regulations in the Kingdom of Saudi Arabia

4

Contributing to capacity building of those who works in preparing and drafting legislation



## The Importance Of The Guide

The Guide For Preparing And Drafting Legislation derives its importance from the importance of legislation; as a means for regulating the behavior of individuals and institutions in society, and achieving development goals. For this legislation, to perform its function, there is a need for rules and standards for preparing and drafting this legislation, a situation which necessitated to work for developing and preparing this Guide, which can be considered as a building block in developing the legislative Law in the Kingdom of Saudi Arabia, in accordance with the best practices in the field of legislation Making. Consequently, according to these standards and foundations, high-quality legislation will be produced, that achieves its goals, takes into account its requirements, and meets its needs.

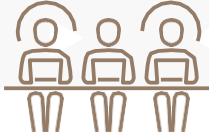


## Scope Of The Guide

The Guide reflect the workflow of the legislative process, starting from the basic concepts in the legislation Making process, to the main stages of preparing and drafting legislation process, e.g. preparing the general concept and studying the current situation, preparing policies and technical studies for the proposed legislation, collecting and sorting data, proposing solutions and studying the potential impacts on the implementation, reviewing regional and international experiences, choosing reference Laws, then preparing the contents and legislation general structure, clarifying the rules and controls that are applied in drafting the legislation articles, and finally, reaching the issuance of the legislation and its publication in the Official Gazette, consequently verifying the legislation quality, extracting conclusions and returning to the legislative session if necessary.







## Target Audiences Of The Guide

The Guide targets those working in preparing, reviewing, interpreting, or amending legislation, from the members of the legislative, Implementing, or judicial authorities, or others who have an interest in this field, by virtue of the nature of their work or specializations.

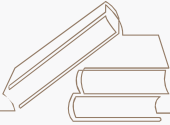


## Sources Of The Guide

- 1 Starting from the controls that must be considered in preparing and studying the drafts of Laws and Regulations and the like, issued by the Cabinet Resolution No. (713) in 30/11/1438 AH<sup>1</sup>, amended by Cabinet Resolution No. (476), in 15/7/1441 AH, and No. (200) in 4/4/1443 AH.
- 2 Relying on the grammatical rules of the Arabic language in terms of considering: language integrity, style clarity, and formulation quality.
- 3 Benchmarking of Arab and international legislative Guides, studying their contents, and benefiting from what is mentioned, to extract the best modern methodologies and applied rules, which reflect the reality of the legislative process locally, be consistent with its course and adapt to its variables.
- 4 Relying on the rules and principles of legal drafting.

<sup>1</sup> The term "AH" when referring to the Islamic calendar means "Anno Hegirae," or in the year of the Hijri. It is a way of identifying dates that are written using the Islamic calendar. For example, 2021 CE corresponds to 1442 or 1443 AH.





**This Guide is a review of the legislative process cycle in the preparation and drafting stage.** The established controls have been considered, as well as the existing local legislative custom, in Order to support all those working in the legislative field to make the regulatory rules in accordance with practical foundations and fixed procedural steps. Hopefully the Guide achieves the aspirations, answers the questions, and meet the needs in terms of cognitive content and practical practice, and contribute to the path of legislative development in the Kingdom of Saudi Arabia.

**And Allah is the Grantor of success.**



## Chapter One

### Legislation: Objectives, Foundations, Sources, Hierarchy And Tools

- ▶ **Legislation And Legislative Drafting**
- ▶ **Objectives Of The Legislative Process**
- ▶ **Foundations Of Legislation**
- ▶ **Sources Of Legislative Building**
- ▶ **Hierarchy Of Legislation**
- ▶ **Legislation Tools**



# Legislation And Legislative Drafting

## 1 ► Legislation

A set of general, abstract, binding legal rules issued by the authority that is competent to issue legislation in a written form. According to which the behavior of individuals in society is regulated, their rights and duties are determined, policies and powers of public utilities are determined, as well as work controls in different activities.

### Legislation has two pillars:

- Abstract and general legal rules, that do not address a specific person or a specific incident.
- Those rules must be issued by a competent authority, in a way that does not conflict with the foundations and reference of the legislation, and its rules are binding and regulating for the behavior of natural or legal persons.

## 2 ► Legislative Drafting

The process of putting the legislation in the legal form according to the standards prepared in this Guide, in which policies and provisions are converted into specific, regulated and practical rules, suitable for practical application in a way that achieves the aim and the intended objective.



Legislative drafting includes drafting main legislation; such as Constitutional Laws, Ordinary Laws, as well as subordinate legislation; such as Implementing Regulations and rules issued by the competent authority.





The term "**Nizam**" is synonymous to the word "Law" in the local legislative environment, and has been used instead of the term Law in the Arabic version of this Guide.



## Objectives Of The Legislative Process

- 1 Clearly declaring the regulator's will to the addressee of the Law.
- 2 Clarifying and controlling the behavior of the various forms of individuals and institutions in the society, through defining responsibilities, determining obligations, rights and duties, and procedures resulting to violations.
- 3 Clarifying procedures and jurisdictions of each entity, and reducing violations that arise due to lack of clarity of jurisdiction.
- 4 Stability of judicial work in the legislation related to judicial consideration, by limiting the judge's task to writing, describing and proving the incidents, and then applying the appropriate legislative text.
- 5 Increasing confidence and reassurance in contracts and obligations, due to the existence of specific legislative texts that control the legal positions of the concerned parties.
- 6 Raising the rate of expectation of rulings in the legislation that relate to rights and obligations. This provides the prior prediction of what disputes will lead to if they occur, which motivate the investment environment and increases the opportunities to attract various capitals.



## Foundations Of The Legislation

The foundations upon which legislation in the Kingdom is based are an original reference upon which legislation is based and does not contradict with and from which it derives its principles. The foundations upon which the preparation and formulation of legislation are based can be summarized as follows:

- 1 The provisions of Islamic Sharia/Law, that are based on the original Sharia evidence from the Qur'an, Sunnah, consensus, and correct analogy, and secondary evidence such as custom and recognized interests, according to the established deduction mechanisms. Article No. (Seven) of the basic Law of Governance, issued by Royal Order No. (A/90) in 27/8/1412 AH, states that governance in the Kingdom of Saudi Arabia derives its authority and powers from the Book of God Almighty/Qur'an and the Sunnah of His Prophet (Muhammed, peace be upon him), as the two rulers to this Law and all state Laws.
- 2 The general rules and objectives of Sharia, the jurisprudential and Sharia policy provisions that achieve recognized interests. Article No. (Sixty-Seven) of the basic Law of Governance states that the regulatory authority is responsible for establishing
- 3 Laws and Regulations, to achieves the interest, or removes corruption in the affairs of the country, in accordance with the rules of Islamic Sharia, and exercises its powers in accordance with this Law, and the Laws of the Council of Ministers and the Consultative Council (Majlis Al-Shura).
- 4 The obligations of the Kingdom of Saudi Arabia under international agreements and treaties in force, taking into account the Kingdom reservations on its provisions, and ensuring that the proposed legislation does not contradict with its contents, which have become similar to the internal Law.
- 5 The basic Laws, the preparation of legislation shall be bound by the principles that have been stipulated in these Laws, and preserving the rights it guaranteed





These Laws have an advantage and priority over other Laws; Because they were issued by Royal Orders, and because they include provisions of a constitutional nature, the preamble to the Cabinet Resolution No. (114) in 26/8/1412 AH stated that (based on the Royal directive to review the arrangement of the state apparatus and issuance of the basic Law of Governance, the Consultative Council (Majlis Al-Shura) Law, and the Regions Law by Royal Orders as basic Laws), they were described as basic Laws, issued by Royal Orders unlike other Laws, and were later followed by the Cabinet Law<sup>1</sup> and then the Allegiance Commission Law<sup>2</sup>.

### **The Rules of Islamic Sharia/Law**

that are based on the original Sharia evidence from the Qur'an, Sunnah, consensus, correct analogy, and secondary evidence such as custom and recognized interests.

### **The Obligations of the Kingdom of Saudi Arabia**

under international agreements and treaties in force, taking into account the Kingdom reservations on its provisions.

## **Foundations of the Legislation**

### **The General Rules of Sharia and its Objectives**

and the jurisprudential provisions and the provisions of Sharia policy that achieve recognized interests.

**The Basic Laws**, the preparation of Legislation shall be bound by the principles stipulated in these Laws, and preserving the rights it guaranteed.

<sup>1</sup> Issued by Royal Order No. (A/13), in 03/03/1414 AH.

<sup>2</sup> Issued by Royal Order No. (A/135), in 26/09/1427 AH.



## Sources Of Legislation Building

Taking into account the foundations on which preparation of legislation is based, the sources from which legislative rules can be derived in the preparation phase are as follows:

### First: Regulatory Sources:

#### 1 Laws and the like:

Legislation (Law) in the Kingdom of Saudi Arabia is called the Nizam, Regulations in the Kingdom may be divided into: basic Laws, ordinary Laws, and sub-Laws that are subordinate to a Law or independent (Regulations and the like), and each type has a competent authority for issuance.

When preparing legislation, it is significant to study the local legal environment which relates to the subject of legislation, through an analytical study of everything related to the subject of legislation in other Regulations, Orders or decisions and the like. , in addition to considering any conflict that may arise with the legislation under preparation, and providing the appropriate treatment, either by amending what requires amendment, or repeal if it is dispensed and not needed; sufficing with the new provisions. As well as achieving integration between legislative texts, filling the legislative vacuum if exists, and unifying the methodology between those stipulated provisions and the legislation under preparation.

#### 2 International Treaties and Agreements:

International treaties, entirely - even those not ratified by the Kingdom - are among the sources that are used when preparing legislation, in Order to identify topics that need to be addressed, and the ways of International society for treatment , taking into account the suitability of what is derived from those agreement with the provisions of Islamic Sharia and its objectives and the basic Laws.



3

### Model Laws:

Countries with similar or close circumstances, included under an international entity, work to create unified Laws in priority areas; To achieve more convergence, enhance common interests and strengthen ties in a number of aspects. Many different Model Laws have been issued in this regard, some have been approved after fulfilling the necessary procedures according to the practice of each country. Those Laws can be viewed through their sources. Among the examples of these Laws:

#### Model Laws in the Gulf Cooperation Council:

The Gulf legislative cooperation process started with the holding of the first meeting of the Ministers of Justice of the GCC countries, at the headquarters of the General Secretariat in Riyadh on 27-28 Safar 1403 AH, 12-13 December 1982 AD, where the ministers assigned a panel of experts to develop the unified codification projects in the following main areas: civil, commercial, personal status and penal, based on the provisions of Islamic Sharia. Several legislations have been issued in a number of areas, which can be viewed on the website of the General Secretariat of the GCC.

#### Model Laws in the League of Arab States:

The legislative cooperation process between Arab countries under the umbrella of the League of Arab States started with the agreement of the Arab ministers in Sana'a (1402 AH - 1981 AD) to unify Arab Laws. A plan was prepared aiming to provide the basis for establishing a Unified Arab Law in accordance with the provisions of Islamic Sharia/Law, taking into account the circumstances of Arab society, taking into consideration that legislation relies on the Holy Quran and the Sunnah of the Prophet and what leads to their rules in terms of consensus, analogy, or general interests without being bound by a specific school of jurisprudence, as well as the principles of justice that do not conflict with the provisions of Islamic Sharia/Law. The League has accomplished a number of non-binding Model Laws, which can be viewed on the website of the Arab Center for Legal and Judicial Research, affiliated to the League of Arab States.

## Model Laws issued by International Bodies and Committees Concerned with Laws Unification:

Those Laws are issued by the parties concerned with the unification and harmonization of International Trade Laws, among those committees and bodies:

### First: The United Nations Commission on International Trade Law:

It is a subordinate body affiliated to the United Nations General Assembly, responsible for helping to facilitate international trade and investment, it is called (UNCITRAL). Amongst its missions: urging members to sign the agreement of unifying the rules of international commercial transactions, expanding the inclusion of the provisions of Model Laws within their domestic legislation, preparing a list of terms used in international transactions with their definitions, and also preparing comparative legal studies between legislative systems to identify the points of convergence or difference<sup>1</sup>.

### Second: The International Institute for the Unification of Private Law:

An international governmental organization aiming to harmonize the Private International Law across countries through unified rules, international agreements, preparation of Model Laws, and sets of guides and guidelines. It is concerned with codifying the customs and practices of international trade under the name of the (Unidroit Principles) or the Law of Merchants.



The International Institute for the Unification of Private Law is concerned with codifying the customs and practices of international trade under the name of the (Unidroit Principles) or the Law of Merchants.

Over years, Unidroit has prepared the international agreements that have approved many of the unified Laws that were developed by Unidroit and adopted by member states.

<sup>1</sup> The Kingdom of Saudi Arabia obtained membership in the United Nations Commission on International Trade Law "UNCITRAL" for the period (2022 - 2028) after its nomination among the countries of the Asia-Pacific Group.

### Third: International Chamber of Commerce - Paris:

It is a non-governmental organization that represents commercial companies around the world. The Chamber includes thousands of companies from more than 140 countries in its membership. The Chamber was founded in 1919 and its headquarters locates in Paris, France. The Chamber contributes to the formulation of rules and policies that encourage trade and investment on the international level. The Chamber represents the business sector in the United Nations, the World Trade Organization, and other governmental bodies at the international and regional levels.

The Chamber has issued the (Incoterms rules), which is a set of internationally recognized rules for interpretation of the terms used in international sales contracts. In addition, it has also established specific rules for documentary credits, and adopted the



(Incoterms rules)  
a set of internationally recognized rules to explain the terms used in international sales contracts

establishment of an arbitration chamber to settle the disputes on international trade contracts.

### Fourth: World Trade Organization (WTO):

global organization based in Geneva, Switzerland. It aims to facilitate the international trade and its flow between countries. It was founded in 1995.

It is the global organization concerned with International Laws related to trade among countries. Its tasks include: Management of trade agreements, reviewing national policies related to trade, moreover, the organization has provided multiple means to settle international trade disputes.

### Special Model Laws:

In countries that rely on the federal Law, such as the United States of America, in which each state is independent in issuing its own legislation, and given the importance of harmony between

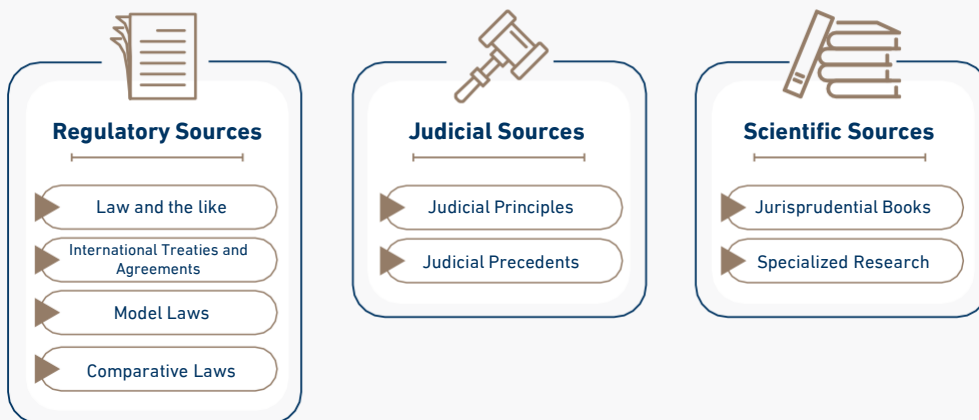
these Laws, The American Law Institute prepares and submits draft Laws to the legislative authorities in each state, and most states have adopted these drafts. Among the most important draft Laws issued by the Institute are: The Uniform Commercial Code (UCC), and the Restatements projects that transformed American judicial precedents into model legal articles. In addition, most American states have also adopted these Model Draft Laws and transformed them into binding Laws.

4

#### Comparative Laws:

Various international experiences are among the considered sources when preparing legislations, especially countries with similar circumstances in terms of social, economic and developmental aspects, and those sources must be reviewed and studied, and benefited from in developing the legislation under study, as well as many other areas, whether in terms of content, division, or drafting methods and general methodologies that similar or comparative Laws have followed. In addition to recognizing the advantages and disadvantages of these legislations, and the types and methods of treatments they contain.

### Sources of Legislation Building



### Second: Judicial Sources:

1

#### Judicial Principles:

The Supreme Court and the Supreme Administrative Court issue general rulings on specific topic, in accordance with their jurisdictions stated in the second paragraph of Article No. (Thirteen) of the Judicial Law issued by Royal Decree No. (M/78) in 19/9/1428 AH, which stipulates that “the General Authority of the Supreme Court shall undertake... to establish general principles in the matters related to the judiciary,” as well as what is stipulated in Article No. (Eleven) of the Board of Grievances Law, issued by Royal Decree No. (M/78) in 19/9/1428 AH,

stating that the Supreme Administrative Court has the jurisdiction to “examine objections, if the objection is a violation of a judicial principle decided in a ruling issued by the Supreme Administrative Court.”. The principles, which have been established in the judicial work and by a decision issued by the court, are appropriate to be clearly reflected in the proposed legislation, given the detailed and in-depth study of their consequences and justifications that precedes their issuance, which justify to adopt it in the proposed legislation and make it permissible, unless there is an apparent reason to leave.

#### Judicial Precedents:

2

Judicial precedents are significant sources from which the topics to be addressed in the proposed legislation are inspired, they help to recognize the problems of the issues where the legislation must provide solutions, in addition to the fact that guidance from

what has been established in judicial work on the planned legislation subject helps to achieve the goal of the legislation.



Judicial precedents are significant sources from which the topics to be addressed in the proposed legislation are inspired.

Judicial precedents in the fields of general and administrative judiciary, and quasi-judicial committees can be found through the following:

Judicial rulings published by the Research Center at the Ministry of Justice.

Decisions of the Banking Disputes Settlement Committee.

Decisions of the Sharia Health Bodies.

Decisions of the Insurance and Finance Disputes Settlement Committees.

Judicial records issued by the Board of Grievances.

Decisions of the Securities Disputes Settlement Committees.

Decisions of the Customs Committees.

Codes of Labor Principles and Decisions.

## Third: Scientific Sources:

1

### Jurisprudence Books:

The various Jurisprudence codes are an important source in preparing legislations because it includes treatments for various legislative issues that Islamic jurisprudence scholars have worked hard to edit and describe. When taking from jurisprudence books, consistency and discipline of the rulings must be ensured and taken into account, in addition to making utmost to reach the most appropriate says and views in case of conflict, in Order to achieve the intent of the Wise Legislator.



The various Jurisprudence codes are an important source in preparing legislation, as they contain treatments for various legislative issues

Reading in jurisprudence books helps in understanding the subject of legislation more deeply, as it raises many questions and solutions that those working on legislation can reflect in rules that answers it.





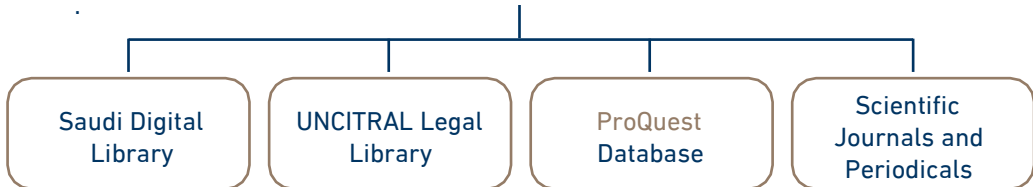
### 2 Specialized Research:

The Specialized research on topics related to the proposed legislation is an important resource that must be reviewed, especially studies that are characterized by including local and international practices, and have been reviewed and evaluated by arbitrators.



Specialized research on topics related to the proposed legislation is an important resource that must be reviewed, especially studies that are characterized by including local and international practices, and have been reviewed and evaluated by referees.

Various databases are rich with a large number of specialized research and scientific theses at the master's and doctoral levels. It is useful to review their sources in Order to identify the research, among those sources that contain a number of researches are:



**Saudi Digital Library:** It is a digital library that includes various specializations, and meets the needs of beneficiaries in educational institutions and others in the Kingdom of Saudi Arabia.

**UNCITRAL Legal Library:** It is a library affiliated to the United Nations, established in 1979 in Vienna to be a reference and research library for the UNCITRAL Secretariat and the participants in the intergovernmental meetings it holds.

**ProQuest Dissertations Database:** It is an international database that includes thousands of dissertations in different disciplines from different countries of the world.

**Scientific Journals and Periodicals:** i.e. the peer-reviewed legal and regulatory journals that deal with specialized topics in detail, such as:

The Justice Journal issued by the Ministry of Justice.

The Journal of Sharia Sciences at Imam Muhammad bin Saud Islamic University.

The Judicial Journal issued by the Ministry of Justice.

The Journal of Umm Al-Qura University for Sharia Sciences and Islamic Studies

Journals of the faculties of Law at other Gulf, Arab and International Universities.

The Journal of Jurisprudence Medical Studies.

The Journal of Sharia Sciences at Qassim University.

Researches from the Institute of Public Administration.

The Arab Journal of Sharia and Legal Studies affiliated with Al-Majmaah University.

The Journal of the Saudi Judicial Association (Qadaa).

The Journal of the Board of Grievances.

The Journal of Islamic Studies at King Saud University.

The Arab Journal of Jurisprudence and Judiciary issued by the League of Arab States.

The Journal of Islamic Research affiliated with the General Presidency for Scientific Research and Ifta.

The Journal of the International Islamic Fiqh Academy..

The Journal of Contemporary Jurisprudence Research..

The Journal of the Islamic Jurisprudence Academy

The Journal of the Institute of Public Administration.

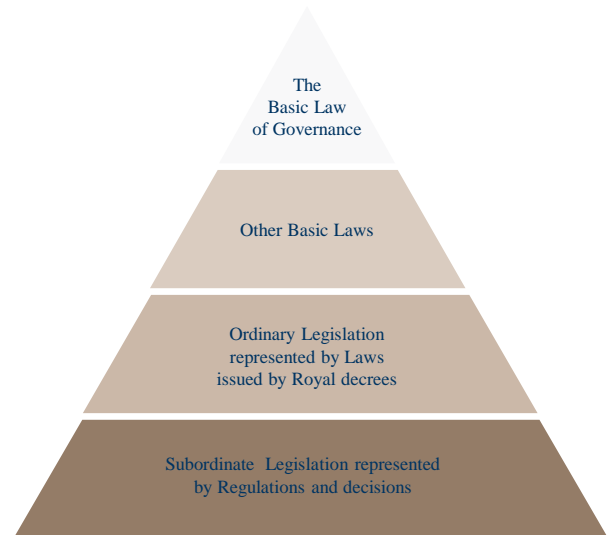
The Journal of the Saudi Jurisprudence Association.



## Hierarchy Of Legislation

Legislations take, according to its strength and means of issuance, a hierarchical sequence. The basic Law of Governance comes in the highest hierarchy, followed by other basic Laws, then other legislation, e.g. the Laws issued by Royal decrees, followed by subordinate legislation represented by Regulations and decisions.

The significance of clarifying the gradation is emphasized because legislation is subject to the principle of (gradation of the legal rule), i.e. a lower legal rule should not contradict a higher legal rule. The following is a brief exploration of the legislation types, according to the sequence:



### First: Basic Laws:

The legislations that regulate subjects of a constitutional nature, such as determining the state form, its Governance Law, and its basic features, in addition to organizing the authorities and clarifying the individuals' rights and duties.

The basic laws in the Kingdom consist of five laws: The Basic Law of Governance is the highest, then the other basic laws: The Law of the Council of Ministers, the Law of the Consultative Council (Majlis Al-Shura), the Law of Regions, and the Law of the Allegiance Commission. These laws were issued by Royal Orders, unlike the other laws that are issued by Royal Decrees based on a decision from the Council of Ministers and a decision from the Consultative/ Shura Council.

1

## The Basic Law of Governance:

The Basic Law of Governance was issued by Royal Decree No. (A/90) in 27/8/1412 AH, and included a set of legal rules that clarify the general principles; such as the Governance Law in the country, and also the division of powers into Implementing, judicial and regulatory with a clarification of the relationship between those authorities. In addition to the religious, social and cultural components of Saudi society, the economic and financial principles, the individuals' rights and duties, and general provisions.

The basic Law is a constitutional document that must not be violated in any way but in what is excluded and specified by the Law<sup>1</sup>. It is called in comparative legislations "the constitutional document".

2

## Other Basic Laws:

These Laws include provisions of a constitutional nature, which complete drawing the general features of the country, its Governance Law and the mechanism of its transfer. It determines the powers of the Implementing and regulatory authorities and the procedures of exercise, organizing the regions and the duties of their princes. These Laws - as previously mentioned - are: The Law of the Council of Ministers, the Law of the Consultative /Shura Council<sup>2</sup>, the Law of Regions<sup>3</sup>, and the Law of the Allegiance Commission, which are issued by Royal Orders, unlike other Laws that are issued by Royal decrees, and may not be amended except by the same instrument of issuance.

Due to the nature of these Laws and the connection to the rules and provisions of the basic Law of Governance, they are of a higher hierarchy than other Laws, and Ordinary Laws must not contravene the provisions contained therein.

1 This includes what is stated in Article (82): "Without prejudice to what is stated in Article (Seven) of this system, it is not permissible under any circumstances to suspend any of the provisions of this system, except temporarily in times of war, or during the declaration of a state of emergency, in the manner specified in the system."

2 Issued by Royal Order No. (A/91) in 27/08/1412 AH.

3 Issued by Royal Order No. (A/92) in 27/08/1412 AH.

### Second: Ordinary Laws:

These are the Laws that are issued by Royal decrees based on a decision from the Council of Ministers and a decision from the Consultative /Shura Council (in their capacity as a regulatory authority). These Laws belong to a lower hierarchy than the basic Laws. Article No. (Sixty-Seven) of the basic Law of Governance stipulates that “the regulatory authority shall be competent to issue Laws and Regulations, in Order to achieve interest or remove corruption with regard to the country affairs, in accordance with the rules of Islamic Sharia, and shall exercise its powers in accordance with this Law and the Laws of the Council of Ministers and the Consultative /Shura Council.”



Ordinary Laws mean: the Regulations issued by Royal decrees based on a decision from the Council of Ministers and a decision from the Consultative /Shura Council.

### ▶ Proposing the Draft Ordinary Laws:

With the exception of the basic Laws issued by Royal will, the draft Regulations may be proposed as follows:

- A Article No. (Twenty-Two) of the Law of the Council of Ministers stipulates that “Every minister has the right to propose a draft Law or Regulations related to the work of his ministry. Every member of the Council of Ministers members may propose what he sees as beneficial to be discussed in the Council after the approval of the Prime Minister.
- B Article No. (Twenty-Three) of the Law of the Consultative /Shura Council stipulates that “The Consultative /Shura Council may propose a new draft Law, or propose an amendment to an existing Law, and study it in the Council. The Chairman of the Consultative /Shura Council shall submit the Council decision to the King.”

### ▶ Review of Laws

- A The Council of Ministers, in accordance with Article No. (Twenty-One) of the Council Law, which stipulates that “The Council of Ministers shall study the draft Laws and Regulations presented to it and vote on article by article, then vote on as a whole, in accordance with the specified procedures in the Council’s internal Regulations.”

**B** The Consultative /Shura Council, according to Article No. (Fifteen) of the Council Law, which stipulates that: "The Consultative /Shura Council expresses its opinion on the general policies of the country to which is referred by the Prime Minister, and in particular the following: a - Discuss the general plan for economic and social development, and express its opinion on it, b - Study the Laws, Regulations, treaties, international agreements, and concessions, and propose what is appropriate in this regard, c - Interpret the Laws, d - Discuss the annual reports submitted by ministries and other government agencies, and propose what it deems appropriate in this regard"

### ► **Issuing Laws:**

Article No. (Seventy) of the basic Law of Governance stipulates that "Laws, treaties, international agreements, and concessions shall be issued and amended by Royal decrees," and Article No. (Twenty) of the Law of the Council of Ministers stipulates that "taking into account what is stated in the Law of the Consultative /Shura Council, the Laws, treaties, international agreements, and concessions shall be issued and amended by Royal decrees after studying by the Council of Ministers. »



The hierarchy of ordinary Laws comes after the basic Law of Governance and the basic Laws supplementing it and the ratified international treaties and agreements.

Accordingly, it is not acceptable that the Laws include provisions that contradict the provisions of any of them.

### **Third: Subordinate Legislation (Regulations and the like):**

Subordinate legislation comes following the general Laws, and is called (Regulations, rules, regulatory rules, Implementing Regulations, regulatory arrangements, special Regulations, and special controls), and can be defined as: a set of legal rules issued by the regulatory or Implementing authority; to establish detailed procedures and provisions for implementing general Laws, based on what is assigned to the ministries and other governmental agencies. These Regulations may be independent subordinate legislation that does not follow a specific Law.

These legislations may be issued by the regulatory or Implementing authority, as necessary. Article No. (Sixty-Seven) of the basic Law of Governance stipulates that "the regulatory authority is competent to establish Laws and Regulations, in what achieves interest or removes corruption with regard to the country affairs, in accordance with the rules of Islamic Sharia, and exercises its powers in accordance with this Law and the Laws of the Council of Ministers and the Consultative Council (Majlis Al-Shura)". However, these Laws may be issued by the Council of Ministers, for instance: the Implementing Regulations of The Law of the Anti-Narcotics and Psychotropic Substances, issued by Cabinet Resolution No. (Two-Hundred and One) in 10/6/1431 AH. Article No. (Sixty-Nine) of the Law stipulates that the Regulations shall be issued by a Cabinet Resolution, in this text: "The Ministry of Interior, the Ministry of Justice, and the Ministry of Health shall prepare the Implementing Regulations for this Law within one hundred and eighty days after the implementation of this Law, and it shall be issued by a Cabinet Resolution and published in the Official Gazette." The same applies to the Implementing Regulations for the Law of Criminal Procedures issued by Cabinet Resolution No. (One- Hundred and Forty-Two) in 12/3/1436 AH.

It may be issued by the competent minister as well, for example: the Implementing Regulations of the Law of the Commercial Courts which is issued by the Minister of Justice's decision No. (8344) in 29/10/1441 AH.

The issuance of the Regulations may be delegated to the concerned minister after coordination with other parties related to the subject of the Law, for example: the Sharia Litigation Law/ 1435 AH, Article No. (Two-Hundred and Forty) states that "the Implementing Regulations of this Law shall be prepared by the Ministry of Justice and the Supreme Judicial Council, and the Ministry of Interior shall participate in the related provisions, and shall be issued by a decision of the Minister of Justice after coordination with the Council... And shall not be amended except in the same manner of issuance.



- subordinate legislation includes detailed provisions required for the application of the Law. As a branch, it is subject to and bound by its origin, so it may not violate the provisions of the origin either by canceling, amending or adding a substantive provision; Because it belongs to a lower hierarchy in terms of legislative hierarchy.
- The Law often stipulates the authority responsible for issuing its Implementing Regulations

It was previously mentioned that some of these legislations (Regulations and the like) are independent and do not follow a specific Law. In other words, the general and binding legal rules issued by the Council of Ministers to regulate a specific topic, which often relate to the Regulations of a public affair. The entity concerned with the topic may be authorized to issue it. These subordinate legislations are generally divided, in general custom, into:

- 1 Regulatory Regulations: These Regulations have an independent nature and are not subject or subordinate to a specific Law. Regulatory Regulations are the abstract and binding general rules that apply to an unlimited number of individuals, and have a binding effect equal to the Laws, even if it is in a lower hierarchy in terms of legislative arrangement. They are also called (independent Regulations). Among its examples in the Kingdom are the Diplomatic Jobs Regulations issued by the Cabinet Resolution No. (1182/1) in 19/6/1426 AH, and the Regulations for the Employment of Non-Saudis in Public Jobs issued by (former) Civil Service Council Resolution No. (45) in 1/8/1398 AH.
- 2 Control Regulations: The Regulations issued by the Implementing authority to control public behavior. It aims to maintaining public security, public interest, public Order, and falls within the responsibility of the administrative authority. These Regulations usually include penalties for whoever violate its provisions, such as imprisonment, fines, or confiscation. Among its examples in the Kingdom, the Public Taste Regulations issued by the Cabinet Resolution No. (444) in 4/8/1440 AH.





- 3 Delegation Regulations: The Regulations issued by the Implementing authority, based on a limited delegation issued by the regulatory authority.

### ► Scope of Law and Scope of Regulations in Terms of Content:

This is a controversial issue, but it can be said, in general, that the scope of Laws is everything that has been stipulated in the basic Law of Governance to be regulated by a Law, such as: Article No. (Three) which states that the Law specifies the provisions related to the flag of the country, Article No. (Thirty-Four) which states that the Law specifies the provisions of military service, Article No. (Thirty-Five) states that the Law specifies the provisions of Saudi Arabian nationality, Article No. (Forty-Seven) states that the right to litigation is guaranteed equally to citizens and residents of the Kingdom, and the Law specifies the necessary procedures for that, Article No. (Twenty) states that fees and taxes are not imposed, nor are they amended, cancelled or exempted from except by virtue of the Law, and Article No. (Fifty-Nine) states that the Law specifies the provisions of civil service, including salaries, bonuses, compensations, benefits, pensions, and other provisions, as well as what is related to rights of Individuals, their properties, restricting their powers, and what relates to organizing civil and commercial transactions and personal status, and what is similar to that in various life areas, and other than that, it is permissible to issue Regulations and Regulations, as in the establishment of utilities and bodies.

### Types of Legislation according to its sequence:

1

Basic Laws

2

Ordinary Laws

3

Subordinate Legislation  
(Regulations and the like)



## Legislative Tools

The regulatory authority is one of the main authorities in any country, in addition to the Implementing and judicial authorities. Article No. (Sixty-Seven) of the basic Law of Governance stipulates that the regulatory authority is competent to develop Laws and Regulations that achieve interest or remove corruption with regard to the country affairs in accordance with the rules of Islamic Sharia, and exercises its powers in accordance with this Law and the Laws of the Council of Ministers and the Consultative /Shura Council. However, these Laws and its Regulations legislations can be issued only by tools, those tools are used also for appointments and other matters related to the country affairs, the management of its agencies and the organization of its affairs. Accordingly, it is understood that these tools are not used exclusively for legislation, but some are used as an Implementing tool. The following is a brief description of these tools according to induction, with emphasis on the absence of a regulatory text that sets the limits of each tool and defines its jurisdiction.

### 1 Royal Order:

A written document issued by the King in his capacity as the head of state and a reference for all authorities. The Royal Order is to be issued on most of the topics that are included in the basic Law of Governance, the most important one is the ratification of the Laws of governance (The basic Law of governance, the Law of the Consultative /Shura Council, the Law of the Council of Ministers, the Law of the Allegiance Council, Law of regions). The Royal Order is also used in the Implementing affairs of the country, which include the appointments of ministers, deputy ministers, excellent hierarchy employees, judges, military personnel, and members of the Consultative /Shura Council.

### 2 Royal Decree:

A written document issued by the King in his capacity as the head of state and a reference for all authorities. This tool is used to ratify Laws, agreements, international treaties, and the state budget.

### 3 High Order:

A written document issued by the King in his capacity as the head of the Council of Ministers. This type of Royal Order does not have a specific form and is often issued in Implementing affairs..



4

### Royal Directive:

The Royal Directive is issued without a specific form or formula, it is not compulsory to be written and signed by the King. It is to be communicated by letter or telegram from the Royal Court, and it may be included in a statement or a direct speech to the public or to a specific official on what falls within his jurisdiction.

5

### Cabinet Resolution:

A written document issued with the signature of the Council Chairman or his deputy. The resolution expresses and reflects what the Council of Ministers decides during its meetings regarding the topics that falls within its jurisdiction by the Law/Law, and it is signed by the Council Chairman or one of his deputies. It shall not be final until the King approve it, in accordance with Article No. (Seven) of the Law of the Council of Ministers. It shall be used in Implementing and regulatory affairs in which it participates with the Consultative Council (Majlis Al-Shura).

6

### Consultative /Shura Council Resolution:

A written document issued with the signature of the Council Chairman or his deputy. The resolution expresses and reflect what the Council decides on matters that fall within its jurisdiction, whether regulatory or supervisory tasks, as a participant in the regulatory authority. The regular procedures regarding the Consultative /Shura Council resolution shall be completed in accordance with what is stated in Article No. (Seventeen) of the Law of the Consultative /Shura Council.

7

### Ministerial Resolution:

A written document issued by the power-owner, such as the competent minister or his equivalent, or the person entrusted for issuance in accordance with the powers mandated to him by the Law/Law, such as the councils of public authorities, institutions and centers with legal Independent personality.



These legislative tools exist in legislative use but there is no regulatory text to set the limits of each tool and define its jurisdiction and the mentioned details are mere interpretations that reflect the legislative reality.



## Chapter Two

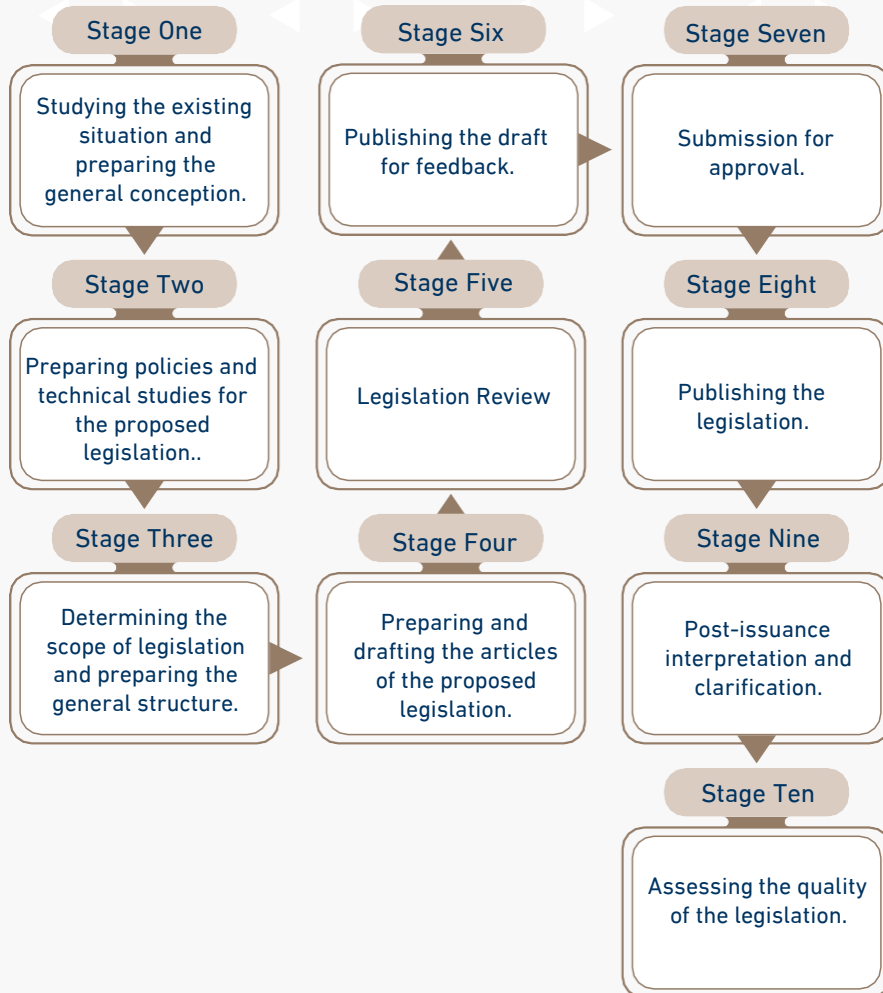
### Stages Of Preparing, Drafting, Issuing And Interpreting The Legislation

- ▶ **Stage One** Studying The Existing Situation And Preparing The General Concept
- ▶ **Stage Two** Preparing Policies And Technical Studies For The Proposed Legislation
- ▶ **Stage Three** Determining The Scope Of The Legislation And Preparing The general structure
- ▶ **Stage Four** **Preparing And Drafting The Proposed Legislation**
- ▶ **Stage Five** Legislation Review
- ▶ **Stage Six** Submitting The Legislation For Approval
- ▶ **Stage Seven** Publishing The Legislation
- ▶ **Stage Eight** Subsequent Interpretation And Clarification To Issuance
- ▶ **Stage Nine** Assessing The Legislation Quality





This chapter will discuss the stages of the legislation preparation process, starting from the proposal stage, ending with the issuance stage and the subsequent interpretation and sub-Regulations. The following is a brief presentation of these stages:





## Stage One: Studying The Existing Situation And Preparing The General Conception:



See: Verification  
model for the first  
stage, p. 168

### First: Studying the existing situation and possible solutions.

Determining the legislative needs is the main starting point for the legislation preparation process, whether the legislative is needed to fill a legislative gap, amend existing legislation or propose new legislation. This process requires firstly the precise definition of the problem that requires the legislative intervention, studying its causes and manifestations, and explaining its effects and the proposed solutions. The problem could be defined through a study that includes the following elements:

- Determining the temporal scope of the subject/problem, is it permanent or temporary?
- Determining the spatial scope, does it have a jurisdiction over a specific geographical area or extend to others?
- Determining the objective scope, does it relate to a specific activity and is limited to a specific field, or overlap with various activities and ramify in multiple fields?
- Determining the type of problem/subject (economic, social, health, local, international, etc.).
- Determining the size of the problem/subject in light of the available figures and statistics.
- Determining the affected stakeholders.
- Determining and studying the causes of the problem, and distinguishing between the symptoms of the problem and its causes.
- Determining the existing legislation related to the subject or problem.



- Identifying judicial disputes related to the problem, considering their causes, and benefiting from the judicial treatments of the courts in these disputes.
- Studying comparative international experiences regarding methods of dealing with the problem and the subject of legislation.

### ► Proposed Sources for Studying the Existing Situation

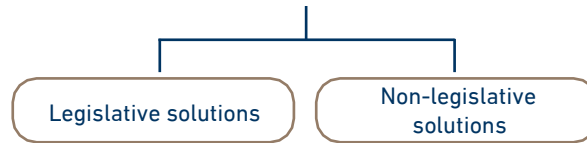
- Hearing the opinions of stakeholders and the affected people
- Hearing the opinions of governmental agencies on the problem that is to be solved.
- Hearing the opinions of local and international specialized experts.
- Conducting opinion polls/surveys at the national level on the problem, its nature, and its impact on society.
- Referring to local and international studies and reports conducted by national international research units and international & regional organizations related to the problem.
- Making an inventory for all applicable legislation that has previously addressed the problem.
- Studying relevant international treaties and agreements.
- Relevant judicial disputes.

## Second: Preparing Initial Proposals to Solve the Problem:



See: Model for listing possible options to solve the problem and assessing its impact, p. 169

A special document is to be prepared to analyze the existing situation, it is to include a set of initial solutions to treat the problem. These solutions fall under two types:



### ▷ Legislative solutions:

Namely, all new legislations issued by the regulatory and Implementing authority, or amendments to existing legislation.

### ▷ Non-legislative solutions:

It may be detected from studying the legislative solutions that they are not the best option, and it is possible to provide alternatives better than the legislative intervention and avoid the procedures and financial costs. These solutions include the following:

### 1 Mediation Between Stakeholders:

The entity that is concerned with the solution shall play the role of mediation between stakeholders to reach binding agreements to solve the problem. The agreements will be signed by the concerned parties, and the concerned entity guarantees the implementation and respect of the provisions of the agreement. The entity may be a party to this agreement if the problem relates to public interests. Amongst the advantages of these agreements, addressing the existing situation and solving the problem, while keeping flexibility for amendment, choosing the appropriate means of implementation, and its reduced costs. This type is called "optional". Amongst the examples of these agreements: the agreements between workers and business owners in a specific sector, to guarantee a minimum wage, as well as agreements concluded by the competent ministry with pharmaceutical companies, to guarantee the Medicines supply.



at a fair price. This agreement is an alternative to legislative intervention through pricing, and the social and economic impacts from which it may result.

### 2 Awareness Campaigns:

To be implemented through different media networks, aiming to change the society behavior or a sector behavior instead of the binding legislative intervention

### 3 Economic Solutions:

Another alternative to legislative intervention, by granting companies and individuals economic advantages in exchange for their commitment to a certain behavior. These advantages vary between: financial support, tax and customs reductions, and other economic incentives.

### ► Benchmarking to Select the Most Appropriate Solutions:

After the end of the stage of identifying the proposed solutions, reaching the optimal solution - whether legislative or non-legislative - requires preparing the next comparisons:

- The financial cost of implementing each solution, whether it is a direct or indirect cost.
- The ability of each solution to address the problem, in the short, medium and long term.
- Surveying the opinions of stakeholders about each proposed solution, by offering questionnaires to know opinions or by correspondence or hearing sessions to their opinions.

The proposed solutions should take into account to:

- 1 be relevant to the problem.
- 2 implementable, and commensurate with the nature and size of the problem..
- 3 meet the needs of stakeholders
- 4 be consistent with the findings of studies and reports conducted during the problem analysis.

- Assessing the impact of each solution on the general legal status and situations, and the actual need for legislative amendments when implementing each solution.
- Studying the effects of each solution on economic, social and legal situations.

According to what was stated in the Cabinet Resolution No. (713) in 30/11/1438 AH and the amendments thereto, when the authority adopts a decision for developing a legislative proposal that addresses an existing problem or contributes to improving certain conditions, it must submit a proposal to the Prime Minister to present it to the Council of Economic and Development Affairs or the Council of Political and Security Affairs, according to the jurisdiction. This proposal should include a complete conception of the legislation, including its objectives, the target audiences of application, the actual need, existing international legislation and experiences, with a statement of the expected financial, social and functional effects, in addition to the resulting impact on the applicable regulatory provisions, as well as the ratified international agreements to which the Kingdom is a party and which are related to the proposal, in Order to adopt the initial direction on the proposal.

This stage encompasses the elements that have to be stated in the explanatory memorandum which are stipulated in the controls that must be taken into account when preparing and studying draft Laws and Regulations.

## Steps for Studying the Existing Situation And Preparing the General Conception

1 Studying the existing situation and possible solutions

Preparing initial proposals to solve the problem

2





## Stage Two: Preparing Policies And Technical Studies For The Proposed Legislation:



See: verifying model  
for Stage Two, p. 170

This stage follows the previous stage, the most prominent results of which will be: either approving the legislative intervention, or refusing the legislative intervention and using non-legislative solutions. In the case of choosing the legislative intervention, a number of matters must be determined before starting the draft formulation, as follows:

### First: Determining the legislation objectives:

Determining the objectives is very significant, given that it enables the concerned parties to measure the quality of the legislation after implementation and the extent of its efficiency in achieving the planned objectives, as the criterion for the successful legislation is: achieving the planned objectives during the preparation phase.



### Controls of Legislative Objectives Formulation

- 1 The objectives must be determined and clear, this requires determining the targeted subject and the beneficiary of these objectives.
- 2 The objectives must be measurable, consequently the generally worded objectives are invalid. For example, if the legislation is addressing a health issue, and amongst its objectives, e.g., reducing the rate of a certain disease, at that moment the target percentage for the reduction must be determined to measure the actual success of the legislation.
- 3 The objectives must be applicable within a clear time frame. The objective should be realistic in light of the available financial resources and the social and political conditions, and the consistency of the objectives with public policies.
- 4 The objectives must be linked to the problem, i.e. the achievement of the objectives should lead to addressing the problem and its direct and indirect impacts.



### **When setting the objectives, attention must be paid to the next mistakes:**

- 1 Mixing between objective and solution, for example: if the legislation addresses the issue of granting incentives to companies that employ citizens, the objective is to reduce the unemployment rate by 2%, while the solution is to grant incentives to the companies according to the percentage of recruitment in the available jobs.
- 2 Choosing vague and generally worded objectives, which makes the evaluation of the proposed solutions that achieve these objectives difficult, for example: if the goal of the legislation relates to the environment, which is to reduce the percentage of air pollutants without specifying the type of pollutants, and without specifying the targeted reduction rate, or the time period in which the pollutants will be reduced.

## **Second: Determining the Legislative Policy:**

Legislative policy is the set of general rules and principles that the legislation adopts in its provisions. These policies are derived from the legal, economic and social conditions that the basic Law of the country represents.

### **► Controls of Legislative Objectives Formulation**

- Public Policies must be written in a clear and specific language.
- Taking into account the consistency of public policies with the provisions of Islamic Law/Sharia and the Kingdom's obligations arising from the ratified agreements.

Examples: If the legislation relates to a social affair on family and marriage and divorce issues, then the legislation policy will be prepared in light of the related general policies which exist in the basic Law, as in Article No. (Nine) thereof: (The family is the nucleus of Saudi society, its members are raised on the basis of the Islamic faith and what it requires of loyalty and obedience to Allah, His Prophet, and those in authority, and respect and implement the Law,



Love and pride of the homeland and its glorious history), as well as Article No. (Ten) thereof: (The country is keen to strengthen family ties, preserve its Arab and Islamic values, care for all its members, and provide the appropriate conditions for developing their talents and abilities).

### Third: Studying Local Laws:

- This stage is significant in the preparation process, in order to list all laws related to the proposed topic, know the discrepancy and expected overlap with other Laws, determine the actual need for legislation and the legislative gaps that urgently need to be filled. Amongst the useful sources for reaching the Laws and Regulations in force:
- The National Center for Documents and Archives: was established by the Royal Decree No. (M/55) in 23 Shawwal 1409 AH. It is linked, administratively, to the President of the Royal Court. Amongst its missions: collecting and preserving Laws, Regulations, instructions, agreements and treaties in accordance with the Law of Documents and Archives and its Regulations.
- The Saudi Laws Collection: available on the website of The Experts Authority-The Council of Ministers.
- Websites of related ministries, governmental agencies and bodies, with regard to the Regulations they had issued.
- Umm Al-Qura newspaper website, which is the official Gazette in which the Laws and Regulations are published.



Scan the barcode to view a collection  
Of Saudi Laws



Scan the barcode to visit the website of the  
National Center for Documents and Archives.

#### **Fourth: Studying Regional and International Experiences:**

In preparing legislations, the stage of studying international and regional experiences is one of the significant stages that has been assured by the controls that must be taken into account when preparing and studying draft Laws and Regulations, contained in The Cabinet Resolution No. (713) in 30/11/1438 AH and the amendments thereto. The importance of this study is being informed and familiar with the countries' approaches to addressing the problem, which helps in identifying reference Laws that can be relied upon during the preparation of the proposed legislation. The stage of studying international and regional experiences goes through several steps:

##### **1 Studying Relevant Regional and International Agreements:**

Reviewing and studying these agreements contributes to determining the nature of the obligations that must be taken into account during the preparation of the legislation, in addition to benefiting from the international principles stipulated in these agreements. The compatibility of the legislation with these agreements also helps to improve competitiveness in international indicators, as a result of taking the agreements into account and adhering to their provisions, in addition to benefiting from international model Laws that are usually one of the outputs of international/regional agreements or charters.

As to any other agreements, they may be reviewed only for familiarization with its rules and provisions that may be useful during the development of legislation. The agreements can be searched for in the following sources:

- 1 Collection of international treaties and agreements registered or deposited with the United Nations Secretariat. (United Nations Treaties Services)
- 2 League of Nations Collection.
- 3 Collection of treaties and agreements concluded under the Arab League.
- 4 Index of world treaties, in English.
- 5 Multilateral Treaties Index



- 6 Judgments issued by the International Court of Justice
- 7 Judgments issued by the International Criminal Court.
- 8 Judgments issued by the Permanent Court of Arbitration.



### Criteria that help in choosing the international and regional agreements under study:

- The agreement should relate to the problem that the proposed legislation will address.
- The agreement under study should be ratified by its parties, so that the application of its provisions is not disputable.
- The agreement should have an impact in respect of improving the country's indicators in the economic, social and environmental fields.
- Agreements of an international nature are in a higher hierarchy than regional agreements, and regional agreements are in a higher hierarchy than bilateral agreements.

### 2 Studying Regional Laws:

Studying regional Laws is significant because these Laws stem from an environment that is characterized by similar circumstances, this study helps to understand the experience of those countries that have the same or similar situations and circumstances.

Regional Laws in the Arab region include: Gulf Laws and Arab Laws.

### 3 Studying International Laws:

Reviewing the comparative international Laws is significant to recognize what is applied at the international level. This study helps in issuing the legislation that is compatible with the latest theories, ideas and legal Laws in the world.

Legal Laws worldwide are divided into two main Laws:



- 1 Civil Law: is divided into Latin Law, e.g. the Laws of France, Spain, Italy, and Belgium, and German Law, e.g. the Laws in Germany, Austria, the Netherlands, etc.
- 2 Common Law: which is represented by the Laws of the United States of America, the United Kingdom, Australia, Singapore, Canada, and other countries..

**There are many databases that provide Arab and international Laws, including the following sources:**

LexisNexis Database: a database that deals with international legislation and provides numerous legal services.

WestLaw Database: a database that provides the research for judicial precedents, legislation, and legal articles for a number of the World countries. It has branches, such as WestLaw UK, which is concerned with the legal articles of the European Union.



The diversity of Laws collected during the stage of preparing policies and formulating the contents of the legislative draft should be considered. Being limited to one legislative school or a specific geographical area should be avoided, careful investigations through the collection stage is significant until determining the best reference legislative options and practices in light of the comparative Laws that can be used during the preparation and drafting stage..

#### 4 Methodology of Studying Regional and International Experiences:

The study method is based on examining the similarities and differences between the selected Laws. The most prominent expected results are: identifying the best legal experiences to address the problem at hand through:

- 1 Identifying the Laws nominated for comparison, choosing these Laws is to be based on specific criteria; e.g. the country is famous for certain Laws in a specific field.
- 2 Listing the texts that address the problem being legislated.
- 3 Studying the Law that contains the previously listed texts, and recognizing the relationship of between these texts and the Law and also the methodology adopted in the treatment.
- 4 Extracting conclusions and evaluating the best practices to address the problem, this could be done through an attempt to recognize the application impacts, through judicial rulings and specialized research.



Though the importance of reviewing the similar Laws, the mere transfer of materials and provisions may not suit the environment to which the draft legislation is presented. In addition to the possibility of conflict and perhaps contradiction in form and content between these Laws and other legislation or higher constitutional principles.

### An example:

If there is a legislative actual need to address the subject of "proof in writing", the work should be as follows:

- Selecting comparative legislation and Laws, taking into account the previously mentioned diversity, not less than three Laws.
- Identifying the texts that regulate "proof in writing" in these Laws.
- Recognizing the methodology and philosophy of the Laws and legislation of the countries being compared, to identify the methods of addressing "proof in writing" and identifying the similarities and differences.
- Extracting conclusions and identifying the best practices in addressing the subject.



### Success Requirements of Methodological Comparison:

- 1 Sufficient knowledge of the comparative Law through awareness of its language, legal terminology and judicial applications.
- 2 Studying the social, economic, political and historical factors that affect the legislations of the comparative Law.
- 3 Familiarity with similarities and differences between the environment of the comparative legislation and the environment of the proposed legislation.



See: Reference mark selection model, p. 171

### **Fifth: The Reference Mark:**

The reference mark is Law that will be accompanied during the stage of preparing the legislation, consequently a comparison is to be made with its articles in terms of words and contents.

The selection of the reference mark is one of the study results of international experiences, which is to be based on several criteria:

First Criterion: comprehensiveness, i.e. including the objectives and contents that the legislation is to address

Second Criterion: Distinguished drafting, good arrangement and classification.

Third Criterion: availability of judicial applications in the nominated Law for comparison. Judicial applications highlight the weaknesses and strengths of the legislation and its ability to adapt to changes, because the facts raised before the judiciary are not limited and are renewed according to the societies circumstances and their variables.

Fourth Criterion: availability of legal studies and research on the nominated Law, due to its role in analyzing, explaining and criticizing texts; which helps the legislation to avoid the criticisms that studies and research have mentioned.

Fifth Criterion: availability of preparatory work and explanatory notes on the nominated Law for comparison, to understand its philosophy, historical and social circumstances, objectives, and the reason for selecting its articles, and the methodologies it used.

Sixth Criterion: Competitiveness of the country being compared. The regional Laws of the most advanced countries are in a high hierarchy in international indicators, because the appropriate legal structure has an impact on the country's hierarchy in international indicators, such as the contract enforcement index and the minority investors protection index.

## Criteria for Selecting the Reference Mark

- 1 Comprehensiveness, including the objectives and contents that the legislation is to address
- 2 Distinguished drafting, good arrangement and classification.
- 3 Availability of judicial applications in the nominated Law for comparison.
- 4 Availability of legal studies and research on the nominated Law.
- 5 Availability of preparatory work and explanatory notes on the nominated Law for comparison.
- 6 Competitiveness of the country being compared.



The stipulation of these criteria does not mean that they must be fully available in the reference legislation and Laws, the novelty of the problem, for instance, may be a reason for the lack of one or more of these criteria, however these criteria represent the ideal situation that should be taken into account when selecting these legislations and Laws

### Sixth: Studying and Evaluating the Proposed Legislative Policies Impacts:

Evaluating the impact of policies included in the legislation is one of the methods used to identify the advantages and impacts of legislations after its enforcement. One of the most prominent features of this evaluation is that it considers the potential economic, social, legal and international impacts.

Impact assessment means: a series of practical steps within a specific methodology; to analyze and evaluate the economic, social, financial, health, functional, environmental and organizational results and impacts of the legislative policies, followed by evaluating desired costs and benefits from the expected interventions, identifying the available options and nominating the best.

#### ► Impact Assessment Objectives:

- **Helping the decision-maker** to make focus on the legislative impact and its consistency with the basic decisions, recognize the best expected results from the draft legislation, identify costs and benefits and recognize positive and negative effects.
- **Promoting the principle of transparency** among governmental agencies regarding the taken decisions, through communication with other governmental agencies, stakeholders and the public, which creates an interaction that ensures the implementation of the legislation and its effectiveness after its approval.
- **Ensuring consistency** with local and international legislations, by verifying the impact of legislation on the existing rights in international treaties to which the Kingdom of Saudi Arabia has committed, and raising competitiveness in international indicators.
- **Improving the quality of legislative intervention**, and supporting the decision-making process with tangible evidence about the potential benefits and expected risks, in addition to recognizing costs and avoiding unintended consequences.

- Early detection of direct and indirect impacts of proposed legislation, which helps to avoid negative impacts.
- Improving the quality of legislation to achieve the public interest as well as effectiveness and efficiency in solving the problem at the lowest possible cost.

1

### Scope of Impact Assessment:

Impact assessment can be applied at any stage of legislation, because it is a recurring process that authorities can do more than

Once during the legislative cycle. Assessing the impact of legislation takes several forms, in light of the legislative stage. It may be during the stage of preparing policies and legislation, or a pre assessment to an existing legislation, and may be during the legislative process in case of amending the nominated policies, before entering into force. It may be also a post-assessment, with regard to legislation whose impact has not been assessed previously.



See: Regulatory Impact Evaluation and assessment Model, p. 172



Impact assessment can be applied at any stage of legislation, as it is a recurring process that authorities can do more than once during the legislative cycle.

2

### Impact Assessment Methodology:

A methodology to classify the legislation whose impact is measured should be developed, to achieve the effectiveness of the impact study. The World Bank Guide for Assessing the Impact of Legislations has mentioned the multiplicity of legislative policies that require in-depth analysis of the impact. This necessitates the development of a clear methodology for the sorting process, which can be summarized as follows:

- Considering the impact size: by prioritizing legislations related to economic, social and environmental affairs, especially if the expected impact of the legislation exceeds a certain percentage.
- The body proposing the legislative policy: The impact is to be studied if the proposal came from a higher body such as the Council of Ministers or the Royal Court, as well as if the proposed policy came from the stakeholders.





It is important to provide the accurate information on a continuous and organized basis, so that the impact can be measured in a comprehensive manner that achieves the objective. This could be done through the prior planning for data collection, identifying sources of information, in addition to identifying strategies for dealing with data shortages and methods of collecting and analyzing.

### ► Potential Impacts of Implementing the Proposed Legislation:

The expected impact of the proposed legislation may occur in the short, medium, or long term. This relates to the objectives and purpose of the legislation, for example, in financial legislation that aims to increase the country revenues, it may be better for its impact to appear in the short term, while in economic legislation related to sustainable development, the impacts only appear in the medium or long term because it is connected to medium and long-term plans. These impacts vary between economic, social, legal, environmental, international, health, and other impacts of the proposed legislation.



#### **Economic Impacts:**

Economic impacts include, for example, the level of competitiveness, trade and investment, the expected costs on the institutions concerned with implementation, the administrative costs required in the public or private sector, the actual need to create certain jobs, or establish new entities, etc.



#### **Social Impacts:**

Social Impacts include, for example, the impact on employment and labor markets, standards of work quality and occupational safety, social cohesion and protection of certain groups, equality between different groups, public health and safety, crime and security, etc.



### **Legal Impacts:**

Legal impacts include, for example, the impact on existing legislations and its actual need to be amended, rates of need to resort to the judiciary, rates of adjudication in the cases, the impact on legal situations, etc.



### **International Impacts:**

International impacts include, for example, obligations related to international, regional and bilateral agreements and the actual need to be amended, relations between the country and other countries, relations with various international and regional organizations, the country's hierarchy in various international indicators, etc.



The legislation impacts may be direct, as if the legislation lead to a change in the situations of the addressees, while if the legislation impacts certain positions, this will be followed by an indirect impact in some aspects, for example: Approving a legislation that reduces subsidizing for the electricity sector, the expected direct impact of this legislation is raising the cost of electricity bills, and the indirect impact is raising the prices of goods and services as a result of the increased cost resulting from raising electricity prices.

► **Methodology of Studying and Analyzing the Impacts:**

The methodology of studying and analyzing the impacts is based on analyzing risks and benefits expected from the legislation, according to the following:



**A Risk Analysis:**

By identifying the expected risks from the proposed legislation on all economic, social, legal and international situations, whether in the short, medium or long term. This analysis depends on a set of determinants, as follows:

- Determining the scope of risk occurrence.
- Determining the rates of risks occurrence.
- Studying the expectations of concerned parties, target audiences and stakeholders regarding the potential risks.
- Determining the expected cost of these risks in terms of time and money.
- Determining the cost of implementing and adhering to the legislation requirements.

**B Benefit Analysis:**

The benefit analysis is based on identifying the expected benefits and the necessary cost to achieve those benefits. This analysis depends on a set of determinants, as follows:

- Determining the expected benefits from the legislation, for example: the extent to which the proposed legislation contributes to increasing the gross domestic product or the country's revenues or reducing the number of Lawsuits registered in the courts.



### Seventh: International Indicators:

International development indicators have a prominent role in motivating countries' policies. The international indicator aims to influence the concerned parties, through the supporting force represented by the international acceptance of the indicator. The incentive to adhere to the international indicator is derived from its weight, since the indicator works through its periodical reports to determine the hierarchy of countries in terms of commitment to the index standards.

The sources of international indicators vary according to its establishment by individuals, international organizations, civil institutions, or international agreements.

The international indicator is based on two pillars:



**The diversity of sources of international indicators in terms of establishment**

1

By individuals

2

By international organizations

3

By civil institutions

4

By international agreements

## ► The Criteria for Selecting Indicators:

The National Competitiveness Center is the concerned agency with indicators. The center has adopted the development of special criteria for selecting international indicators and reports, as following:

It must be issued by a non-profit, non-governmental entity.

The importance of the report and its indicators for the competitive environment.

It must not include sub-indicators that include religious, social or political violations.

Existence of a clear methodology for the report or indicator.

The areas of focus of the report or indicator, and its connection to the Kingdom's Vision 2030.

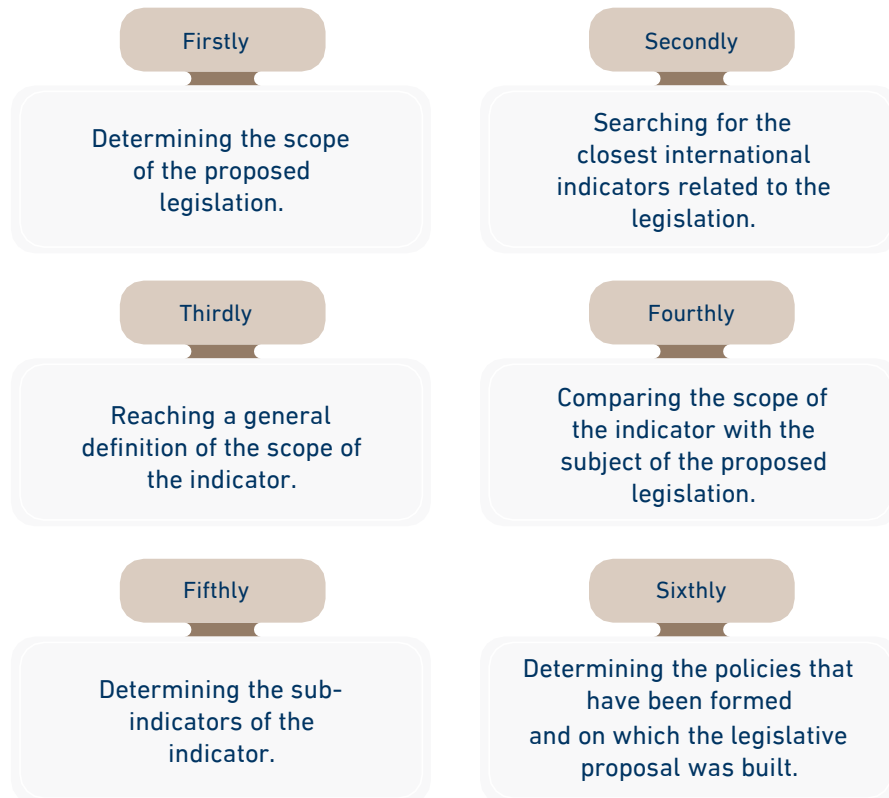
The report's global fame, and its presence in the media.

The existence of one or more general hierarchy of countries in the report.

The importance of the report to the Kingdom's global reputation.

► **The Methodology of Dealing with the Indicator:**

Dealing with the international indicator comes after verifying its suitability, through several steps, as follows:



► **Key International Indicators:**

To help the legislation drafters to identify the international indicators which are relevant to the proposed legislation, the herein after mentioned table shows a selected sample of such indicators, with a brief definition of the methodology for assessing the indicator:

1. Human Development Category		
Indicator	Entity	Methodology
<b>Human Development Index</b>	United Nations Development Program	measures the achievement average in key dimensions of human development, including health, education and livelihood.
<b>Gender Gap</b>	World Economic Forum	The index addresses four criteria: economic participation, educational attainment, political empowerment and health.
<b>Human Capital Index</b>	World Bank Group	The index consists of three components: survival, expected education, and health and growth.
<b>World Happiness Index</b>	Sustainable Solutions Development Network- the United Nations Secretariat	The index is based on criteria including: per capita GDP, social welfare, life expectancy, absence of corruption, quality of health and education, and labor market.



<b>2. Business and Investment Environment Category</b>		
<b>Index</b>	<b>Entity</b>	<b>Methodology</b>
<b>Ease of Doing Business Index</b>	World Bank Group	The index is based on ten criteria: starting a business, ease of obtaining construction permits, access to electricity, ease of registering property, ways to get credit, protecting minority investors, paying taxes, trading across borders, enforcing contracts, and resolving insolvency.
<b>Global Entrepreneurship Index</b>	Global Entrepreneurship and Development Institute	The index covers three components: entrepreneurship, entrepreneurial activity, and ambition.
<b>Index of Economic Freedom</b>	Heritage Foundation	The index is based on four criteria: rule of Law, government spending and tax burden, regulatory efficiency, and market openness.

### 3. Competitiveness Category

Index	Entity	Methodology
<b>Global Competitiveness Index</b>	World Economic Forum	The index is based on a set of partial indicators: innovation, macroeconomic environment, health, basic education, higher education, training, goods market efficiency, financial market development, technological development, market size, and business progress.
<b>Competitiveness Index</b>	International Institute for Management Development	The index is based on four axes: economic performance, government effectiveness, business efficiency and effectiveness, and infrastructure.
<b>Industrial Competitiveness Index</b>	United Nations Industrial Development Organization	The index is based on three levels: the country's ability to produce and export manufactured goods, the strength of the economy in terms of technological content, and the country's influence in global manufacturing
<b>Travel and Tourism Competitiveness Index</b>	World Economic Forum	The report is based on four main indicators: enabling environment, travel and tourism policy, infrastructure, natural resources, and culture.
<b>Logistics Performance Index</b>	World Bank Group	The index is based on six key indicators: efficiency of customs and border administration, transport infrastructure, availability of shipments with competitive prices, efficiency and quality of logistics services, ability to track and trace shipments, and timeliness of shipments.

4. Diversification and Globalization Category		
Indicator	Entity	Methodology
<b>Export Diversification Index</b>	UNCTAD	The index shows the degree of dependence of countries on products or trading partners.
<b>Globalization Index</b>	Swiss Institute of Economics	The index aims to assess current economic flows and clarify economic constraints and information data.
5. Governance and Transparency Category		
Indicator	Entity	Methodology
<b>Corruption Perceptions Index</b>	Transparency International Organization	This index measures the prevalence of abuse of power for private gain.
<b>E-Government Index</b>	UN Department of Economic and Social Affairs	The index is based on three criteria: availability of electronic services, telecommunications infrastructure, and human resources.

## 6. Knowledge and Innovation Category

Index	Entity	Methodology
<b>Global Innovation Index</b>	Cornell University, INSEAD, WIPO	The index provides detailed measures of innovation performance and outcomes.
<b>Cybersecurity Index</b>	International Telecommunication Union	Measures the level of commitment of different countries to cyber security



## Stage Three: Defining The Scope Of The Legislation And Preparing The General Structure:



See: Verification Model  
for the Third Stage, p.  
177

This stage is subsequent to preparing policies and technical studies. It includes preparing the contents that will be addressed by the legislation, and the objective scope which is represented in determining the general structure of the proposed legislation. The following are a set of procedures that contribute to improving the outputs of this stage and subsequent stages:

### First: Forming a Specialized Teamwork:

It is important to select competencies which possess qualifications and experiences that are compatible with the legislation needs, before starting the preparation of the general contents of the legislation. The following steps should be considered when selecting the teamwork:

- Collecting the necessary information about those nominated to join the teamwork.
- Studying the CVs of the candidates, and reviewing their correlated contributions to the subject of the proposed legislation.
- Developing an evaluation model for candidates, according to specific and clear criteria.
- Holding personal interviews with candidates, to ensure their competence and awareness of the latest developments on the subject of the proposed legislation.



### When evaluating candidates to join the teamwork, the next criteria are to be considered:

- Keeping well-informed of the latest developments on the proposed legislation.
- Scientific publications in the field of the proposed legislation.
- Full knowledge of linguistic and legislative drafting skills.
- Diversity of scientific and cultural background.
- Practical experience in previous legislative projects.

## Second: Preparing the Time Plan:

One of the factors that guarantee a smooth running of the legislative process and directing efforts towards achieving the planned objectives, is developing a suitable time plan for the assigned teamwork in Order to work on the initial preparation of the legislation contents and structure before preparing the final draft, taking into account the following:

- Setting the time frame for the assigned teamwork according to the available time duration.
- Clarity of tasks and duties for the assigned teamwork members.
- Dividing tasks into specific steps, and connecting them to delivery dates.
- Verifying the efficiency of the time plan, and ensuring its realism and feasibility.

## Third: Formulating General Contents and the Proposed Legislative Structure:

This step departs from the adopted general policy for the preparation of the legislation. An inventory for the legislation contents is to be made, in addition to its structure, according to the following steps:

- Preparing the objective contents (main provisions) of the proposed draft legislation, with a brief statement.
- Inserting the contents in a general structure.
- Classifying the contents into groups.
- Preparing studies on the justifications for choosing the objective contents.
- Judging the nominated contents, through workshops with the relevant parties and getting their feedback on the proposed contents.



**The importance of preparing the main contents of the proposed legislation before starting the drafting stage may be realized from the following:**

- Helping the assigned teamwork to draft the legislation tightly.
- Recognizing the substantive details that should be included.
- Contributing to arranging the teamwork ideas.

## Stage Four: Defining The Scope Of The Legislation And Preparing The General Structure:



See: Verification model  
for the fourth stage, p.  
178

The importance of legislative drafting - as a means of bringing the contents into existence - is in giving the contents the suitable form for practical application. Legislative drafting also has an apparent impact at all economic, political and social levels,

in addition, it reflects the country's strategy and general policy to the world.



Legislative drafting reflects the country's strategy and general policy to the world.

The quality of legislative drafting - taking into account its origins and principles - limits subsequent modifications, and ensures the proper application of its contents without any discrepancy in the understanding among the addressees. It also contributes in narrowing the scope of disagreement on the requirements and implications of the text.

The general structure of legislation has basic components that should exist in any legislation representing its main units; such as general and final provisions, and other non-essential parts, such as the definitions, the transitional and conservation provisions.

The general structure that the legislation is supposed to include can be determined, through taking what is appropriate for each legislation from the structure. Herein bellow a statement of these general components, the data they contain and the related drafting rules and warnings:

## ► First: The Legislation Name:

It is the approved name that will be given to the legislation. The legislation or the Law name should distinguish it from the other legislations and Laws, to make it easier for every addressee to understand the subject that the authority aims to control through the articles of this legislation. The following is a list of the most important drafting rules in effect on the local level with regard to the legislation name:



The legislations that are issued by a Royal decree is called (Law). To clearly reflects the subject of the legislation, a distinctive description is to be added to it, such as (Law of Companies, Law of Employee Discipline, Law of Traffic).



Some Laws have a different form. The term “Law” comes with the definite article as in: (the basic Law of Governance, the Law of Health, the Law of Commercial Maritime, the Penal Law for Forgery Crimes, the General Law of Environment, and the basic Law of the Saudi Arabian Boy Scouts Association).



No separate article of the legislation is allocated for its name



Some local Laws have allocated an article at the start of the Law for its name, as in Article No. (One) of the Law of Nationality: (This Law is named: The Law of Saudi Arabian Nationality), and also in Article No. (One) of the Law of Civil Status: (This Law is named: The Law of Civil Status. However, this is contrary to what is generally stated in most Laws that do not specify an article that specifies the name.





The subordinate legislations that regulate topics issued by a decision from the Prime Minister or the competent minister, is called the Regulations.



The terms organization, organizational arrangements, and special organization are used for what is issued by the Council of Ministers regarding the establishment of utilities and determining its jurisdiction and tasks, according to its powers that have been determined. In Article No. (Twenty-Four) of the Law of the Council of Ministers: The Council, in its capacity as the direct Implementing authority, has complete control over implementation and administrative affairs, its Implementing powers include the following:

- 1 Monitoring the implementation of laws, regulations, and decisions.
- 2 Establishing and arranging public interests...).



Reviewing the set of Saudi Regulations on the website of the Authority of Experts mentions that the names of the legislations regulating utilities and authorities vary between the following terms: (organization - organizational rules - organizational arrangements, special organization).



Choosing an appropriate name for the subject of the legislation, taking into account:

The tool used in issuing it.

Using explicit terms that indicate the intent of the legislation.

Using established terms in the local legislative environment.

It should reveal of the content of the proposed legislation, and its scope.

Briefing as much as possible in formulating the title, by limiting it to one topic that is essential in the legislation.

## Second: The Preamble

The preamble, in legislative custom, is concerned with highlighting and mentioning what relates to the legislation of other legislations, through inserting its official name, date of issuance, and its issuance instrument, in addition to the grounds that granted the concerned authority the power of issuance, and the issuance phrase.



The preamble is a preventive tool to ensure that there is no conflict between legislations, and that each is applicable in its scope, as well as ensuring that what was previously stipulated is not repeated.

The preamble is part of the legislation and published with it. It which the origin of the legislation and what may relate to it is indicated. The preamble is significant since it connects between the different legislations, this enables the reader to visualize the legislation dimensions. It also contributes to recognizing the relationship between other legislations in force that are related to the legislation. The next are the most important drafting rules related to this part:



In Royal Decrees, as the instrument by which legislation is issued, the structure includes the name of the person who is authorized to issue the decree, the King, then the preamble states the relevant regulatory documents with its numbers and dates. Then the formula of the issuance: (we have decreed the following) in the middle of a separate line, then the text of the decree approving the Law in its attached form, and the necessary instructions for its implementation.



The decree includes the provisions that the regulator deems inappropriate to be included in the Law text, because of its temporary nature or because it addresses issues or topics during a transitional phase.



**With the help of God Almighty**

## **We, Salman Bin Abdulaziz Al Saud** **King of the Kingdom of Saudi Arabia**

Based on Article (Seventy) of the basic Law of Governance,  
issued by Royal Order No. (A/90) in 27/8/1412 AH. and;  
Based on Article (Twenty) of the Law of the Council of  
Ministers, issued by Royal Order No. (A/13) in 3/3/1414 AH.  
and;  
Based on Article (Eighteen) of the Law of the Shura Council,  
issued by Royal Order No. (A/91) in 27/8/1412 AH. and;  
After reviewing the Shura Council Resolution No. (...) in ...  
and;  
After reviewing the Cabinet Resolution No. (...) in ...

### **We have decreed the following:**

First: Approval of the Law of.....in the attached form.  
Second: His Highness, the Deputy Prime Minister, the  
Ministers, and the heads of the relevant independent  
agencies - each in his own capacity - shall implement our  
decree.



## Examples of Some Topics Included in Some Royal Decrees of Laws:

- **Repeal of Some Articles and Laws in force**

E.g. the Royal Decree No. (M/111) in 17/9/1440 AH, which issued the Law of the service providers for foreign pilgrims: (Second: agree to cancel the following: The Law of General Mutawwaf... The Law of Mutawwaf Agents... The Law of Guides Authority in Medina... Disciplinary Rules for members of the Mutawwaf, Agents, Guides and Zamazama groups).

- **Exceptions to the Application of the Law**

In the Royal Decree No. (M/3) in 28/1/1437 AH, which issued the old Law of Companies (Second: Investment funds and special purpose establishments - organized in accordance with the Law of Capital Market, issued by Royal Decree No. (M/30) in 2/6/1424 AH and its Regulations - are not subject to the provisions of the Law of Companies).

- **Determining a Transitional Phase Prior to the Application of Law on its Addressees.**

E.g. the Royal Decree that issued the Law of Universities: (granting the University - to which the Law will be applied according to what is stated in Clause (Third) of this Decree - a transitional period (one year) starting from the date of entry into force of the Law, during which the current university Regulations will continue to be in effect...).

- **Stating the Scope of Application.**

In the Royal Decree that issued the Law of Sharia Litigation: (The provisions of this Law shall be applied to the non-adjudicated Lawsuits, and procedures that have not been completed before its entry into force).

### **Confirming the Continuation of Work of Some Laws to Dispel the Illusion of Conflict.**

In the Royal Decree No. (M/164) in 19/11/1441 AH that issued the Law of Documentation (Second: Continuation of work with the licenses of notaries and marriage registrars, issued before the issuance of the Law of Documentation, until the expiry of their terms, and to be renewed in accordance with its provisions).

- **The Retroactive Effect of the Law Provisions.**

In the Royal Decree No. (M/15) in 11/3/1424 AH that issued the Law of Real Estate Expropriation for the Public Benefit: (The provisions contained in this Law shall apply... to cases of expropriation of real estate for the public benefit prior to its enforcement...).

- **Definition of Some Terms Contained in the Decree.**

E.g. the Royal Decree No. (M/86) in 08/08/1439 AH that issued the Law of Commercial Mortgage: (For the purposes of applying what is stated in paragraphs (1) and (2) of this clause, the term "security right" means: every accessory real right established on movable property to guarantee the fulfillment of a debt, and the term "secured transaction" means: any transaction or contract that includes a condition for establishing a security right on movable property as a guarantee for an economic debt with respect to the debtor).

### ► Third: The Introduction to the Legislation:

This part of the legislation is the intro for the following articles. Numbering of articles starts from the introduction. It usually includes the definitions, objectives, and scope of application related to the subject of the legislation, connected to all its articles and a prelude to what follows. It organizes the entire legislation subjects, and is inserted at the beginning of the Law to prevent repetition of its content either in a reference or the text. The establishment of the general provisions is discretionary, based on the need of the legislation. This is a detailed review of the most important elements of the introduction, with the most important rules related to each element:

#### 1 Definition

This part of the introduction includes a clarification of meanings of the used expressions that are repeatedly occurred in the legislation, while understanding its intended meaning may be difficult. The allocation of an article for definitions has benefits, including:

- Removing the ambiguity that prevents the application of the legislative text.
- The existence of the definitions articles doesn't leave a space for interpreting its meaning in a way that may be different from the intended meaning.
- Allocating an article for definitions at the intro of the Law contributes to avoiding explaining the meanings wherever it appears.



If necessary, a section is to be allocated for definitions. This is at the discretion of who draft the legislation.



Terms and definitions must be arranged logically, whether alphabetically or according to their occurrence.



The introduction that includes definitions, Law objectives and scope of the Law is called, in some legislations, the General Provisions and is inserted in the first chapter. Such as the Law of Government Tenders and Procurement of 1440 AH, where the first chapter is called the General Provisions, and included 27 diverse articles that address different topics.



It may be preferable to delay the formulation of the definitions article until the completion of the draft legislation, to recognize and determine what needs to be defined because it repeats, and what is sufficient to explain its meaning within the article.



At the beginning of the definitions article, there shall be an introductory intro, to clarify that these definitions are included for the purpose of understanding and the possibility of application, to prevent the illusion of its application to other Laws, and it is often as follows:

(The following words and phrases, wherever appear in this Law, shall have the meanings indicated in front of each, unless the context requires otherwise).



Words that repeat in more than one place in the legislation shall be interpreted in a way that prevent providing its meaning on every occasion it occurs, so that it is sufficient to express these repeated words in the articles of the legislation with only one or two words.

**For example:** What has been stated in the beginning of the Law of Chambers of Commerce, in the definitions article:

- The Law: The Law of Chambers of Commerce.
- The Regulations: The Implementing Regulations of the Law.
- The Ministry: The Ministry of Commerce.
- The Minister: The Minister of Commerce



The definitions shall include the regulatory terms that need to be restricted and excluding some of the possible meanings and descriptions. The subjects to the conditions of the term shall be specified.

**For example:** in the beginning of the Voluntary Work Law issued by Decree Royal Decree No. (M/70) in 27/05/1441 AH, in the definitions section: (Beneficiary entity: Any non-profit entity that benefits from volunteer work, whether public or private), the definition excluded the profit-oriented entities of being addressed by the Law, though they may benefit from the services of some volunteers.



Clarifying the terms that its meanings need to be expanded to include multiple meanings and descriptions intended by the legislation.

**For example:** in the beginning of the Saudi Central Bank Law : “Financial institution: any person subject to the supervision, control and Regulations of the bank, whether natural or legal.”



The terms that are repeatedly occurred shall be defined at the beginning of the legislation, while the other terms may be defined within the article in which the term occurs.

**For example:** in Article No. (Twelve) of the General Authority for Food and Drug Law, issued by Royal Decree No. (M/6) in 25/01/1428 AH: (The Implementing Chairman: is responsible for managing the Authority in accordance with this Law and what is decided by the Authority's Board of Directors)



If the legislation is long and includes a number of internal divisions, it may be permissible to insert an article for definitions at the beginning of each division, instead of listing all the terms in the first article.



It is forbidden to use definitions that contradict with definitions in other Laws, without a justification for the difference.



It is permissible - when necessary - to refer to definitions included in other legislations. Such as defining Smuggling, as stated in the First article of the Anti-Narcotics and Psychotropic Substances Law, as follows: (Smuggling: Anything that is considered smuggling according to what is stipulated in the Customs Law)

---

1 Issued by Royal Decree No. (M/36) in 04-11-1442 AH





Terms that should be identified are the terms that may be difficult or hidden to be understood, especially for non-specialized persons of the subject of legislation.

**For example:** at the beginning of the Government Tenders and Procurement Law/ 1440 AH: (Electronic Reverse Auction: An electronic method for submitting successively reduced offers within a specified period for the purpose of selecting the lowest priced offers).



Local Laws vary in terms of including definitions or not. The Laws may be completely devoid of definitions, as in the General Authority for the Guardianship of the Funds of Minors and the like Law, issued by Royal Decree (M/17) in 13/03/1427 AH. However, definitions may increase in some legislations to reach 58 definitions, as in the Water Law, issued by Royal Decree (M/159) in 11/11/1441 AH.

### 2 Objectives:

A number of local Laws include a dedicated article for the objectives, to explain the purpose for which the legislation was developed. Although inserting the objectives in the legislation does not lead to a legislative rule, but it helps to understand the legislation and helps the addressees to recognize its purpose, consequently achieving the Law objectives. The most important rules related to this part are:



It may be preferable to insert in the intro of the legislation, especially independent and non-branched legislation, the objectives that clarify the purpose for which the legislation was developed.



The allocated article for the objectives is to be mentioned after the article of definitions, when it occurs.

**For example:** in Article No. (Two) of the Law of Universities, issued by Royal Decree No. (M/27) in 02/03/1441 AH: (Article Two: Objectives: The Law aims to organize the affairs of higher education and works to enhance its scientific, research and societal status at the local, regional and international levels).



Detailing and enumerating the objectives should be in accordance with the extent that clarifies it and achieves its intended purpose.



The Laws differ in terms of the number of objectives, its detail and brevity. For example, the objectives of the Law of electricity are ten objectives, while the Law of University was limited to one objective. They also differ in terms of whether they include objectives or not.

Reviewing the Laws issued since 1440 AH, mentions that many Laws have included a dedicated article for Laws objectives .

### 3 Scope of Enforcement and Implementation:

i.e. determining the scope of legislation enforcement, in terms of place, time, subject, and also the persons who are subject to its provisions, whether natural or legal persons. The inclusion of this article is subject to the need of the legislation under drafting. The scopes related to enforcement vary as follows:

#### ► First: Formulating the Provisions of the Spatial Enforcement:



The provisions of spatial enforcement stipulate the principle of territoriality, especially in criminal provisions

All legislation has included texts that confirm this rule, e.g. Article No. (Four) of the Anti-Narcotics and Psychotropic Substances Law:(the competent authorities in the Kingdom has

1 See, for example: the electricity Law issued by Decree No. (M/44) dated 16/05/1442 AH, the social security Law issued by Decree No. (M32/) dated 04/04/1442 AH -And the Environmental Law issued by Royal Decree No. M165/ dated 19/11/1441 AH, the water Law issued by Royal Decree No. (M159/) dated 11/11/1441 AH, and the competition Law issued by Royal Decree No. (M75/) dated 29/06/1440 AH.



The power of monitoring and prosecuting perpetrators of crimes stipulated in this Law in the following cases:

- 1 If the crime occurred within the territory of the Kingdom or the crime's result or effects extended thereto.
- 2 If the crime occurred on a ship flying the flag of the Kingdom...).



If there is a need to make an exception to the principle of territoriality, this should be stipulated in the intro of the Law.

**For example:** in the Terrorism Crimes and Financing Law / 1435 AH : (As an exception to the principle of territoriality, the Law provisions shall apply to every person, whether Saudi or foreign).

### ► Second: Formulating the provisions of the Temporal Enforcement:



Inserting the temporal scope of the enforcement of the legislation provisions is to confirm the principle of non-retroactivity of provisions except what is stipulated upon.

**For example:** in Article No. (Eighteen) of the Real Estate Development Fund Law, issued by Royal Decree No. (M/47) in 23/05/1442 AH: (The Law shall be published in the Official Gazette, and shall be effective after (ninety) days from the date of its publication.



To avoid what may result from the adoption of a new legislation, e.g. the conflict of legislations and the discrepancy in determining which of them is applicable to the previously established facts and legal positions, the term "temporal conflict of Laws" has emerged, and to resolve this conflict, most legislations adopt and stipulate the principle of non-retroactivity of Laws.

### ► Third: Formulating the Objective Enforcement Contents:



The scope of the objective enforcement is to be stipulated in the legislation to indicate the topics whose provisions are addressed by the legislation.

**An example:** in Article No. (2) of the Law of Value Added Tax, issued by Royal Decree No. (M/113) in 2/11/1438 AH: (The tax is imposed on the import and supply of goods and services, in accordance with the provisions stipulated in the agreement, Law and y-Laws), article No. (Four) of the Treatment of Important Financial Institutions Law, issued by Royal Decree No. (M/38) in 25/4/1442 AH: (the following are subjects to the Law provisions: financial institutions, holding companies, affiliated establishments, foreign branches, and financial groups).



The provisions of the enforcement are to be inserted after the definitions and objectives in case of occurring.



The provisions of the enforcement may appear scattered in some legislations, e.g. the Associations and Civil Institutions Law / 1437 AH, in which the provisions of the enforcement were scattered, and the article that determines the scope of the application has been placed at the end of the Law. The reason behind this distribution of the scope of enforcement to the large divisions included within the Law. Therefore, the articles of enforcement are as follows: Article 28: (The provisions contained in this Law shall apply to public benefit associations in matters that have no specific provision), Article 37: (The provisions contained in this Law shall apply to institutions in matters that have no specific provision), then the Law was concluded with a number of articles, including Article 41: (The provisions of this Law shall apply to charitable institutions established by Royal Orders, with the exception of...).

### ► Fourth: The Text of the Legislation (main provisions):

The text includes the basic and detailed provisions that the legislation aims to address, while the preceding articles are as a prelude to it. The articles mentioned in the text are the basis for which the legislation was developed. The contents of this section can be divided into:



- 1** Substantive Provisions: the provisions that address the subject of the legislation and its details, which will be included clearly in the legislation, to prevent any ambiguity regarding what does it regulate and what it doesn't. If the subject of the legislation is the establishment of an entity, the provisions of the legislation should specify its tasks and competencies, connections and bodies, and what it provides to the beneficiaries.
- 2** Procedural Provisions: This section explains the necessary procedures to implement the legislation, the method of operations management that achieve the legislation objectives, and the required steps that must be followed by the responsible body for implementing the legislation.
- 3** Security Provisions: The provisions that secure the obligation to the legislation, by stipulated arrangement of penalties for specific actions, in light of what the provisions stipulate regarding imposing fines or penalties against the violators.

### The most important drafting rules related to this part are:



Gradual presentation of provisions, i.e. the original provision before the exception.

**For example:** in the Social Security Law issued by Royal Decree No. (M/32) in 4/4/1442 AH, Chapter Three (Calculation and Entitlement Mechanism) (Article No. 9): (A pension is deserved to those who meet the following conditions: 1- To be a Saudi citizen residing permanently in the Kingdom...), then Article No. (Ten) stated: (The following categories are exempted from the nationality requirement: - A Non-Saudi woman married to a Saudi....



The most important articles should be inserted in the text before the less important, or what sets a general provision before what sets a special provision. .

**For example:** in the old Law of Companies<sup>1</sup>, issued by Royal Decree No.) M/3 in 28/1/1438 AH, regarding the provisions of the expiration of companies in general, in Article No. (Sixteen) which stipulated that: ( Taking into account the reasons for expiration specific to each type of company, the company shall be dissolved for one of the following reasons: A - The expiration of the specified period, unless it is extended in accordance with the provisions of the Law. B - The purpose for which it was established was achieved, or the impossibility of achieving it...), then the Law included a special provision on the expiration of the joint-liability/partnership company, Article No. (37/1), stipulated that: (The joint-liability/partnership company is dissolved by the death of one of the partners, placing him under guardianship, or by declaring his bankruptcy...).



If the legislation includes the establishment of an entity with a legal personality or the legislation was intended to organize this entity, the legislation is to include an article to specify its description and legal form.

**For example:** article No. (Two) of the Law of the General Authority for Endowments, issued by Royal Decree No. (M/11) in 26/2/1437 AH: (The General Authority for Endowments is a public body with an independent legal personality, enjoys financial and administrative independence, is linked to the Prime Minister, and carries out the tasks and powers assigned to it under this Law, and its headquarters shall be in the city of Riyadh, and it may establish branches within the Kingdom, as needed).



Articles with a substantive provision should be inserted in the text before the procedural ones.

**For example:** What was mentioned in the old Law of Companies regarding the provisions of the expiration and liquidation of the company, as in Article No. (203), which stated the following: ( 1- The company enters the liquidation phase upon its expiration, and retains its legal personality to the extent necessary for liquidation...), then in a later place, the articles of the Law included procedural rules for liquidation, as in Article No. (209), which stated a procedural action related to liquidation: ( The liquidator shall prepare, within three months of commencing his work, and in partnership with the company's auditor - if any - an inventory of all the company's assets and liabilities).

---

<sup>1</sup> During the preparation of the guide, the new system of Companies was issued by Royal Decree No. (M/132) in 1/12/1443 AH



Distributing the articles into sections, i.e. homogeneous groups, to make it easier for the reader to read them in one place. Each section/group should have an appropriate name, e.g. chapters or sections. Some Laws may include sub-titles, which helps legislation users to access the provisions easily and conveniently, in addition to the possibility of referring to a group of articles through the name of its section, instead of referring to the articles through its numbers..



Dividing the legislation articles into chapters and sections is to be resorted to, according to the need and to its nature. If there is no need, an appropriate title can be given to each group in consistency with its provisions.



The articles of the Law can be divided according to induction into: chapters with articles, such as the basic Law of Governance, or sections with articles, such as the Law of Copyright Protection, or into chapters, sections and branches with articles under them, such as the Law of Commercial Papers, or sections only, such as the Law of Saudi Flag, or sections and chapters as in the Law of Employee Discipline. Or titles with a group of articles, such as the Law of the Council of Ministers, or direct articles such as the Law of Commercial Agencies and the Law of Commercial Books. Appendices may be added to the Laws, such as the Unified Law for the Management of Healthcare Waste in the Gulf Cooperation Council Countries.

## ► Fifth: The Conclusion of the Legislation:

It means the set of provisions that relates to the legislation and its provisions, but it is not appropriate to start the legislation with those provisions. This may include the transitional provisions related to repeal, delegation of powers, and assignment to implement the legislation and its effective date. The topics included in the conclusions of the legislation are:

### 1 Repeal Provisions:



Repeal provisions are to be included in the final provisions of the legislation, according to the established legislative custom.



Repeal should be explicitly stipulated in the legislation in an independent article that specifies the cancelled texts, by mentioning their numbers, provisions or both. The implicit repeal is not desirable in the new legislation through a text that conflict with a previous legislation in a way that makes it impossible to bring them together; since it may cause a confusion in the legislation interpretation.



A legislation may not be cancelled except by a higher legislation or at its hierarchy.



The positions of the repeal articles in local Laws vary between two positions:

#### **The First Position: The Tool of Law Issuance:**

Such as what is stated in the Royal decree that issued the Law of Environment, which included the following: (Second: The Environment Law - referred to in Clause (First) of this decree - shall cancel, after its enforcement, the following: The Law of Saudi Wildlife Authority, ... and the Law of Wild Animal and Bird Hunting ... and all provisions that may conflict with it).

#### **The Second Position: At the Conclusion of the Law:**

This includes what is stated in Article No. (Twenty-Six) of the Law of Saudi Central Bank: (The Law shall replace the Law of Saudi Arabian Monetary Agency, issued by Royal Decree No. (23) in 23/5/1377 AH, and shall cancel all provisions that may conflict with it).



### 2 The Order for Implementation:

This article stipulates the responsible authorities for implementing the legislation. It is an original article in the legislation because it stipulates and determine the responsible of implementing the legislation and issuing the related Regulations and procedures.

#### **For example:**

In Article No. (63) of the Law of the Chambers of Commerce, issued by Royal Decree No. (M/37) in 22/4/1442 AH: (The Minister or his delegate shall supervise the implementation of the provisions of the Law).

### 3 Preservative Provisions:

The articles that state the preservation of existing legal positions that arose under a previous legislation. The preservative provisions are the actual application of the principle of non-retroactivity of Laws, since legislations in principle apply with an immediate effect to all rights and legal positions that will arise after the enforcement of the Law provisions.

Preservative provisions are significant in the legislation, since it prevents the implicit repeal of provisions that the legislation does not intend to cancel, because inserting what may challenge it in the new legislation, without referring to their continuation and preservation, may be understood as a repeal, while this is not intended. Therefore, the existence of the preservative provision in the text is significant to avoid any ambiguity, and to confirm that the new provisions will not apply to the categories of addressees addressed by existing legislation.

The provisions stipulated in the preservative provisions vary, it may relate to entities established before the application of the legislation, Duties, obligations, rights, or pre-accrued financial benefits, as well as subordinate legislation and previous administrative decisions whose provisions are intended to remain.

#### **For example:**

In the Mining Investment Law, issued by Royal Decree No. (M/140) in 19/10/1441 AH: (-1 The Law replaces the Expansive Investment Law issued by Royal Decree No. (M/47) in 20/8/1425 AH, and cancels all conflicting provisions. 2- As an exception to Paragraph No. (1) of this Article,

The rights arising under the Mining Investment Law issued by Royal Decree No. (M/47) in 20/8/1425 AH shall continue to apply if those rights were in effect before the Law came into effect, provided that the financial provisions stipulated in the Law and Regulations shall apply to the owners of those rights from the date of their enforcement.

4

#### **Transitional Provisions:**

The transitional provisions include the mechanism for transitioning from a “previous legislation” to a “new legislation”. So, it includes provisions that ensure the appropriate transition from an effective legislation to a new legislation that will replace the old one through the submitted proposal. The provision of transitional provisions contributes to controlling the provisions between existing and subsequent legislation, preventing overlap, and granting the addressees the sufficient time to implement the new legislation.

#### **For example:**

At the end of the Finance Companies Control Law<sup>1</sup>: (Companies and institutions operating finance activities in the Kingdom before the entry into force of this Law shall be granted a period of two years to settle their situations in accordance with the provisions of this Law). Transitional provisions may be stipulated and inserted in the instrument by which the new legislation will be issued.

5

#### **Responsible Authorities for Issuing the Subordinate Legislation:**

Namely, the Implementing Regulations and instructions issued by the authorized person, based on the authority granted to him. These Regulations are concerned with stating the detailed rules that clarify and explain the way of implementing the rules of the legislation. The Regulations may not stipulate amending or repealing the legislation articles or inserting new original provisions that are not stipulated therein.

Issuing Regulations is mostly the task of the Implementing authority represented by the competent minister; because what the Regulations cover is often subject to change and updating according to interest and the changing circumstances. Consequently, the Implementing authority is the closest to know the necessary details and how to address it.

<sup>1</sup> Issued by Royal Decree No. (M/51) in 13 - 08 - 1433 AH



### 6 The Legislation Enforcement Provisions and Publishing in the Official Gazette:

The actual implementation of the legislation requires stipulating the date of its enforcement and starting its implementation. Usually, enforcement of legislation is connected to its publication in the Official Gazette, however the specified period before implementation may vary.



The enforcement of legislation is to be determined according to the nature of the legislation's subject and the actual need to accelerate its implementation. The enforcement may be immediate and may take a short or long period.

#### Topics Included in the Legislations Conclusions

1

Repeal Provisions

2

Order of Implementation

3

Preservative Provisions

4

Transitional provisions

5

Responsible Authorities for issuing subordinate legislation

6

Legislation Enforcement Provisions and publishing in the Official Gazette



## Types of Temporal Enforcement in Local Laws

### **First: Immediate Enforcement:**

In article No. (Two Hundred forty two) of the Law of Sharia Litigation: (This Law shall be effective from the date of its publication in the Official Gazette), and also what is stated in Article No. (Eight) of the Law of Anti-Harassment Crime: (This Law shall be effective from the date of its publication in the Official Gazette)

### **Second: Enforcement after a Specific Period of Legislation Publishing:**

The enforcement periods vary in local legislations, as follows:

- Enforcement after one day: article No. (Ninety-six) of the Law of Anti-Terrorism Crimes and Financing states that: (This Law shall be effective from the day following the date of its publication in the Official Gazette).
- Enforcement after thirty days: in Article No. (Thirty) of the Law of Penal Code for Forgery Crimes: (This Law shall be effective after thirty days from the date of its publication in the Official Gazette).
- Enforcement after sixty Day: in the Law of Anti-Money Laundering, Article No. (Thirty-Two) states that: (This Law shall be effective after sixty days from the date of its publication in the Official Gazette).
- Enforcement after ninety days: in Article No. (Forty-Four) of the Law of Civil Associations and Institutions: (This Law shall be effective after (ninety) days from the date of its publication in the Official Gazette."



- Effective after one hundred and twenty days: in article No. (Twenty-Six) of the Law of Social Security: (The Law shall be effective after (one hundred and twenty) days from the date of its publication in the Official Gazette).
- Effective after one hundred and eighty days: such as what is included in Article No. (Twenty-Eight) of the Law of Competition: (This Law shall be effective after (one hundred and eighty) days from the date of its publication in the Official Gazette).
- Effective after one hundred and fifty years from the date of publication: as what is stated in Article No. (Sixteen) of the Law of Saudi Building Code Implementation: (This Law shall be effective one year from the date of its publication in the Official Gazette, and all that conflicts with it shall be repealed).
- Effective at the beginning of the month following the expiration of the specified period: including what is stated in Article No. (Twenty-Nine) of the Law of Unemployment Insurance: (This Law shall be effective starting from the beginning of the month following the expiration of one hundred and eighty days from the date of its publication).



## Legislative Drafting: Types, Elements, And Rules Of Clarity

### First: Types of Legislative Drafting

Legislative drafting has several types based on different considerations. It varies in terms of its nature and determining the meaning according to the content into: rigid and flexible drafting. It also varies in terms of whether individuals may violate it or not into: mandatory drafting and supplementary drafting. It also varies according to its content. These types are explained as follows:

#### 1 Rigid and Flexible Drafting.

One of the features of legislative drafting is the definition. Its scope and extension differ, defining the rule may be rigid, depriving the discretionary power from who applies it. It also may be flexible, giving space for discretion according to the circumstances and facts. The following is a clarification of the two types:

#### Rigid Drafting:

Namely, expressing of the provision in a specific and decisive meaning word, which does not leave a discretionary power to who applies, but rather includes a fixed provision for a specific imposition that does not change with changing circumstances.

Rigid drafting is characterized by ease of application; Due to clarity and the lack of doubt in its application correctness. Although it is also characterized by achieving social stability, but it fails to consider the differences, in addition to its inability to keep pace with changes.

Examples of rigid drafting: procedural provisions which include periods, dates and procedures specified through precise drafting that does not accept differences in application.



### Flexible Drafting:

i.e. expressing the provision in a word that gives the person who apply a discretionary authority, consequently the implementation can be subject to the variation of circumstances and conditions.

Flexible formulation is characterized by the ability to consider the emerging facts; as a result of the availability of discretionary authority to who applies the provision, consequently the possibility to keep pace with development and renewed needs.

### Examples of flexible drafting:

what is included in the provisions of penalties for specific actions by setting a minimum and maximum limit for the penalty, which gives the judge the discretion to apply the appropriate penalty for each case in accordance with the surrounding circumstances and conditions.

## 2 Mandatory and Supplementary Drafting

Legislative rules vary in terms of the binding force into mandatory rules and supplementary rules, the two types are explained as follows:

### Mandatory Rules:

These are the provisions that must be adhered to. For the addressees, it is prohibited to deviate from or agree to violate these rules. Mandatory rules restrict the will of individuals with a binding formula that cannot be deviated from, and the addressees should respect it, for the establishment of the public Order and protect basic interests.



It is not desirable to use non-explicit or unclear formula in indicating obligation, such as: "it is not permissible", "it is not appropriate", "it is not permitted", "it should not be" and similar formulas, since it may lead to different meanings.

Examples of mandatory formulations: texts that prohibit crimes and participation in, such as murder. The mandatory rule can be recognized by the explicit words that indicate the command to follow a specific provision, or the prohibition of violating a specific ruling, by using:

- Formulas indicating obligation, such as "must" and "required "
- Formulas indicating prohibition, such as "may not be," "is prohibited," and "is forbidden."
- Formulas indicating invalidity, such as "is invalid."
- Formulas indicating punishment, such as "is punished."

The regulator may combine obligation or prohibition with the punishment in one text, as a further emphasize of the mandatory nature.

### Supplementary Rules:

The rules that individuals may agree to violate because it relates to their private interests. The purpose of these rules is to complete the will of its addressees, through a formula that allows them to organize some of their private transactions in accordance with their interests; since there is no infringement or harm to the society basic interests, such as determining the place and time of delivery of the sale.

The supplementary rule complements its meaning through formulas that indicate the possibility of not being bound by it, by using:

- Formulas of permissibility, such as: "It is permissible," "It is not forbidden," and "It is possible that."
- Permissibility to agree on something against its provision, such as: "It is permissible to agree on something otherwise," and "Unless the agreement stipulates something otherwise."

### Types of Legislative Formulation

1

Rigid and Flexible Drafting

2

Mandatory and Supplementary Drafting





If the text phrases do not reveal the legislator intention regarding the mandatory or supplementary formulation, his intention can be recognized through the text content and its meaning. Subsequently, if the text content relates to basic interests and public Order, then it indicates the mandatory nature, and if the text content relates to private interests with no harm to the public interests, it means that it indicates the supplementary nature. This criterion is not like the verbal criterion in terms of the meaning conclusiveness of rule type, but rather it is characterized by flexibility and is subject to assessment.

### Types of Formulas according to the Content:

#### ► First: Obligatory Formulas: examples:

- «Must»: As in Article No. (Fourteen) of the Commercial Data Law: (endorsing the storage receipt and mortgage document must be dated), and in article No. (Forty-Six) of the Criminal Procedures Law: (the house shall be inspected in the presence of its owner ... and if it is not possible ... the inspection must be in the presence of the district mayor).
- «Have to»: As in Article No. (Thirteen) of the Law of Animal Wealth: «If any type of animal wealth is infected with an epidemic disease ... the Ministry have to take the necessary measures to get rid of it»
- «Is/are obligated»: As in Article No. (Forty-One) of the basic Law of Governance: «Residents of the Kingdom of Saudi Arabia are obligated to abide by its Regulations and must observe the values of Saudi society and respect its traditions and feelings»

#### Obligatory Formulas

- « must»
- « have to»
- « is/are obligated»
- « be obligated »
- « undertakes »
- « ought to »
- The formula “shall be done” or “shall do” when the context indicates obligation

- “be obligated”: As in Article No. (Twenty-One) of the Copyright Protection Law: “In case of disagreement, the author shall be obligated to compensate the authorized party.”
- “Undertakes”: For example: “The contractor undertakes to submit periodic reports to the government agency.”
- “ought to”: As in Article No. (Twenty-Seven) of the Law of Regions: “They ought to attend in person or by their representative.”
- The wording “shall be done” or “shall do” when the context indicates obligation: As in Article No. (Twenty-Eight) of the Domestic Pilgrims Service Law: “The non-Saudi violator shall be deported... outside the country.” And as in Article No. (twenty-Eight after hundred) of the Law of Officers Service: “If an officer is lost... his salary shall be paid to his family.” And as in Article No. (one hundred and eighty) of the Criminal Procedure Law “The court shall base its ruling on the evidence presented.”

## ► **Second: Formulas of Permissibility and Discretionary Authority: examples:**

- «Is permitted»: As in Article No. (Seven) of the Law of Banking Control: «The institution is permitted to amend this percentage according to the requirements of the public interest»
- «Is allowed»: As in Article No. (Nine) of the Law of Veterinary Quarantine of the Gulf Cooperation Council States: «the owner is allowed to transfer it to the slaughterhouse or breeding place».
- The wording «may do»: As in Article No. (Twenty-Nine) of the State Funds Collection Law: «the Minister of Finance may Order them to be fined the money»
- «Each of...have»: As in Article No. (Fifty-Three) of the Labor Law: «each of the parties shall have the right to terminate the contract during this period»

### Forms of Permissibility

- «Is permitted»
- «Is allowed»
- “the wording” May do”
- «Each of...have»

### Formula of Prohibition

#### Third: Forms of Prohibition and Prevention: examples:

- «Is prohibited »: As in Article No. (Two) of the Anti-Human Trafficking Crimes Law: "Trafficking in any person in any form is prohibited."
- «Is not permitted »: As in Article No. (Four) of the Public Warehouses Deposit Law: "The treasurer, whether an individual or a company, is not permitted to practice ... any commercial activity."
- «Is not allowed»: As in Article No. (Fourteen) of the Implementing Regulations for Practicing the Profession of follow-up: "The licensee to practice the profession of follow-up is not allowed to open more than one office."
- «Is forbidden »: As in Article No. (Fifty-Six) of the Anti-Narcotics Law: "A Saudi convicted of ... is forbidden from traveling outside the Kingdom ... for a similar period."
- «the wording: May not do »: As in Article No. (Six) of the Council of Ministers Law: "He may not practice any commercial or financial activity or accept membership in the board of directors of any company»

- «Is Prohibited »
- «Is not permitted »
- «Is not allowed »
- «Is forbidden »
- «the wording: May not do »

#### Fourth: Formulas of Granting and Invalidating the Right: examples:

- «Have the right »: As in Article No. (thirty-Three) of the Trademarks Law: "He also has the right to use it himself", and its opposite "Do not have the right" as in Article No. (Thirty-Two) of the Civil Retirement Law: "In the event of the employee's death... the heirs do not have the right to demand... the value of these installments."
- «The right to »: As in Article No. (Eighty-two) of the Labor Law: "The worker has the right to request to connect his annual leave to his sick leave", and its opposite "Do not have the right to" as in Article No. (Sixteen) of the Allegiance Commission Law: "he does not have the right to vote."

- "It is the right of": As in article No. (Forty-Three) of the basic Law of Governance: "It is the right of every individual to address the public authorities regarding matters that arise to him."
- "Is entitled": As in Article No. (Ninety-Five) of the Officers' Service Law: "The officer is entitled to a sick leave during a period of three years for three months with salary," and the opposite as in Article No. (Twenty-One) of the Law of Civil Service: "The employee is not entitled to a salary for the days on which he does not perform his work."

#### Formulas of grantin and invalidating the right

- "Have the right"
- "The right to"
- "It is the right of"
- "Is entitled"

### ► Fifth: Formulas of Stipulation. examples:

- "It is required": As in Article No. (Fourteen) of the Private Health Institutions Law: "It is required for licensing any public medical complex ... that it has at least one consultant," and also what is in Article No. (Four) of the Consultative /Shura Council Law: "It is a condition that a member of the Consultative /Shura Council be of Saudi nationality by origin and birth."

#### Formulas for stipulations

- «It is required»
- "It is condition"

### ► Sixth: Formulas for Granting Authority and Determining Jurisdiction, examples:

- «Is competent»: As in Article No. (Two) of the Anti-Corruption Law: "The Ministry of Commerce and Industry is competent to implement the provisions of this Law ... The Board of Grievances is competent to consider and adjudicate violations of the provisions of this Law".
- «The Competent»: As in Article No. (Two) of the Law of Transporting Pilgrims to the Kingdom and Returning Them to Their Countries: "The air carrier is obligated ... to submit Hajj transport flight programs for approval by the competent authorities."

- the wording: do/does”: as in Article No. (Twenty-Four) of the Allegiance Commission Law: “The King shall appoint a Secretary-General for the Commission.”
- «Jurisdiction”: As in Article No. (Four) of the Anti-Cybercrime Law: “The Communications and Information Technology Commission shall, in accordance with its jurisdiction, provide technical support and assistance to the security agencies.”
- «Delegate, delegated”: As in Article No. (Eight) of the Law of the General Authority for Guardianship over the Funds of Minors and their counterparts : “The Chairman of the Commission may delegate some of these powers to one of his deputies.”
- «Authorize, authorized”: As in Article No. (one hundred and fifty Eight) of the Officers Service Law: “The Minister may grant some of his authorized powers ... to the Deputy Minister.”
- « Competence”: As in Article No. (Forty-Five) of the Government Tenders and Procurement Law: “The Minister shall have the Competence to decide on direct purchase.”

### Forms of Granting Authority

- «Is Competent »
- «The Competent »
- «the wording: Do/Does »
- «Jurisdiction»
- «Delegate”
- “delegated»
- «Authorize”
- “Authorized »
- « Competence »

► **Fifth: Formulas of Stipulation. examples:**

Conditional formulas are used in three ways:



- A** Conditional Sentence: “If”: As in Article No. (Eleven) of the Domestic Pilgrims Service Law: “If it is proven that the person to whom a site has been allocated has used it... for a purpose other than that... then the Ministry of Hajj shall refer the violator to the committee.”
- B** Subsequent Conditional Restriction: “provided that, on condition that”: As in Article No. (Thirty-One) of the Law of adjudication: “He must have obtained a certificate from one of the Sharia colleges in the Kingdom...Provided that he passes... a special exam.” And article No. (Twenty-Seven) of the Law of Individuals Service: “It is not permissible to transfer an individual... except upon the interest of work, on condition that the job is compatible...”, as well as what is in Article No. (Twenty-Nine) of the Private Health Institutions Law: “The Minister... may Order the use of any private health institution... provided that the Ministry pays the fair costs for the duration of its use.
- And Article No. (Forty-Four) of the Government Tenders and Procurement Law: “The needs of the government agency may be provided ... through direct purchase ... on condition that the purchase value does not exceed one million riyals.”
- C** The Excepted Condition: “Unless” as in Article No. (Twenty-Seven) of the Lawyers Law “The client may dismiss his client ... unless the court sees ... otherwise with regard to dismissal and full fees.” And what is in Article No. (Fourteen) of the Regulations of the Members of the Bureau of Investigation and Public Prosecution (Public Prosecution): “A member of the Bureau may not be promoted from the position of Head of Department ... unless he has been inspected at least twice.
- D** Using the letter “if”: As in Article No. (One Hundred and Nine) of the Sharia Litigation Law: “If he is present in person, he must swear immediately or return it to his opponent.”

### ► Eighth: Exception Formulas:

- “Except”: As in Article No. (Ten) of the Board of Grievances Law. “The President of the Supreme Administrative Court shall be appointed by Royal decree... and his service shall not be terminated except by Royal decree.”
- “However”: As in Article No. (Eleven) of the Law of Copyright Protection: “all copies must be destroyed... However, a copy of this recording may be kept... if it is a unique documentary recording.”
- “But”: As in the phrase: “The tenant may not change the building, but in the cases stipulated in the contract.”
- “Excluding”: As in Article No. (Seventy-Two) of the Labor Law: “Within fifteen days –excluding official holidays.”
- “Except for”: As in Article No. (Twenty-Eight) of the Employee Disciplinary Law: “The decisions of the Trial Council are final, except for decisions issued to dismiss employees of the eleventh hierarchy and above.”
- «Exception from »: As in Article No. (Thirty-Nine) of the Traffic Law: “Exception from Paragraph 1 of Article 36 ... It is permissible ... to grant a temporary license ... to anyone who has completed the age of seventeen.”
- «Excepting »: As in Article No. (2) of the Law of Private Health Institutions: “Excepting the hospital, it is required that the ownership of the private health institution be Saudi ownership.”

#### Exception Forms

- «Except »
- «However, »
- «But»
- «Excluding»
- «Except for»
- «Exception from»
- «Excepting »


## Second: Elements of Legislative Drafting:

Three elements must be considered in the drafting legislative provision:  
The legal actor, the legal act, and the case description  
These elements are:



### 1 The Legal Actor.

The legal actor is to be clearly defined in the legal sentence to avoid ambiguity and confusion. The legal actor is the addressee by the provision that is contained in the text. He is subject to an obligation or a duty, or is prohibited to do something, or has an established right, privilege, authority, or jurisdiction.



The Legal actor: is a natural or legal person. There may be a reason to limit the actor to a specific category, such as merchants, doctors, and Lawyers. In some cases, he may be a person designated by description, such as the minister or the head of an agency.

### 2 The Legal Act.

The legal act is to be precisely defined in the sentence. The legal act is the part that represents an obligation, responsibility, right, privilege, authority, or penalty, entrusted to or imposed on the legal actor. According to the legal act, one can determine the obligation of the legal actor or what he must/mustn't do.

### 3 Case Description.

The circumstances to which the provision of the legal act applies, and it is most likely to apply to limited or limitable cases.





The legal case is expressed by wording that indicate the case to which the provision applies. The often-used expression is "in the case of", or by the conditional tool, such as the conditional tools: "if", and "whenever", or by stating the conditional word, such as: "on condition that", and it has three cases:

1

### **The Open Case:**

I.e. the case that describes complete circumstances without any restrictions. For instance: "If the terms of the contract are clear, it is not permissible to deviate in interpretation." The word "clear" is an open and non-restricted case, unlike if it was said: "If the terms of the contract are clear through the literal meaning of words, it is not permissible to deviate in interpretation."

2

### **The Limited Case to a Specific Scope (Qualified Case):**

It is similar to the open case, but it has what restrict the open case. For example: "If a deadline for acceptance is assigned, the obligor is obligated to keep his offer until the expiration of the deadline."

3

### **The Restricted Case by a Condition or Exception (Modified Case):**

It is similar to the open case, but it sets a condition without which the Law can't be applied, or an exception that the Law can't be applied when it exists. For example: "If the boy is discerning, his financial transactions are valid as long as they are purely beneficial," or: "If the price is estimated on the basis of weight, the net weight is the criterion unless they agree otherwise."

### **Third: Rules of Clarity of Legislative Drafting:**

Amongst the necessities of legislative drafting quality: accuracy and clarity in indicating meanings and consistency of expression, since this leads to a disciplined understanding of the legislation provisions, a sound application, and limits subsequent amendments that may occur due to disagreement in understanding the meaning or its ambiguity, because of the defects in legislative drafting such as error, deficiency, ambiguity and conflict. The legislation quality can be achieved through considering a number of established rules in drafting legislations. These rules vary amongst what relates to the formulation of the sentence in terms of its structure and construction, and what relates to the single word and its indication to the meaning, and what relates to various linguistic issues, as follows:

#### **First: Rules of Clarity of Drafting in Sentences.**

The First Rule: Allocating a regulatory article for each idea.

In this case, each article is limited to one specific regulatory rule, and it is not recommended to include several regulatory rules within one article, even if these provisions have a direct relationship with each other, unless they are parts of it.

The Second Rule: Formulating the sentence in a regulatory form.

In formulating the regulatory sentence, the commitment to the characteristics of the regulatory sentence is significant, in addition to the necessity of considering the rules and principles of regulatory formulation. The most important characteristics are:

- 1 **Generality and Abstraction:** The sentence formula should indicate generality, which means the generality of the characteristic. The same applies to incidents, the regulatory rule is not related to a specific incident, but is to be applied if the conditions for its application are met, with the necessity of including any exception or restriction to the rule, if exist.

An example of an exception that occurs after generality: in Article No. (Ninety-Seven) of the Sharia Litigation Law: "A judge may not refrain from judging a case brought before him, unless he is prohibited from considering it or has a reason for rejection.

- 2 **Obligation and Penalty:** the sentence is to be obligatory, and it is preferred to be coupled with a fiscal penalty. The result of existence of the obligation in legislative drafting is the achievement of stability among the society members.

The expression "It is preferable for the state to protect human rights, in accordance with Islamic Sharia" is not appropriate. The correct expression is what is stated in Article No. (Twenty-Six) of the basic Law of Governance: "The state protects human rights, in accordance with Islamic Sharia".

- 3 **Regulating the Behavior:** The sentence relates to the external behavior of individuals in the society, since the Law does not consider internal intentions unless they appear in the form of an external action. So, it is not recommended to say: "Both parties must believe that the contract must be written."

The correct expression is what is stated in Article No. (Thirty-Seven) of the Labor Law: "The employment contract of a non-Saudi must be written and of a fixed term."

### **The Third Rule: Using original meaning when formulating the sentence.**

In formulating the regulatory sentence, the type of sentence should be considered based on the context and the meaning intended to be conveyed, whether it is a nominal or verbal sentence, however, it is permissible to use either of them. What should be taken into account in this regard is:

- 1 Using the nominal sentence when expressing the permanence and stability of the provision regardless time, renewal or continuity, as an example, what is stated in Article No (Sixty) of the basic Law of Governance: "The King is the Supreme Commander of all military forces." This context is more appropriate than the expression with the verbal sentence: "The King leads all military forces," because it does not indicate the stability of the provision, and because that is specific to the King. In this case, because the Laws are intended to stipulate what is specific to the King, the word "king", to which we should refer, should be presented in front of the sentence.
- 2 Using the verbal sentence when expressing the occurrence and renewal of the act at a specific time, for example, what is stated in Article No. (Twenty-One) of the basic Law of Governance: "Zakat is collected and spent in its legitimate expenditures." The rule here is specific to a renewed act, so it is appropriate here to express with the nominal sentence.

#### **The Fourth Rule: Wording the verbal sentence in the active voice<sup>1</sup>**

In formulating the regulatory sentence, it should be considered to use the active voice; As stated in Article No. (Eighteen) of the Law of Procedure before the Board of Grievances: "The Secretary of the Department shall report the session's minutes under the supervision of its President..." because the active voice identifies the regulatory actor who undertakes the act with no ambiguity, and because using the passive voice causes ambiguity in identifying the actor.

It is not recommended to word the sentence as "The minutes of the session shall be reported under the supervision of its President..."; unless there is a reason, since determining the party responsible for reporting is subject to variable considerations, which is not appropriate to be detailed within the article

#### **The Fifth Rule: Wording the verbal sentence in the affirmative form.**

In formulating the regulatory sentence, it should be considered to use the affirmative form as much as possible, since it is closer, for understanding, than the negative form. In addition to its clarity and directness, while the sentence in the negative form requires an analysis to be understood.

It is not recommended to word the sentence as "The provisions of this chapter do not apply to anything other than the evidential procedures in the cases that the court has jurisdiction to consider»

What is correct in this case is what is stated in Article No. (Thirty-Eight) of the Law of Commercial Courts: "The provisions of this chapter shall apply to the procedures of proof in the cases that the court has jurisdiction to consider.

#### **The Sixth Rule: Wording the verbal sentence in a form that indicate the future.**

In formulating the regulatory sentence, it should be considered to use the present tense without the tools that transfer its meaning to the future, because the legislative provision applies to both present and future tenses, so, it is not correct to specify it in the future time

It is not recommended to word the sentence as "The employee who is assigned to work outside of official working hours and during official holidays will be paid a cash reward for the additional hours."

<sup>1</sup> By the translator: (in Arabic language grammar, the active and passive voices are two ways of forming sentences based on the relationship between the subject and the verb. In the active voice, the subject is the doer or the performer of the action. In the passive voice, the subject is the receiver or the target of the action. The active voice is usually more direct and engaging than the passive voice)



Use

the form of proof whenever possible.



Use

the wording in the present tense without the tools that transfer its meaning to the future.



The correct statement is what is stated in Article No. (Twenty-Six) of the Civil Service Law: “An employee who is assigned to work outside of official working hours and during official holidays is paid a cash reward for additional hours.”

It is prohibited to word the sentence using the past tense verb, unless the verb indicates the future. In this case, the elements of the conditional sentence must be considered by inserting the conditional, the conditional verb, and the result to the condition. It should be taken into account in the wording of the result, to use “may” in the right places, as it confirms the connection between the conditional verb and its result.

For example, what is stated in Article No. (Fifty-Seven) of the Litigation Law before the Board of Grievances: “If the competent department deems it necessary to conduct an oral argument, it may hear the statements of the parties to the objection...”



Avoid

wording with a past tense verb, unless the verb indicates the future

### **The Seventh Rule: Wording Should Include the Intended Meaning with Brevity as much as Possible.**

In formulating the regulatory sentence, brevity in the wording should be considered, since brevity is one of the most significant legislative drafting rules. Amongst the ways to achieve brevity is to use short sentences, by mentioning the least number of words that achieves the desired purpose, and avoiding long sentences that may cause ambiguity in the provision, resulting in the possibility of

occurred error in the interpretation due to the large number of structures and words. If it is impossible to word the provision in one short sentence, the following can be followed according to requirement of each situation:

1

Wording with short sentences, the sentences should be separated with appropriate punctuation marks, Connected and clear in indicating the common idea.



Using several short sentences may lead to a lack of clarity in the provision due to the inability to achieve coherence and cohesion amongst these sentences from a formal or substantive perspective. Then, a long sentence can be used that achieves clarity more than the short sentences, taking care to be clear and precise in the formulation as much as possible.

2

Using several short sentences, distributed into paragraphs. These paragraphs are to be connected and clear in indicating the common idea. Resorting to dividing the article into paragraphs often occurs in case of multiple conditions or cases.

### **The Eighth Rule: The Singular Form has Precedence on the Plural Form**

In formulating the regulatory sentence, it should be considered to use the singular form instead of the plural. Although both of the singular and plural forms indicate the general application of the provision, but the enforcement of the singular form to every individual in the category to which the provision applies is more apparent, because the singular form prevents the possibility of confusion and illusion that it does apply only to the group of people without applying it to each one individually. Moreover, the singular form is easier in wording than the plural form, which requires taking into account the plural pronouns in nouns and verbs.



Use

the singular form instead of the plural

It is not recommended to word the sentence as "The applicants for the seizure must submit to the court...."

The most appropriate wording is what is stated in Article No. (Thirty-Two) of the Law of Enforcement: "The applicant for attachment must submit to the court or the competent authority a written declaration....".

### **The Ninth Rule: Related Words Should be as close in Structure as Possible**

In formulating the regulatory sentence, it should be considered to separate the parts of the sentence. Such as separation with parenthetical clauses; separation, especially the long one, may affect the sentence clarity. For example: placing the subject or its

deputy after the verb; since it is inconceivable that an act occurs without an actor, then the object is placed if the verb is transitive and close to them. Perfect drafting may require placing the verb before the subject or its deputy if its delay may cause a gap between the sentence elements.



Avoid

separating the parts of the sentence.



### The Tenth Rule: Being careful when using referral.

In formulating the regulatory sentence, consideration should be taken when using the referral. Legislative drafting may require the referral to a specific article or paragraph in the legislation, or in another legislation. In this case, the referral method is to be used to avoid repetition and prolongation. When referring, accuracy, clarity, and brevity must be taken into account, as follows:



Use

accuracy, clarity and brevity when referring.

- 1 When referring to the entire chapter, the reference should be directly to the chapter without mentioning its location in the articles and chapters. An example is what is stated in Article No. (one Hundred and Ninety-Seven) of the Law of Commercial Courts: "It is permissible to object to the ruling issued in the grievance, in accordance with the procedures established for objection stipulated in Chapter Ten of the Law."
- 2 The referral should be directly to the article or paragraph without mentioning its location in the chapters and sections.
- 3 Mentioning the phrase "of this Law" and the like after mentioning the article or paragraph referred to; in a way that removes the possibility, whatever it is.
- 4 Avoiding phrases that may cause confusion when referring, or do not specify the article or paragraph referred to precisely and clearly, such as: "the Previous Article", "the Subsequent Article", or "stipulated above". These expressions are not precise in terms of definition, especially with the possibility of amendment that may occur to the legislative process during the preparation phase.
- 5 Using referral only when necessary or needed; because the referral frequency leads to length of the sentence and difficulty of structures, and this may lead to ambiguity and confusion in understanding the article' intended meaning when attempting to link the articles of the legislation.

An example that has considered this case: "The Supreme Court shall consider the formal conditions of the objection, related to the data stipulated in paragraph No. (1) of Article NO. (one hundred Ninety-Five) of this Law..."

## The Eleventh Rule: Observance of accuracy and clarity in legislative drafting

When formulating a regular sentence, care must be taken to ensure clarity and avoid ambiguity as much as possible, as ambiguity undermines the purpose of legislation, which necessitates the issuance of subsequent interpretations or amendments to remove the ambiguity.



Use

clarity and avoid ambiguity as much as possible.

It is not recommended to word the sentence as “No Hisbah<sup>1</sup> Lawsuit shall be presented except through the relevant authorities after the approval of the King, and shall not be heard after the lapse of (sixty) days from the date of the arose of the claimed right,”. Without clarifying in the text or the Law what is meant by the relevant authorities.

The appropriate is what is stated in Article No. (Four) of the Law of Sharia Procedures: “No Hisbah Lawsuit shall be presented except through the Public Prosecutor after the approval of the King, and shall not be heard after the lapse of (sixty) days from the date of the arose of the claimed right.”

It is preferable to refer to the relevant authority based on its description. This description is to be distinguished from others, even if the authority name has changed. For example, it can be said: “No Hisbah Lawsuit shall be presented except through the Public Prosecution after the approval of the King, and shall not be heard after the lapse of (sixty) days from the date of the arose of the claimed right.”

1 The translator (The concept of hisbah in Islam originates from a set of Qur’anic verses and Hadith. It is an obligation placed on every Muslim to call for what is good or right and to prevent or denounce what is bad or wrong).





Rules for Clarity of Drafting in Sentences

1

First Rule

Allocating a regular article for each idea

2

Second Rule

Formulating the sentence in a regulatory form

3

Third Rule

Using original meaning when formulating the sentence

4

Fourth Rule

Wording the verbal sentence in the active voice

5

Fifth Rule

Wording the verbal sentence in the affirmative form

6

Sixth Rule

Wording the verbal sentence in a form that indicate the future

7

Seventh Rule

Observance of brevity while covering all the meaning aspects

8

Eighth Rule

Using the singular form instead of the plural form

9

Ninth Rule

Making related words as close in structure as possible

10

Tenth Rule

Being careful when using referral

11

Eleventh Rule

Observance of accuracy and clarity in legislative drafting

## ► Second: Rules for Drafting Clarity in Terms of Words.

When formulating the regulatory sentence, the choice of words, clarity and accuracy must be considered, by considering a number of rules as follows:

### The First Rule: Using words with a specific meaning.

Use words that indicate the intended meaning directly. To achieve this in formulating the regulatory sentence, the following must be considered:

- 1 Avoid using linguistic embellishments<sup>1</sup>, for instance similes, metaphors, and the like.
- 2 Avoid using complex legal words as much as possible, since the Law is addressing everyone, not only the specialists.
- 3 Avoid using synonyms to express a single regulatory provision, because this led to confusion regarding the meaning of these words, or difference in meaning, since the judge may interpret one of the words differently from the other, because applying the speech is better than neglecting it, for example:

1 Using "canceled" and "invalid" to indicate the same meaning.

2 Using "right" and "obligation" to indicate the same meaning.



Use

Words that directly indicate the intended meaning.

Words that clearly indicate the intended meaning.



Avoid

linguistic embellishments

Complex legal words.

Synonyms for the same regulatory provision.

Words whose meaning is included in the meaning of another word to which it is attached.

Words that do not produce any regulatory effect.

Ambiguous expressions.

<sup>1</sup> embellishments are what make language interesting and keep it from becoming stale, predictable, and boring

- 4 Use words that are clear in indicating the intended meaning, and avoid using ambiguous words that may have multiple meanings and different connotations. If there is a necessity to use words that have multiple meanings, one should be careful to mention the words in an appropriate context that reveals the meaning..
- 5 Avoid using words whose meaning is included in the meaning of another word to which it is attached. for example: "The lessee may use the ship to transport things, people, and goods, even if they are owned by others", since attaching words that fall under the general meaning of the word "things" causes ambiguity and interference.
- 6 Avoid using words that do not produce any regulatory effect, for example: "It is strictly prohibited", although it indicates confirming the prohibition and that it is a definite prohibition.
- 7 Avoid ambiguous phrases: There are types of this ambiguity, including the following:
  - Ambiguity resulting from the connotation of the word: as if the word is one of the common words, such as the word "money" which includes cash, financial papers, real estate, cars, etc. The same applies to the word "possession" because it may mean possession of ownership or actual possession.
  - Confusion resulting from the arrangement of words in the sentence: such as using "and" or the optional tool "or" with two things described by one attribute or one condition.
  - Confusion resulting from context: when the meaning of a word is understood but becomes challenging in terms of its context, whether it is within the sentence or an external context, such as: "If the worker comes up with an invention during his service to the employer, then he has no right to that invention," so the intended meaning of the demonstrative pronoun becomes confused, whether it refers to the employer or the worker.

## **The Second Rule: Using Usual and Familiar Words.**

When formulating the regulatory sentence, it is significant to choose familiar words and avoid using ambiguous and obsolete words. If there is a need to use unfamiliar words, e.g. specialized words in the subject of legislation, the words' explanation should be mentioned in the definitions article, if repeated. But if not repeated, the explanation should be mentioned in the place where they appear.

## **The Third Rule: Avoid Using the Non-Arabic Words.**

When formulating the regulatory sentence, it is significant to use Arabic words, as it is the official language according to what is stipulated in the basic Law of Governance. The use of a foreign word after its Arabization is limited to the cases where there is no Arabic term that indicates the intended meaning without ambiguity or confusion. As the case of non-Arabic words that are familiar in use and have an equivalent that is not common in Arabic language. Therefore, it is permissible to use the non-Arabic words; since it is the most famous in indicating the meaning, and the most common in use. Examples:

- 1 The word (fax) is not originally Arabic, but it is more familiar than (duplicator).
- 2 The word (television), is more common in use than (ra'i) and (marna'a).
- 3 The word (cyber) may be clearer in meaning among specialists than (information security) or (computer security).

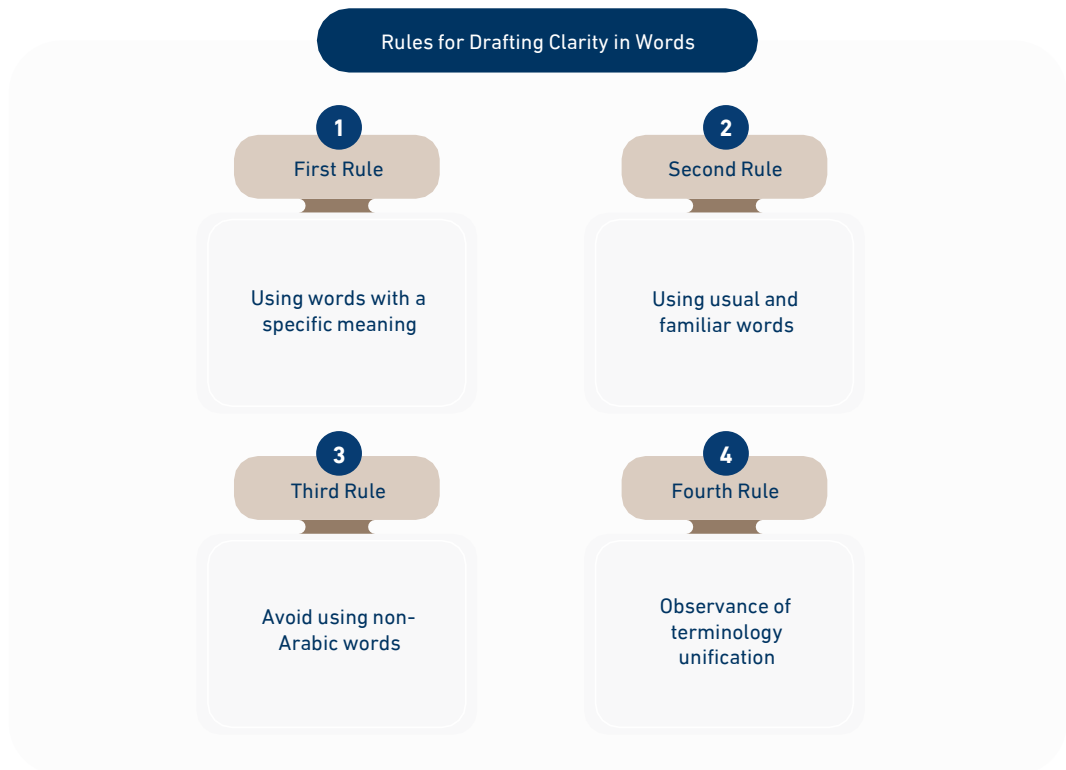
With regard to the non-Arabic words that are familiar in use, and have an equivalent in Arabic that is also familiar in use, here the drafter is to use the Arabic word.

Example: The word (telephone) is not Arabic, and its equivalent in Arabic is the word (Hatef), and both are familiar in use, so the Arabic word is to be used; because there is no need to express with another.

### The Fourth Rule: Observance of Terminology Unification.

The drafter must ensure, in the formulation of the regulatory sentence, the unification and consistency of terminology in using words that indicate a certain meaning, whether in one legislation or in all legislations; as the difference in the use of words that have the connotation of the same meaning raises doubt in interpretation.

Example: When using the word "marriage" in personal status articles, there is no need to use the word "nikah" to indicate the same meaning.



### Third: Rules of Drafting Clarity in Various Linguistic Issues.

The first rule: Being careful when using overlapped or close-in-meaning words and letters.

In formulating the regulatory sentence, one shouldn't use some close-in-meaning words and letters, since this may lead to ambiguity and confusion in understanding the sentence. The most famous words and letters that may overlap in the meaning are:



Avoid

using some words and letters that are close in meaning.

#### 1 When Using the conjunctions: "and", "or", one should consider the following:

- Using the conjunction "and" to indicate the meaning of: absolute combination between the conjoined and the conjoined thereto, and the conjunction "or" to indicate the meaning of: the choice between the conjoined and the conjoined thereto, for example: "The sailor deserves his wages if the ship is captured, or sinks, or becomes unfit for navigation..."
- One shouldn't use any of the conjunctions "and", "or" between sentences and words in which it is appropriate to use the paragraphing method; Because the division into paragraphs is clearer than using conjunctions.

#### 2 When Using "every" and "any", the following should be considered:

- Using "every" to indicate that the provision includes all individuals or parts of the noun that comes after "every"

Example: "everyone who is arrested or detained shall be immediately informed of the reasons for his arrest or detention."

- Using "any" to indicate that the provision applies to an unspecified part of the noun that comes after "any."

Example: "A criminal investigation officer may not enter or search any inhabited place except in the cases provided for by Law..."



The Second Rule: Being careful when using letters indicating several close meanings.

In formulating the regulatory sentence, it is preferable to use the original meaning of each letter, because the sentence is to be based on directness and clarity, not on the breadth of language, with the possibility of replacing the letters.

Example: Using the letter (Baa) for attachment; as the letter (Baa) indicates several close meanings that may confuse the addressee, such as the meaning of attachment, substitution, and causality, while attachment is its original meaning.

The Third Rule: Being careful when using plural forms when generality is intended.

There are several forms to indicate generality. The priority is to use the most emphatic and strongest form according to the context in which they are used; this is to prevent the possibility of specificity. The possibility of specificity may occur to the plural form a lot, therefore, it is preferable to avoid using plural forms, and use the form "every" followed by a singular noun, such as: "every person" or "everyone"

Example: "Every employee must..." is generality stronger than: "Employees must..."



Avoid

using plural forms

The Fourth Rule: Being Careful When Using Pronouns

In formulating the regulatory sentence, one should be cautious when using pronouns that may confuse the addressee to determine what is meant by the pronoun and its reference. Therefore, one shouldn't separate the pronoun and its reference with many words. If the use of the pronoun causes a confusion in determining what is meant by it, then the apparent noun is to be used in wording instead of the pronoun. The drafter of the legislation may see that using the pronoun in wording is better than using the apparent noun; because of the clarity of the meaning, which makes no need to repeat the noun in the sentence in a way that leads to unnecessary prolongation.



Avoid

separating the pronoun and its reference with many words.

It is not recommended to word the sentence with: "The sessions for considering the case and the session for issuing the judgment must be attended by the required legal number of judges; if the required number of judges is not available, the head of the court shall assign who complete

The quorum among them. If that is not possible, the President of the Supreme Judicial Council shall assign who, among them, complete the quorum in this regard.

The clearest statement is what is stated in Article No. (Seven) of the Criminal Procedures Law: "The sessions for considering the case and the session for issuing the judgement must be attended by the required legal number of judges. If the required number is not available, the President of the Court shall assign who complete the quorum amongst its judges. If this is not possible, the President of the Supreme Judicial Council shall assign who complete the quorum from the judges in this regard."

The Fifth Rule: Using the masculine form in general rulings.

In formulating the regulatory sentence, the rule regarding feminization and masculinity is to use the masculine form predominantly; since the use of both the masculine and feminine forms together lead to a long sentence with multiple structures, which makes the phrase ambiguous, and because masculine form is predominant, includes both masculine and feminine.

It is not recommended to say: "It is required that whoever is appointed (Male)/ appointed (Female) to the position of male notary public/female notary public meets the stipulated conditions stipulated..."

The correct statement is what is stated in Article No. (Seventy-Six) of the Judicial Law: "A person appointed to the position of notary public must meet the stipulated conditions..."



Use

wording with the masculine form predominantly.

The Sixth Rule: Using the feminine form in provisions specific to women.

The feminine form is to be used if the provision is specific to women.

Example: "A working woman has the right to ten weeks of fully paid maternity leave, which she can distribute as she wishes."





### The Seventh Rule: Adherence to the rules of grammar and spelling<sup>1</sup>.

The regulatory sentence should be formulated in a correct language, free of grammatical and spelling errors, as these errors may lead to a change of the meaning or making it ambiguous and confusing, in addition to the impact of these errors on the drafting quality. These are some of the related rules to this point:

- 1 It is not correct to put the subject in the (accusative) case instead of the (nominative) case
- 2 It is not correct to put the object in the (nominative) case instead of placing it in the (accusative) case.
- 3 Avoid writing the hamza on an incorrect letter, since the meaning may be changed.
- 4 Avoid cutting the hamzat al-wasl, or connecting the hamzat al-qata'<sup>3</sup>



Avoid

putting the subject in the accusative case instead of the nominative case.

Putting the object in the nominative case instead of the accusative case.

Writing the hamza on an incorrect letter..

Cutting the hamzat al-wasl, or connect the hamzat al-qata'..

### The Eighth Rule: Avoiding linguistic errors.

In formulating the regulatory sentence, in addition to avoiding grammatical and spelling errors, one must avoid linguistic errors, in other words, errors in the linguistic use of the word, e.g.:

- 1 Using the word "justification" to mean reason or causal, the correct is to say "justified".

It is not recommended to say "If the opponent fails to appear for interrogation without an acceptable excuse, or appears and refuses to answer without justification, then the court may hear the evidence." The correct statement is what is stated in Article No. (one hundred and Seven) of the Sharia Procedures Law: "If the opponent fails to appear for questioning without an acceptable excuse, or appears and refuses to answer without a justifies reason, the court may hear the evidence."

1 In the Arabic language, parsing is the assignment of diacritical marks to word endings. Essentially, diacritical marks at word endings are called cases. There are four cases in Arabic: 'نَومٍمَرْمُوع' (nominative), 'مَظُوبٍمَنتُوب' (accusative), 'مَظُورٍمَجنُوب' (genitive), and 'مَظُومٍمَجُوس' (jussive).

2 The hamza (Arabic: هَمْزَة hamza) (ا is an Arabic script character that, in the Arabic alphabet, denotes a glottal stop.

3 Hamzat al-Wasl; also known as Aliful-wasl or the Connecting Hamza, is a glottal stop sound that occurs at the beginning of certain words in the Arabic language. It is pronounced as a typical vowel sound and appears in the form of a small superscript sign, called Hamza (ا), (above the letter Alif in the Quran. Hamzatul-qat: is a little letter hamza (ا is placed above the word's first letter to indicate that Hamzatul-qat is a non-connecting Hamza. A glottal stop is used to pronounce Hamzatul-qat when a word begins with a letter that has sukun or hamza

2 Using the word “in person” for emphasis, and it is better to use the word “himself.”

Accordingly, it is not recommended to word the sentence as: “If the person to whom the oath is directed appears in person and does not dispute its validity or its relevance to the case, he must perform it immediately or return it to his opponent, otherwise he will be considered to have refused.”

The correct statement is what is stated in Article No. (one hundred and Thirteen) of the Sharia Procedures Law: “If the person to whom the oath is directed appears with himself and does not dispute its validity or its relevance to the case, he must perform it immediately or return it to his opponent, otherwise he will be considered to have refused.”

3 Using the singular in place of the plural.

Thus, it is not recommended to word the sentence as: “Real estates have its sanctity and it is not permissible to enter it without the permission of its owner.”

The correct expression is: “Real estates have its sanctity and it is not permissible to enter it without the permission of its owners.”

4 Using what contradicts the writing of rules of numbers, such as the articles’ ordinal number.

5 Transitivity with the letter “by” or “about”, though the verb is actually transitive.

It is not appropriate to word the sentence as: “refereeing by that to the Public Prosecutor.” It is better to say: “refereeing that to the Public Prosecutor.”

6 Using “or” instead of “and”.

It is not appropriate to word the sentence as: “Saudi companies or individuals may own real estate”. The correct expression is: “Saudi companies and individuals may own real estate”.

- 7 Using the letter "as" for anything other than similarity.  
It is not appropriate to word the sentence as: "He shall manage the Authority affairs as a CEO". The correct expression is: "The CEO shall manage the Authority affairs".
- 8 Using the word "entire" added to what follows it, to indicate generality.  
It is not appropriate to word the sentence as: "A clerk must present with the judge in the sessions and in all the procedures of the case to write the minutes of the session". The correct statement is what is stated in Article No. (Six) of the Sharia Procedures Law: "A clerk must present with the judge in the sessions and in the entire procedures of the case, who will write the minutes of the session."
- 9 Using "rather than," and the correct statement is "instead of".  
It is better to express it as "The dismissal or removal of the agent without the court's approval does not prevent the proceedings from proceeding unless the client informs his opponent of the appointment of another agent rather than the dismissed or removed agent, or of his intention to conduct the case himself."

The correct statement is what is stated in Article No. (Fifty-Two) of the Sharia Procedures Law: "The dismissal or removal of the agent without the court's approval does not prevent the proceedings from proceeding unless the client informs his opponent of the appointment of another agent instead of the dismissed or removed agent, or of his intention to conduct the case himself."

10

Using the word "till", while the correct is "until".

It is not appropriate to word the sentence as "It is permissible to amend the draft judgment till it is pronounced."

The correct expression is what is stated in Article No. (one hundred and Sixty-Eight) of the Sharia Procedures Law: "It is permissible to amend the draft judgment until it is pronounced."

11

Using the word "with no", while the correct is "without."

It is not appropriate to word the sentence as: "The dismissal or removal of the agent with no court approval does not prevent the proceedings from proceeding."

The correct expression is what is stated in Article No. (fifty-two) of the Law of Sharia Procedures: "The dismissal or removal of the agent without the court's approval does not prevent the confidentiality of the proceedings.

These simple examples are provided for illustration only, and more can be reached in the related specialized references.



Achieving clarity and quality in legislative drafting requires specificity and brevity in wording. In respect of specificity, it requires accuracy when choosing appropriate words and sentences that are clear in indicating the meaning with no way for any doubt or hesitation in interpretation. As for brevity in wording, it requires limiting number of words to the limit that achieve the purpose of the legislation, and using the familiar structures and words that are closest to the minds of the addressees and existing customs.

Rules for Drafting Clarity in Various Linguistic Issues.

1

First Rule

Being careful when using overlapped or close-in-meaning words and letters

2

Second Rule

Being careful when using letters indicating several close meanings.

3

Third Rule

Being careful when using plural forms when generality is intended.

4

Fifth Rule

Being careful when using pronouns.

5

Sixth Rule

Using the masculine form in general rulings.

6

Seventh Rule

Using the feminine form in provisions specific to women.

7

Ninth Rule

Adherence to the rules of grammar and spelling

8

Tenth Rule

Avoiding linguistic errors.



## The Fifth Stage Legislation Review



See the verification model for the fifth stage, p. 180

The review stage is a post-stage to the preparation stage, and only occurs after the proposed legislation meets the requirements of preparation and study in all its aspects. The review stage includes:



The review stage is a post-stage to the preparation stage, and only occurs after the proposed legislation meets the requirements of preparation and study in all its aspects.

- Verifying that the provisions of the proposed legislation do not contradict with higher-hierarchy legislation.
- Verifying the consistency of the proposed legislation with existing legislations to prevent contradiction.
- Considering the logical sequence of the articles and the appropriate division of chapters and sections.

For the success of the review stage, a work plan must be developed to organize the process in a way that ensures the quality of the final output in terms of both form and content, this may be done through the following steps:

### **First: Opinions of the Concerned Parties, Experts and Stakeholders:**

Amongst the criteria for the legislation success, the person who prepared it. He should have a high level of experience and specialization in the legislation subject. This includes the related stakeholders to the subject of the legislation.

Seeking assistance of experts in preparing legislation is one of the main principles for preparing legislation, because some technical or objective aspects related to it, and recognizing its details and precise points require referring to specialists, such as technical topics or medical issues. Seeking the assistance of stakeholders facilitates the process of choosing the best solutions to achieve the desired goal of the legislation, as their participation clarifies existing problems and suggests the most appropriate solutions for the subject of the legislation.

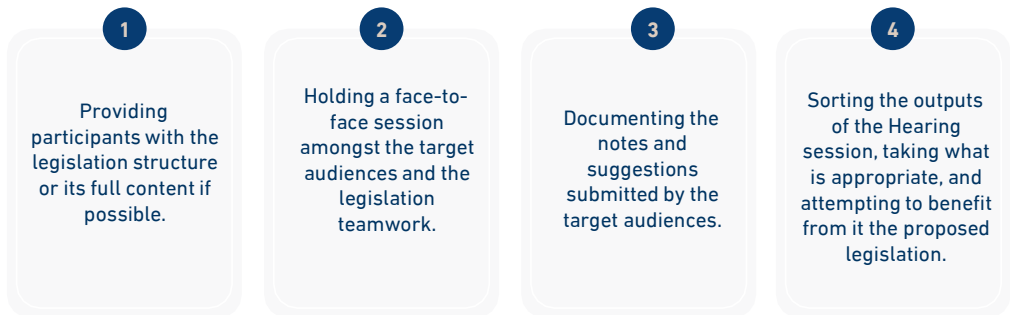
The participants in the review of the Laws' contents are:

- 1 Entities concerned with enforcing and implementing the legislation.
- 2 Governmental and civil entities related to the field of legislation.
- 3 Categories whose work is regulated by the legislation.
- 4 Specialists in the subject of legislation from academics and researchers.
- 5 Local and international experts.

### Second: Hearing Sessions:

The direct communication with stakeholders has an impact on the information access and understanding, therefore, it is significant to hear the experts and specialists and those to whom the legislation will apply, to know the ideas or aspirations they have and hope to be addressed in the draft legislation.

The next steps can be taken in the Hearing session:



### **Third: Verifying the consistency of the legislation contents:**

The importance of reviewing this consistency appears in the long legislation that includes multiple topics. The review team must review the legislation articles and verify its consistency and maintaining a single setup in terms of methodology and general legal trends.

### **Fourth: Verifying the consistency of the legislation with other legislation:**

The controls required to be taken into consideration when preparing and studying draft Laws and Regulations and the like (updated), that have been issued by the Cabinet Resolution No. (713) in 30/11/1438 AH in paragraph (c-2) of the first item included: Developing a schedule that includes a list of the Laws and regulatory provisions contained in the Laws and Regulations and the like, Royal Orders, Cabinet decisions and high Orders that the issuance of the proposal will result in its cancelation or amendment, and the corresponding proposed provisions with a causal memorandum.

Any legislative Law may be criticized in case of existence of conflicting provisions for one subject in the legislation it issues. Consequently, reviewing before issuance and ensuring consistency prevents this conflict.





### Fifth: Reviewing the Linguistic Formulation:

The importance of sound linguistic formulation is apparent in preserving legislation from misinterpretations and multiple understandings. Weak formulation leads to ambiguous connotations, i.e. possible different interpretations. The stage of verifying the integrity of linguistic formulation includes:



## Sixth: Reviewing Consistency with International Agreements:

International agreement, as soon as the country ratifies it and takes its regulatory measures in this regard, it becomes included within the country's legislative Law, with a priority in application that exceeds special Laws. The countries that ratified the agreements are obligated not to issue any Law that includes implicitly or explicitly texts that contradict these agreements. Article No. (Eighty-one) of the basic Law of Governance stipulates that: "The application of this Law shall be with no prejudice to the treaties and agreements that the Kingdom of Saudi Arabia has concluded with states, international bodies and organizations."

It also included the controls that must be considered when preparing and studying draft Laws, Regulations and the like (updated) that have been issued by the Cabinet Resolution No. (713) in 30/11/1438 AH in paragraph (d-2) of the first Clause: International agreements (and the like) to which the Kingdom is a party that are directly related to the proposal, and the obligations they contain on The Kingdom.



International Agreements, when ratified and the state has taken its regulatory measures regarding them, they become part of the state's legislative Law and have priority in implementation that exceeds special Laws.

## Seventh: Public Opinions:

Given that legislation is to regulate what affects natural or legal persons, it is important to consider the opinions of those persons before approving any legislation. These opinions may contain what was hidden for the drafters of the legislation. Moreover, it also reinforces the principle of confidence in the legislation efficiency, taking into consideration the contribution of those concerned in its preparation, which will have an impact on the comprehensiveness of its provisions, ease of implementation, and effectiveness in achieving the legislation objectives.

Clause No. (Third) of the Cabinet Resolution No. (713) in 30/11/1438 AH, amended by Clause No. (Fifth) of the Cabinet Resolution No. (476) in 15/7/1441 AH, states that: "Every government agency, when preparing a proposal related to economic and development affairs for draft rules, Regulations, decisions, and the like of a regulatory nature - which falls within its jurisdiction and does not require a review - must publish it on the unified electronic platform to survey the opinions of the public and government agencies on



### Seventh: Public Opinions:

Given that legislation is to regulate what affects natural or legal persons, it is important to consider the opinions of those persons before approving any legislation. These opinions may contain what was hidden for the drafters of the legislation. Moreover, it also reinforces the principle of confidence in the legislation efficiency, taking into consideration the contribution of those concerned in its preparation, which will have an impact on the comprehensiveness of its provisions, ease of implementation, and effectiveness in achieving the legislation objectives.

The World Wide Web (Internet) to enable entities and individuals concerned with its provisions to express their opinions and observations regarding it, and then a summary of the most important aspects of these views and observations is to be published on the platform. The entity has the discretion to publish the proposals related to other matters, and a summary of the opinions and observations expressed in this regard.

In Clause No. (Second) of the controls required to be considered when preparing and studying draft Laws and Regulations and the like (updated) that was issued by the Cabinet Resolution No. (713) in 30/11/1438 AH - amended by Clause No. (Sixth) of the Cabinet Resolution No. (476) in 15/7/1441 AH, it was stated that: "taking into account what is stated in Paragraph (1) of Clause (First) of these controls, the government agency, when preparing a proposal related to economic and development affairs for draft Laws and Regulations and the like,



It is important before approving any legislation to consider the views of legal persons in order to promote the principle of confidence in the legislation efficiency.

Its ruling, or the amendment of the effective one, shall be published on the unified electronic platform to survey the opinions of the public and governmental agencies on the World Wide Web (Internet), and to evaluate the regulatory effects for a period of not less than (30) days. The authority may extend the period for surveying the opinions of the public and governmental agencies if it deems it necessary, in a manner that enables government agencies and individuals concerned with its provisions to express their views and observations on it, as well as publishing a summary of the most important aspects of these views and observations. The concerned authority may survey the opinions of the public and governmental agencies more than once on the proposed project whenever necessary, and the concerned authority may estimate the publication of proposals related to other matters, and a summary of the views and observations expressed in this regard. To emphasize the importance of this survey and maximize its return, Clause No. (Seventh) of the Cabinet Resolution No. (476) in 15/7/1441 AH stipulated the addition of Paragraph (E) to Paragraph (1) of Clause (Fifth) of the controls required to be observed when preparing and studying draft Laws and Regulations and the like (updated), including taking into account: Benefiting from the survey results and its summary when the Council of Ministers' Experts Authority studies it with the relevant government agencies, after the proposed legislation is received and it is verified that it meets the requirements necessary for its preparation.



Scan the barcode to visit the website of the unified electronic platform for surveying the opinions of the public and government agencies "Survey

## Steps for Reviewing Legislation





## Sixth stage: Submitting The Legislation For Approval:

### The Explanatory Memorandum:

After the previous stages is completed, the concerned entity submits the proposed legislation with an explanatory memorandum that includes: the regulatory basis of its jurisdiction to request the issuance of this proposal, its purpose, its main elements, the reasons that prompted it to prepare it, and a clear explanation of its articles. The next attachments should be attached to the memorandum: a table that includes a comparison between the legislation articles and the comparative international legislation that it has been benefited from, and the various effects that may result from the application of the new legislation, and a table of the Laws, Orders, decisions, Regulations and the like, which include provisions that may be cancelled or amended as a result of the issuance of the legislation, in addition to a list of the ratified international agreements that directly relate to the legislation.

#### The Explanatory Memorandum includes

1

The regulatory basis for the entity jurisdiction to request the issuance of the proposal

2

The purpose of the proposal

3

The main elements of the proposal

4

The reasons that prompted the preparation of the proposal

5

A clear explanation of the articles of the proposal

The explanatory memorandum had been named in paragraph (2) of item (First) of the controls that must be considered when preparing and studying draft Laws and Regulations and the like issued by the Cabinet Resolution No. (713), as it includes that writing the legislative articles is to be in a preliminary form and format, as the controls stipulated in paragraph (3) of item (Fifth) that the Experts' authority is competent to draft the final form of the legislation in accordance with the generally accepted principles.

In some legislative laws, there are other names, such as:

**Drafting Instructions:**

It is the common term that is used in most legislative drafting Guides in Europe and America. It stipulates the necessity of writing the drafting instructions by the party requesting the legislation.

**Legislative Policy Memorandum:**

This name was mentioned in a number of Arab drafting Guides. However, the OECD evaluation report had criticized, for a number of Arab legislative Guides, this name and suggested to call it "Drafting Instructions" because the name (Legislative Policy Memorandum) is ambiguous and not common.

**Justification Memorandum:**

A memorandum that is attached to the proposal of the draft of a new Law or amendment of an existing Law, stating the reasons for submitting the proposal, its objectives, its basic principles, according to what is stipulated in Article NO. (Forty-One) of the Rules of Work of the Shura Council and Specialized Committees. The Justification memorandum shall be attached to the Shura Council's decision that will be issued regarding the proposal.

**Explanatory Memorandum:**

It is the memorandum that explains and interprets the articles of the Law in detail, and serves as a reference in the Law interpretation.



## Stage Seventh: Publishing The Legislation:

The publishing stage is one of the most significant stages in preparing legislation, since it determines the date of compulsory commencement of the legislation, its entry into force and application, which is called the enforcement of the legislation. The necessity of publishing the legislation may be highlighted, because obligating natural persons and those concerned with the legislation requires a mechanism to inform them, to enable them to control their actions in accordance with its provisions.

The approved means for publishing the legislation is the Official Gazette, represented by Umm Al-Qura newspaper, as stated in Article No. (Seventy-one) of the basic Law of Governance: "The Laws shall be published in the Official Gazette, and shall be effective from the date of their publication, unless another date is stipulated," as well as Article No. (Twenty-three) of the Law of the Council of Ministers, which states: "All decrees must be published in the Official Gazette, and shall be effective from the date of their publication, unless another date is stipulated."

Publishing in the Official Gazette is a mandatory procedure for the enforcement of the legislation, whether it is a basic, ordinary, or subordinate legislation, no other means of announcement can replace it. Usually, the final provisions stipulate specifying the compulsory commencement of the legislation coupled with its publication in the Official Gazette.

Setting the date of enforcement and application subsequent to the publication of the legislation allows who will be affected by the Law the sufficient time to prepare and adjust their situations with it, as well as giving the concerned parties a sufficient time to prepare the Regulations and provide the requirements for the successful implementation of the legislation. Consequently, in determining the date of entry into force of the legislation, it should be appropriate, to enable the addressees to arrange their situations, while the party concerned with implementing the legislation can prepare the conditions for its success.

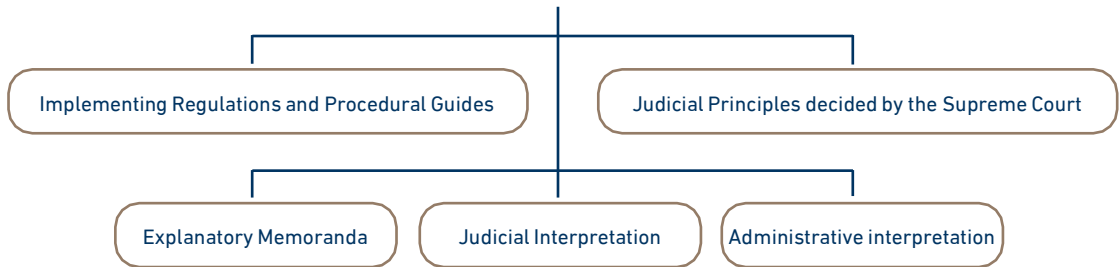


The official gazette, represented by Umm Al-Qura newspaper, is the approved means for publishing the legislation.



## Stage Eight: Subsequent Interpretation And Clarification To Issuance:

Legislation deals with essential and recurring issues, which require stability and limited amendment. With regard to the details, possibilities and developments that may cause a legislative vacuum, it can be filled through a variety of methods that are subsequent to the legislation issuance, clarifying its provisions, its meanings, and its procedures and methods of implementation. These methods are explained as follows:



### 1 Implementing Regulations and Procedural Guides

The Regulations that are issued by the competent minister based on the authority granted to him – by the Law for which the Regulations was issued. It is concerned with stating the detailed rules that explain how to implement the rules that are mentioned in the Law. The Regulations may not stipulate amending or repealing the articles of the Law or any other new original provisions that are not provided for in the legislation.

The issuance of Regulations is often the task of the Implementing authority represented by the competent minister; Because Regulations cover and regulate matters that are subject to change and continuous development according to the interest and changing circumstances. Therefore, the Implementing authority is more concerned with the required details and how to deal with it, more than the others. It must be considered that the issuance of the Regulations may be delegated to the Prime Minister, and it may be delegated to a minister after coordination with another minister or ministers who have a relationship with the subject of the legislation.





### 2 Judicial Principles decided by the Supreme Court General Authority:

Substantive and procedural judicial principles, are decided by the General Authority of the Supreme Court, and should be considered by judges in the cases that are heard before the courts and through the issuance of the rulings. These principles, in addition to being issued by the Authority in its capacity as the competent authority for this purpose by Law, are also characterized by flexibility and quick response to new developments in the field of judiciary, both in practice and theory.

### 3 Explanatory Memoranda:

Namely, the memorandum that is prepared to clarify the problematic articles and provisions included in the legislation. This memorandum may include the comparative Laws and the clarifying reasons for leaving the other opinions that relate to the substantive provisions, if any. The explanatory memorandum aims to guarantee the clarity of the legislation articles in a way that achieves its purpose as best as possible. One seeks the explanatory memorandum when there is a problem in the application due to lack of clarity of the legislative text. Examples of the explanatory memorandum may include what was issued regarding Article No. (41) of the Implementing Regulations of the Labor Law, issued by the decision of the Minister of Human Resources and Social Development No. (146652) in 10/9/1441 AH.

### 4 Judicial Interpretation:

Judicial interpretation is an application of the content of the legislative text, since the judge is authorized to apply it. Consequently, the judge interprets the text before applying it to the considered case; In preparation for issuing the ruling in light of what that text has provided.

### 5 Administrative Interpretation:

It is the interpretation of the legislation carried out by the administrative body as an Implementing authority, in light of its field practice and experience. Accordingly, the authority issues - in relation to its jurisdiction area- the procedural rules, Implementing decisions and instructions related to the implementation of the legislation.



## Stage Nine: Assessing The Legislation Quality:

The legislation quality reflects the efficiency of preparation and grounding. The legislation quality can be measured through several factors, the most prominent one is ensuring that the potential or accompanying effects of implementation are studied, in addition to recognizing the expected results and discussing the available alternatives for implementation. The legislation quality index is one of the World Bank's indicators to measure the ability of the legislative team to draft and implement high-quality policies and Laws. To achieve progress in this index, countries are evaluated through several criteria, the most important are:

Transparency and neutrality in legislations and legislative institutions.

Strengthening the roles of legislative oversight.

Reviewing competitive policies and ensuring their efficient and effective implementation

Mechanisms for preparing new Laws and reforming old Laws.

Legislation quality has two aspects: the first is related to the legislative policy and evaluating the impact of these policies, and the second is related to the quality of legislative formulation. The following is a review of the most important quality standards related to the two aspects:

- 1 Planning: through setting clear, specific, measurable and applicable goals for legislative reform programs.
- 2 Periodic Review: through reviewing legislative policies and evaluating their impact periodically, to ensure that its goals are achieved efficiently and effectively.
- 3 Necessity: through ensuring the necessity of the proposed legislation and the actual need to it.



- 4 Effectiveness: namely, achieving the legislation objectives so that it produces its effects, through choosing the best practices, solutions and proposals to reach its goal.
- 5 Studying international experiences: Through a comparison between the legislation and the experiences of other successful countries in the same subject, to benefit from their experiences, choose the best international practices and applying them.
- 6 Efficiency: through adopting the appropriate methods and procedures to achieve the legislation objectives with the least costs and effort.
- 7 Comprehensiveness: The legislation should contain all issues related to its subject and cover it.
- 8 Clarity: it means that the legislation should not be complicated, consequently difficult to be understood and applied. Choosing words and phrases that are free of ambiguous or indefinite words enables the addressee to easily understand what is meant.
- 9 Accuracy: i.e. choosing words that may not have another interpretation, while paying attention to the sentence structure correctness, placing each sentence in its appropriate place, and avoiding long narration.
- 10 Ease of language: choosing common words that are understood by the public, to facilitate the process of application of the legislation provisions.
- 11 Compatibility: the new legislation must not contradict with the rules, provisions and objectives of Islamic Law/Sharia, nor with Laws of a higher hierarchy.
- 12 Consistency: The legislation is to be in harmony with other applicable Laws and international treaties and agreements to which the state is a party.
- 13 Legislative Economy: To reduce the phenomenon of legislative extravagance, the consideration should be given to codifying what requires the issuance of legislation, and not what rarely occurs or what is known intuitively or can be addressed in other ways.
- 14 Qualification of the drafters: the legislation drafters should have certain characteristics, the most important characteristics are: experience and knowledge of the legislation subject, possession of linguistic, legal and Sharia skills in addition to accuracy, objectivity and integrity.

The following means can be applied after the issuance of the legislation, to verify the legislation quality and efficiency in achieving its objectives:

First: Assessing the community's understanding of the legislation and its objectives and the ease of application.

Second: Reviewing the international indicators and the actual progress in these indicators after the issuance and application of the relevant legislation.

Third: Assessing the impact of economic legislation on increasing investment, with regard to the investors, attracting capital from abroad, providing job opportunities, and the related impact to the living cost, the appropriateness of goods and services prices and improving the work environment.

Fourth: Assessing the legislation impact on reducing expenses, that can be reduced; in Order to directing those expenses to matters that can achieve economic efficiency.

Fifth: Considering the judicial rulings that are based on the Law and its consistency and harmony.

Sixth: Assessing the legislation's comprehensiveness of the facts presented before the judiciary and its absorption of it.

Seventh: Assessing the extent to which the legislation protects the beneficiaries rights.

Eighth: Assessing the consistency of the legislation, after application, with other relevant legislation, and its consistency with the international agreements that have been committed to.

**The above can be achieved through several methods, including:**

- Hearing the opinions of relevant entities, including stakeholders or those responsible for implementing the legislation objectives.
- Holding seminars and workshops related to the legislation.

- Reviewing the results of international and local indicators.
- Developing questionnaires and forms to explore and analyze the required information.



See: Quality Assurance Model Before Legislation Adoption, p. 182  
See: Key Performance Indicators: Post-Legislative Audit Levels, p. 183

The result of the review and analysis has two possibilities:

### ► **The First: Asking the Authorized Body to Amend the Legislation According to the Legislation Hierarchy:**

This may be done either by requesting the repeal of a legislative text, or replacing a new legislative text with a previous text, since repeal and replacement can only be done by the authority that is authorized to issue the legislative text.

One may resort this type of review when the legislative text, based on the review and analysis, has not achieved its goal, or when there has been a change in the reasons that prompted the establishment of the previous legislative text, with the importance of stating the reason when requesting amendment or repeal.

### ► **The Second: Maintaining the Legislation:**

When the subsequent review process shows that the legislation achieved the goals for which it was issued, with the possibility of adding auxiliary tools when needed.



## Appendices

- ▶ Appendix 1: Controls That Should Be Considered When Preparing And Studying Draft Laws, Regulations And Their Amendments
- ▶ Appendix 2: Model Draft Laws Signed By The Kingdom As a Guide

## Appendix (1)

### Controls That Should Be Considered When Preparing And Studying Draft Laws, Regulations And Their Amendments

Controls to be considered when preparing draft Laws, Regulations and the like (updated), and studying it. Issued by the Cabinet Resolution No. (713) in 30/11/1438 AH.

Without prejudice to what is stipulated by Laws, the following shall be considered:

**First:** When submitting a proposal to the Prime Minister regarding draft Laws, Regulations, and the like or amending what is in force, the government agency shall ensure the consistency of the proposal with the approved visions, plans and strategies, and take into account the jurisdictions of other relevant agencies, and take the following:

- 1 If the proposal includes a new idea for a draft Laws, Regulations or the like, the agency shall - before starting the preparation - submit a comprehensive conception that includes clarifying its objectives, the target audience of application and the actual need for it, in Order to submit it to the Political and Security Affairs Council or the Economic and Development Affairs Council - according to the jurisdiction - To get the initial directive, and then resending it to the entity to complete what is necessary in accordance with these controls.
- 2 Taking into account what is stated in paragraph (1) above, the entity shall submit an explanatory memorandum that includes a statement of the legal basis for its competence to request the issuance of the proposal, its purpose, its main elements, the reasons that prompted it to prepare it, and a clear explanation of its articles, in addition to the following:

A- A summary of the international legislation and experiences that were benefited from when preparing the legislation, and the most important legal texts included in those legislations.

B- The expected financial, economic and functional effects that may result when the legislation is definitely applied, including what relate to public and private sector facilities, in addition to the social effects, and coordination with the relevant authorities in this regard.



C- Setting a schedule that includes a list of the Laws, regulatory provisions contained in the Laws, Regulations and the like, Royal Orders, Cabinet decisions, and high Orders, which will be cancelled or amended as a result of the issuance of the proposal, and the corresponding proposed provisions with the reasons for that.

D- International agreements (and the like), to which the Kingdom is a party, that are directly relate to the proposal, and the included obligations for the Kingdom.

Second: Taking into account what is stated in paragraph (1) of item (First) of these controls, the government agency, when preparing a proposal related to economic and development affairs for draft Laws, Regulations and the like or amending the current ones, shall publish it on its websites on the World Wide Web (Internet), in a way that enables the agencies and individuals concerned with its provisions to express their opinions and observations on it, as well as publishing a summary of the most important contents of these opinions and observations. The concerned agency has the discretion to publish the proposal related to other affairs and a summary of the views and observations

Third: Governmental agencies - in coordination with relevant authorities as necessary - shall establish the procedures that ensure Providing the necessary attention when preparing a proposal for draft Laws, Regulations and the like or amending the existing ones, in accordance with what is stated in these controls, and that the task of preparation shall be assigned to specialists

Fourth: The General Secretariat of the Council of Ministers - when the proposal is submitted thereto - shall do the following:

- 1 Refer it to the Experts Authority at the Council of Ministers to ensure that the governmental agency meets the requirements for its preparation, as specified in Clause (First) of these controls, and if it is detected that the agency has not met these requirements, the proposal shall be returned to it for completion.
- 2 Considering what is stated in Paragraph (1) of Clause (Fourth) of these controls, if the proposal is a Law draft, Their Highnesses and Excellencies the Ministers, as well as the heads of the independent agencies (related to) shall be provided - at the same time of referring the original transaction to the Experts Authority-

With copies to express their observations, especially the regulatory and objective observations, on condition that it must be attached with reasons, within a period not exceeding thirty days, provided that the observations are referred directly to the Experts Authority in a written form, in addition to sending it to the Authority's e-mail.

Fifth: The Experts Authority of the Council of Ministers - upon receipt of the proposal, and after ensuring that the requirements necessary for its preparation are met, shall:

1 Study the proposal with the relevant governmental agencies, taking into account that:

A- It does not conflict the Kingdom's obligations under international agreements in force therein.

B- It takes into account the model and model Laws and regional and international customary codes that relate to the legislation subject, without conflict with its objectives.

C- It does not conflict the established judicial principles.

D- It states the effects resulting from the existing legal situations and positions, and states the transitional provisions it includes, if any.

2 Stating the provisions that relate to the legislation subject, that are contained in the international agreements in force in the Kingdom, and whether its texts have taken them into account.

3 Drafting the legislation in a final form in accordance with the generally accepted principles.

4 Referring the legislation to the General Secretariat of the Council of Ministers (General Committee of the Council of Ministers); to complete the related regulatory procedures according to its nature.

Sixth: Emphasizing to the governmental agencies that their representatives, participating in studying the proposal, are specialists with sufficient qualifications and experience

Seventh: Governmental agencies and the Council of Ministers' Experts Authority shall seek the assistance of specialists and experts from inside and outside the Kingdom on a part-time basis, and hold the necessary seminars and work sessions if the study of the proposal required that.

Eighth: The General Committee of the Council of Ministers shall, upon receipt of a proposal from the Shura Council - for draft Laws, Regulations and the like, or amending those in force - refer it to the relevant governmental agency to express its opinions, taking into account what is included in paragraph (2) of item (First) of these controls, and shall raise it within a period not exceeding (120) days, or as the General Committee of the Council of Ministers deems appropriate in this regard.

Ninth: These controls shall replace the controls required to be observed when preparing draft Laws, Regulations and the like, issued by Cabinet Resolution No. (265) in 21/6/1435 AH.

## **Amendments To The Controls Required To Be Observed, Issued By The Cabinet Resolution No. (476) in 15/7/1441 AH**

The Cabinet, after reviewing the package received from the Royal Court under No. 50546 in 4/10/1439 AH, which included the telegram of His Excellency the Minister of Commerce and Investment, Chairman of the Board of Directors of the General Investment Authority (formerly) No. 48530 in 9/9/1439 AH, regarding the necessary proposed mechanism to implement what was stated in the Cabinet Resolution No. (713) in 30/11/1438 AH, which stipulated the approval of the controls required to be observed when preparing draft Laws and Regulations and the like (updated). And;

After reviewing the controls required to be considered when preparing and studying draft Laws, Regulations and the like (updated), issued by the Cabinet Resolution No. (713) in 30/ 11/1438 AH. And;

After reviewing the organization of the National Competitiveness Center, issued by the Cabinet Resolution No. (212) In 25/4/1440 AH. And;

After reviewing the minutes No. (1819) in 21/10/1440 AH, and No. (509) in 18/4/1440 AH, prepared by the Experts Authority of the Council of Ministers. And;

After reviewing the recommendation prepared by the Council of Economic and Development Affairs No. (16 - 10/41/D) in 21/5/1441 AH. And;

After reviewing the recommendation of the General Committee of the Council of Ministers No. (4879) in 30/6/1441 AH.

The following is decided:

First: The National Competitiveness Center shall do the following:

1 Establishing, the Laws and Regulations Support Unit and the like, in the center, and coordinating with the Ministry of Investment to put in place all necessary requirements and arrangements for the unit to enable it to carry out its duties, with the provision of the necessary financial support within its budget to achieve this purpose, in accordance with the procedures followed.

2 Carrying out all necessary measures to achieve the unit's objectives, without prejudice to the competencies and responsibilities of other entities, including:

A-Establishment of a unified electronic platform to survey the public opinions and governmental agencies, and supervising it.

B-Preparing survey forms, evaluating effects, and disseminating these forms to governmental agencies.

C-Submitting notes and opinions on the survey results to the proposal owner-entity upon its requests.

D-Preparing working sessions, training courses, meetings, seminars, and specialized conferences in the field of the unit's work.

E-Communicating the governmental agencies to introduce the unit, its objectives, and the services it provides.

F-Raising awareness and spreading the culture of surveying the importance of participating in evaluating the regulatory effects on draft Laws, Regulations and the like.

G-Concluding cooperative memoranda with relevant governmental and private entities, to exchange expertise and enhance the application of survey Laws.

Second: Governmental entities shall work with the Laws and Regulations Support Unit and the like, at the National Competitiveness Center according to the work and governance mechanism that the Center will prepare with regard to the publication mechanism mentioned in Clauses (Fifth) and (Sixth) of this decision, in accordance with the best international practices, within (180) days from the date of issuance of this decision.

Third: The annual report, submitted by the National Competitiveness Center to the Council of Economic and Development Affairs based on Article No. (Thirteen) of its organization - issued by the Cabinet Resolution No. (212) in 25/4/1440 AH - includes the unit's duties and achievements, the obstacles it faces, the extent to which government agencies are obligated to implement controls, remove obstacles facing its work, and proposals.

Fourth: The performance of the Laws and Regulations Support Unit and the like shall be evaluated within two years starting from performing its jurisdiction, by the Board of Directors of the National Competitiveness Center. The evaluation shall be submitted to the Council of Ministers to decide what it deems appropriate.

Fifth: Amending item No. (Third) of the Cabinet Resolution No. (713) in 30/11/1438 AH, to read as follows: "Every governmental agency, when preparing a proposal related to economic and development affairs for draft rules, Regulations, decisions, and the like of a regulatory nature- which falls within its jurisdiction and does not require submission – shall publish it on the unified electronic platform to survey the opinions of the public and governmental agencies on the World Wide Web (Internet), in a way that enables the agencies and individuals concerned with its provisions to express their opinions and observations, and then publish a summary of the most important contents of these opinions and observations on the platform, and the agency has the discretion to publish proposals related to other affairs and a summary of the opinions and observations expressed in this regard.

Sixth: Amending item No. (Second) of the controls required to be taken into account when preparing and studying draft Laws and Regulations and the like (updated) issued by the Cabinet Resolution No. (713) in 30/11/1438 AH to read as follows: "Taking into account what is stated in paragraph (1) of item (First) of these controls, the governmental agency, when preparing a proposal related to economic and development affairs for draft Laws and Regulations and the like, or amending the current ones, shall publish them on the unified electronic platform to survey the opinions of the public and governmental agencies on the global information network (the Internet) and evaluate the regulatory effects for a period of no less than (30) days.

The entity may extend the period for surveying the opinions of the public and governmental agencies if it deems it necessary, in a way that enables governmental agencies, individuals and the private sector concerned with its provisions to express their opinions and observations on it, as well as publishing a summary of the most important points included in these opinions and observations. The Concerned Authority may survey the opinions of the public and governmental agencies more than once on the proposed draft whenever necessary, and the Concerned Authority may decide to publish proposals related to other matters and a summary of the opinions and observations expressed in this regard.

Seventh: Adding a sub-paragraph numbered (e) to paragraph (1) of item (fifth) of the controls required to be taken into account when preparing draft Laws and Regulations, and the like (updated) - issued by the Cabinet Resolution No. (713) in 30/11/1438 AH - with the following text: "Benefiting from the results of the survey and its summary issued by the Laws, Regulations, and the Like Support Unit.

**Amending Paragraph (2/b) Of Item (First) Of The Controls  
Required  
To Be Considered When Preparing And Studying Draft Laws,  
Regulations And The Like  
Updated For The Year 1438 AH**

The Cabinet Resolution No. (200) in 04/04/1443 AH

The Council of Ministers, after reviewing package received from the Royal Court under No. 44079 in 05/08/1442 AH, which includes the letter of the Ministry of Health (Health Committee in All Policies) No. 429173 - 1442 in 03/08/1442 AH, regarding the recommendation of the ministerial committee formed under the name "Health in All Policies" concerning giving a priority to public health in all Laws and legislation to combat and prevent diseases.

After reviewing the two Royal Orders No. (46708) in 12/10/1438 AH, and No. (21434) And in 19/4/1440 AH. And;

After reviewing the controls that must be considered when preparing and studying draft Laws and Regulations and the like (updated), that was issued by the Cabinet Resolution No. (713) and in 30/11/1438 AH. And;

After reviewing the memoranda No. (48) and in 7/1/1443 AH, and No. (511) and in 28/2/1443 AH, prepared by the Experts Authority of the Council of Ministers. And;

After reviewing the recommendation prepared by the Council of Economic and Development Affairs No. (21 - 4/43 / D) and in 18/1/1443 AH. And;

After reviewing the recommendation of the General Committee of the Council of Ministers No. (2058) and in 11/3/1443 AH





It decided:

To amend paragraph No. (2/b) of item (first) of the controls required to be considered when preparing and studying draft Laws, Regulations and the like (updated), issued by the Cabinet Resolution No. (713) in 30/11/1438 AH, by adding health impacts to the impacts required to be stated in accordance with that paragraph, so that its text is to be as follows:

**“clarifying the expected financial, economic and functional impacts that may result when it is applied in a definite manner, including what may occur to public and private sector facilities, in addition to clarifying the social and health impacts, and coordinating with the relevant authorities in this regard.”**

## Appendix (2)

# Model Draft Laws Signed By The Kingdom As A Guide

### ► First: Projects of the League of Arab States:

Following is the most important outcomes of the joint Arab work in this regard:

- 1 The Draft Arab Model Law for the Protection of Cyberspace and its Explanatory Memorandum.
- 2 The Arab Model Law for Combating Money Laundering.
- 3 The Arab Model Law for Judicial Inspection.
- 4 The Law of Notaries
- 5 A Model Law for the Protection of Copyright and Related Rights.
- 6 A Model Arab Law for Conciliation and Reconciliation.
- 7 A Model Arab Law for Expertise before the Judiciary.
- 8 The Model Draft for the general Commercial Law.
- 9 The Model Arab Law for the Judiciary Authority with the Explanatory Memorandum.
- 10 The Model Arab Law for Electronic Transactions and Commerce.
- 11 The Arab Civil Law.
- 12 The Document of Legal and Judicial Terms extracted from the Final Arab Laws.
- 13 A Model Arab Law for Proofing via Modern Technologies.
- 14 The Model Arab Labor Law.
- 15 Kuwait Document for the Unified Arab Law of Personal Status.
- 16 Unified Arab Judicial Law.

- 17 Algeria's Arab Model Law on Civil Procedure.
- 18 Algeria's Arab Model Law on Criminal Procedure.
- 19 UAE's Model Law on Combating Information Technology Crimes.
- 20 Arab Model Document on Social Security.
- 21 Juvenile Model Law.
- 22 Unified Arab Model Law on the Care of Minors.
- 23 Arab Model Law on Crimes Under the Jurisdiction of the International Criminal Court.
- 24 Unified Arab Law on the Regulations of Prisons
- 25 Unified Arab Law on Combating Human Trafficking.
- 26 Arab Model Law on Judicial Assistance.
- 27 Unified Arab Penal Code.
- 28 Sana'a Plan for the Unification of Arab Legislation.
- 29 Arab Model Law on International Judicial Cooperation in Criminal Matters.
- 30 Unified Arab Law on Real Estate Registration.
- 31 Arab Model Law on Regulating the Profession of Judicial Bailiffs.

### ► **Second: Gulf Cooperation Council projects:**

The following is the most important outcomes of the joint Gulf work in this regard:

- 1 **Muscat Document for the Unified Personal Status Law for the GCC States**, which addresses matters related to the family, guardianship, wills, and inheritance.
- 2 **Kuwait Document for the Unified Civil Law for the GCC States**, which includes the general rules of jurisprudence, provisions on obligations and their sources, contracts, ownership, and rights arising therefrom.



- 12 **Kuwait Document for the Unified Law for the Care of Minors' Money and the like,** consisting of sixty-eight articles.
- 13 **Abu Dhabi Document for the Unified Law for Combating Trafficking in Persons for the GCC States.**
- 14 **The Guiding Model for Legal and Judicial Cooperation Agreements for the GCC States,** which includes aspects of legal and judicial cooperation that are usually the subject of bilateral agreements between countries.
- 15 **Kuwait Document for the Unified Law for International Legal and Judicial Cooperation in Criminal Matters for the GCC States.**
- 16 **Kuwait Document for the Unified Law for Judicial Inspection for the GCC States.**
- 17 **Kuwait Document for the Unified Law for Expert Work before the Judiciary for the GCC States.**
- 18 **Kuwait Document for the Unified Law for Judicial Assistants for the GCC States.**
- 19 **Kuwait Document for the Unified Law for the Implementation of Judicial Rulings for the GCC States.**
- 20 **Riyadh Document for the Unified Law for Combating Cybercrimes Information.**
- 21 **Riyadh Document for the Unified Law of Family Courts,** which included the establishment of family courts, their formation and jurisdictions, the establishment of family guidance and reconciliation offices (committees), the jurisdictions of the offices, and the methods of resorting to those offices.
- 22 **Manama Document for the Unified Law of the Judicial Authority.**



## Models

- ▶ **First Stage Verification Model**
- ▶ **Model Inventory For Possible Options To Problem Solving And Assessing Their Impact**
- ▶ **Second Stage Verification Model**
- ▶ **Selecting Of Benchmark Model**
- ▶ **Organizational Impact Evaluation And Assessment Model**
- ▶ **Third Stage Verification Model**
- ▶ **Fourth Stage Verification Model**
- ▶ **Fifth Stage Verification Model**
- ▶ **Draft Review Model**
- ▶ **Quality Verification Model Before Adopting Legislation**
- ▶ **Key Performance Indicators: Post-legislative audit scores**
- ▶ **Subject Study Model**

Note: These Models are Indicative, Preliminary and are Subject to modification according to the nature of each legislative project.

## Verification Form For The First Stage

Procedure	Implementation		Notes
	Yes	No	
Determining the time frame of the problem, whether it is permanent or temporary.			
Determining the spatial scope of the problem, whether it is in a specific geographical area or extends to others?			
Determining the objective scope of the problem, in terms of its relation to a specific activity and its confinement to a specific field, or its overlap with various activities and its ramifications in multiple fields.			
Determining the problem type: economic, social, health, local, or international...			
Determining the problem size in light of the available figures and statistics.			
Determining the stakeholders affected by the problem.			
Determining and studying the causes of the problem, while distinguishing between the symptoms of the problem and its causes.			
Determining the existing legislation related to the problem, if any.			
Studying the comparative international experiences in methods of dealing with the problem.			



## Model Inventory For Possible Options To Problem Solving And Assessing Their Impact

	Procedure	Explanation of the option	Consequences	Identifying the categories Affected by the option	Costs and benefits resulting from the option
<b>Legislative options</b>					
<b>Non-legislative options</b>					

## Verification Form For The Second Stage

Procedure	Implementation		Notes
	Yes	No	
Defining the legislation objectives			
Considering the controls of drafting of the legislative objectives			
Defining legislative policies			
Considering the controls for preparing legislative policies			
Listing the relevant Local Laws			
Studying the relevant Laws to identify intersections			
Studying the international and regional agreements related to the subject			
Listing the relevant regional Laws			
Listing the relevant international Laws			
Studying the relevant regional Laws			
Studying the relevant international Laws			
Extracting conclusions and evaluate the best legislative practices			

## Model Inventory For Possible Options To Problem Solving And Assessing Their Impact

	State Competitiveness (5)	State Modernity (5)	Drafting excellence (5)	Presence of judicial application (10)	Availability of studies and research (5)	Presence of preparatory work and explanatory notes (10)	Total (5)
Law 1							
Law 2							
Law 3							
Law 4							
Law 5							
Law 6							
Law 7							

## Regulatory Impact Assessment Form

Impact Assessment (1/5)	
Statement	Description
<p><b>What are the benefits of the proposal?</b></p> <ul style="list-style-type: none"> <li>• Identifying all potential benefits (or financial returns) as a result of the regulatory proposal.</li> <li>• Providing a detailed/brief description, as appropriate, of the identified benefits (or financial returns), within any available information including:               <ul style="list-style-type: none"> <li>❖ Health and safety benefits: Will there be any benefits to public health; human, animal or plant health; product safety or consumer protection; occupational health and safety?</li> <li>❖ Benefits to the economy, business and trade: Will there be any benefits to the economy (national and regional), trade (national and international), business, competition, jobs, labor mobility, etc.?</li> <li>❖ Benefits to society and culture: Will there be any benefits to the human life style, culture, society, political Laws, welfare, personal and property rights?</li> <li>❖ Benefits to public security: Will there be any benefits to safety and National security, transportation and travel safety, criminal activity or police, emergencies cases, disasters, family and home safety, financial security, and cybersecurity?</li> <li>❖ Government savings: Will there be any benefits (savings) to the state?</li> <li>❖ Administrative cost reductions for businesses: Will there be any reduction in administrative costs for businesses (regardless of the size of business)?</li> <li>❖ Administrative cost reductions for small businesses: Will there be any reduction in administrative costs for small businesses?</li> <li>❖ Environmental benefits: Will there be any environmental benefits or harms?</li> <li>❖ Are there any other benefits that are not listed above? (To be stated)</li> <li>❖ What are the pros and cons of introducing the draft proposal?</li> </ul> </li> </ul>	

Impact Assessment (2/5)	
Statement	Description
<p><b>What are the expected costs to the state, business and industry sectors, consumers, citizens and residents?</b></p> <ul style="list-style-type: none"> <li>• The total potential costs to the state, business and industry sectors, citizens and residents as a result of the regulatory proposal are to be estimated in Saudi Riyals.</li> <li>• The total estimated costs are to be calculated and the appropriate level (low, medium or high) is to be determined as stated below.</li> <li>• The cost estimate is to be on an annual basis. The year that estimation is based on should be stated.</li> <li>• The costs of developing the regulatory proposal are not to be included in the costs that the state will borne.</li> <li>• Justifications are to be provided to support the analysis.</li> <li>• The costs to be borne by citizens, the costs to be borne by the state, the costs to the business and industry sector, the costs to be borne by residents, other costs, and total costs are mentioned.</li> <li>• <b>The costs are to be estimated based on:</b> <ul style="list-style-type: none"> <li>❖ <b>No costs.</b></li> <li>❖ <b>Not measurable.</b></li> <li>❖ <b>Low costs (less than one million riyals annually).</b></li> <li>❖ <b>Medium costs (one million to ten million riyals annually).</b></li> <li>❖ <b>High costs (more than ten Millions of riyals annually).</b></li> </ul> </li> </ul>	

## Impact Assessment (3/5)

Statement	Description
<p><b>Are there any other costs?</b></p> <ul style="list-style-type: none"> <li>• It is important to mention the public interest in proposing the draft, and the extent to which society will benefit from proposing it.</li> <li>• Identifying other costs or potential negative impacts arising from the proposal that have not been identified above.</li> <li>• Providing a brief description of the costs or potential negative impacts, including any available supporting qualitative information on the following areas: <ul style="list-style-type: none"> <li>❖ Economy (national and regional), trade (national and international), the Kingdom's hierarchy in global indicators, competition, jobs, and labor mobility.</li> <li>❖ Society and culture (including citizens' lifestyle, culture, society, political Laws, individual rights, and property rights).</li> <li>❖ Any other unidentifiable costs or potential adverse impacts.</li> <li>❖ Health, safety, security, and the environment for citizens.</li> <li>❖ Vulnerable socio-economic groups (low-income, subsidy)</li> </ul> </li> </ul>	

Impact Assessment (4/5)	
Statement	Description
<p><b>What is the public interest in putting the proposal forward? Is there stakeholder support and are there any objections to putting the proposal forward?</b></p> <ul style="list-style-type: none"> <li>• The level of support and opposition of key stakeholders (e.g. commercial sectors/businesses, other governmental agencies, key business partners, NGOs, etc.) is explained.</li> <li>• The proposal may have support or opposition, please provide both.</li> <li>• It is significant to describe the nature or source of the debate and the positions expected from stakeholders.</li> <li>• It is significant to include details of consultations that have taken place or will take place in the future, any unresolved issues, points of disagreement, etc.</li> <li>• <b>Stakeholder support is rated as follows:</b> <ul style="list-style-type: none"> <li>❖ None.</li> <li>❖ Low support for the proposal (e.g. there has been little feedback or discussion regarding the proposal).</li> <li>❖ Low opposition to the proposal (e.g. there has been little feedback or discussion regarding the proposal).</li> <li>❖ Moderate support for the proposal (e.g., stakeholders have expressed their position or the issue has been publicly discussed in the media).</li> <li>❖ Moderate opposition to the proposal (e.g., stakeholders have expressed their position or the issue has been publicly discussed in the media).</li> <li>❖ High support for the proposal (e.g., there has been active lobbying for either position, a national news story, and high public interest in the issue).</li> <li>❖ Strong opposition to the proposal (e.g., there has been active lobbying for either position, a national news story, and high public interest in the issue).</li> </ul> </li> </ul>	

## Impact Assessment (5/5)

Statement	Description
<p><b>What internal Regulations or international agreements, commitments and standards that are relevant to the proposal?</b></p> <ul style="list-style-type: none"> <li>• Indicating whether the regulatory proposal is being submitted to comply with, or has an impact related to internal Regulations or international agreements (trade, competition, environment, human rights, etc.), and explaining where there are conflicts or inconsistencies.</li> <li>• A detailed analysis of regulatory gaps, if any, is to be conducted.</li> <li>• International agreement(s), commitment(s) and/or standard(s) that the proposal aims to comply with should be identified: <ul style="list-style-type: none"> <li>❖ None.</li> <li>❖ Treaty.</li> <li>❖ Agreement.</li> <li>❖ Commitment</li> </ul> </li> </ul>	
<p><b>Is the proposal expected to increase administrative costs for small businesses?</b> Indicates the expected impact and potential costs on small businesses.</p>	<ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> </ul>
<p><b>Is the proposal expected to increase administrative costs for medium and large businesses?</b> Indicates the expected impact and potential costs on medium and large businesses.</p>	<ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> </ul>
<p><b>Is the proposal expected to increase Administrative burden on the business sector in general?</b></p>	<ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> </ul>



## Verification Form For The Third Stage

Procedure	Implementation		Notes
	Yes	No	
Collecting the necessary information about who is nominated to join the teamwork.			
Studying the CVs of the candidates, and review their contributions.			
Holding personal interviews with the candidates.			
Setting a time frame for the work of the assigned team.			
Clarity of tasks and duties for the members of the assigned work team.			
Division of tasks into specific steps, and linking them to delivery dates.			
Checking the efficiency of the time plan, and ensure its realism and feasibility.			
Preparing the objective contents (main provisions) with a brief list.			
Placing the contents in a general structure.			
Preparing studies to select the objective contents.			
Arbitrating the nominated contents.			

## Verification Form For The Fourth Stage

Scope	Determinants	Implementation		Place of the note	Notes
		Yes	No		
<b>Decree</b>	1- Preparing a draft decree.				
	2- Including the decree with topics that are of importance to the legislation.				
<b>Introduction to the Legislation</b>	3- Existence of articles for definitions when needed.				
	4- Arranging terms and definitions logically.				
	5- Existence of the objectives that clarify the legislation purposes.				
<b>Temporal, Spatial and Subject Scope</b>	6- Stipulating the spatial scope and what is excluded from it.				
	7- Stipulating the temporal scope and what is excluded from it.				
	8- Stipulating the scope of the subject application to indicate the topics that the legislation addresses its provisions.				

Scope	Determinants	Implementation		Place of the note	Notes
		Yes	No		
<b>Substantive Provisions</b>	9- the original provision has priority over the exception in the presentation of substantive provisions.				
	10- the most important articles have priority at least.				
	11- articles with a substantive provision have priority over what includes a procedural provision				
	12- Distributing the articles into homogeneous sections and groups, according to the need and its nature				
<b>Final Provisions</b>	13- Placing the repeal articles - when necessary - in the final provisions of the legislation.				
	14- Stipulating the responsible bodies of implementing the legislation.				
	15- inserting articles to preserve the existing legal positions that arose under previous legislation.				
	16- Stipulating the mechanism for transitioning from the previous legislation to the new legislation.				
	17- Stipulating the responsible bodies of issuing Implementing Regulations.				
	18- Stipulating the date on which the legislation will come into force.				

## Verification Form For The Fifth Stage

Scope	Determinants	Implementation		Place of the note	Notes
		Yes	No		
Linguistic reviews	1- Accuracy and clarity in wording the legislation contents				
	2- Freedom from grammatical and linguistic errors and typos				
	3- Observance of the drafting rules				
	4- Appropriateness of punctuation marks				
	5- Avoiding padding and digression				
	6- Consistency of style and absence of difference				
Linguistic reviews	7- the provisions of the proposed legislation should not contradict with higher-hierarchy legislation.				
	8- Consistency of the proposed legislation with existing legislation to prevent conflict				
	9- Observance of logical sequence of articles, and the appropriate division of chapters and sections.				
	10- Integrity of references within the legislation.				
	11- Arranging the legislation structure appropriately.				
	12- Reviewing consistency with international agreements.				
Other reviews	13- Gathering the opinions of concerned parties, experts and stakeholders.				
	14- Listening to the public's opinions				

## Project Draft Review Form

Review Data			
No.	Formal Review Elements	Score	Notes
1	Sequential Order of Articles		
2	References in the draft		
3	Arrangement for Project Structure		
3	Spelling Rules and consistency		
4	Punctuation		

First Reviewer

Signature

Second Reviewer

Signature

## Quality Assurance Form Before Legislation Adoption (maximum: 100 points)

Chapter	Yes 10 points	Mostly Yes 6-9 points	Not fully Yes 1-5 points	No Yes 10 points	Total points Yes 10 points
1- The extent to which the legislation serves the vision of the Kingdom of Saudi Arabia as expressed in the formulation?					
2- Is the legislation consistent with the objectives and policy of the Ministry?					
3- Can the legislation achieve the required regulatory results within the specified time period?					
4- Can the selected implementation mechanisms achieve the desired regulatory results within the specified timeframes?					
5- Does the current structure provide accessible answers to the specific questions of each user group?					
6- Does the language of each article convey its message to the beneficiaries in a way that enables them to understand it?					
7- Is the language clear, precise and unambiguous?					
8- Is the language toned down?					
9- Are the imposed rights and duties clear?					
10- Is there a document to review the effectiveness of this Legislation?					
<b>Total score (if less than 50, the proposed legislation should be reconsidered)</b>					

## Key Performance Indicators: Subsequent Legislative Audit Scores (10 Questions)

Chapter	Yes 10 points	Mostly Yes 6-9 points	Not fully 1-5 points	No	Total Points
1- How consistent is the legislation with the Kingdom's vision?					
2- Is this legislation consistent with the Ministry's policy objectives?					
3- Did the legislation achieve the desired regulatory outcomes?					
4- Were the selected implementation mechanisms successful?					
5- Did the beneficiaries receive the objectives of the legislation clearly?					
6- Was the language clear, precise and unambiguous?					
7- Were the rights and obligations clearly presented?					
8- Was litigation necessary to achieve the legislative objective?					
9- Was there a need for legislative reform/amendment/repeal?					
10- Is the legislation still useful?					
<b>Total score (if less than 50, the proposed legislation should be reconsidered)</b>					

## Study Model For An Article

Chapter	One
Article No.	
Proposed wording	
The article in the reference mark	
Corresponding articles in comparative Laws	





Chapter	One
<b>The study</b>	
<b>Expert Opinion</b>	
<b>Final Drafting</b>	

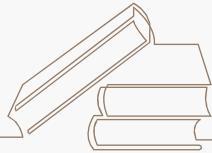


National Competitiveness Center  
Riyadh Front - Business, Airport Branch Road  
Riyadh 13414  
Kingdom of Saudi Arabia  
[www.ncc.gov.sa](http://www.ncc.gov.sa)

In case of comments, send via  
email [pc@ncc.gov.sa](mailto:pc@ncc.gov.sa)

Copyright and printing of this Guide are  
reserved





## Legislation Preparation and Drafting