

# Draft Investment Law

(2022)

## **Article 1. Definitions**

The terms and phrases below- wherever they appeared in this Law- shall each have the meaning as described below except where the context required otherwise:

**Kingdom:** Kingdom of Saudi Arabia.

**Law:** Investment Law.

**Regulation:** The implementing regulation of this Law.

**Competent Authority:** Any relevant ministry, commission, institution, or governmental or semi-governmental entity.

**Ministerial Committee:** The Standing Ministerial Committee for Examination of Foreign Investments.

**Ministry:** Ministry of Investment.

**Minister:** Minister of Investment.

**Direct Investment:** The establishment of or acquisition of all or part of an economic enterprise providing products or services from within the Kingdom by an Investor who contributes capital or tangible or intangible assets for the purpose of making profit through, but not limited to, any of the following forms:

- a. Commercial enterprises; including companies, institutions and branches.
- b. Shares and stakes in non-listed companies in the Saudi Capital Market.
- c. Owning a Lasting Interest in companies listed in the Saudi Capital Market, in accordance with the Capital Market Law and its Implementing Regulations.
- d. Contractual rights, including rights in contracts of construction, operation, management, production or revenue sharing, or other contracts with similar characteristics.
- e. Fixed or movable assets including real estate, mortgages, liens, and pledges.
- f. Moral rights, including intellectual property rights, such as copyrights, patents, industrial designs, integrated circuit design plans, technical know-how and confidential commercial information, and trademarks.

**Investor:** Any natural or legal person making a Direct Investment in the Kingdom, including both Domestic Investor and Foreign Investor.

**Domestic Investor:**

- a. Any natural person of Saudi Arabian nationality; or deemed to be treated in the same manner as a Saudi Arabian national pursuant to the laws and regulations in force in the Kingdom or international agreements to which the Kingdom is a party and makes a Direct Investment in the Kingdom.
- b. Any legal person who makes a Direct Investment in the Kingdom whose head office is registered in the Kingdom, or whose owners are natural or legal persons holding Saudi Arabian nationality, or who is treated similarly to a local legal person established in the Kingdom under the laws and regulations in force in the Kingdom or international agreements to which the Kingdom is a party to.

**Foreign Investor:** Any natural or legal person who is not a Domestic Investor as defined in this Law, and makes a Direct Investment in the Kingdom.

**Entity:** Any legal entity incorporated in accordance with the Saudi Arabian Companies Law or other relevant laws and regulations in force in the Kingdom.

**Establishment:** The head office through which the Investor carries out, in whole or in part, the economic activity.

**Lasting Interest:** The direct or indirect ability to influence the business and decisions of any Entity through owning (10%) or more of the voting rights, or the right to appoint (30%) or more of the members of the Board of Directors.

**Special Economic Zones or Activity:** Geographical areas or economic sectors with privileges and exemptions from base economy's laws determined by Competent Authorities.

**Excluded Activities:** The economic activities in which investing is reserved to Domestic Investor unless otherwise decided by the Ministerial Committee.

**Restricted Activities:** The economic activities that include restrictions on the investment by Foreign Investor, with specific percentages or other conditions as decided by the Ministerial Committee.

**List of Excluded and Restricted Activities:** The list stipulated in Article (8) of this Law, and which is otherwise referred to in this Law as the 'List'.

**Authorization:** The Authorization granted to Foreign Investors to practice any economic activity from the activities specified in the List.

**Registration:** A procedural process that includes providing the Ministry with data and information according to forms prepared for this purpose.

**Recognized Currency:** foreign currencies recognized by the Saudi Central Bank.

## **Article 2. Purpose of the law**

Subject to the laws and regulations in force in the Kingdom, this Law aims to attract Direct Investments, enhance the investment environment, preserve Investor rights, and increase his confidence in investing in the Kingdom through:

- a. Facilitating entry procedures for Direct Investments and protecting them.
- b. Equality of treatment in treatment between Domestic Investor and Foreign Investor.
- c. Defining the Investor's rights and obligations.
- d. Supporting the principle of competitive neutrality and fairness, and ensuring equal opportunities in the treatment of Direct Investments made by public and private Investors.

## **Article 3. Scope of Application**

This Law applies to all Direct Investments within the Territory of the Kingdom.

## **Article 4. Rights of Investor**

1- Domestic Investor and Foreign Investor shall be accorded the same treatment regarding their Direct Investments in the Kingdom, except where specified by this Law and other laws and regulations in force in the Kingdom.

2- Subject to the applicable laws and regulations of the Kingdom, Investor shall enjoy the following rights and guarantees:

- a. Impartial and non-discriminatory treatment.
- b. Freedom to manage the economic enterprise; sell or dispose of it; acquire property necessary to the conduct of the economic enterprise; enter into commercial contracts; and acquire, terminate or sell any company.

- c. Facilitating the procedures and providing facilities by providing the necessary support and assistance by all Competent Authorities.
- d. Transfer funds from within and out of the Kingdom, including transferring the proceeds and profits of the economic enterprise and its sale and liquidation- through regular channels using any Recognized Currency inside the Kingdom, or disposing of it by any other legitimate means.
- e. Protecting intellectual property and confidential business information.
- f. Protecting personal data.
- g. Recourse to the competent courts or arbitration centers in the Kingdom.
- h. Guaranteed due process in all proceedings; with fairness, transparency, and clarity.

3- Direct Investments shall not be confiscated, in whole or in part, except by judicial decision and they shall not be expropriated in whole or in part except for public interest and adequate compensation in accordance with the laws and regulations in force in the Kingdom.

4- The Ministry provides Investor with available statistical information and data as well as providing to him all necessary services to facilitate all transactions related to his Direct Investment, and endeavors to address the complaints submitted by the Investor according to clear and transparent procedures.

5- Subject to the provisions of this Law, Domestic Investor and Foreign Investor shall be subject to the same sectoral approval requirements such as licenses, registration, approvals or permits for specific sectors of the economy or Special Economic Zones in accordance with the laws and regulations in force in the Kingdom.

6- A Competent Authority, when taking any measures to achieve the public interest, including the measures necessary to fulfill international obligations, maintain public order and national security considerations, shall take into account that the implementation of such measures does not conflict with the provisions of Paragraphs (2) and (3) of this Article.

7- The mere fact that action is taken (or an expected action is not taken) that may be inconsistent with an Investor's expectations does not constitute a breach of this Article, even in cases which result in loss or damage to the interests of the Investor.

#### **Article 5. Obligations of Investor**

1- The Investor shall adhere to all laws and regulations in force in the Kingdom and the international agreements to which the Kingdom is a party of.

2- The Investor is obligated to the following duties and obligations in particular:

- a. To the extent required through the Regulation, carrying out business through an Establishment inside the Kingdom, and the Ministry shall work to facilitate the procedures required for the process of setting up the Establishment and practicing the activity, in coordination with the Competent Authorities, efficiently and effectively, as described in the Regulation.
- b. Maintaining separate accounting records of the enterprise, in accordance with the laws and regulations in force in the Kingdom.
- c. Providing any information requested by the Ministry or the Competent Authorities; to enable the Ministry and the Competent Authorities to efficiently and effectively exercise their statutory powers entrusted to them.
- d. Meeting national standards for corporate governance according to the sector in which the business is conducted.
- e. Paying all taxes and dues owed at the required time in accordance to the laws and regulations in force in the Kingdom.
- f. Maintaining environmental and social standards, participating in the development of local infrastructure, and contributing in social responsibility in the Kingdom.
- g. Implementing Labor, Health and Safety laws.

#### **Article 6. Investment Enablers**

1- Subject to the laws and regulations in force in the Kingdom and the international agreements to which the Kingdom is a party, granting Investment Enablers concerned with encouraging, attracting, and developing Direct Investment, shall be according to previously defined, clear, objective, and non-discriminatory eligibility and evaluation criteria.

2- Investment Enablers may be extended, suspended, modified, or canceled based on objective economic criteria.

3- As an exception to the provisions of Paragraph (1) of this Article, and subject to the laws and regulations in force in the Kingdom and international agreements the Kingdom is party of, a Competent Authority may agree with any Investor regarding his Direct Investment in granting him investment enablers.

## **Article 7. Registration**

1- Subject to a de minimis threshold as defined in the Regulation, all Direct Investments made in the following forms shall be subject to Registration with the Ministry without delay and in accordance with the Regulation:

- a. Establishing an economic project.
- b. Acquisition of an economic project in whole or in part.
- c. Purchasing a Lasting Interest in companies listed on the Saudi Stock Exchange.

2- The Foreign Investor must before any change in his ownership, inform the Ministry of this, and update his data at most thirty (30) days from the date of such change, and the Regulation sets the necessary controls for this. Also, Direct Investments subject to the condition of obtaining prior Authorization must comply with the provisions of Paragraph (3) of Article (9) of this Law.

## **Article 8. List of Exempted and Restricted Activities**

1- The power to designate activities on the List shall be exercised by the Ministerial Committee, consistent with protecting the national security, vital economic interests and preserving public order and the exercise of this authority shall be on an objective, non-discriminatory and minimalist basis.

2- The Ministry shall publish the List that includes all Excluded Activities and all Restricted Activities.

## **Article 9. Authorization**

1- A Foreign Investor must obtain a prior Authorization from the Ministerial Committee before investing in any economic sector designated as Restricted on the List of Excluded and Restricted Activities, by submitting the details of his Direct Investment application to the Ministry.

2- A Foreign Investor shall not apply to the Ministry to obtain specific prior Authorization for Excluded Activities specified as such on the List, except in accordance with the procedures specified by the Regulation.

3- A Foreign Investor must apply for a new Authorization to the Ministry for any Direct Investment that requires such Authorization - in accordance with Paragraph (1) of this Article - when a change in his ownership occurs, otherwise the Authorization is null and void.

#### **Article 10. Disputes Settlement Methods**

- 1- An Investor involved in a dispute, including a dispute with any of the Competent Authorities, shall have the right to resort to a competent court or other alternative disputes resolution in a manner that does not conflict with the laws and regulations in force in the Kingdom.
- 2- A Competent Authority may, after obtaining the necessary approvals in accordance with the laws and regulations in force in the Kingdom, resort to international arbitration in respect of a Direct Investment as provided under a contract between the Competent Authority and an Investor prior to the dispute arising, or according to terms agreed upon by the parties at the time of, or subsequent to, the dispute.
- 3- Subject to the laws and regulations in force in the Kingdom, the Ministry will promote alternative dispute resolutions, including arbitration, mediation, and conciliation.

#### **Article 11. Penalties**

- 1- The Ministry shall inform the Investor in writing of any violation of the provisions of this Law and its Regulation to remove the violation within a period of time specified by the Regulation.
- 2- Without prejudice to any more severe penalty stipulated by the laws and regulations in force in the Kingdom, the Investor shall be penalized, if the violation persists, with any of the following penalties:
  - a. Imposing a financial fine not exceeding SR (500,000) five hundred thousand Saudi riyals.
  - b. Annulment of the act that took place in violation of the provisions of this Law or its consequences, without prejudice to the rights of bona fide third parties.
  - c. Cancellation of the Investor's Registration or Authorization.
  - d. Withholding or cancelling all or part of any investment enablers granted to the Investor.
- 3- The Regulation determines the procedures for detecting violations of this Law and their consequent penalties.
- 4- The penalties referred to in Paragraph (2) of this Article shall be applied by a decision of the Minister or his authorized representative, taking into account the gradualness in determining penalties amount with the gravity of the violation and its recurrence.



### **Article 12. Methods of Grievance**

1- A committee shall be formed, by a decision of the Minister, to investigate the grievances against the decisions issued in accordance with the provision of this Law, and the Regulation shall specify the process and the periods required to consider the grievance.

2- Subject to the provision of Paragraph (1) of this Article, the decisions issued in accordance with the provisions of this Law may be appealed before the competent court.

### **Article 13. International Treaties and Obligations**

In the event of any conflict between the provisions of any applicable international treaty to which the Kingdom is a party and the provisions of this Law, the applicable international treaty shall prevail to the extent of the inconsistency.

### **Article 14. Activities, Special Economic Zones and Acquired Rights**

1- Nothing in this Law over-rides or amends specific laws and regulations applying to specific sectors of the economy, capital markets or Special Economic Zones of the Kingdom of Saudi Arabia, save that Investors shall as a minimum enjoy the rights provided for in this Law.

2- Nothing in this Law over-rides or amends licenses, permits or concessions granted by a Competent Authority prior to the enactment of this Law in respect of a Direct Investment for the duration specified in such licenses, permits or concessions, except that the provisions of Article 7.2 shall apply to pre-existing Direct Investments. To the extent that such licenses, permits or concessions afford an Investor preferential terms, the Investor shall continue to enjoy such preferential terms for the duration specified.

### **Article 15. Implementation**

The Ministry is responsible for the implementation of this Law and the publication of its Regulations in accordance with the applicable laws and regulations in the Kingdom.

### **Article 16. Regulation**

The Minister shall promulgate the Regulation during 180 days after the date of publication in the Official Gazette and it shall come into force from the date of entry into effect of this Law.

**Article 17. Publication and Entry into Effect**

This Law shall be published in the Official Gazette and shall take effect 180 days after the date of publication.

This Law cancels the Foreign Investment Law issued by Royal Decree No. (M/1) dated 5/1/1421H, as well as all provisions that contradict it.