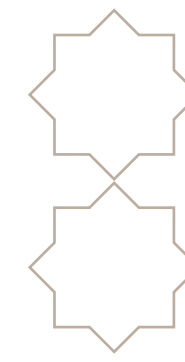
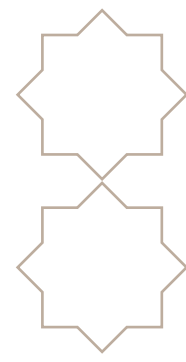


A sustainable vision for the future.  
Guide to Investing in Saudi Arabia 2023







# Introduction

Saudi Arabia's economy has demonstrated its resilience over the course of 2022 and into 2023. Growth has been sustained in the midst of global economic pressures, geopolitical instability and the wake of the Covid-19 pandemic.

Whilst most global economies experienced a slowdown in economic growth, Saudi Arabia saw a steady growth in GDP year on year in 2022, supported by non-oil private sector activity. The Kingdom's GDP growth rate was the fastest-growing among the G20 countries in 2022.

While higher oil prices and increased oil-driven exports account for much of the Kingdom's growth, the non-oil economy has also demonstrated strength, buoyed by pro-business reforms which seek to diversify the economy and attract foreign private investment under the strategic roadmap of the Vision 2030. Saudi Arabia is in the middle of an economic upswing, supported by higher non-oil activity, according to analysis by the Economist Intelligence Unit.

The economy is expected to grow 1.9 per cent in 2023 according to the latest International Monetary Fund ("IMF") World Economic Outlook (WEO) Report. While this is lower than previous forecasts (to an extent, due to expected lower oil export revenue), it is higher than the growth rates of more advanced economies.

Global confidence in Saudi Arabia's financial stability and reform programme is borne out by improvements to the Kingdom's credit ratings in 2023, by Fitch Ratings (upgraded to A+ with Stable Outlook), S&P Global Ratings (upgraded to A/A-1' with Stable Outlook) and Moody's (affirmed A1 with revised outlook to Positive).

In this guide, we look at the legal framework for investing in Saudi Arabia, the Vision 2030 objectives and recent business-friendly reforms which support the private sector. We also discuss key legal issues to foreign investors need to know about when considering investing in the Kingdom.

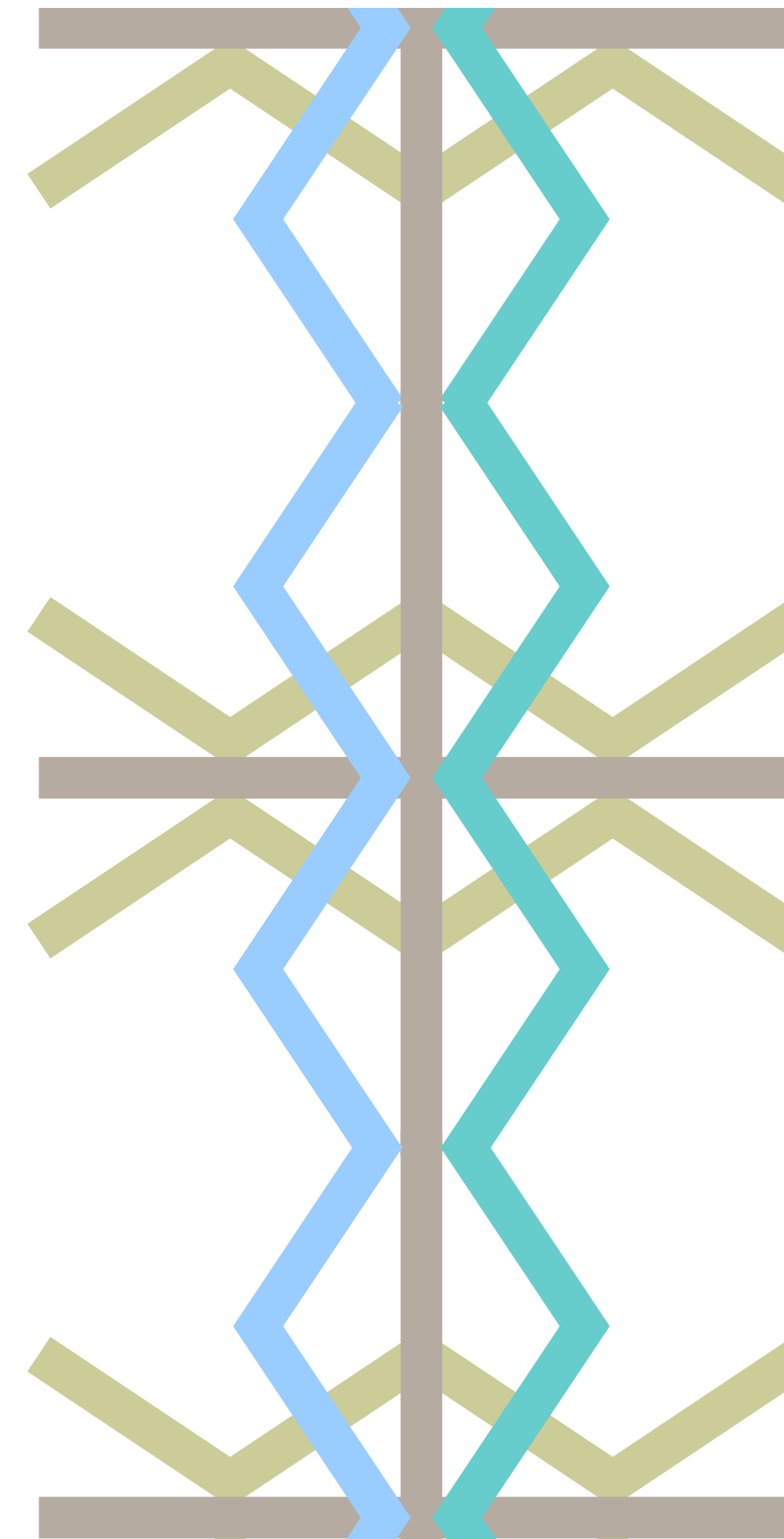
If you would like to talk to us about any of these issues, please get in touch with your usual contact or one of those noted at the end of the guide.

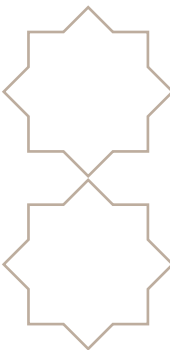
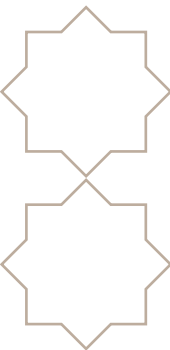


Saudi Arabia is a powerhouse, delivering strong growth and enhanced investment opportunities in a challenging 2023. Strong reform momentum has continued, and a new legal regime for companies is the centrepiece of recent changes to the local business environment. We **understand our client's strategic aims and concerns**, and we can provide **first class legal services** which blend **deep knowledge of the legal regime** with a **sensitive understanding of customs and culture** in business practices."



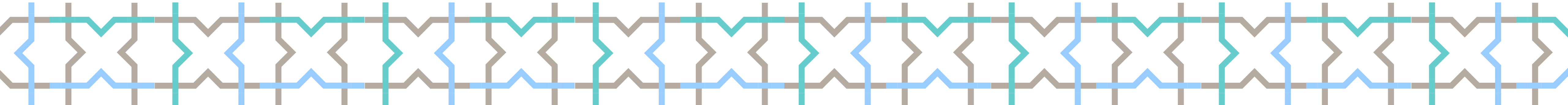
**Waleed Rasromani**  
National Managing Partner,  
Saudi Arabia





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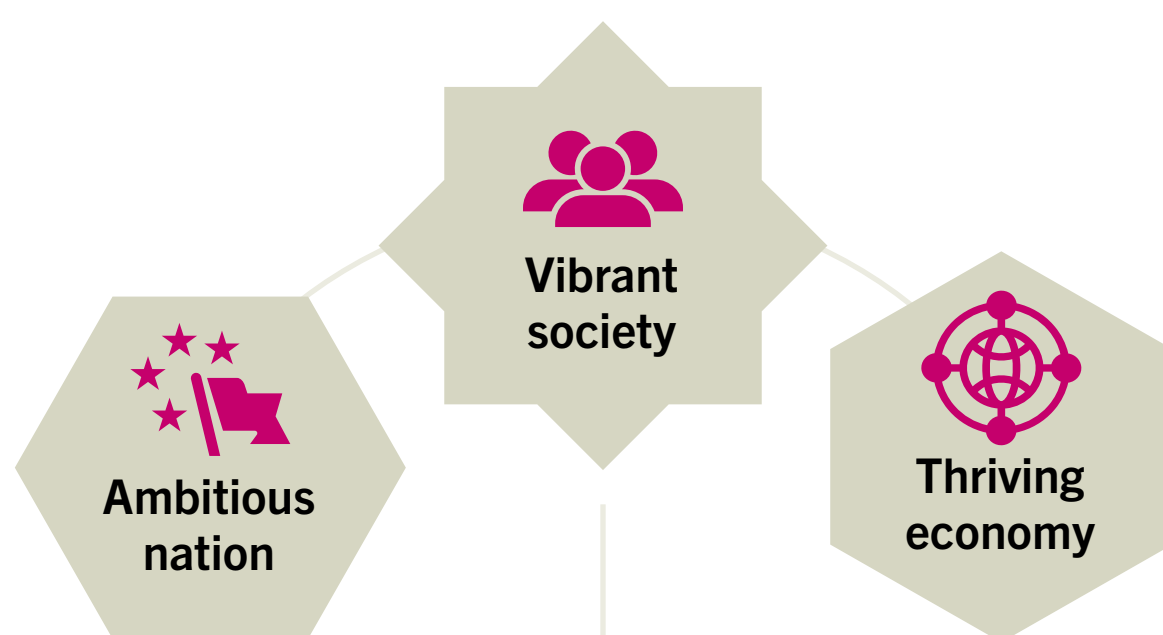


# 1 Overview

In this section, we explore the key programmes and economic trends that shaped the investment outlook for Saudi Arabia businesses and their investors in 2022 and into 2023. Later in this guide, we will explore the legal framework relevant to structuring investments in the Kingdom.

## Key facts about:

### Vision 2030



Vision 2030 is an ambitious socio-economic reform programme, with the purpose of creating an open Kingdom where business opportunities are diverse and abundant, education, employment and career development opportunities are aligned, and economic growth is sustainable.

The three key themes of the Vision 2030 are to foster an ambitious nation, a thriving economy and a vibrant society. These broad themes are cascaded into 96 “Strategic Objectives” and 13 “Vision Realisation Programmes” (“VRPs”).

## Vision Realisation Programmes

Of the 13 VRPs which support the realisation of Vision 2030 ambitions, the National Transformation Programme (“NTP”), the Privatisation Programme, the Financial Sector Development Programme (“FSDP”) and the Public Investment Fund (“PIF”) Programme set out key economic reform frameworks which are fundamental to attracting foreign investment into the Kingdom and supporting economic diversification into non-oil sectors. A brief summary of some important aspects of these VRPs is set out below.

### NTP

The NTP sets out key objectives and reform delivery plans to create an environment that enables the public, private and non-profit sectors to achieve the Kingdom’s Vision 2030. Under the umbrella of the NTP, measures are undertaken to facilitate doing business, support the labour market and promote wider economic ties, among other things.

### Privatisation Programme

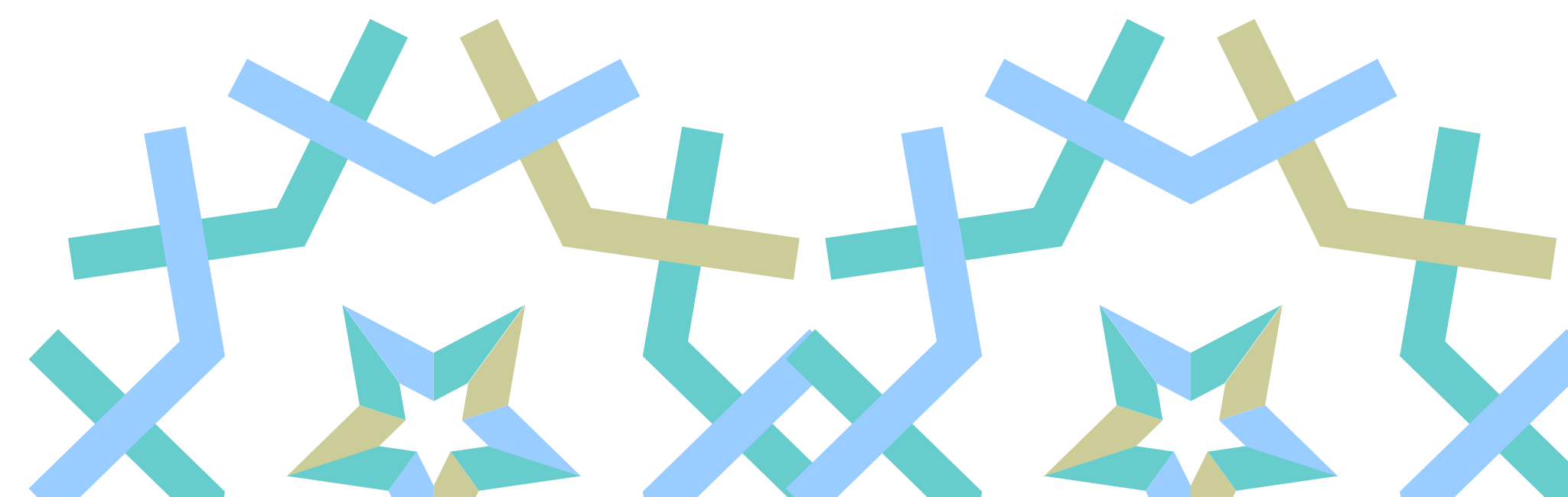
The Privatisation Programme aims to develop the role of the private sector, facilitating the privatisation of government assets and services in order to expand the role of the private sector in the provision of services. The National Centre for Privatisation & PPP (“NCP”) is responsible for formulating regulations and developing the privatisation pipeline.

### FSDP Programme

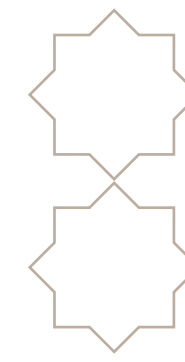
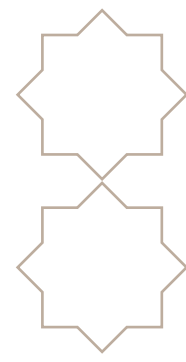
The FSDP aims to develop a diversified and effective financial sector (including in the sectors of banking, insurance, investment and stock and debt markets). Among its objectives, the programme aims to strengthen financial institutions to support the private sector, support the development of an advanced capital market and promote financial planning.

### PIF Programme

The PIF is Saudi Arabia’s sovereign wealth fund and one of the largest sovereign wealth funds in the world. The PIF’s is a key driver of economic diversification and the development of strategic sectors under the Vision 2030.







## Vision Realisation Projects

Saudi Arabia's large-scale "giga-projects" have been described by the Government as "the crown jewel of Vision 2030". Designed to open new areas of economic activity, create jobs and drive economic development, the projects span sectors, from energy to tourism. Many giga-projects are large-scale infrastructure and construction projects, led by the PIF in partnership with the private sector.

The giga-projects are already stimulating the economy. The vast investment needed is driving both domestic and foreign investment. The human capability needed to bring the giga-projects to fruition is creating jobs and attracting international expertise, and it will serve to develop the skills and capabilities of Saudi nationals. Looking ahead, the projects have the potential to re-cast the economic profile of Saudi Arabia and drive non-oil sector contribution to GDP for the long term.

AlUla • Amaala • Qiddiya  
Saudi Genome Project  
Green Riyadh • Riyadh Art  
Water Desalination Project Using Solar Power  
Middle East Green Initiative  
Saudi Green Initiative  
King Salman Energy Park  
Absorption Base Desalination Plant  
Low Power Research Reactor  
ROSHN • NEOM  
Sakaka Solar Power Plant  
The Red Sea Project  
Riyadh Sports Boulevard  
Saudi Made • Diriyah Gate  
Soudah Development  
Composite Aerostructure Factory



## NEOM

The largest and most ambitious giga project is NEOM (an acronym meaning "a new future"). NEOM's ambition is to be a sustainable eco-city of the future in the northwest of Saudi Arabia, providing the blueprint for how our cities may look in the decades to come.

As well as comprising a residential city to house nine million residents on completion and tourist attractions, NEOM will be a self-legislating free zone open to a range of sectors and services. It will be sustainable, powered by renewable energy, and have zero carbon emissions.

Designed as a "cognitive city", NEOM will have cutting-edge digital infrastructure that uses data and artificial intelligence to drive connectivity for people and businesses. As NEOM's development rapidly accelerates, it is driving significant transformation in other aspects of the Kingdom's economy.

The first phase of the project is scheduled for completion in 2030, funded by the PIF. Future funding needs are to be met in part from international and regional sovereign wealth funds, private institutional investors and a stock market flotation anticipated by the end of 2024.





### The investment climate

Despite an uncertain global economic outlook in 2022, Saudi Arabia experienced a strong growth rebound. This contrasts with the stalling growth seen in the world’s three largest economies—the United States, China and the euro area.



- Various drivers of continued growth include:
- > elevated oil prices, which is providing additional liquidity for the government’s investment arms, such as the PIF;
  - > an increasingly sophisticated and diversified business environment, which is attracting foreign investment inflows (in particular from Asia);
  - > increased tax revenues following the tripling of the VAT rate to 15 per cent in 2020; and
  - > strong domestic demand, with steady population growth and the opening up of new sectors of the economy serving to stimulate spending.

Saudi Arabia was  
**the fastest growing**  
G20 economy in 2022

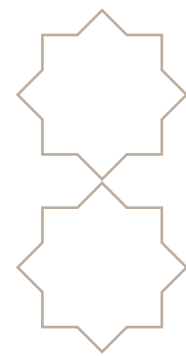
### Privatisation and the growing private sector

The Privatisation Programme is one of the cornerstone programmes under Vision 2030. Privatisation initiatives are an important tool to enable the Government to realise several aims: to maximise revenues from state-owned assets, diversify the economy into new sectors, reduce historic dependence on oil, stimulate foreign investment and develop national capabilities.

### Enabling the Private Sector: Strategic Objectives

-  Facilitate doing business
-  Attract foreign investment
-  Develop the digital economy
-  Develop the retail sector
-  Increase the contribution of Small and Medium Enterprises to the economy
-  Increase the contribution of productive households to the economy
-  Encourage businesses’ interest in sustaining the national economy





Progressive legal reforms over the last few years have put in place some important pillars of the legislative framework to achieve these aims. Most recently, a new Companies Law introduced a modernised regime for local companies with effect from January 2023. Privatisation initiatives are typically carried out through public private partnerships (“**PPPs**”) or the sale and lease of state-owned assets.

New laws regulate private sector participation (“**PSP**”), and in particular PPPs, between the Saudi Arabian government and the private sector on joint projects. The PSP Law, enacted in July 2021, provides a comprehensive framework for the regulation of arrangements between the Saudi Arabian government and private sector entities in relation to the provision of infrastructure and other public services projects, including PPPs.

Other reforms have made it easier to start a business and obtain commercial and foreign investment licences, improved access to credit and modernised the provision of security to lenders, opened up investment opportunities in listed companies, improved employment terms for workers and modernised procedures for resolving insolvency.

A National Investment Strategy (*Shareek*) was launched in October 2021 to encourage investment in the Vision 2030 initiatives. Its aim is to accelerate the growth of the private sector (increasing contribution to GDP to 65 per cent by 2030) by providing investment and broad-based support across a number of pillars, ranging from financial to operational. The program offers incentives and enable private investment of US\$1.33trn (SAR 5trn) through until 2030.

As at April 2023, reports indicate that 28 companies have received SAR 192bn of investment the *Shareek* program. The Saudi Investment Promotion Authority (SIPA) was established by the Government of Saudi Arabia in August 2022, with a mandate to attract national and foreign investment as part of the National Investment Strategy.

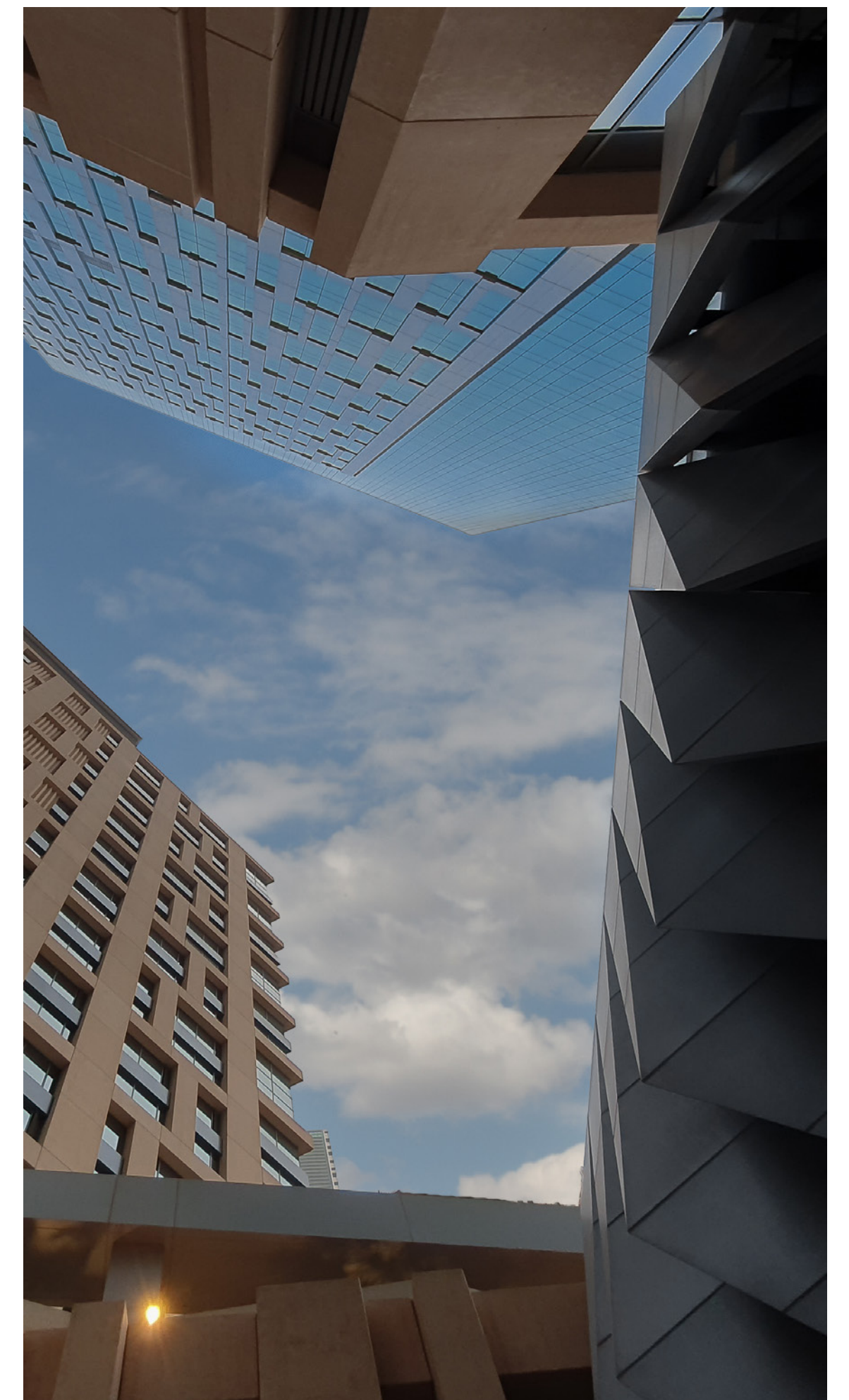
Historically, small- to medium-sized, family-owned companies have been prevalent in Saudi Arabia. The ownership structure and management dynamics within local companies are changing, as foreign investment in local companies increases, driven primarily by the ambitious foreign direct investment and privatisation initiatives under the Vision 2030 programme.



### Focus on: Aramco in 2022

- > The Saudi Arabian Oil Company (“**Aramco**”) is one of the world’s most profitable companies. Aramco’s net income for 2022 was US\$161.1bn, up from US\$110bn in the previous year. Aramco’s public market cap is reported to be almost \$2trn (as of March 2023). Aramco’s vision is to be the world’s pre-eminent integrated energy and chemicals company.
- > It is reported that the company is considering a subsequent offering of its shares to the public, following Aramco’s landmark IPO in 2019. Aramco’s IPO was the largest IPO in the region, which raised US\$29.4bn.

- > The Saudi Arabian Government remains the largest shareholder in Aramco, with a stake of more than 90 per cent of the company’s shares.
- > 2022 saw one of the world’s largest energy infrastructure deals, as a consortium of international investors acquired a 49 per cent stake in Aramco Gas Pipelines Company, a subsidiary of Aramco, for US\$15.5bn. This is a significant injection of foreign investment into the Kingdom. It underlines the appeal of infrastructure investment in Saudi Arabia to global investors and the success of the Kingdom’s twin strategies to unlock value of its state-owned assets and attract foreign capital.
- > The Power and Water Utility Company for Jubail and Yanbu, known as Marafiq, successfully executed its IPO of 29.2 per cent of its shares and the listing of its shares on the Saudi Exchange.
- > In its first Sustainability Report published in June 2022, which outlines ways the company plans to in developing lower-carbon solutions that can contribute to the broader energy transition. The company aims to achieve net-zero Scope 1 and Scope 2 greenhouse gas emissions across its wholly-owned operated assets by 2050, and plans to produce 11 million tons of blue ammonia annually by 2030.
- > Aramco established a SAR 5.6bn (US\$1.5bn) Sustainability Fund to invest in technology needed to support a stable and inclusive energy transition.





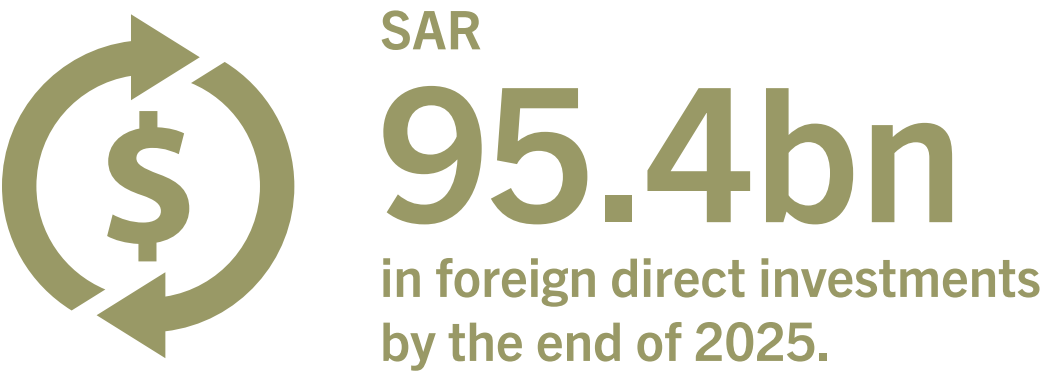


Foreign investment

Foreign investment is a key driver of private sector growth. Opportunities for foreign investors are being created by the Privatisation Programme, the opening up of the Saudi Exchange (*Tadawul*), new Special Economic Zones (“**SEZs**”) and the “giga” projects. Inbound investment into Saudi Arabia has been affected by the slowdown of economic growth as a result of geopolitical tensions. While global FDI flows declined in Q1 2023 by 34.7 per cent compared to Q1 2022 according to the OECD, FDI inflows into Saudi Arabia increased in the same period. Data published by the Ministry of Investment (“**MISA**”) in October 2023 shows that Saudi Arabia saw a growth rate in foreign direct investment (“**FDI**”) inflows of SAR 8.1bn in Q1 2023, up from SAR 7.4bn in Q1 2022 (an increase of 10.2 per cent).

Saudi Arabia was the most targeted nation for M&A in the MENA region, with deal values of US\$7bn, according to statistics published by MENA Investment Banking Review, First Nine Months 2023 (Refinitiv).

A key NTP milestone commitment is to achieve



The creation of SEZs, with bespoke regulations, is expected to boost investment further. Sector-based SEZs are a key tool to incentivise foreign investors to

enter the local market; SEZs have few or no restrictions on foreign investment and provide more favourable regulatory and operating environments, including tax holidays.

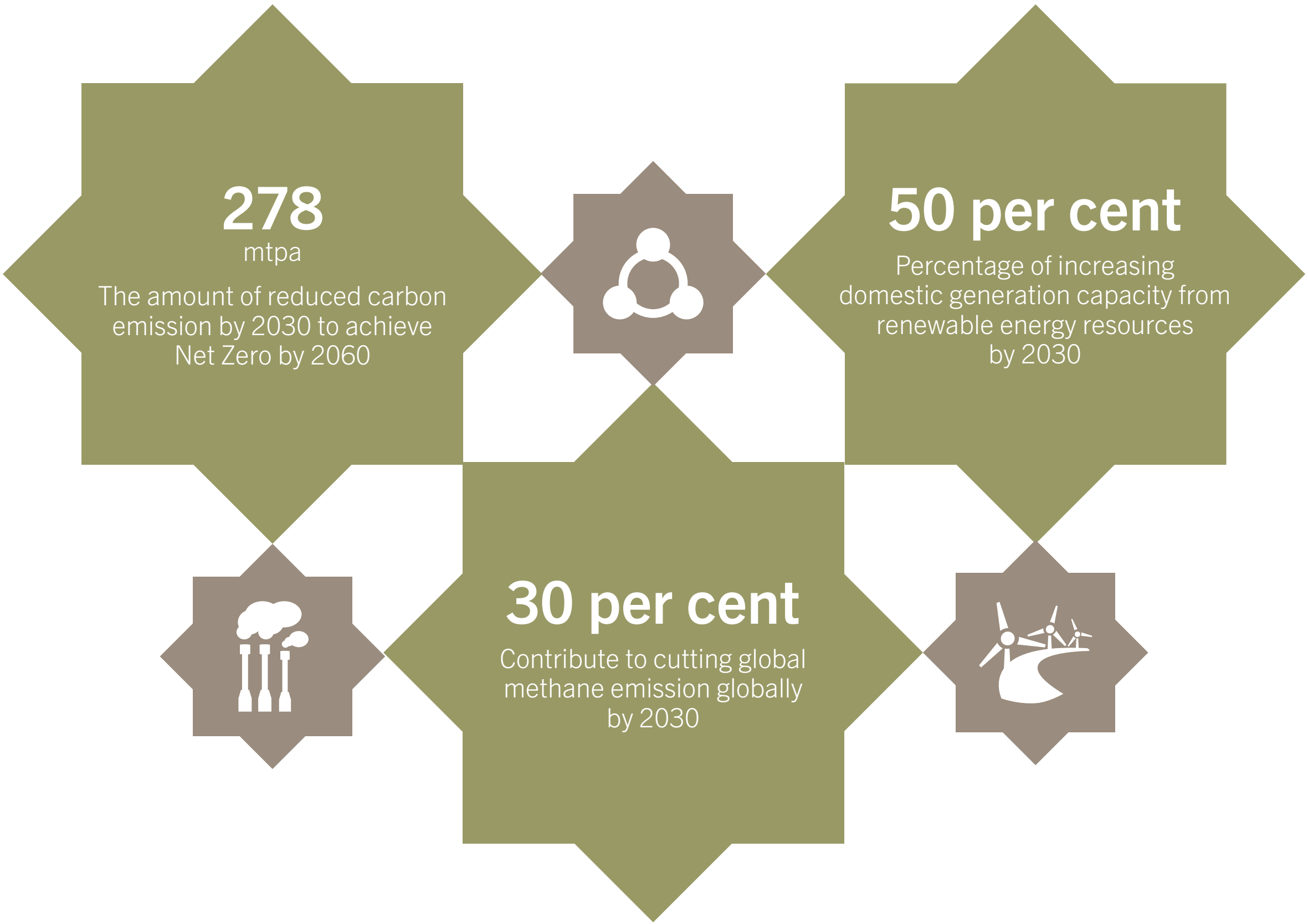
The Kingdom’s first special economic zone, the Integrated Logistics Bonded Zone (ILBZ), focusses on providing integrated logistics. SEZs may focus on other sectors such as ICT, logistics, tourism, industrial and financial services. Four new SEZs, Ras Al-Khair Special Economic Zone, King Abdullah Economic City Special Economic Zone, Jazan Special Economic Zone and Cloud Computing Special Economic Zone, were announced in April 2023.

Diversification

Diversification is another key driver of private sector growth. Economic diversification represents a deliberate and fundamental pivot away from historic dependence on oil and gas. By the end of 2025, Saudi Arabia aims to achieve SAR 143bn in total government revenue from non-oil sources.

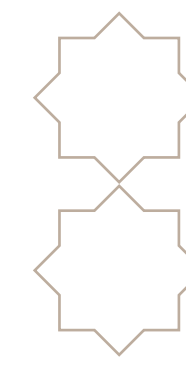
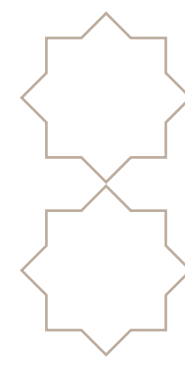
Non-oil revenue has doubled over the past four years to reach 12.8 per cent of GDP in 2021, according to IMF statistics. The Saudi General Authority for Statistics (GASTAT) estimates that GDP from non-oil activities in 2022 will have increased by 8.2 per cent year on year.

Investment activity is expected to focus on sectors identified in Vision 2030, including infrastructure, renewable energy, financial services, fintech, healthcare, education and technology, tourism, media and telecommunications. We explore some of these key sectors below.



Source: MISA, Economic and Investment Monitor, Saudi Arabia, Q2 2022





## Focus on: Renewable energy

The Kingdom's investment in renewable energy aligns with a key pillar of Vision 2030: environmental sustainability. Saudi Arabia adopted the UN Sustainable Development Goals in 2015, which are being promoted under the Vision 2030 initiatives, the most prominent of which are the Saudi Green Initiative, National Environment Strategy, the National Renewable Energy Programme (“**NREP**”) and the King Salman Renewable Energy Initiative. The NREP aims to maximize the potential of renewable energy, promote sustainability, reduce emissions and generate investment in renewables.

A key goal is to develop the renewable energy industry in the Kingdom such that almost 60GW of power is generated from renewable sources (including solar and wind) by 2030, driving a shift away from dependence on conventional fuel supply. Renewable energy may account for up to 50 per cent of Saudi Arabia's energy mix by 2030. By 2060, Saudi Arabia is looking to achieve net zero carbon emissions.

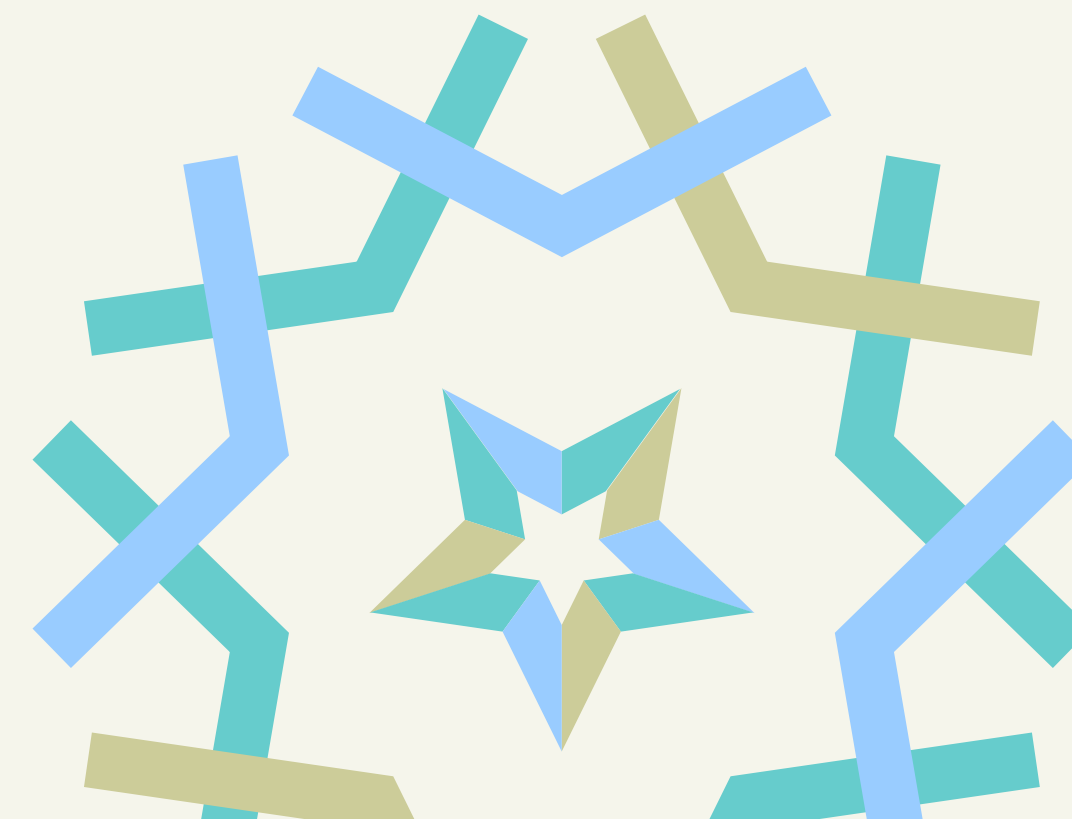
The NERP is overseen by the Kingdom's Ministry of Energy, Industry, and Mineral Resources (MEIM), and implemented by the Ministry's Renewable Energy Project Development Office (REPDO). The *Mutajaded* programme, launched by the Saudi Industrial Development Fund (SIDF) in 2019, aims to promote the manufacturing of components needed by the renewable energy industry, which further supports the development of this sector.

Progress is already underway to construct and operate several projects to produce electricity from renewable sources. These projects include the Sakaka Solar Power Plant, which was commissioned in April 2021, and is expected to supply power to more than 75,000 Saudi Arabian homes and avoid the production of more than 430,000 tonnes of carbon dioxide each year. Saudi Arabia's first wind farm (and the largest in the Middle East), the Dumat Al-Jandal Wind Farm, is expected to supply power to approximately 70,000 Saudi Arabian homes, while offsetting up to one million tonnes of carbon dioxide emissions a year when it commences operations in 2022. Other planned projects in the Kingdom include three wind IPP projects, at Yanbu, Al Ghat, and Waad al-Shamal and two new solar IPP projects at Al-Hinakayah and Tubarjal solar.

Aramco's first Sustainability Report 2021 notes that a key part of the state-owned oil company's strategy is lowering the net carbon emissions of its operations, and developing low-carbon products and solutions across energy, chemicals and materials. It sets out medium-term targets for carbon capture and storage (CCS) capacity and production of blue hydrogen and renewable energy. Key objectives outlined in the Sustainability Report include investing in renewables that aim to generate 12 gigawatts of solar and wind power by 2030 and reducing or mitigating more than 50 million tonnes of carbon dioxide equivalent annually by 2035.

In March 2022, NEOM announced “ENOWA”, a subsidiary company that will develop sustainable energy and water systems in the city as part of the vision to power the city by 100 per cent renewable energy. ENOWA is developing a new green hydrogen plant, which is a joint venture with the Saudi power company ACWA Power and the US chemical company Air Products. It is expected to be completed in 2025.

Under the Saudi Green Initiative, Saudi Arabia is advancing plans to increase the Kingdom's reliance on clean energy, offset emissions and combat climate change.



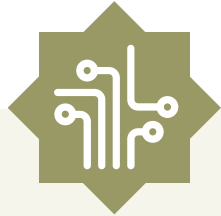
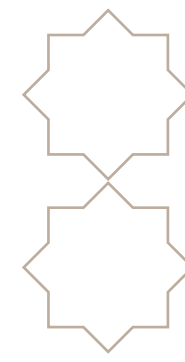
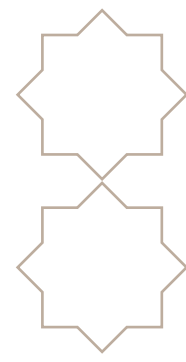
Saudi Arabia is adapting to a changing world, **pivoting towards cleaner fuels** to satisfy the world's growing energy requirements and the **green agendas being implemented by major economies** in response to climate change considerations. The Government is investing in the development of pioneering ideas to **promote sustainability**. This focus on sustainability is **embodied in NEOM's proposed system of 100 per cent renewable energy** to fuel the Kingdom's city of the future.”



**Matthew Keats**

Partner, Middle East Head of Energy and Infrastructure, Dubai





## Focus on: Fintech

In support of the Vision 2030 goal to develop the digital economy, and under the auspices of the FSDP, the FinTech Strategy Implementation Plan aims to promote the development of technology-based financial services and solutions and establish Riyadh as a global Fintech hub. As part of the strategy, which was launched in June 2022, the Kingdom is looking to increase the number of Fintech companies operating in the country from 82 to 230 by 2025.

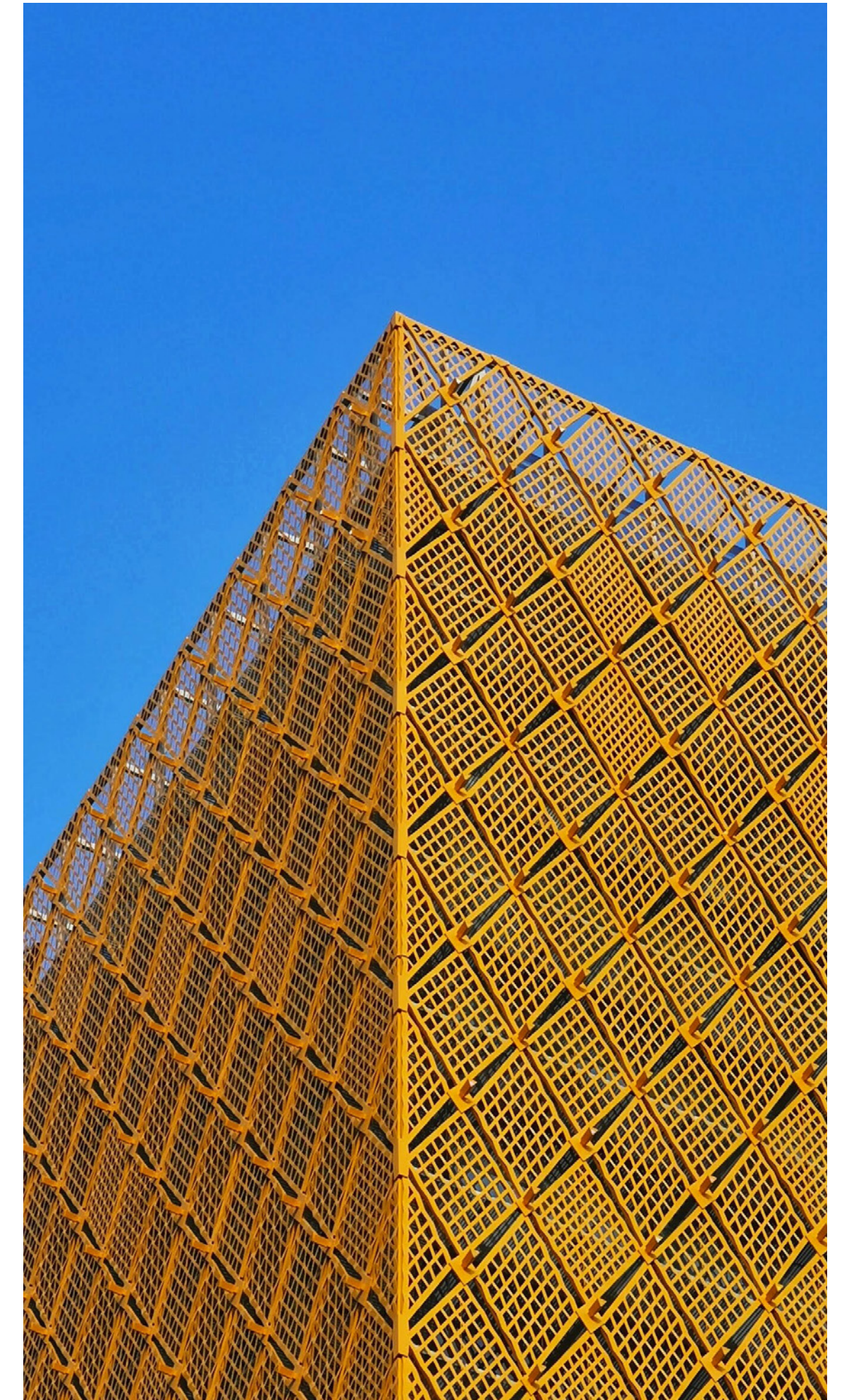
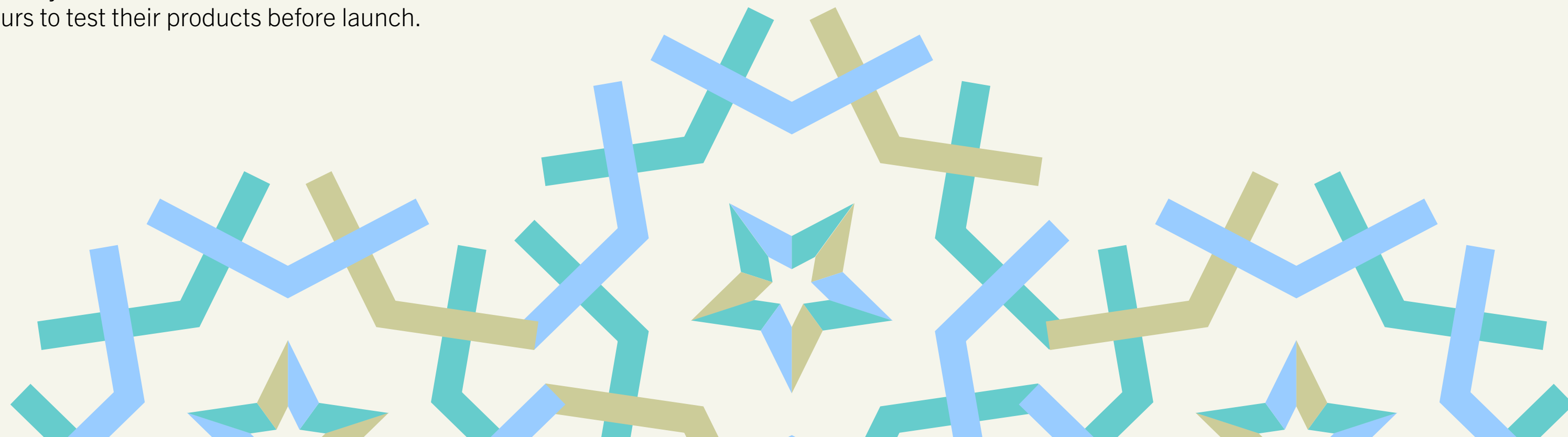
This builds on “Fintech Saudi”, an initiative launched in 2018 by the Saudi Central Bank (“**SAMA**”) to enhance innovation in the financial services sector and act as a catalyst for the development of Fintech industry. Regulatory sandboxes have been established by both SAMA and the Capital Market Authority (“**CMA**”) which enable Fintech entrepreneurs to test their products before launch.

Licensing regimes have been modified to attract Fintech entrepreneurs, for example:

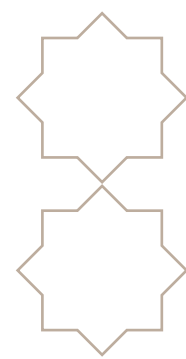
- > There is a category of entrepreneur foreign investment licence. This is intended for foreign investors who wish to establish start-ups accredited by Saudi Arabian universities or business incubators.
- > SAMA has issued trading licences to financial institutions and Fintech companies operating in the banking, digital payments and debt crowdfunding space.
- > Companies can apply to the CMA for a Financial Technology Experimental Permit (or “ExPermits”), in order to test their products (which must be related to securities activities) in the CMA’s Regulatory Sandbox.

The digitalisation of the financial system is underway, accelerated by the pandemic. As in many other countries, developing a responsible regulatory framework to keep pace with the Fintech ecosystem is likely to be a priority for the Saudi Arabian government in the coming years.

The number of active Fintech companies grew by around 37 per cent in 2021 to about 82 companies. The FSDP is aiming to boost the number of FinTech SMEs in Saudi Arabia from to 230 by 2025.







## Focus on: Tourism

As part of the Vision 2030, Saudi Arabia's ambition is to be one of the top five destinations in the world. Under the umbrella of the National Tourism Strategy and funded by the well-capitalised Tourism Development Fund (“**TDF**”) (established in June 2020 with US\$4bn in capital) to facilitate local and international investors' access to high-potential tourism investments across key destinations in the Kingdom. These range from rich cultural heritage sites (religious and non-religious) to a natural environment that offers mountains, deserts and sea. The General Authority for Entertainment, established in 2016, is responsible for developing the Kingdom's growing entertainment sector.

Key tourism sector goals include:

- > achieving 100 million visits in Saudi Arabia by 2030;
- > increasing tourism GDP to 10 per cent by 2030;
- > increasing the number of Umrah visitors from eight million in 2015 to 30 million people by 2030
- > doubling the number of Saudi Arabian heritage sites registered with UNESCO;
- > creating the largest Islamic museum in the world; and

- > increasing household spending on cultural and entertainment activities inside the Kingdom from the current level of 3 per cent of total spending to 6 per cent by 2030.

Among the giga-projects under development, are the following world-class tourism destinations which promise to attract tourism and further cultural diversification:

- > **The Red Sea and Amaala:** Two world-leading regenerative tourism destinations, The Red Sea and Amaala, are under development by Red Sea Global (RSG) developers (wholly-owned by the PIF). These luxury tourism destinations along the Kingdom's coastline will focus on environmental sustainability and are intended to be powered by renewable energy and support water conservation and re-use. The Red Sea destination will include hotels, residential properties, leisure facilities, entertainment ventures and an international airport. Amaala will be an ultra-luxury, wellness-focussed tourism destination which will feature luxury resorts, recreational activities, a sports performance academy, and active sports club and a dedicated airport. RSG has also recently announced Thuwal Private Retreat, an exclusive, luxury private island destination.

- > **Qiddiya:** This will be a dedicated precinct for sports, entertainment and the arts in the north of Riyadh to serve domestic, regional and international markets. Covering more than 334 square km, Qiddya will offer theme parks, sports arenas, academies for sports and the arts, concert and entertainment venues, motorsport racetracks and other adventure activities, as well as areas designated for natural conservation.

- > **Sindaldah:** Sindalaha will be the first luxury island destination in NEOM, which will form part of a group of islands to be developed in the Red Sea. Announced in late 2022, the island is expected to open to visitors early in 2024. Among the attractions on the island will be luxury resorts, yachting and nautical experiences and a world-class golf course.

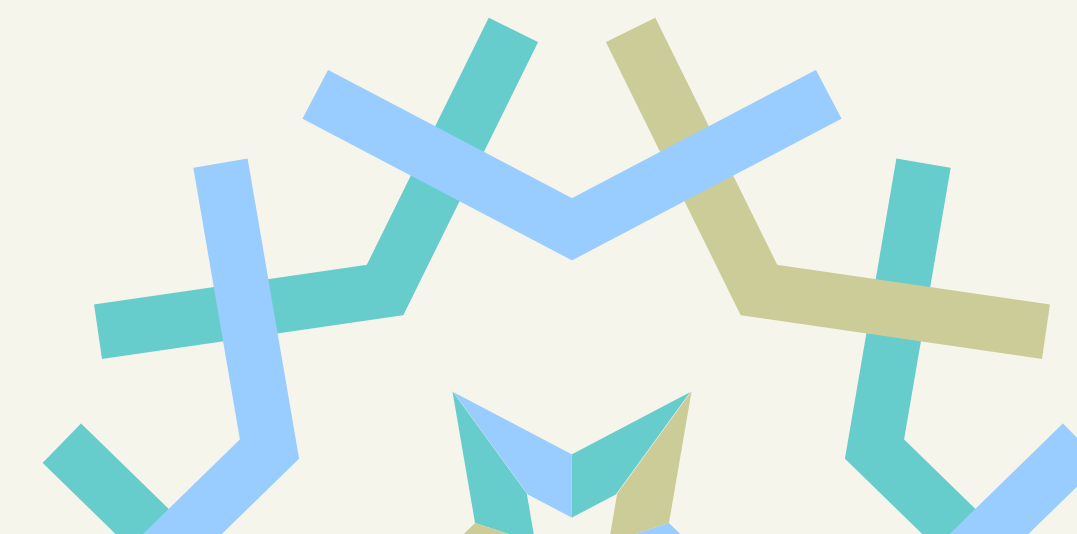
The opening up of the tourism sector will also benefit the construction sector, as new hotels are developed to accommodate domestic and international tourists, and could help to provide significant employment opportunities to Saudi Arabian nationals.

The number of tourists in Saudi Arabia increased 45 per cent year on year in the first half of 2022. This looks set to increase if religious tourism rises following the government's removal of the cap on the number of Hajj pilgrims in January 2023.

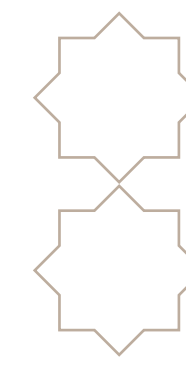
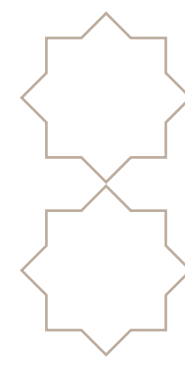
One of the Vision 2030 goals is to increase the contribution of the tourism sector to GDP to more than 10 per cent. According to projections, tourism is expected to make up more than 17 per cent of Saudi Arabia's GDP by 2032 (*Source: Aljazira Capital Strategy Report January 2023*).

To facilitate an increase in tourism, plans are underway to develop the Kingdom's aviation industry to cater for increased passenger traffic.

Development plans for King Salman International Airport in Riyadh aims to facilitate up to 120 million passengers per year by 2030 and up to 185 million passengers per year by 2050. A major new international airport is planned for NEOM, due to open in 2025. In March 2023, Saudi Arabia announced the establishment of Riyadh Air, a new national airline.







## Focus on: Infrastructure

The Saudi Arabian government is focussing on bringing private and public stakeholders together to deliver the world-class infrastructure needed to support the Vision 2030.

Under the umbrella of the National Industrial and Logistics Development programme, infrastructure investment is driving the development of:

- > future cities and communities (such as NEOM);
- > the tourism industry (through destinations such as Qiddiya, The Red Sea and Amaala destinations);
- > transportation (including the planned development of King Salman International Airport in Riyadh, other newly announced airports at NEOM), the planned Medina bus rapid transit (BRT) network and the high-speed Haramain train from Makkah to Madinah and Madinah Airport);
- > power generation (including renewable power projects like the Sakaka Solar Power Plant and IWPPs such as Shuaibah IWPP); and
- > manufacturing (ranging from new iron and steel sector projects announced in 2022 which will serve a variety of industries to factories such as the state-of-the-art Composite Aerostructure Factory).

Other major projects include the construction of dams to create the Trojena mountain resort as part of the NEOM giga project.

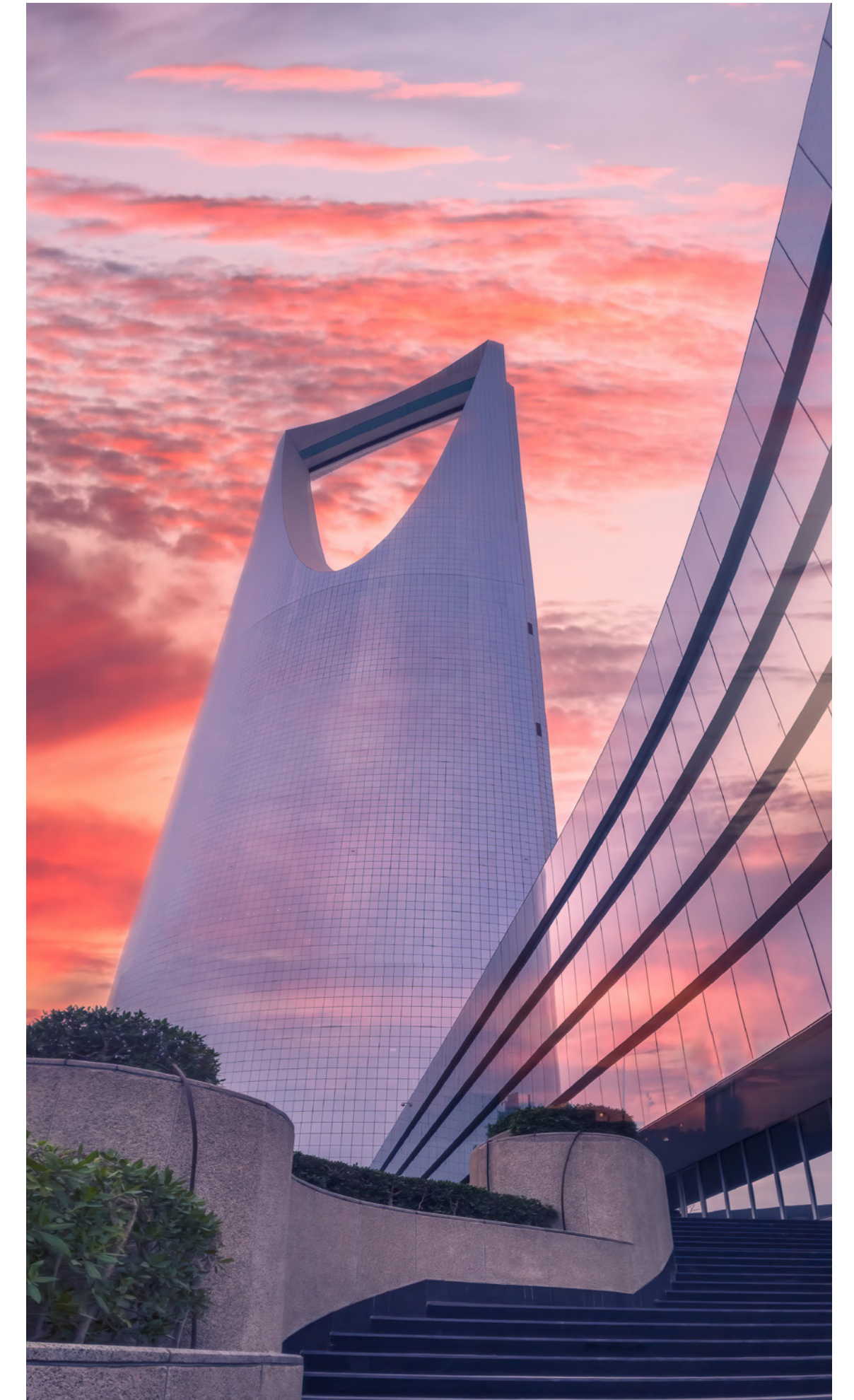
New laws regulating PSP and PPP were approved in 2021. The PSP Law 2021 provides a comprehensive framework for the regulation of arrangements between the Saudi Arabian government and private sector entities in relation to the provision of infrastructure and other public services projects, including PPPs. Government approval is required for PSP projects, which are subject to a minimum term of five years and a maximum term of 30 years. The PSP Law addresses key issues such as:

- > the acquisition of land for projects;
- > the provision of credit support from the Ministry of Finance;
- > tax breaks;
- > assignment and subcontracting by the private sector party;
- > protections for private companies and foreign investors;
- > breach of obligations by the private sector party and Government step-in rights;
- > compliance with the competition regime; and
- > dispute resolution (which must be by arbitration).

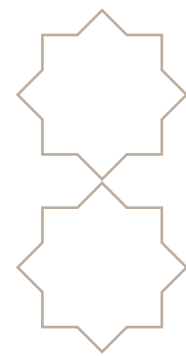
The implementing regulations under the PSP Law were issued in 2022, which address specific matters such as:

- > de minimis value thresholds for PSP projects, which must be met in order for the PSP Law to apply;
- > the processes for obtaining Government approvals (such as from the NCP) required for a PSP project;
- > procurement methods; the default route for the procurement of PSP projects is public competition, although procurement by limited competition, direct contracting and unsolicited proposals may be possible under certain circumstances;
- > the requirements for each phase of the public competition procurement process (which comprise the Expression of Interest phase, the Pre-qualification Phase, and the Request for Proposals phase), as well as provisions regarding the award of the contract and commercial and financial close; and
- > the assessment of competition issues.

The new PPP Law regulates tendering PPP and privatisation contracts.







## Pivot to Asia

Occupying a strategic location at the crossroads of three continents – Asia, Africa and Europe – the Kingdom is well placed to foster relationships across the globe. It is clear that Saudi Arabia’s economic relationships are evolving closer with Asia. Whilst not displacing traditionally strong relationships with Western countries, deepening ties with the East are being driven by mutually beneficial trade and investment opportunities.

Inflows of investment and expertise from Asia are to a large extent attributable to economic diversification initiatives in the Kingdom and the giga projects. Outflows from goods trade to Asia are primarily in the oil and gas sector (for example, in 2021, the Kingdom was the largest supplier of oil to China), with renewable energy becoming increasingly significant as it contributes to Asia’s green agenda and plans for energy security in the future. Sovereign wealth funds are also looking East for investment opportunities. The picture is similar across the Gulf Cooperation Council (“**GCC**”) region.

Diplomatic ties and commercial relationships are deepening. During Chinese President Xi Jinping’s state visit to Saudi Arabia in December 2022, a comprehensive strategic partnership agreement between The People’s Republic of China and the Kingdom of Saudi Arabia was signed. Reports indicate that 35 bilateral agreements were announced between Chinese and Saudi Arabian businesses across a variety of sectors, including renewable energy, information technology, transport and construction. More recently, Saudi Arabia signed 12 co-operation agreements worth in excess of US\$1.3bn with Chinese companies and banks at an investment forum

held in Beijing, according to news reports in August 2023. Saudi Tadawul Group and the Shanghai Stock Exchange signed an Memorandum of Understanding in September 2023, to promote mutual development and cooperation between the two exchanges, including in the area of dual listings, investor relations, fintech, environmental and social practices.

China is already one of Saudi Arabia’s largest trading partners. As at August 2023, China is the main destination for exports of Saudi Arabia, according to statistics released by the General Authority for Statistics. In the first half of 2022, Saudi Arabia was the single largest recipient of investment from China at US\$5.5bn. China was the top investor in Saudi Arabia by deal volume in Q2 2023, according to MISA.

Saudi Arabia’s need for investment and expertise, in particular, in the technology, construction and infrastructure, logistics and renewables sectors, complements China’s Belt and Road Initiative (“**BRI**”) development strategy, which aims to build connectivity and co-operation across the world. Since the launch of the BRI initiative, China’s foreign direct investment in Saudi Arabia grown rapidly. Closer coordination of the BRI and Vision 2030 is anticipated, in line with announcements following meetings between Crown Prince Mohammed bin Salman and Chinese President Xi Jinping in 2019.



## China: Significant Inbound Investments



### Technology

Saudi Telecom Company entered a joint venture with Chinese tech giant Alibaba Group to launch a cloud services company in Riyadh, with an initial investment of US\$238m.



### Logistics

China’s COSCO Shipping Ports Limited has invested in a 20 per cent stake in Saudi Arabia’s Red Sea Gateway Terminal.



### Construction

Aramco awarded the China Harbour Engineering Company (CHEC) a SAR 344m (US\$91m) contract for the construction of a commercial port at Jizan Economic City in the southwest of Saudi Arabia.



### Infrastructure

China has invested in the light railway connecting Jeddah to Mecca and Medina, which was built in partnership with the China Railway Construction Corporation (CRCC).



### Renewables

China’s state-owned Silk Road Fund completed its acquisition of a 49 per cent stake in Saudi Arabia’s ACWA Power Renewable Energy Holding in May 2020.

Many opportunities for outbound investment are being led primarily by the PIF (with a focus on the infrastructure, energy and renewables sectors) as well as companies such as Aramco and Dar Al Arkan. China, India and Malaysia are key destinations for investment in the Asia region.



## 2 Investing in Saudi Arabia

In this section, we will explore the legal framework relevant to structuring investments in the Kingdom.

### Are you considering:

#### Setting up a company?

A foreign investor may look to set up a new company as an alternative to investing in an existing local company or establishing a branch. Whether it is possible for a foreign investor to set up a wholly foreign-owned company will depend on whether the company will operate in a sector open to foreign investment.

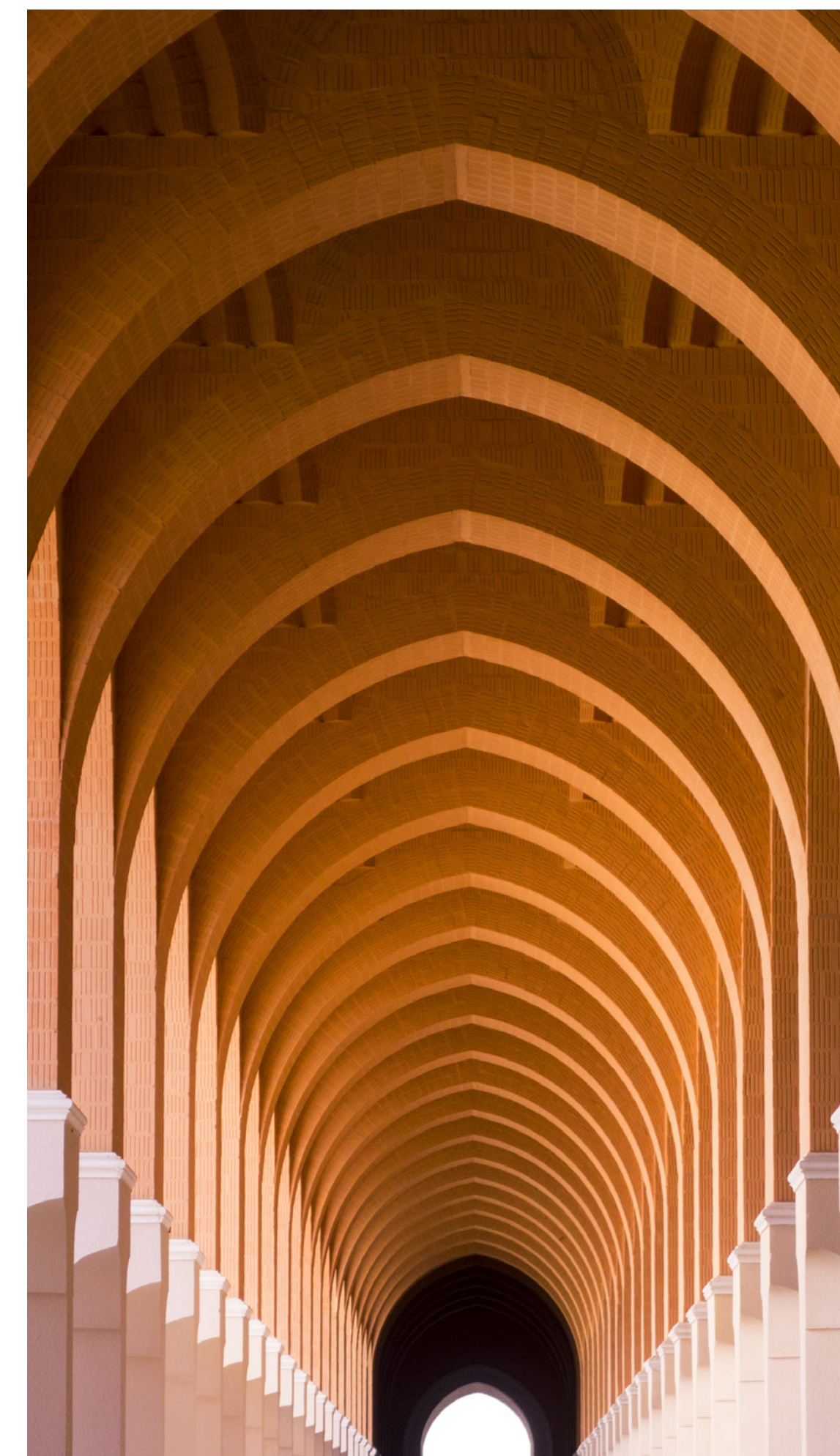
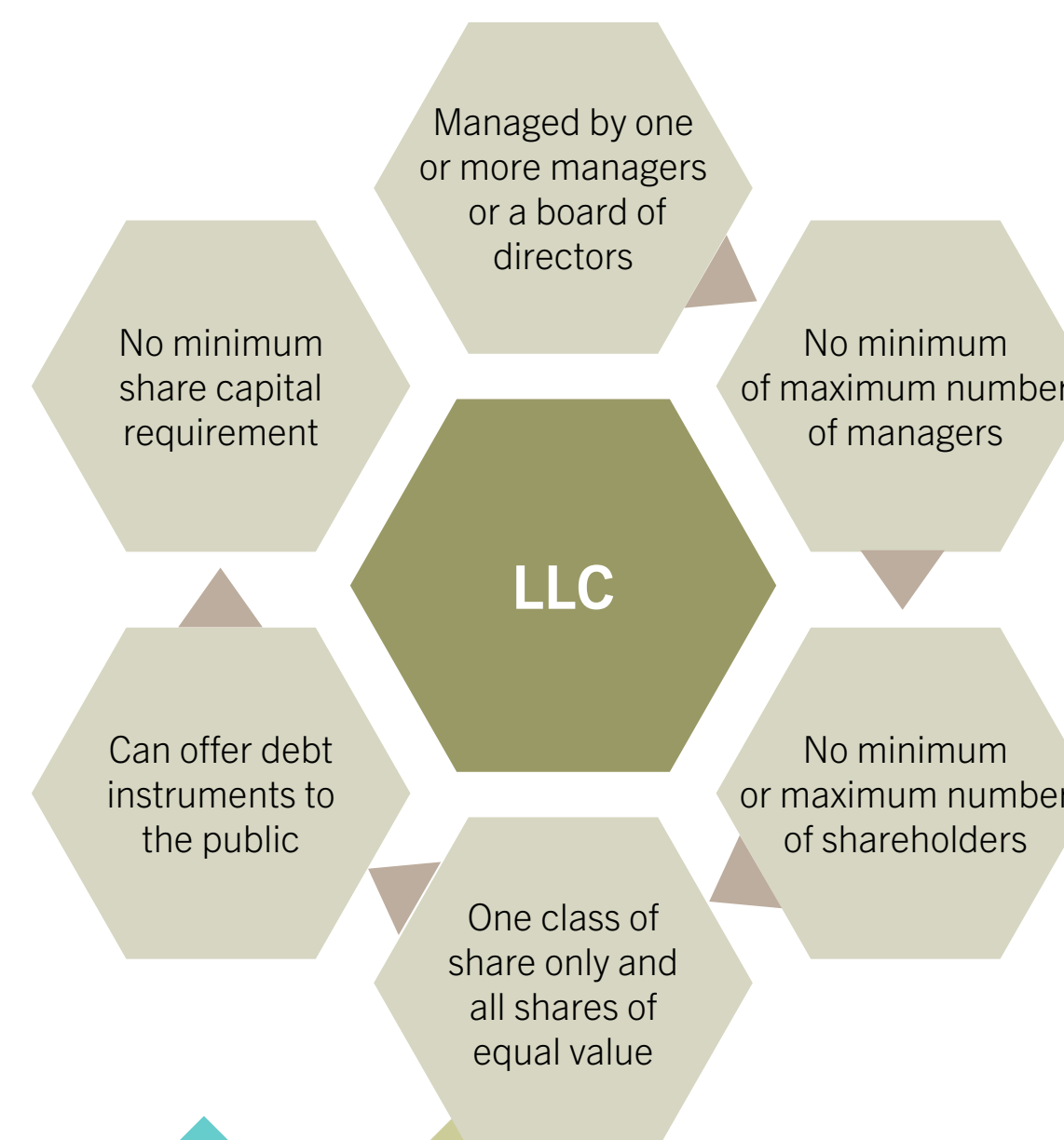
A new Companies' Law (Royal Decree No. M/132 dated 1/12/1443H (corresponding to 30 June 2022)), introduced significant changes to the companies' law regime, when it came into force in January 2023. It repealed and replaced the previous Companies' Law of 2015 and the Professional Companies Law of 2019. Implementing regulations have also been issued by the Ministry of Commerce and the CMA. The new Companies Law is a key part of a wider programme of modernisation under the Vision 2030 and the National Transformation Programme, which establish a framework for long-term economic development and the development of a thriving private sector.

This section summarises the key company law considerations for investors under the new Companies Law.

### LLCs

Typically, limited liability companies ("**LLCs**") are used by foreign investors as an investment vehicle, within corporate group structures and in the context of joint venture arrangements in Saudi Arabia. The LLC is a type of private, non-listed, corporate entity. Broadly, LLCs are subject to lighter regulation than other types of companies.

Shareholders are typically referred to as "partners" and they hold participation or membership interests in an LLC, which are commonly referred to as "shares".



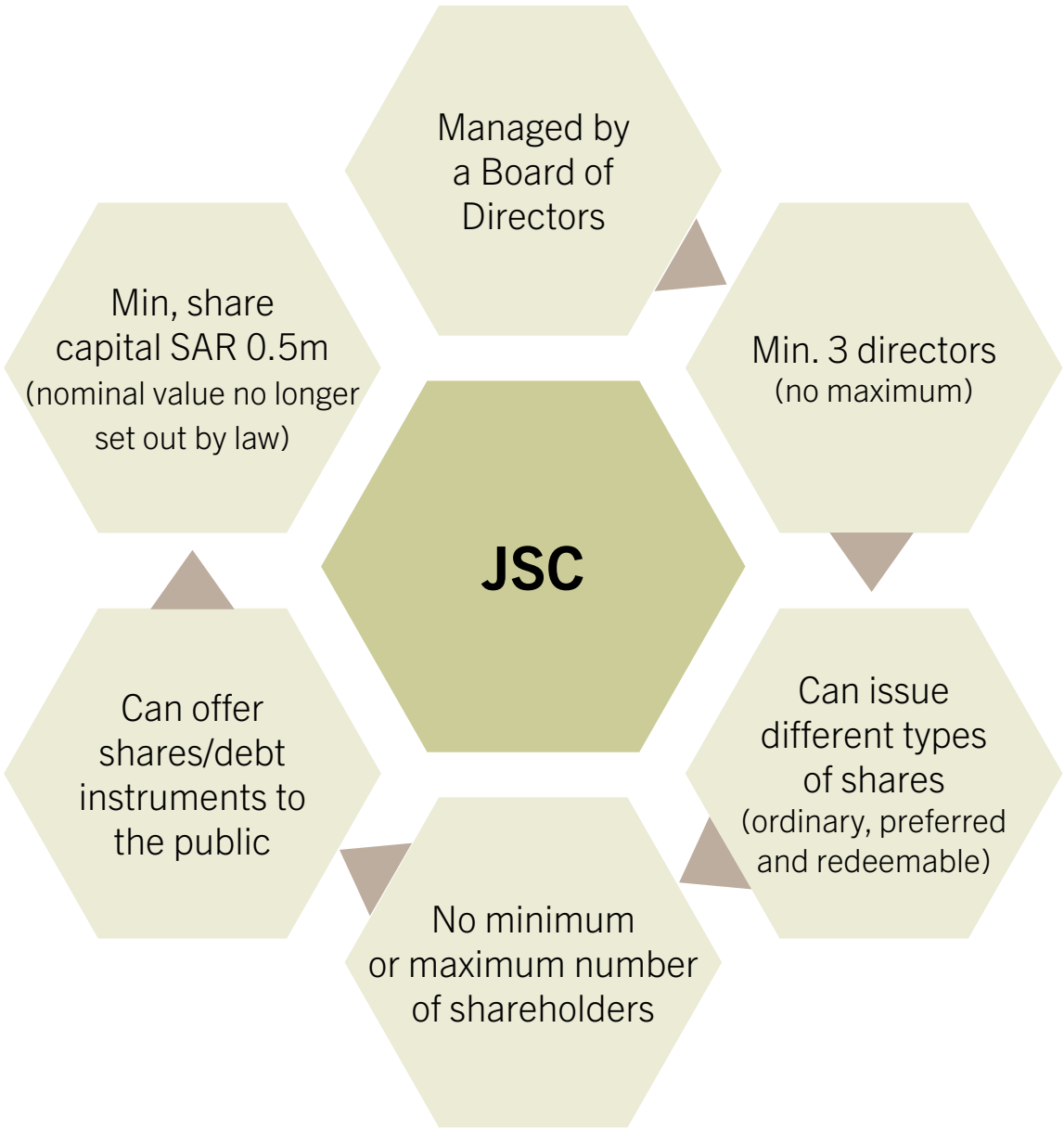




### JSCs

Joint stock companies (“**JSCs**”) are used less frequently than LLCs as a business vehicle by foreign investors. JSCs can issue shares of different classes, which can be offered for public subscription. Accordingly, JSCs are subject to a higher degree of oversight and regulation than LLCs.

A JSC whose shares are offered for public subscription is subject to a higher degree of oversight and regulation by the CMA. Certain types of businesses must be carried out through a JSC, including banking, insurance and certain finance businesses. JSC are usually referred to as the Bylaws, but sometimes a reference to the Articles of Association may be used.



### Simplified JSCs

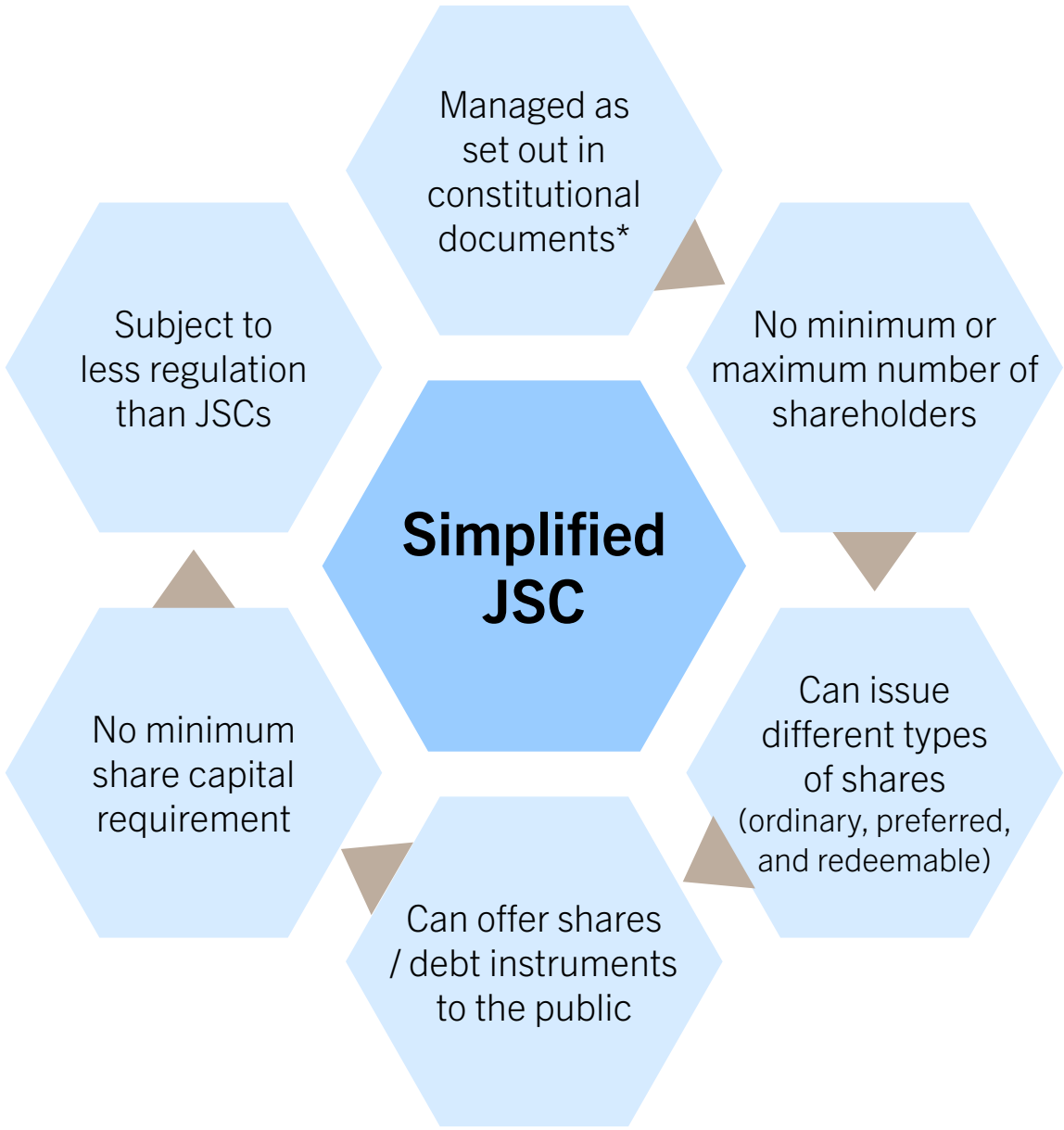
The new Companies Law introduces a new concept of a simplified joint stock company (“**Simplified JSC**”). Members will enjoy great flexibility to determine how a Simplified JSC should be run.

Some features of the Simplified JSC that are likely to be attractive to investors include that it offers simplified establishment and flexible management processes. It can be managed by a chief executive officer, one or more managers or a board of directors; and simpler shareholders’ meetings can replace ordinary and extraordinary general assemblies. It also offers the ability trade shares and issue different types of shares, whilst being subject to a lighter regulatory and corporate governance regime than a traditional JSC. If they so wish, members can decide to restrict the transfer of shares in a Simplified JSC for up to ten years (which is extendable), impose conditions on the assignment of shares and require any shareholder disputes to be resolved by arbitration or mediation in the constitutional documents. These decisions require unanimous consent of the members.

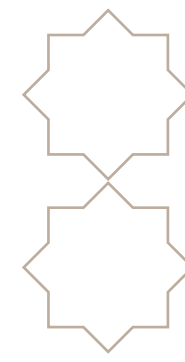
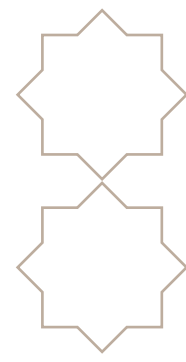
The provisions of the new Companies Law applicable to JSCs apply equally to Simplified JSCs, unless otherwise provided for in the law, except where certain specified provisions are expressly excluded.

Simplified JSCs may become a flexible alternative to businesses and investors looking for a flexible corporate structure, which offers a blend of a light-touch management with the potential to raise capital and offer differing rights and incentives to shareholders.

\*No minimum or maximum number of directors/managers







### The new Companies Law

Companies in Saudi Arabia are regulated by Companies' Law (Royal Decree No. M/132 dated 1/12/1443H (corresponding to 30 June 2022)), which was published in the Official Gazette on 22 July 2022 and came into force on 19 January 2023. Implementing regulations made under the Companies Law also came into force with effect from 19 January 2023.

Implementing regulations of the Companies Law issued by the Ministry of Commerce regulate a range of matters for all types of companies, such as relating to management, conversion, merger, demerger and liquidation. There are also specific rules applicable to unlisted JSCs, LLCs and professional companies (Saudi Arabia Ministerial Decision No. 284/1444 On the issuance of the Implementing Regulation of the Companies Law dated 23/06/1444 H. Corresponding to 16 January 2023) (“**MoC Implementing Regulations**”).

Amended Implementing Regulations for Listed Joint Stock Companies under the new Companies Law issued by the CMA (CMA Board Resolution Number 8-127-2016 Dated 16/1/1438H Corresponding to 17/10/2016G) regulate certain matters for listed JSCs, including relating to the appointment and resignation of directors, directors' remuneration, management, provisions relating to shares and dividend distribution. Amended Implementing Regulations for Listed Joint Stock Companies under the new Companies Law issued by the CMA (CMA Board Resolution Number 8-127-2016 Dated 16/1/1438H Corresponding to 17/10/2016G) (“**CMA Implementing Regulations**”) regulate certain matters for listed JSCs, including relating to the appointment and resignation of directors, directors' remuneration, management, provisions relating to shares and dividend distribution.

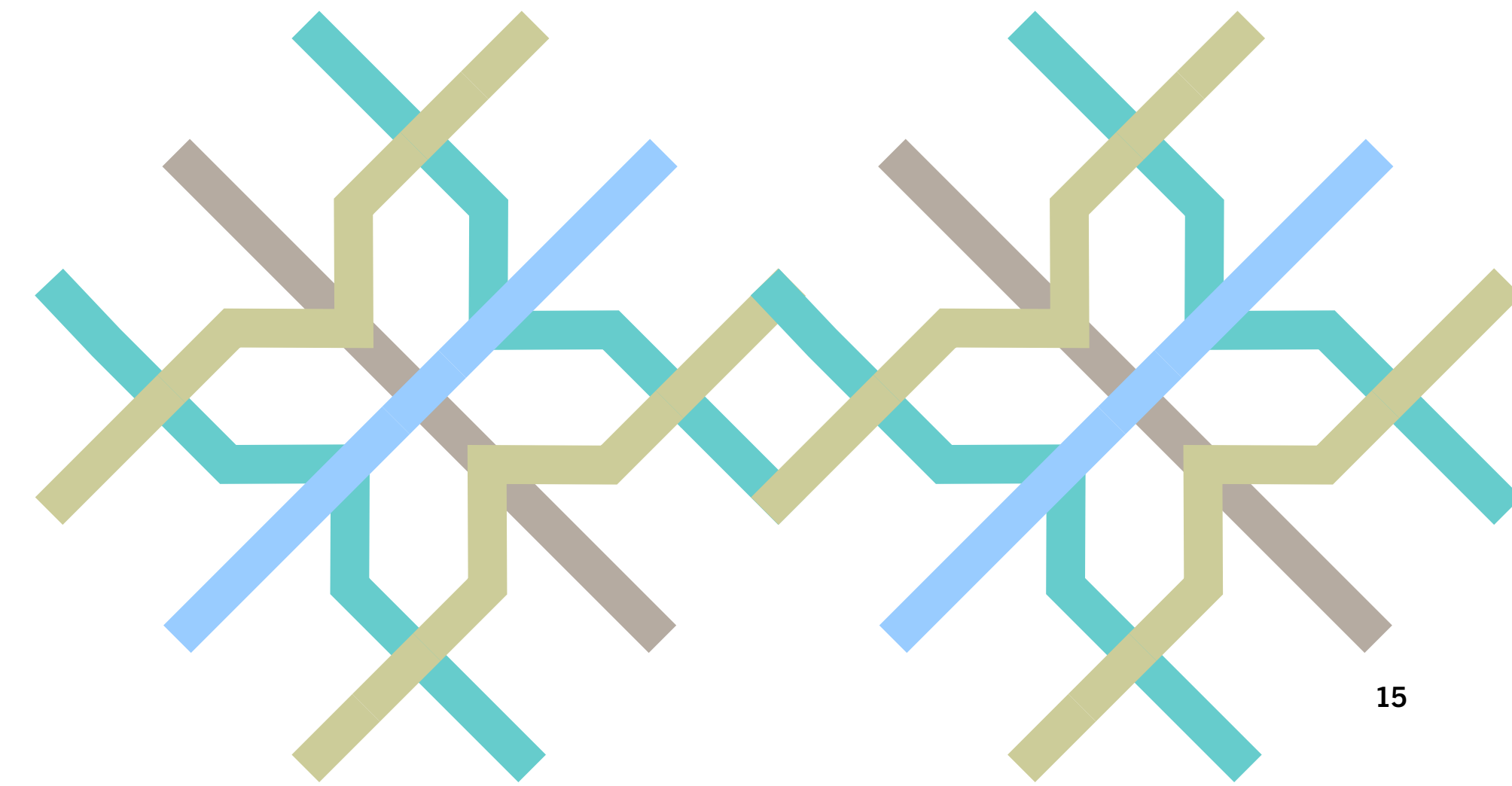
Companies have a two-year grace period from 19 January 2023 to comply with the new regulations according to resolutions issued by the MoC and the CMA.

Although the new Companies Law makes reasonably conservative adjustments to the previous Companies Law regime, some new provisions will impact the management of companies in the Kingdom, share capital arrangements and transaction structuring.

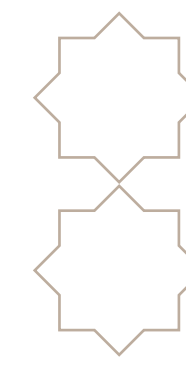
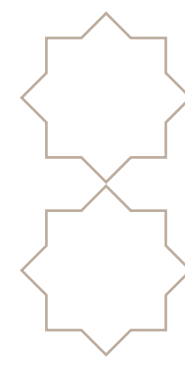
### What types of companies are regulated by the new Companies Law?

1. General Partnership.
2. Limited Partnership Company.
3. Joint Stock Company (referred to as JSC).
4. Simplified Joint Stock Company (referred to as Simplified JSC).
5. Limited Liability Company (referred to as LLC).

Companies can be established as single shareholder companies.







#### Key changes to the regime for LLCs include:



a new express provision enabling partners in an LLC to pledge their shares



LLCs can now issue Sukuk or other debt instruments (currently, only JSCs can issue these types of instruments)



the current limit on the maximum number of shareholders (50) is removed



there is no longer a concept of a “Supervisory board”, whereby if there are more than 20 partners, the constitutional documents may allow the General Assembly to appoint Supervisory Board (comprising a minimum of 3 partners)

#### Key changes to the regime for JSCs include:



allowing shareholders’ written resolutions



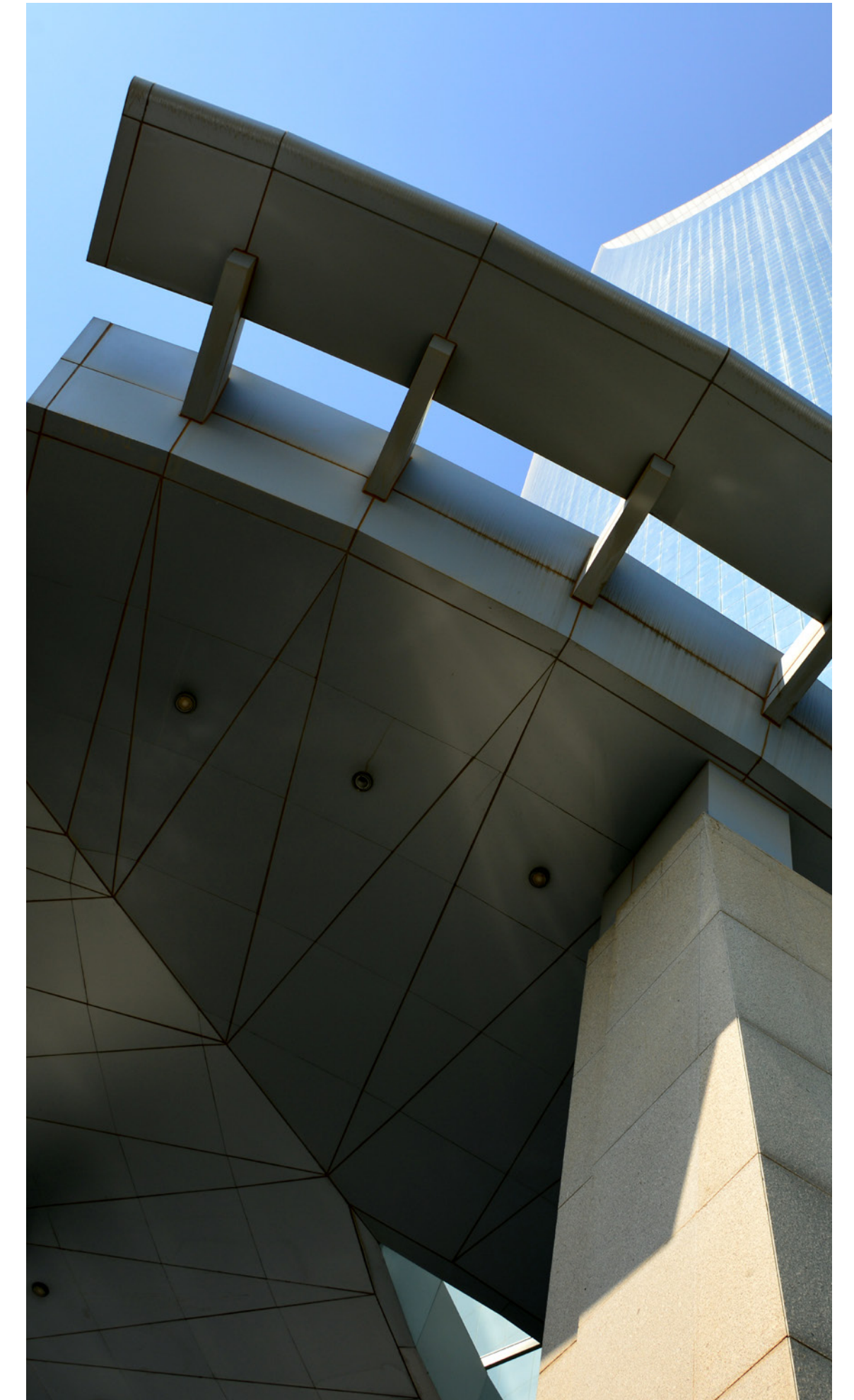
JSCs may issue different classes of shares, with varying rights. Companies can also split shares into shares with a lower nominal value, or merge them to result in shares with a higher nominal value



limits on the maximum number of board members of JSCs and their compensation are removed



new squeeze-out and sell-out rights for shareholders

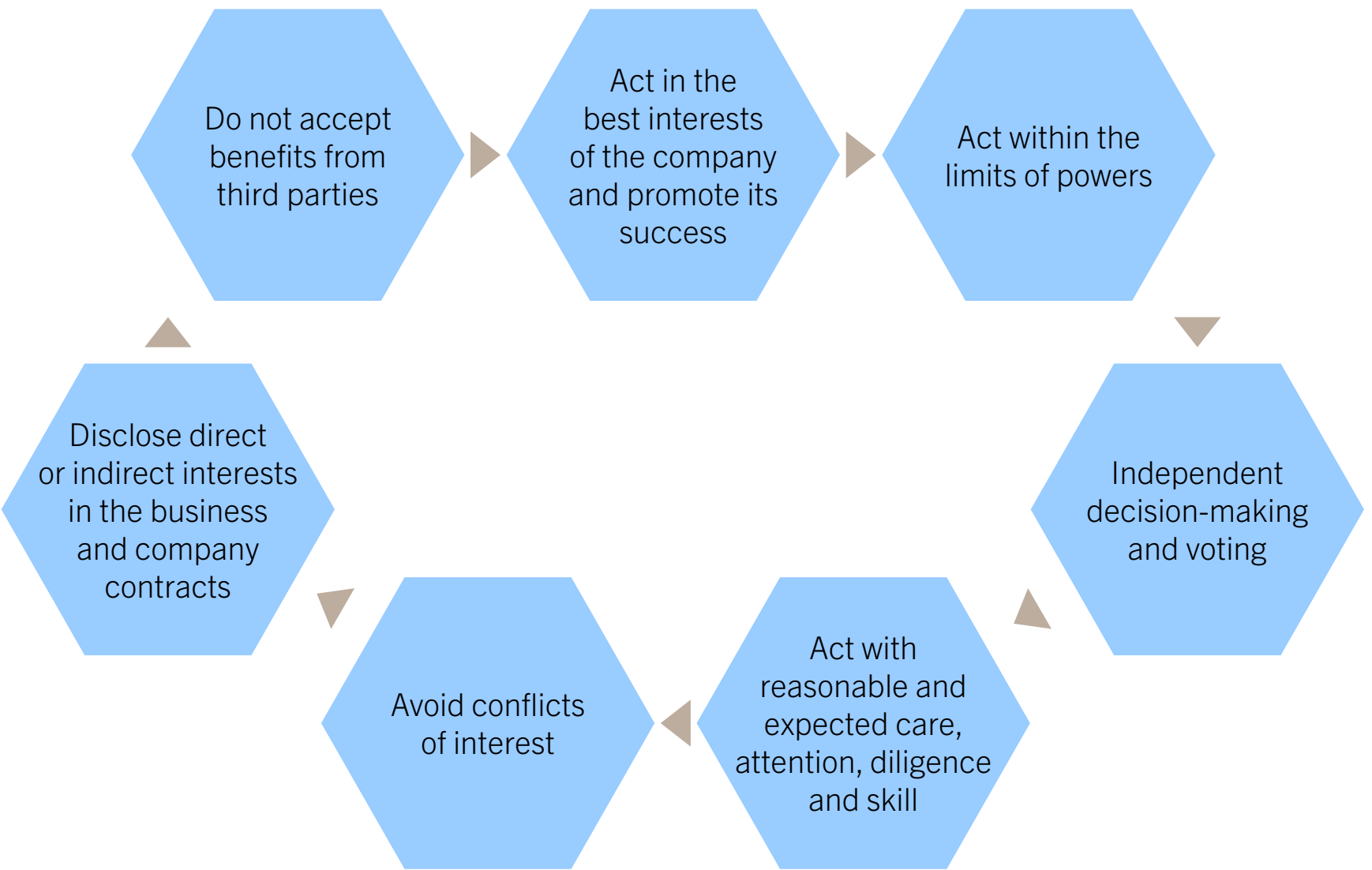






Focus on: directors' duties

Codified directors' duties demonstrate a drive to improve corporate governance, and further implementing regulations on this area are expected. There are new duties of care and loyalty which apply to directors and managers of all types of companies, with particular focus on the following obligations:



The new codified duties more closely align with the codified duties seen in Western jurisdictions, such as the United Kingdom, as well as progressive regional regimes, such as in the United Arab Emirates.

The MoC Implementing Regulations and CMA Implementing Regulations guidance on the manner in which the new codified duties of care and loyalty the rules on conflicts of interest set out in the Companies Law should be fulfilled.

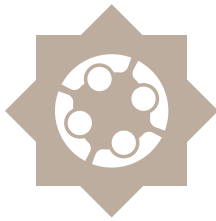
While some provisions replicate the Companies Law, key provisions building on the Companies Law provisions by requiring that directors must:

- > work in good faith in the best interests of the company and all its shareholders, and promote the success and growth of the company and maximise its value for the long-term benefit of its shareholders;
- > exercise their duties objectively and independently; and
- > carry out their duties and responsibilities with the reasonable skill of a diligent person, with the general knowledge, skill and experience of that director, and that expected of a person assuming such a position.

Focus on: shareholder agreements



Shareholder agreements are now expressly recognised for the first time in the new Companies Law, which should remove any residual uncertainty around their legality.



Investors are likely to welcome the ability to regulate matters in a separate shareholders' agreement, outside of the constitutional documents, which should offer enforceable rights provided that the shareholders' agreement does not contain terms which contradict the Companies Law or the constitutional documents.



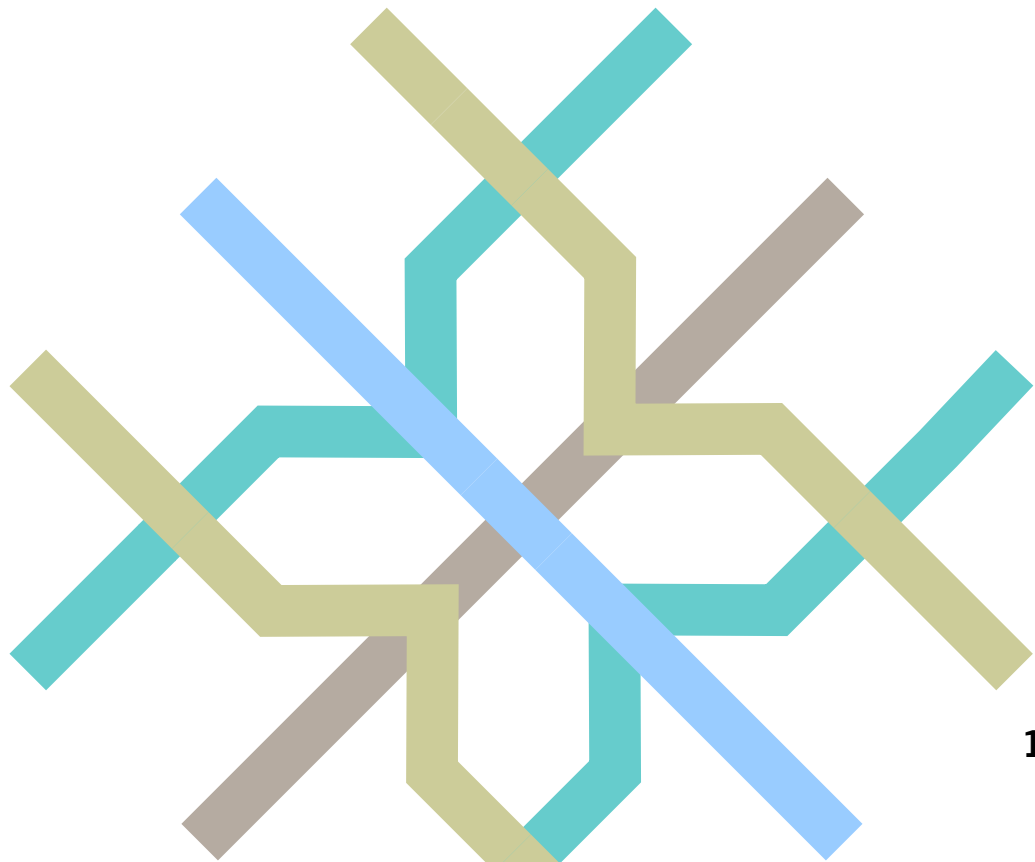
A shareholders' agreements may be used to give protection to shareholders, provide for what happens if "things go wrong", set out more detailed arrangements as to matters such as the management of the company, share of profits, the financing of the company, the procedure to be followed on a transfer of shares and deadlock situations.



The new Companies Law offers greater flexibility for businesses through key reforms, such as recognising shareholder agreements, introducing squeeze out, drag along/tag along rights and enabling JSCs to issue diverse share classes. It also allows for a simplified JSC with lighter regulation as compared to traditional JSCs."



**Waleed Rasromani**  
National Managing Partner,  
Saudi Arabia





## Acquiring shares in a private company?

A foreign investor may look to acquire an existing local company, as an alternative to setting up a new company or establishing a branch. Whether an acquisition is possible will depend on whether the target company operates in a sector open to foreign investment (please see section 3 below for further guidance on foreign investment). Other than the Companies Law and related implementing regulations, there are no specific laws and regulations in Saudi Arabia relating to private M&A. Private M&A tends to follow UK market practice, with US influence in certain areas.

Foreign investors contemplating acquiring a Saudi Arabian LLC should consider initially what approvals are required and engage with local regulators and authorities at an early stage. The acquisition of a Saudi Arabian business can be time-consuming and procedural. The process tends to involve significantly more conditions precedent than one might typically see on international M&A transactions.

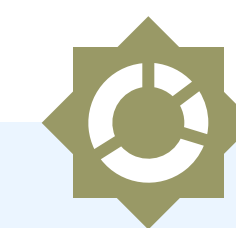
It is typical for share purchase agreements to be governed by English law, although it is increasingly common for such agreements to be governed by Saudi law including where foreign parties are involved. Even if the main transaction documents are governed by a foreign law, some documentation may need to be governed by Saudi Arabian law and some transaction documents may need to be bilingual (ie in Arabic and English). Parties often agree that disputes in relation to the share purchase agreement are to be resolved by international arbitration.

Any documents issued or executed outside Saudi Arabia that will be presented to government authorities in Saudi Arabia must be notarised, legalised and attested.

With effect from December 2022, there is a simplified process for legalising documents for use in Saudi Arabia when the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (also known as the Apostille Convention) comes into force pursuant to Saudi Arabian Royal Decree No. M40/1443 (corresponding to 27 December 2021). Broadly, the competent authority in the country of origin certifies and attests a document for use in Saudi Arabia. Government departments and authorities in Saudi Arabia should now accept apostilled documents. Previously, legalising documents for Saudi Arabia required a lengthier process of legalisation through Saudi Arabian consular offices. Saudi Arabia is only the third signatory state in the GCC to adopt the Apostille Convention, following the accession of Bahrain and Oman.

Saudi Arabia has become one of the most attractive markets for international companies seeking new mergers and acquisitions, not least due to its strategic position and increased opportunities arising as the private sector develops.

Saudi Arabia was the second most targeted state in the GCC for M&A in 2022. M&A activity with a Saudi Arabian target was valued at **US\$8.1bn**. Saudi Arabia was the most targeted nation for M&A in the MENA region in the first nine months of 2023, with deal values of **US\$7bn**. (Source: *MENA M&A - MENA Investment, Banking Review, Full Year 2022 and MENA Investment Banking Review, First Nine Months 2023 (Refinitiv)*).

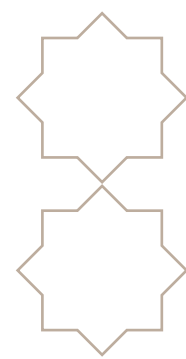


## Key issues to consider in a share purchase

- > **Approvals:** Approvals are required from the Ministry of Commerce (“**MoC**”) for amended articles reflecting the share transfer and board changes and MISA in relation to foreign investment. The consent of the relevant sector regulator will be required on a change of control for companies operating in certain sectors (for example, financial services, insurance and telecommunications).

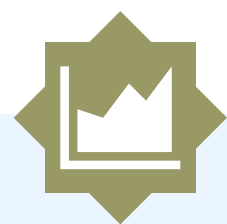
- > **MAC Clauses:** Material adverse change (“**MAC**”) clauses in share purchase agreements are not uncommon in regional deals but are usually subject to negotiation. These clauses are often drafted specifically to include significant global events affecting or likely to affect all companies. MAC clauses are likely to be construed narrowly by the Saudi Arabian courts.
- > **Termination rights:** Typically, termination rights under share purchase agreements are limited to failure to satisfy conditions and material breach of completion obligations, although occasionally there are termination rights for material breach of warranties.
- > **Limitations on liability:** Contractual limitations on liability are unlikely to be enforceable under a Saudi Arabian law-governed document to the extent the amount does not reflect actual direct losses incurred.
- > **Enforcement:** It might be difficult to enforce certain contractual provisions, including some types of indemnities and provisions which involve future promises, such as exit provisions and put right provisions.
- > **Registrations:** The transfer of shares must be registered with MoC.





## Acquiring shares in a publicly-listed company?

A foreign investor may look to invest in an existing local, publicly-invested company. Having once been inaccessible to foreign investors, reform initiatives introduced by the CMA have allowed an increasingly broad range of foreign investors to invest and ownership limits have increased.



### About the Saudi Exchange

The Saudi Exchange (commonly known as Tadawul) is Saudi Arabia's dedicated stock exchange. It comprises a Main Market and a Parallel Market ("**Nomu**"), which has less stringent requirements than the Main Market.

It is the largest stock exchange in the Middle East region and the ninth largest stock market among the 67 members of the World Federation of Exchanges. According to the Saudi Exchange's latest Statistical Report, the Saudi Exchange's total equity market capitalization at the end of the first nine months of 2023 reached over US\$3trn, increasing by more than 5 per cent over the same period of the previous year. The Saudi Exchange's inclusion on major global indices has seen liquidity rise in the past few years.

Non-GCC foreign investment in Saudi Arabian JSCs that are listed on the Saudi Exchange's Main Market is restricted to:

- > Foreign Strategic Investors ("**FSIs**"), this category of foreign investor may invest in listed companies shares
- > Qualified Foreign Investors ("**QFIs**"), this category of foreign investor may invest in all listed securities
- > Investment through swap arrangements with CMA licensed investment banks
- > Non-GCC nationals residing in KSA

The rules for each type of foreign investor are set out in new Rules for Foreign Investment in Securities issued by the CMA in March 2023. Foreign investors who are FSIs can also invest directly in companies listed on the Saudi Exchange. The FSI's investment must be intended to help promote the financial or operational performance of the company. The FSI must also meet certain other conditions, including that it must be established or licensed in a country that applies regulatory and supervisory measures similar to those applied by the CMA or that are accepted by it. FSIs are also restricted from selling their shares for a two-year period after it acquired the shares. FSIs are exempt from the investment limits for QFIs. Any disposal of shares by the FSI will require CMA approval.

Foreign investors who are QFIs can invest directly in companies listed on the Saudi Exchange, subject to certain limits. For example, each QFI may not own 10 per cent or more of the shares or convertible debt instruments of any Saudi Arabia issuer and the maximum proportion of the shares or convertible debt of any Saudi Arabia issuer owned by all foreign investors should not exceed 49 per cent in aggregate (excluding FSIs).



### Who are QFIs and FSIs?

**FSIs** are legal entities incorporated or licensed in a foreign jurisdiction. FSIs are permitted to own shares in companies listed on the Saudi Exchange if the aim of their investment is to contribute to promoting the financial or operational performance of those companies. The shares would be subject to a two-year lock-up period, during which they cannot be transferred. The CMA may also impose additional requirements or conditions.

**QFIs** are legal entities incorporated or licensed in a foreign jurisdiction (and no longer have to be foreign financial institutions). Generally, QFIs must manage a minimum amount of SAR 1.875bn (approximately US\$500m) in assets, subject to certain exceptions. Both QFIs and FSIs must be established or licensed in a country that applies regulatory and supervisory measures similar to those applied by the CMA or which are acceptable to the CMA.

A foreign investor cannot be an FSI and a QFI owning shares in the same Saudi Arabia-listed issuer.

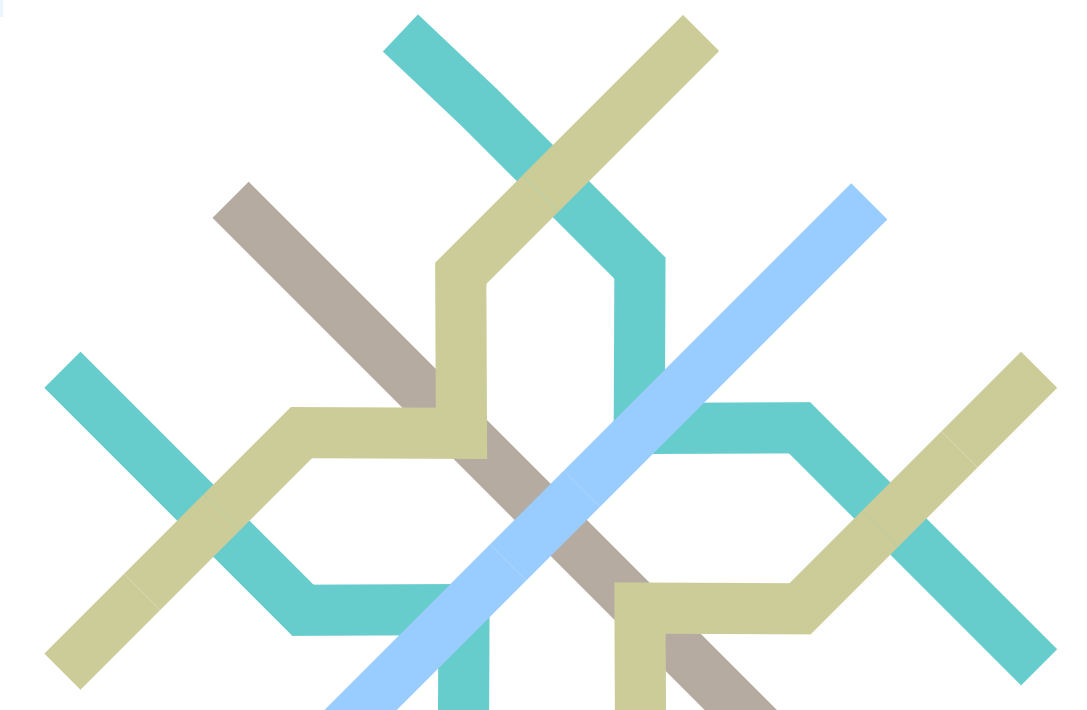
A wider range of foreign investors can invest in shares and participate in IPOs in the Saudi Exchange's Parallel Market, as there are fewer restrictions on investment.



International and regional investors have **unprecedentedly broad access** to the Saudi capital markets today. **Progressive reforms** have opened up the Saudi Exchange, **enhanced market infrastructure** and **reduced risks for investors**. This has resulted in impressive capital inflows to the Kingdom over the last few years."



**Dalia Nammari**  
Capital Markets Partner, Dubai





Investment opportunities for foreign investors, including those who can qualify as QFIs and FSI, are increasing as more state-owned and privately-owned companies launch IPOs.

December 2021 saw the listing of Saudi Tadawul Group, under which 30 per cent of the company's shares were offered to the public via an IPO, which partially privatised the previously wholly PIF-owned company. Saudi Tawadul Group is the holding company for the Saudi Arabia stock exchange group (following a restructuring in 2021), with a portfolio of four subsidiaries:

- a. the Saudi Exchange, the Kingdom's stock exchange;
- b. the Securities Clearing Center Company (*Muqassa*);
- c. the Securities Depository Center Company (*Edaa*); and
- d. *Wamid*, an innovative technology and data services business offering products and services to the wider Saudi Tawadul Group.

The individual subscribers' tranche of the IPO was 442.53 per cent oversubscribed. The overall deal value exceeded US\$1bn.

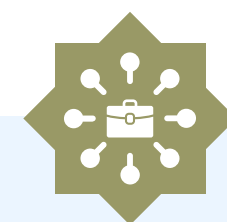
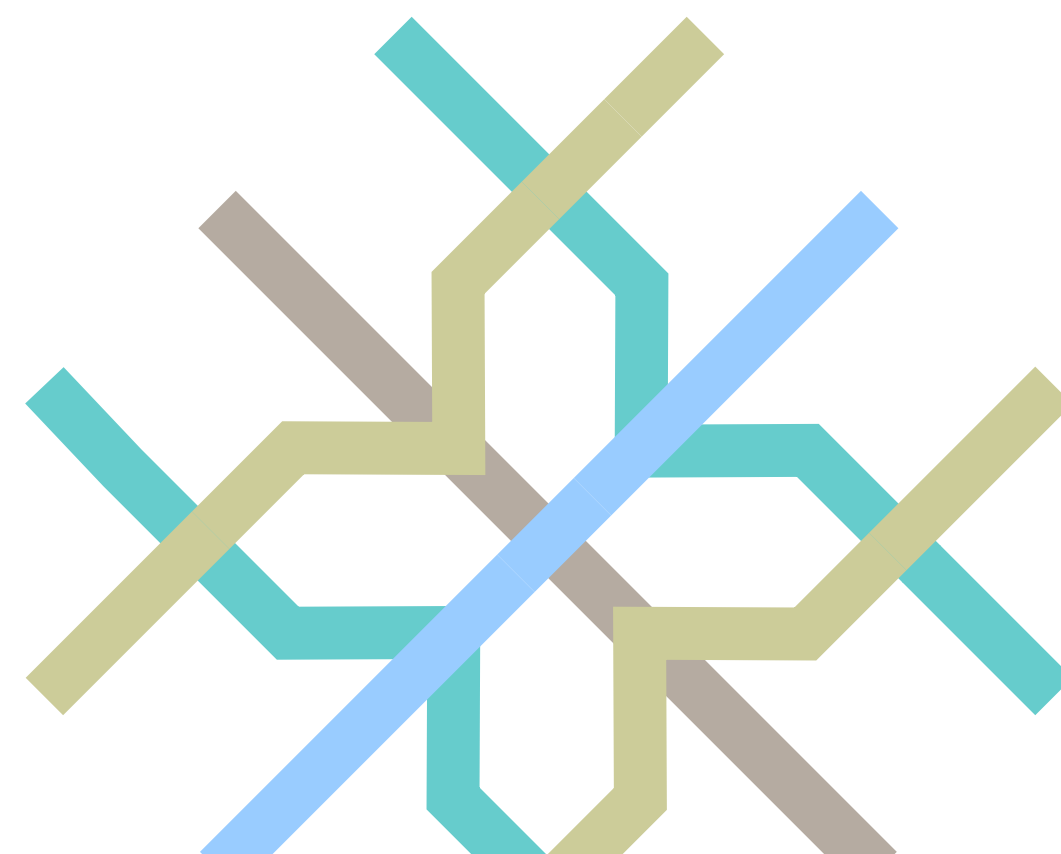
2022 proved to be a strong year for equity capital markets in Saudi Arabia. Among the largest deals in the MENA region were Rabigh Refining and Petrochem's follow-on issuance (which generated US\$2.12bn in proceeds) and the IPOs by Saudi Aramco Base Oil Company and Al Nahdi Medical Company (generating US\$1.32bn and US\$1.36bn in proceeds respectively).



The IPO market in KSA is witnessing **unprecedented growth**, comprising both State-owned and privately-owned companies, with recent reforms facilitating greater access to foreign investors and creating **dynamic** and **accessible financial markets**.”



**Amro Bakhaidar**  
Partner and Head of Equities, Riyadh



## IPOs on the Saudi Exchange

In a challenging global IPO environment, the Saudi Exchange saw strong activity during 2022, which has continued into 2023.

The total value of shares traded reached over SAR 1.7bn, and over 87 million transactions were executed during 2022. In the first nine months of 2023, the total value of shares traded was over SAR 974bn.

The majority of the IPOs in the GCC in 2022 were listed on the Saudi Exchange, and strong investor demand was demonstrated by the fact that many of these IPOs were heavily oversubscribed. The Saudi Arabian Government's initiatives to boost foreign investment are evident in that foreign investment in shares listed on the Saudi Exchange increased by 13.5 per cent in Q4 2022, while Saudi Arabian and GCC investor's ownership declined during the same period.

There were 46 new listings on the Saudi Exchange during 2022, comprising:

- > 16 on the Main Market
- > 30 on Nomu

Reflecting global trends, the Tadawul All Share Index (TASI) declined by 0.6 per cent on an annual basis in Q2 2023. Nomu grew by 21.1 per cent for the same period.

*Source: Ministry of Investment Economic And Investment Monitor, Saudi Arabia, Q4 2022, Saudi Exchange, Statistical Report, First Nine Months 2023.*

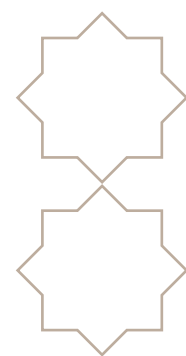
One of the largest IPOs during 2023 was Saudi Aramco Base Oil Company. There was also a dual listing and IPO of Americana Restaurants International PLC on the Tadawul and the Abu Dhabi Securities Exchange (ADX).

Other Main Market listings included Arabian Drilling Company, Power & Water Utility Co for Jubail and Yanbu, East Pipes Integrated Company for Industry and Riyadh Cables Group Company. Nomu listings included Arabian International Healthcare Holding Co, Amwaj International Company, Arabian Plastic Industrial Company, Al Waha REIT Fund.

The Singapore-based food and agribusiness Olam Agri Holdings is preparing for a dual listing on the Singapore Exchange (SGX) and the Tadawul, which will be the first listing on the Tawadul by a non-GCC company. Other companies making preparations for IPOs on the Saudi Exchange include, for example, SAL Saudi Logistics Services Company (cargo handler and logistics solutions provider), ADES Holding Company (oil and gas drilling and production services provider) and Lumi (an auto rental subsidiary of Seera Group Holding). Companies approved to trade on Nomu include Riyadh Steel Company, Intelligent Oud Company for Trading and Munawla Cargo Company.

*Source: Saudi Exchange, Annual Statistical Report, Kamco Invest Investment Strategy & Research*





## IPOs and ESG

The Saudi Exchange issued voluntary guidelines for disclosure of environmental, social and governance (“**ESG**”) practices. The guidelines align with the Vision 2030 sustainability goals and recognise the increased global investor focus on ESG. The new guidelines should help IPO-ready companies in the Kingdom improve their ESG reporting and act as a catalyst to adopt responsible ESG best practices into their wider operations. The new Companies Law anticipates future regulations on corporate social responsibility in the Kingdom.

In certain cases, it could be important to enter into discussions with the CMA at an early stage when contemplating an acquisition of shares in a company listed on the Saudi Exchange which is within the scope of the Saudi Arabian M&A Regulations, issued in by the CMA in 2007 and as last amended in 2023.

The M&A Regulations apply to:

- > a “private transaction” involving the sale and purchase of voting shares in a company listed on the Saudi Exchange resulting in 10 per cent or more ownership/control; and
- > a public offer to purchase voting shares in a company listed on the Saudi Exchange which would increase the offeror’s ownership or control of 10 per cent or more of the voting shares in the company.

A six-month lock-up is triggered at 40 per cent and a mandatory offer is triggered at 50 per cent.

The M&A Regulations expressly permit securities exchange offers, include specific rules for sales that do not involve a general tender offer to all shareholders and confirm that mergers between listed companies are permitted. Hostile acquisitions are uncommon. Any hostile offeror will have very limited access to non-public information.

Foreign investors can also invest in depositary receipts issued outside Saudi Arabia for shares in Saudi Arabian companies issued in the Kingdom. The CMA issued instructions relating to listing of depositary receipts outside the Kingdom in 2020, which enabled, for the first time, companies listed on the Saudi Exchange to obtain secondary listings in a foreign jurisdiction.

Saudi Arabia was included on the MSCI’s Emerging Markets Index in 2019.

## Investing in a joint venture?

A foreign investor may look to establish a joint venture arrangement with a Saudi Arabia national or a Saudi Arabian company, as an alternative to setting up a new company or establishing a branch.

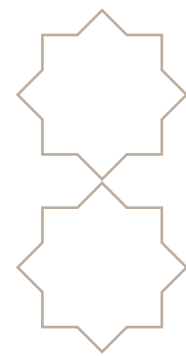
LLCs were historically the most popular legal form used by foreign investors investing in Saudi Arabia as a joint venture vehicle. In recent years, JSCs have also been commonly used for that purpose because they offer a better governance framework and distinct, transferrable shares, but there remained concern regarding the additional regulatory burden associated with JSCs. The introduction of the Simplified JSC in the new Companies Law addresses these concerns, by combining the flexibility of an LLC with the governance framework of JSCs, which may make it an attractive vehicle for joint venture arrangements in the future.

A foreign professional company engaged in a profession such as law, accounting or engineering, requires a joint venture arrangement with a Saudi entity (or individual) with a current licence to carry out the particular profession in the Kingdom.

The new Companies Law, which repealed and replaced the Professional Companies Law enacted in 2020, requires a professional company (which may be an LLC, JSC or Simplified JSC) to have at least one shareholder who is a Saudi Arabian national licensed by the relevant professional body, but it may also have shareholders who are Saudi Arabian nationals and who are not licensed. Further regulations are anticipated to regulate joint ventures between Saudi Arabian and non-Saudi Arabian professional companies.







## Setting up a branch or representative office of a foreign company?

A foreign investor may look to establish a branch, as an alternative to setting up a new company or investing in an existing local company. Foreign companies must ensure their branch activities do not fall under the “Negative List” under the foreign investment regime (see below). Foreign companies cannot establish branches in Saudi Arabia if their proposed activities are subject to minimum Saudi Arabia participation requirements imposed by MISA, in which case they must establish a subsidiary in Saudi Arabian and comply with the minimum Saudi Arabian participation requirements.

A branch is essentially the operation of the foreign company in Saudi Arabia and it has no separate personality from its overseas “parent”. It must carry out the same activities as the parent company and it cannot enter into contracts in its own name. It cannot conduct promotion, marketing or trading activities. The branch must be licensed by MISA. The process to establish a branch in Saudi Arabia is similar to that of an LLC and is usually slightly quicker.

Other types of business structures, which are less commonly used, include:

- > **Representative office:** The activities of a representative office are very limited in scope. It must appoint a local agent to distribute the company’s products in Saudi Arabia, and it can have employees but it cannot perform contracts or commercial activities itself. As a result, representative offices are less common.

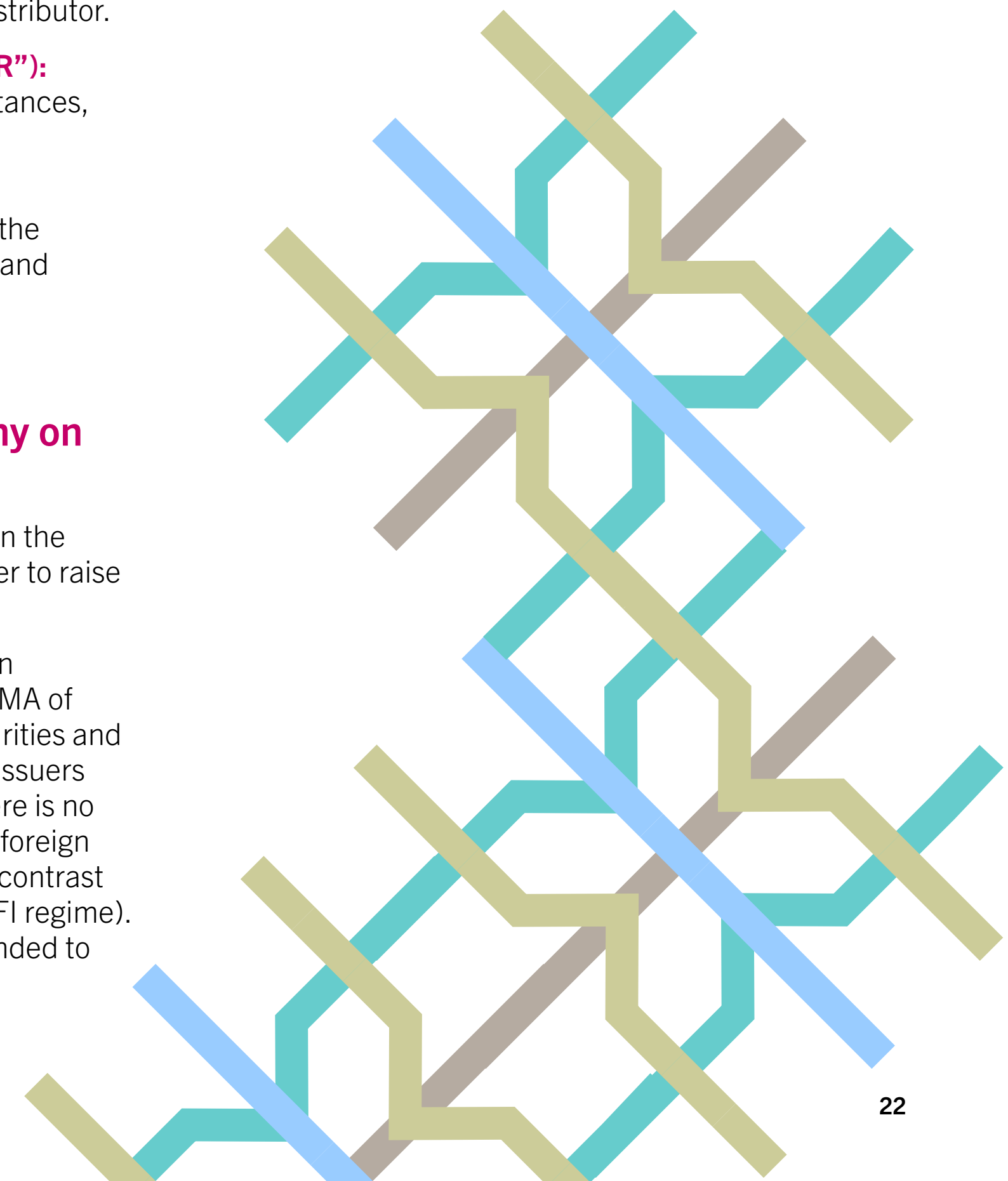
- > **Technical Scientific Services Office (“TSSO”):** A TSSO may be an option in limited circumstances, where there is a foreign manufacturing entity providing technical support for complex products and an agency or distribution agreement exists between it and a Saudi Arabian agent or distributor.
- > **Temporary Commercial Registration (“TCR”):** A TCR may be an option in limited circumstances, where a foreign entity has been awarded a Government contract.
- > **Agency:** Agencies must be registered with the Commercial Agencies Department of MoC and are limited to entities that are wholly Saudi Arabian-owned.

## Listing shares in a foreign company on the Saudi Exchange?

A foreign company may look to list its shares on the Saudi Exchange, as a secondary listing, in order to raise capital from investors in Saudi Arabia.

This is a relatively new development enacted in January 2020, following the issuance by the CMA of amendments to the Rules on the Offer of Securities and Continuing Obligations which allowed foreign issuers to list their shares on the Saudi Exchange. There is no restriction on foreign ownership of shares of a foreign issuer that is listed on the Saudi Exchange (in contrast to restrictions for local issuers set out in the QFI regime). The amended rules also include changes intended to develop Nomu.

Foreign companies listed on the Saudi Exchange are subject to certain listing, disclosure and governance requirements under Saudi Arabian law. Foreign companies’ shares are also traded in SAR, the currency of the Saudi Arabian market.







## 3 Restrictions and conditions to investing in Saudi Arabia

**Are there any:**

### **Restrictions on foreign investment in local companies?**

Yes. The first step in assessing the viability of an investment in Saudi Arabia is to determine whether the industry in question is open to foreign investment.

The Kingdom operates a sector-based approach to regulating levels of foreign investment in domestic companies. Saudi Arabia's foreign investment regime is one of the most formalised and transparent in the Middle East.

The general principle is that a foreign investor may invest in minority, majority or wholly-owned equity stakes in a company incorporated in Saudi Arabia, provided that it operates in a sector which is open to foreign investment (subject to licensing requirements). The maximum level of foreign ownership permitted varies depending on the sector. For Saudi Arabian companies operating in sectors on the "Negative List", either partial foreign ownership is permitted or there is a complete restriction on foreign investment. The regime is administered by MISA.

New restrictions foreign investment in Saudi Arabian companies operating in sensitive and strategic sectors are expected. In September 2021, a new Permanent Ministerial Committee for Examining Foreign Investments ("CEFI") was established pursuant to Cabinet Decision No.83 Of 1443H. The CEFI has several responsibilities, including:

- > determining the list of activities excluded from foreign investment;
- > identifying impacting (directly or indirectly) the national security and public policy;
- > deciding the maximum ownership percentages for foreign investors in Saudi Arabian companies working directly or indirectly in sensitive and strategic industries;
- > setting out procedures, rules, and regulations sensitive and strategic sectors for procedures of reviewing the foreign investments request for acquiring shares of Saudi Arabian companies working in sensitive or strategic sectors; and
- > setting out a list of the persons and entities who are prohibited from investing in Saudi Arabia.

### **What sectors are on the "Negative List"?**

The Negative List is revised annually and can be obtained from MISA. Revisions to the Negative List in recent years have significantly reduced the range of activities and industries where foreign investment is restricted or prohibited. The Negative List uses the International Standard Industrial Classification codes.

The Negative List prohibits foreign ownership in shares in companies incorporated in Saudi Arabia where those companies are engaged in specified activities in the industrial and service sectors, including oil exploration, drilling and production (subject to certain exceptions), real estate investment in Mecca and Medina,

commission agents' distribution services, printing and publishing (subject to certain exceptions).

Minimum local ownership requirements also apply to shares in companies incorporated in Saudi Arabia where those companies are engaged in specified activities in specified sectors, such as communications, insurance and reinsurance, property financing, construction and engineering, intra-city transport, healthcare and education sectors.

### **Are sensitive and strategic sectors are restricted from foreign investment?**

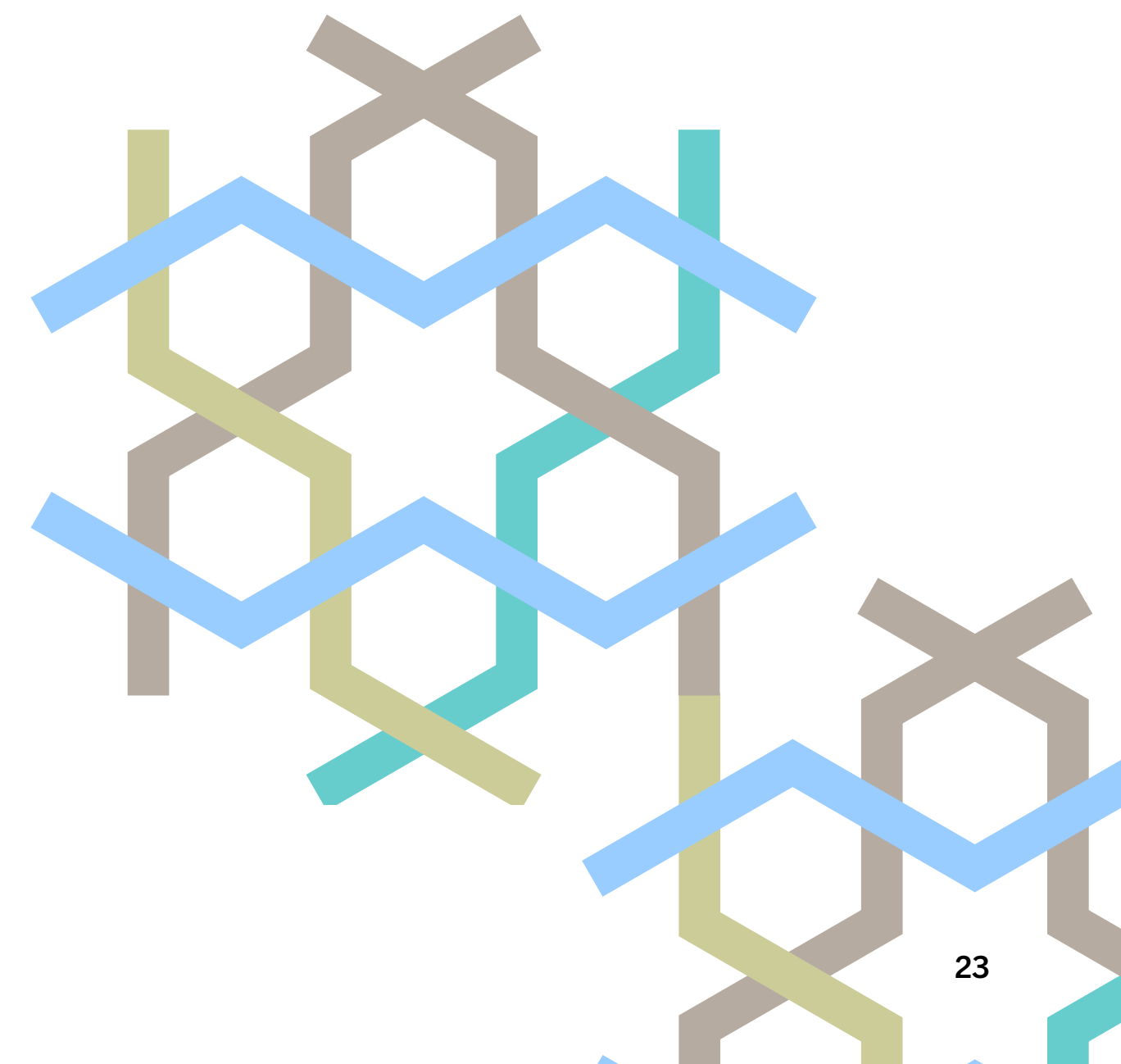
The CEFI, established in September 2021, has several responsibility for identifying sensitive and strategic sectors impacting (directly or indirectly) the national security and public policy in which foreign investment is to be restricted.

A draft new foreign investment law (the "**Draft FDI Law**") was issued for public consultation, which closed in May 2022. Under the Draft FDI Law, the CEFI is also responsible for providing prior authorisation for any proposed foreign investment in any economic sector designated as restricted on a list of excluded and restricted activities issued by the CEFI. Activities are to be designated as being included on the list consistent with protecting national security, vital economic interests and preserving public order. It is not clear at this stage whether the list of excluded and restricted activities will also set out the maximum percentages of direct and indirect ownership by foreign investors in the

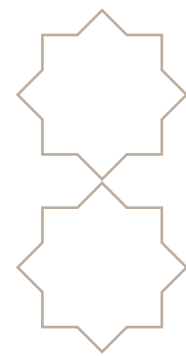
share capital (and other securities) of Saudi Arabian companies operating in the restricted sectors.

The timeline for enactment of the Draft FDI Law (which may not be in the form published) and its implementing regulations and publication of the list of excluded and restricted activities is not yet known.

The interplay between any rules regarding sensitive and strategic sectors with the Negative List is not yet clear.







### Do you need a local partner?

Where only partial foreign ownership is permitted, foreign investors will need to partner with a Saudi Arabian national shareholder who will hold a specified minimum percentage of the share capital in the company. This varies according to the sector in which the company operates. For example, currently 40 per cent of shares in insurance businesses must be held by a Saudi national or nationals.

One of the most important tasks for a foreign investor, who will share corporate profits but may not have majority control over a business, is to choose the right local business partner. An understanding of the relevant market, solid relationships with regulators and other organisations key to the business and aligned working practices and vision for the company are some of the key considerations in choosing a business partner.

Investors should consider carefully whether a proposed business partner meets the following criteria in order to be treated as a Saudi Arabian national for the purposes of foreign investment rules. Broadly, a potential business partner will generally be considered a Saudi national if it is:

- > a Saudi Arabian national;
- > a Saudi Arabian company which is wholly-owned by Saudi Arabian nationals (directly or indirectly);
- > a national of other Gulf Co-operation Council (“GCC”) states (Bahrain, Kuwait, Oman, Qatar and the United Arab Emirates); or
- > a GCC company wholly-owned by GCC nationals.

This is a common approach across the GCC under a Unified Economic Agreement which grants all GCC natural and legal citizens the same treatment as nationals in economic activities.

### What licences do you need?

Various government licences and approvals are usually required. These will have implications on timing and process.

**Foreign investment licence:** Foreigners seeking to invest in Saudi Arabian companies need a foreign investment licence issued by MISA. The licence is issued to the Saudi Arabian company in which foreign investment is made or to be made. Applications can be made by foreign nationals or foreign companies. However, MISA’s common practice is currently to permit applications for foreign investment licences from foreign companies only.

MISA has seen a large increase in the issuance of investment licences in 2022 and this trend continues in 2023.

The total number of investment licenses issued by MISA increased 267.4 per cent in 2022. Around 4,000 investment licenses were issued in 2021.

According to MISA, Q1 2023 saw a 34.8 per cent increase in the number of licences issued as compared with the equivalent period the previous year (1,639 licences up from 1,216).

In Q2 2023, 1,819 new licenses were issued, increased from 938 licenses in the same quarter of the previous year (excluding the licenses issued as part of the anti-concealment law enforcement). Most licences were issued to LLCs.



MISA issued more than

16,000

investment licenses in 2022

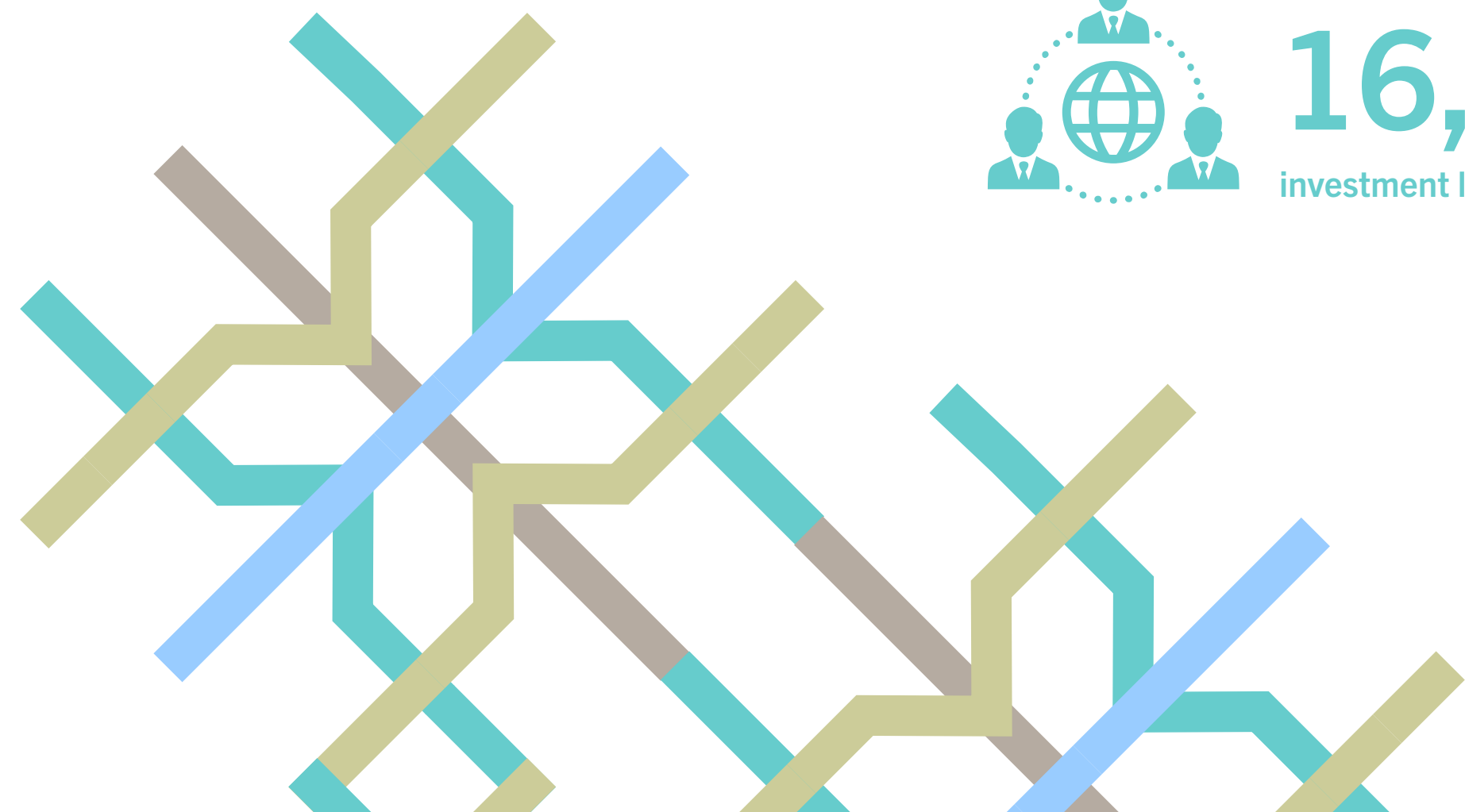
MISA’s licensing rules and procedures make it quick and easy to get a licence. The modernised and transparent procedures introduced by MISA should alleviate concerns investors may have about opaque and time-consuming investment application processes.

The application is made online. The timeframe is specific to the company and sector but the government’s aim is for the process to take less than a week. There is an “instant” licence issuance and renewal service for foreign investors that are listed on a local or international stock market and meet certain conditions. Typically, licences are issued for one year and renewed annually. A five-year investment licence may be granted at MISA’s discretion. MISA uses the International Standard Industrial Classification of all economic activities for foreign investment licences.

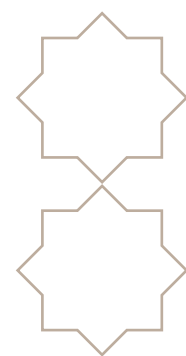
Most documents are required to be in Arabic, or in dual Arabic and English language format. Translation costs and running documents in both English and Arabic will need to be factored into the cost of any transaction and may affect timing. The commercial registration of the proposed foreign shareholder and one year’s audited financial statements will be required at a minimum.

**Commercial licence:** Businesses will also require a commercial licence from the MoC.

**Other:** Licences from other government agencies may also be required. Certain sectors (such as banking, securities business, healthcare, education and transport) may require approval from additional governmental authorities.







## The anti-concealment law: restrictions on side arrangements

Businesses in Saudi Arabia in which foreign nationals and companies have invested must comply with the Anti-Commercial Concealment Law (Saudi Arabia Royal Decree No. M4/1441 dated 19 August 2020 and Saudi Arabia Cabinet Decision No. 785/1441 on the Approval of the Anti-Commercial Concealment Law) (the “**Anti-Commercial Concealment Law**”), which came into force in February 2022.

There is increased regulatory scrutiny of side arrangements which seek to enable foreign nationals and companies to carry on business activities which they are restricted from carrying on under the Kingdom’s foreign investment regime.

The Anti-Commercial Concealment Law restricts agreements or arrangements under which a person allows a foreigner (whether an individual or a company) to use that person’s licence or approval to enable the foreigner to carry on “economic activities” in Saudi Arabia which the foreigner is not licensed or approved to carry on. Economic activities are broadly defined to include any activity with the aim of generating revenues (including commercial, professional, industrial, investment or services activities) which typically require a licence and regulatory approvals.

There are two categories of activity which constitute concealment in breach of the law, which are subject to differing penalties depending on whether the activity is a criminal offence or not.



### Criminal concealment activity

A Saudi Arabian person enabling a non-Saudi Arabian person to carry on a business activity in the Kingdom, for the account of the non-Saudi Arabia person, which the non-Saudi Arabian person is not licensed to carry on, amounts to a breach of the law carrying criminal penalties. This includes activity such as enabling the non-Saudi Arabian to use the Saudi Arabian person’s licence, permit, commercial register or commercial name. A person who participates in such criminal offence, whether by incitement, assistance or advice, and who is aware of the offence, is also in breach of the law. Penalties may include a fine (up to SAR 5m), imprisonment for a period of up to five years, confiscation of funds, a travel ban (for persons who are suspected of committing a criminal offence), deportation (for foreign nationals), restriction on practising commercial activity for a period of five years (for Saudi Arabian nationals) and dissolution of the company.



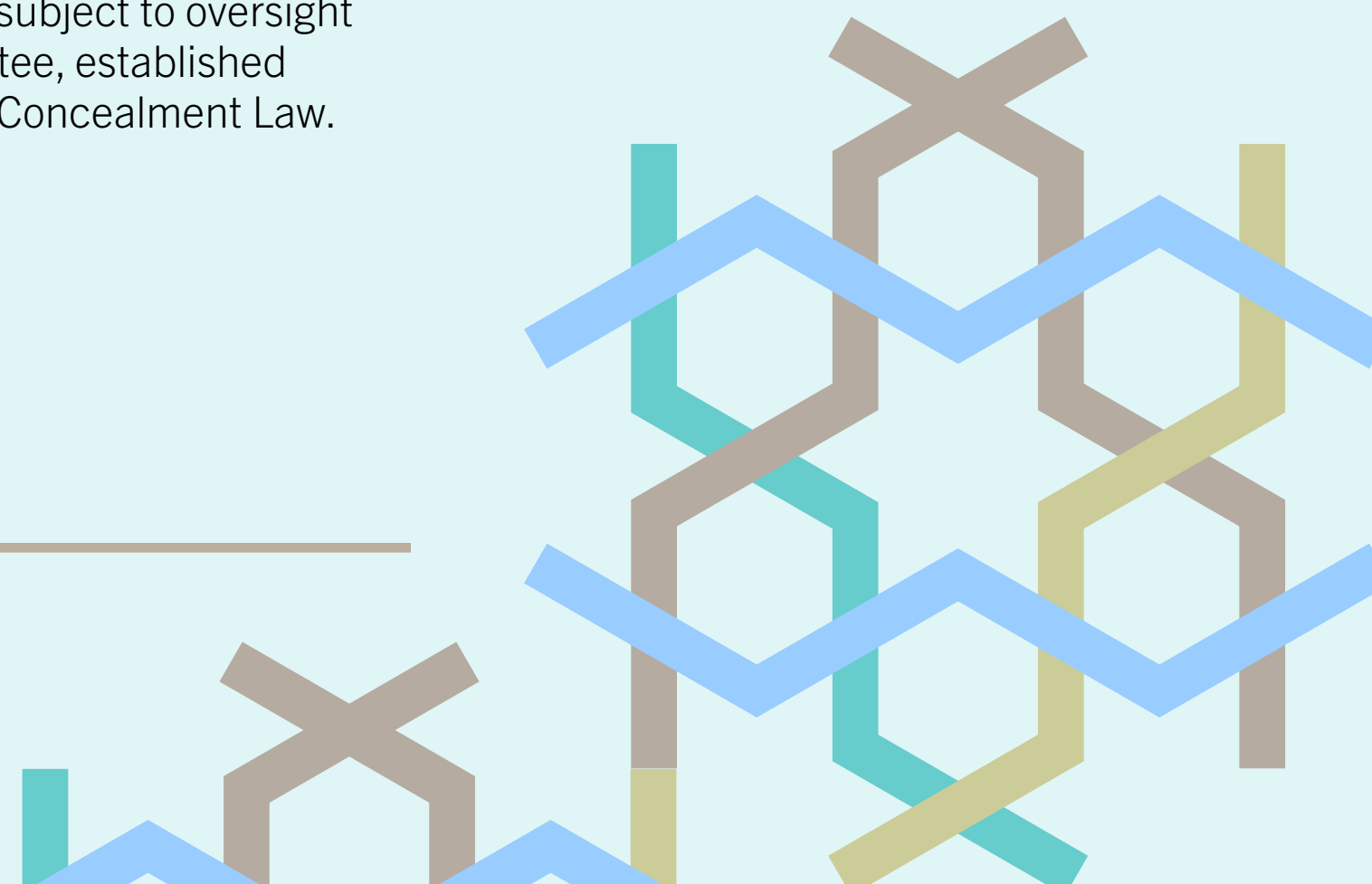
### Non-criminal concealment activity

Where a Saudi Arabian company grants to a non-Saudi Arabian person, or a non-Saudi person has or exercises, unfettered powers to act *ultra vires* in relation to the company, or a Saudi Arabian company using a bank account which does not belong to it in the course of its business activities, civil penalties may be imposed. Penalties may include a fine (up to SAR 0.5m) and temporary closure of the business for up to 90 days. The Saudi Arabian company which has breached the law will also be subject to oversight by the Anti-Concealment Committee, established pursuant to the Anti-Commercial Concealment Law.

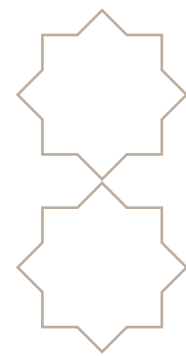
Whistle-blowers benefit from certain protections, including confidentiality and exemptions from penalties, and may be able to claim a financial reward of up to 30 per cent of the fine collected in respect of the relevant offence or breach committed.

These measures are intended to prevent the negative impact of business licensing fraud on the economy and protect the reputation of the Kingdom. They should reduce the risk of fraud and corruption (including money laundering) in commercial licensing processes and the operation of local businesses.

The number of licenses issued by MISA during 2022 increased significantly as a result of active enforcement of the Anti-Commercial Concealment Law.







## Other requirements or conditions for investing?

Even if an activity is not on the Negative List, restrictions can still apply in some industries. This might be because MISA sets minimum capital requirements for the foreign investor and Saudi Arabia partners or governmental authorities may impose other restrictions. In other cases, the law might require a Saudi Arabian partner in order to obtain a licence (please refer to the discussion on joint ventures in section 2 above).

## Employment or training requirements?

Usually, the company in which a foreign entity invests must offer employment, training and senior management development opportunities to Saudi Arabian nationals.

This forms part of a domestic programme of “Saudisation”, known as the Saudi Arabian nationalisation scheme (*Nitaqat*). The company must have a certain number of Saudi Arabian nationals in their workforce, at a rate determined by the Ministry of Human Resources and Social Development. The levels vary depending on industry type and number of employees. In Saudi Arabia, education and vocational training are orientated towards skills needed by the private sector. Saudi Arabia’s large demographic of highly-educated young nationals is driving demand for world class training and expertise. The Saudisation of professions in which there are significant numbers of Saudi Arabian graduates, such as IT, communications and engineering, is a specific focus of the Government.

The Saudisation programme and lowering the rate of unemployment (to 7 per cent by 2030) are key socio-economic goals to ensure inclusive growth. The unemployment rate among Saudi Arabian nationals is at a historical low. Total unemployment dropped to 4.8 per cent by the end 2022 and youth unemployment was halved to 16.8 per cent in 2022 (*Source: IMF Country Report No.23/323, September 2023*).

Women’s economic empowerment is proving to be a significant driver of economic change. Saudi Arabia surpassed the 2030 target of achieving the goal of 30 per cent female participation in the workforce ten years early. The number of employed women in Saudi Arabia has nearly doubled in the last five years and now stands at over 35 per cent of the workforce, according to reported comments by the Saudi Arabian Deputy Minister of Human Resources and Social Development in May 2022. Saudi Arabia scored 80 out of 100 in the 2022 World Bank Women, Business and Law Report, up 10 points from 2020.

Reforms enacted in 2021 have significantly improved private sector workers’ rights. The reforms abolished the sponsorship system (known as “*kafala*”) for expatriate professional workers. New standard contractual arrangements regulate relationships between employers and employees, under which employees benefit from minimum rights and entitlements. Foreign employees are now able to change jobs (which involves transferring their sponsorship from one employer to another), leave and re-enter the country and obtain exit visas without the consent of their employer, thereby improving job mobility. In November 2021, a

new Government regime was introduced which allows eligible foreigners who have specialised skills in the legal, medical, scientific and technological sectors with a route to Saudi Arabian citizenship.

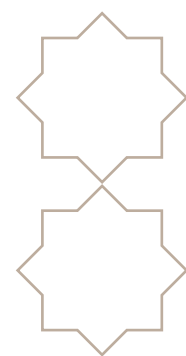
This is an exceptional measure, given that, in line with other countries in the region, citizenship in Saudi Arabia is restricted and foreigners usually have visas that are valid for a specified number of years, that are renewable and linked to their employment. This is designed to incentivise the foreign workers that the Kingdom needs to progress towards the multi-faceted Vision 2030 goals.

## Shareholder pre-emption rights?

Statutory shareholder pre-emption rights may limit the ability to transfer shares in an LLC freely. Under Saudi Arabian law, shareholders in a JSC have pre-emption rights on the issue of new shares, but this right can be adjusted by the extraordinary general assembly and shareholders’ may sell their pre-emption rights.







## Competition/antitrust rules?

Any investor considering investing in a business in Saudi Arabia, such as by joint venture or acquisition of shares in a company, will need to seek advice as to whether competition clearance may be required.

Saudi Arabia has a modernised Competition Law which came into force in 2019, with an active regulator, the General Authority for Competition (“**GAC**”). The GAC is playing an active supervisory and enforcement role in regulating competition across markets in Saudi Arabia and overseas jurisdictions where the Saudi Arabian market is affected.

Where the transaction involves a business in Saudi Arabia, it may be necessary to file an application with the GAC to have the transaction pre-approved within 90 days prior to the completion date. GAC approval will be needed if the total annual turnover of the parties involved exceeds SAR 200m (US\$52m). An increase from the previous threshold of SAR 100m (US\$27m) was announced by the GAC in a press release on 29 March 2023 (corresponding to 7/9/1444H). Transactions below this increased threshold should not be caught, and accordingly the number of economic concentrations which are required to be notified to the GAC should reduce going forwards.

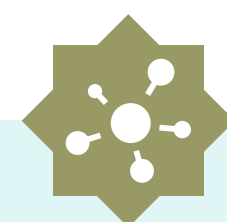
Offshore transactions are caught if they may have an adverse effect on fair competition within the Kingdom.

There are exceptions to the Competition Law (such as for certain Government entities and state-owned companies) and exemptions are possible, for example, if the practice will enhance the market and is beneficial for consumers.

The GAC has published Guidelines for Reporting Economic Concentrations and Merger Review Guidelines which provide guidance on how the GAC assesses whether an economic concentration must be notified (including how the annual sales threshold is calculated), how parties must notify economic concentrations and how the GAC assesses whether an economic concentration would be likely substantially to lessen competition in a market.

Recent experience indicates that there is increased scrutiny by the GAC of transactions with potential competition issues, including mergers, acquisitions and joint ventures.

Under the new PPP Law, the GAC in co-operation with the NCP is expected to establish policies to prevent monopolies in PPP projects.



## GAC actions

Since its establishment in 2019, the GAC has approved a significant number of economic concentrations. The GAC is reported to have received 316 applications for economic concentrations in 2022. 176 no-objection certificates were issued during 2022, an increase of 17 per cent year-on-year.

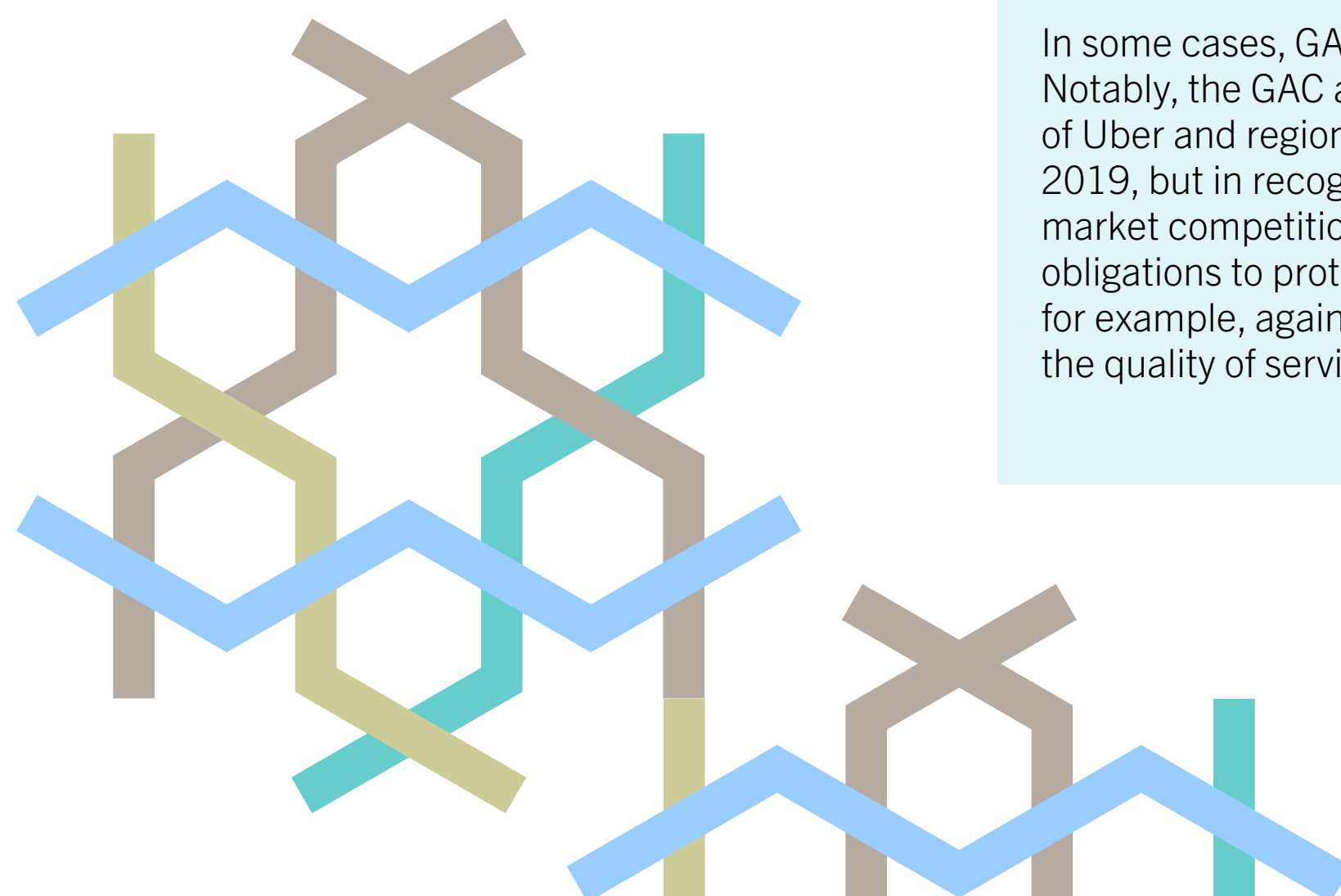
Key transactions approved by the GAC in 2022 include the US\$68.7bn acquisition of Activision Blizzard by Microsoft, SAMI Aerospace’s acquisition of 51 per cent of Saudi Rotorcraft Support and the mergers of Walaa Cooperative Insurance Co. and SABB Takaful, as well as Future Retail for Information Technology and International Applications Trading Company.

In some cases, GAC approval comes with conditions. Notably, the GAC approved the US\$3.1bn merger of Uber and regional ride sharing app Careem in 2019, but in recognition of significant impact on market competition, it imposed conditions and obligations to protect consumers in the Kingdom, for example, against price increases or changes to the quality of services.

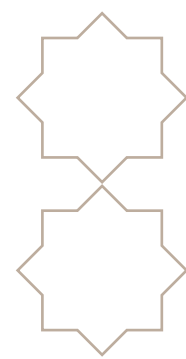
To date, the GAC has blocked two proposed economic concentration transactions:

- > the acquisition by the Saudi-listed National Gas and Industrialization Company (GASCO) of a 55 per cent majority stake in the Saudi-based Best Gas Carrier Company was blocked, in June 2022. This is the first merger prohibited based on substantive vertical competition concerns.
- > the acquisition by Delivery Hero (a German-based company that operates several food delivery apps in Saudi Arabia) of The Chefz Food, a competitor delivery app, was blocked in December 2021. This rejection was based on procedural grounds.

In other cases, the GAC has taken robust enforcement action where parties have failed to comply with the competition regime. Other notable examples of enforcement action by the GAC relate primarily to activities such as price-fixing, abuse of a dominant position and bid-rigging. Penalties for breach can include fines, a requirement to dispose of certain assets and temporary closure of the business.







## Focus on: Competition control – What businesses need to know

### When is a transaction notifiable?

Parties to a transaction which is an “economic concentration” for the purposes of the Competition Law must inform the GAC of the transaction at least 90 days before its completion if:

- > the total annual sales value of the undertakings involved exceeds the threshold of SAR 200m; and
- > the economic concentration has sufficient connection to Saudi Arabia so that the GAC has jurisdiction over the transaction.

### What is an economic concentration?

Broadly, economic concentrations will involve a total or partial transfer of ownership of assets, rights or shares, or a change of control. Transactions that may be economic concentrations include a merger, acquisition or takeover. A joint venture (“**JV**”) may be an economic concentration if the JV is, forms, or performs the functions of, an autonomous economic undertaking, on a lasting basis.

### How will the GAC calculate the total annual sales threshold for economic concentrations?

The GAC will calculate the total annual sales value of all of the entities seeking to participate in the economic

concentration. For example, in the context of an acquisition, the annual sales value of the acquiring entity and the target entity will be considered, but not the selling entity. The “total annual sales value” is the total gross revenue of the relevant entity from the sale of products and services falling within its ordinary course of business for the relevant financial year. This is calculated on the basis of the combined aggregate group-wide and world-wide sales figures of all the relevant entities.

### When will a transaction have a sufficient nexus to Saudi Arabia?

The transaction will have a sufficient nexus to Saudi Arabia and, therefore, fall within the scope of the Competition Law if:

- > the parties involved in an economic concentration are all businesses (irrespective of their legal form) engaged in economic activity in the Kingdom; or
- > any activity taking place outside the Kingdom (such as economic concentrations among foreign businesses) may have an adverse effect on a market within the Kingdom. The GAC considers that there is sufficient effect on a market in the Kingdom where the potential effect is direct, substantial and reasonably foreseeable. In general, the GAC will consider it to be sufficient to establish a nexus if one or more of the foreign businesses has sales in Saudi Arabia.

### How is the competition test assessed?

The GAC will consider the effect or likely effect of the economic concentration on the degree of competition in the relevant market. This involves an assessment of the relevant product and geographic markets and the competitive effects of the economic concentration on the relevant markets (taking into account market concentration and market share measures, barriers to entry and expansion, whether buyers have sufficient alternatives, whether an entity is a failing firm and efficiencies). The GAC will apply an overall test of whether the economic concentration is likely substantially to lessen competition.

### Are there any exemptions?

Yes. Companies which are wholly-owned by the Government and which are solely authorised by the Government to provide goods or services in a particular sector are exempt from the application of the Competition Law, provided the exemption is set out in a Royal order, decree or resolution.

### Is notification mandatory?

Yes, if the transaction meets the criteria described above.

### Who is responsible for notifying?

The obligation to notify the GAC is placed on all of the parties. They can nominate a legal representative to file on their behalf.

### How is the notification made?

The notification must be made online using the prescribed form available on the GAC’s website, with the required information and supporting documentation.

### Is the submission of a filing publicised by the GAC?

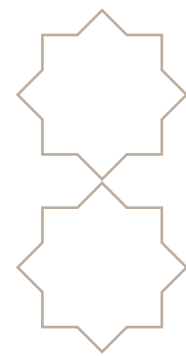
No. The GAC may invite the public to express opinions on the economic concentration transaction (as in the case of the proposed merger of National Commercial Bank and Samba Financial Group, and the acquisition of Careem by Uber in 2020). The parties’ confidentiality will be maintained throughout this process. However, the GAC announces its decision.

### What decision may the GAC’s Board reach?

The Board may issue a decision with any of the following outcomes:

1. Approval;
2. Conditional approval; or
3. Refusal (which will state the reasons).





### Restrictions on repatriating funds?

No, there are no restrictions on the repatriation of funds. Foreign investors are able to repatriate profits and capital, subject to rules on taxation and withholding tax.

### Nationality restrictions for directors?

No. There are no nationality requirements for directors of Saudi companies.

### Special requirements for contracting with the government or government entities?

The Government of Saudi Arabia is incentivising multinationals in relocating their regional headquarters to Saudi Arabia, under the Regional Headquarters in the Kingdom of Saudi Arabia (“**RHQ**”) programme, which was established as a joint initiative between MISA and Royal Commission for Riyadh City (RCRC). Details of a new category of RHQ licence were set out in a new section of the MISA Services Manual issued in 2022.

To promote the RHQ programme, new rules will restrict Saudi Arabian government bodies, authorities and public institutions from contracting with companies which do not have RHQs in the Kingdom, except in accordance with Saudi Arabia Cabinet Decision No. 377/1444 on the Approval of the Controls of Contracting between Government Agencies and Companies that Do Not Have a Regional Headquarters in the Kingdom,

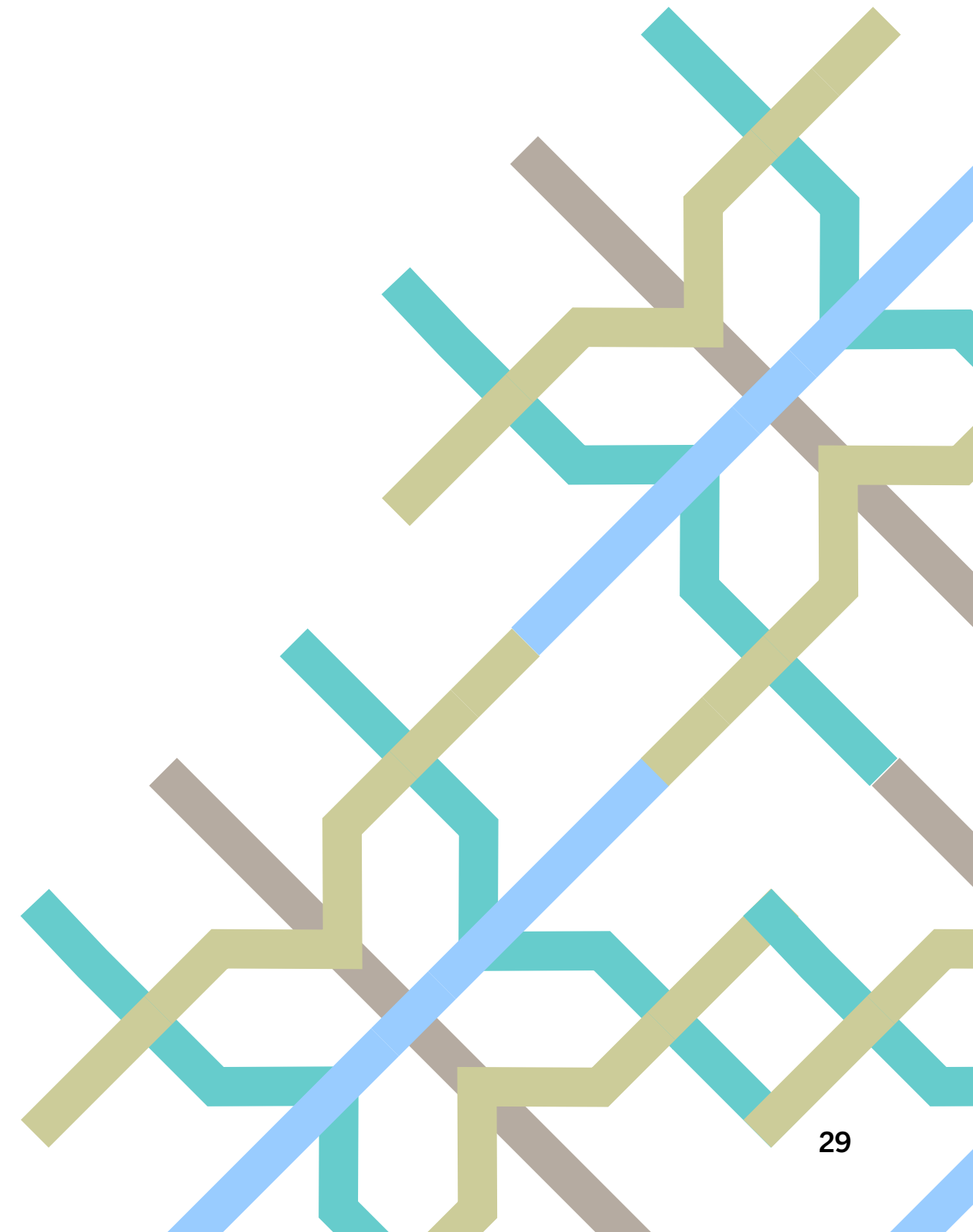
issued on 27 December 2022 (corresponding to 19/6/1445 AH). Compliance is required with effect from 1 January 2024.

Under the new regime, government agencies may not contract with companies or related parties that do not have regional headquarters in Saudi Arabia, except in limited circumstances (broadly, where the cost of the works/procurement is lower than the minimum threshold of SAR 1,000,000 or where the works/procurement is conducted outside Saudi Arabia). International companies (or related parties) which do not have a regional headquarters in Saudi Arabia are permitted to submit bids for tenders put forward by Saudi Arabian Government agencies in specified circumstances. Such bids may only be accepted in limited circumstances. A Committee (reporting to the Ministry of Finance) is expected to be formed to consider any applications for exemptions brought by the relevant Government agency.

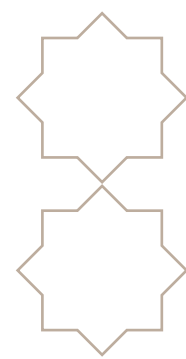
The policy is designed to encourage international companies seeking Government contracts to have their RHQs based in Saudi Arabia, and so promote Saudi Arabia as a regional business hub, as well as facilitate greater investment and employment and training opportunities for Saudi Arabian nationals in line with Vision 2030.

This is likely to encourage new multinationals entering the regional market choosing Saudi Arabia as their headquarters in MENA, and companies which already have a presence in MENA relocating their headquarters from elsewhere in the region to the Kingdom.

Arrangements between the Saudi Arabian Government and private sector entities in relation to the provision of infrastructure and other public services projects must comply with the new PPP Law. The PPP Law provides that disputes arising from a PPP contract may be settled through arbitration, whether inside or outside Saudi Arabia, according to the rules issued by the Board of the NCP.







## RHQ Licence

Global companies with a regional presence in MENA may apply for an RHQ licence. In order to be eligible to apply, a “multinational group” must have, at a minimum, presence in two different countries, other than Saudi Arabia and its country of incorporation. Essentially, the strategic direction for the multinational group’s business in the MENA region will be set by its regional headquarters (RHQs) in Saudi Arabia, and the licenced activities reflect this aim.

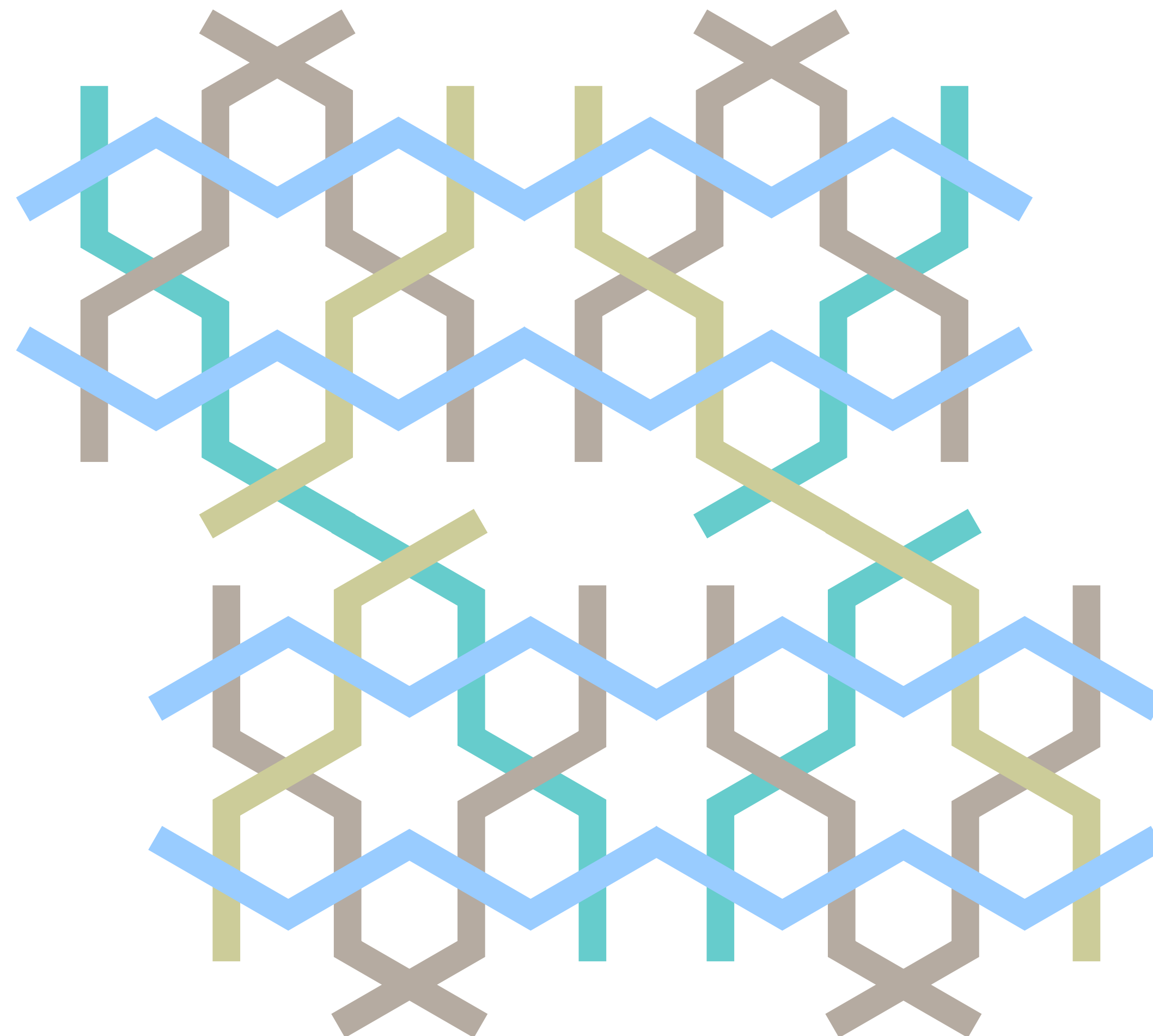
The requirements to obtaining an RHQ licence include that the must:

- > be established as a company or registered branch of a foreign company in the Kingdom with separate legal personality;
- > have a physical office in the Kingdom;
- > conduct “mandatory” RHQ activities (which includes strategic direction activities and management functions), which must be commenced within six months of the date the RHQ Licence is issued;
- > conduct at least three “optional” RHQ activities (which includes a range of activities such as sales and marketing support, human resources activities, accounting, legal and technical support), which must be commenced within one year of the date the RHQ Licence is issued;

- > only the RHQ activities which it is licensed to conduct and not directly conduct other commercial operations that generate revenue;
- > employ a minimum of 15 full-time employees within the first year, of which three must be senior executives; and
- > ensure that the employees carrying on mandatory RHQ License activities have the relevant skills and knowledge developed at the headquarters or another regional headquarters of the multinational group.

The RHQ programme offers multinational companies a variety of employment and visa exemptions as incentives to establish their RHQ in the Kingdom. For instance, there is no maximum number of visas that can be applied for employees, visas may be granted to employees who are foreign nationals in professions that are usually restricted to Saudi nationals (and there are exemptions from the usual professional accreditation requirements in the Kingdom, provided the employee is duly accredited in their country of origin) and dependents of employees are permitted to work and apply for jobs through the *Ajeer* program.

A ten year exemption from complying with Saudisation targets and discounted rates for MISA services are also available to RHQs.





## 4 Q&A

### What do I need to know about the legal environment in Saudi Arabia?

#### Key facts about the legal environment in Saudi Arabia



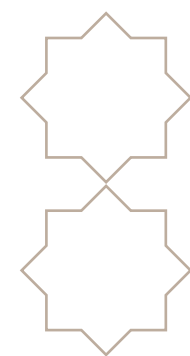
Saudi Arabian law is based on the principles of Islamic Shari'ah. In addition to Shari'ah, Saudi Arabian law is also derived from laws and regulations issued by governmental, regulatory agencies in Saudi Arabia, such as the new Civil Transactions Law.



Saudi Arabian laws are published in Arabic. There are no official English translations for many laws and regulations. The Saudi Government's *Tayseer* committee oversees the online publication of all laws and regulations.



Saudi Arabia has several court systems and specialised judicial committees. These include the Committee for the Settlement of Banking Disputes of the Saudi Central Bank and the Committee for the Resolution of Securities Disputes of the CMA.

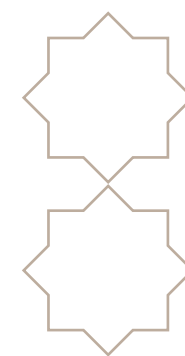


It may be challenging to enforce a foreign court judgment in Saudi Arabia. The Saudi courts will enforce a foreign court judgment only if it is issued in a country which is a party to reciprocal enforcement arrangements with Saudi Arabia or if a country would recognise and enforce a Saudi Arabian judgment in the same manner as a domestic judgment. The courts will consider if the foreign court judgment complies with Saudi public policy (meaning Shariah Principles).

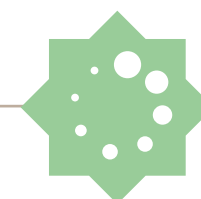


Arbitration is becoming more common in Saudi Arabia for cross-border agreements. The enforcement court in Saudi Arabia should, based on Saudi Arabia being a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, recognise and enforce an international arbitral award, without review of the merits of the dispute, provided that the award was issued in another signatory state to the New York Convention.

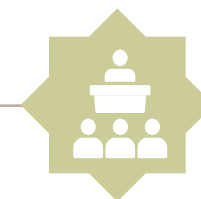
In May 2023, the Saudi Centre for Commercial Arbitration (SCCA) published its revised Arbitration Rules, which mark the latest instalment in a series of developments that seek to bring Saudi Arabia's legal and regulatory arbitration framework in line with best practices in international arbitration.



Decisions of a court or judicial committee in one case are not binding in respect of another case but may be persuasive. Court judgments are not routinely published. This is common across civil law jurisdictions in the Middle East.



Saudi Arabia is a party to a number of (mostly regional) enforcement treaties, including the GCC Convention of the Enforcement of Judgments (1996) and the Riyadh Arab Agreement for Judicial Cooperation (1983).



There is limited jurisprudence to indicate how the enforcement court would interpret and apply the relevant Saudi enforcement legislation in any action before it to recognise and enforce a foreign arbitral award. Again, the courts will consider if the foreign arbitral award complies with Saudi public policy (meaning Shariah principles).



Government authorities and Government-related entities may require their transactions to be governed by Saudi Arabian law, with disputes heard by the Saudi courts (unless a waiver is granted by the President of the Council of Ministers, ie the King acting in his capacity as Prime Minister).

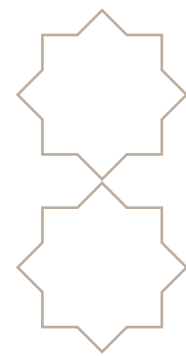


Care must be taken to sign documents in accordance with the proper procedures under Saudi Arabian law. Some types of contracts will require handwritten "wet ink" signatures. Enhanced advice or oversight of the execution of transaction documents may be desirable, especially where a document is particularly significant.



Transaction documents may need to be notarised (and legalised by apostille if executed outside Saudi Arabia) to ensure an agreement is valid and enforceable against the parties in Saudi Arabia.





## What are the most significant recent and anticipated legal reforms?

Over the last few years, an extensive programme of modernisation has woven aspects of international best practice into the commercial legal landscape. As 2030 grows closer, there is real momentum behind significant and wide-ranging legal reforms.



The Saudi Government has implemented an impressive range of legal reforms in recent years, which are among the **most progressive for businesses in the Middle East**. Viewed holistically, these reforms **promise to increase investor confidence** in the Kingdom's business environment."



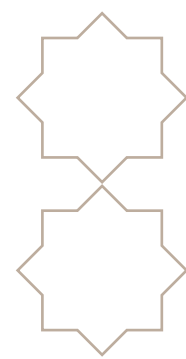
**Omar El Sayed**  
Banking and Finance Partner, Riyadh

Saudi Arabia has already implemented an impressive range of reforms identified in Vision 2030, including modernising its companies law regime, allowing 100 per cent foreign ownership in a range of sectors, opening up its capital markets and new commercial laws modernising the bankruptcy, competition and tax regimes. The new codified contract law framework set out in the Civil Transactions Law should provide greater clarity on the rules governing contractual relationships and promote consistency of interpretation of contractual arrangements in the Saudi Arabian courts. The Kingdom's laws continue to evolve to support foreign inbound investment across sectors. Opportunities for investment are growing as a result of the privatisation initiative and progressive stock exchange reforms.

**The timeline below highlights some of the recent key legal reforms and anticipated reforms in the coming year.**







## Focus on: The Civil Transactions Law 2023

### Civil Transactions Law

Contractual relationships in Saudi Arabia are governed by a new Civil Transactions Law (Saudi Arabia Royal Decree No. M191/1444 H), issued on 18 June 2023 (corresponding to 29 Dhu Al-Qa’dah 1444 H) (Saudi Arabia Cabinet Decision No. 820/1444).

The Civil Transactions Law is the first published law to set out a framework applicable to all types of contracts. To date, contracts have been governed by and interpreted in accordance with Shariah principles, with certain categories of contracts regulated by specific published laws. In common with other Middle East civil law jurisdictions, Saudi Arabia now has a codified basic contract law regime, aspects of which are influenced by French, Roman, Egyptian, Jordanian and Islamic law. This should provide greater certainty as to contract law matters than has previously been the case in Saudi Arabia, which is likely to offer welcome assurance to foreign investors.

Specific types of contract are also regulated in the Civil Transactions Law, namely contracts of sale, loans, guarantees, leases, employment and other contracts for work, agency, partnership, Mudarabah and real estate contracts.

The Civil Transactions Law comes into force on 20 December 2023 (being 180 days from 23 June 2023, the date of publication in the Official Gazette).

As it will have retrospective effect, contracts entered into before the law comes into force will need to be compliant and parties should be familiar with the new rules.

The Saudi Arabian Government is also proposing to introduce a law applicable to commercial contractual relationships. The general contract law principles set out in the Civil Transactions Law should apply to all civil and commercial transactions, and any new commercial transactions law is expected to provide a legislative overlay applicable to categories of contracts identified as commercial in nature. This will be similar to other regimes in the region, such as the UAE.

### Key reasons to know about Saudi Arabian contract law

International parties to transactions with a connection to Saudi Arabia may prefer the certainty and familiarity of English law as the governing law of their agreements. In some circumstances, it may be required or advisable for agreements to be governed by Saudi Arabian law. In each scenario, consideration of compliance with Saudi Arabian contract law principles is necessary, as if proceedings relating to the agreements are brought in the Saudi Arabian Courts, a Saudi Arabian Court may accept jurisdiction and apply Saudi Arabian law, regardless of the parties’ choice of governing law and jurisdiction in the agreement.

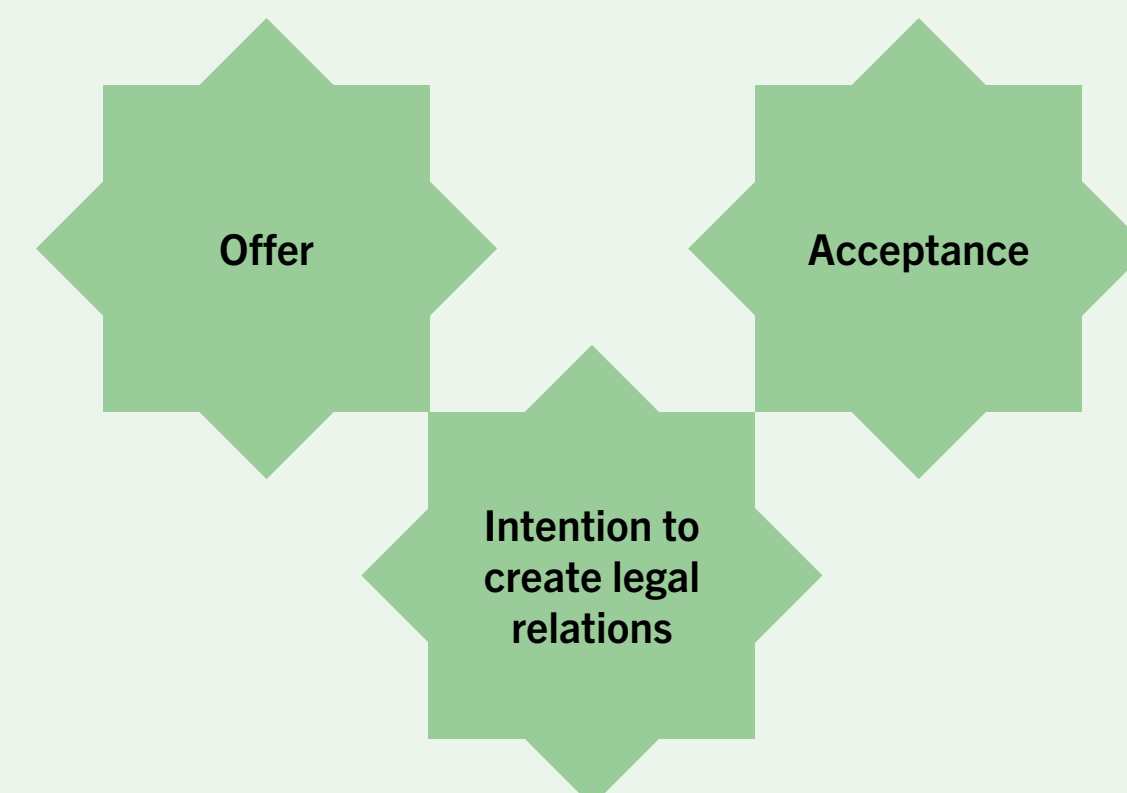
The Saudi Arabian Courts have wide jurisdiction to hear actions against Saudi Arabian nationals, Saudi

Arabian companies and, in certain circumstances, foreigners and foreign companies. It is for a Saudi Arabian Court to determine whether it has jurisdiction to settle any dispute arising out of or in connection with an agreement, irrespective of the parties’ agreement as to jurisdiction.

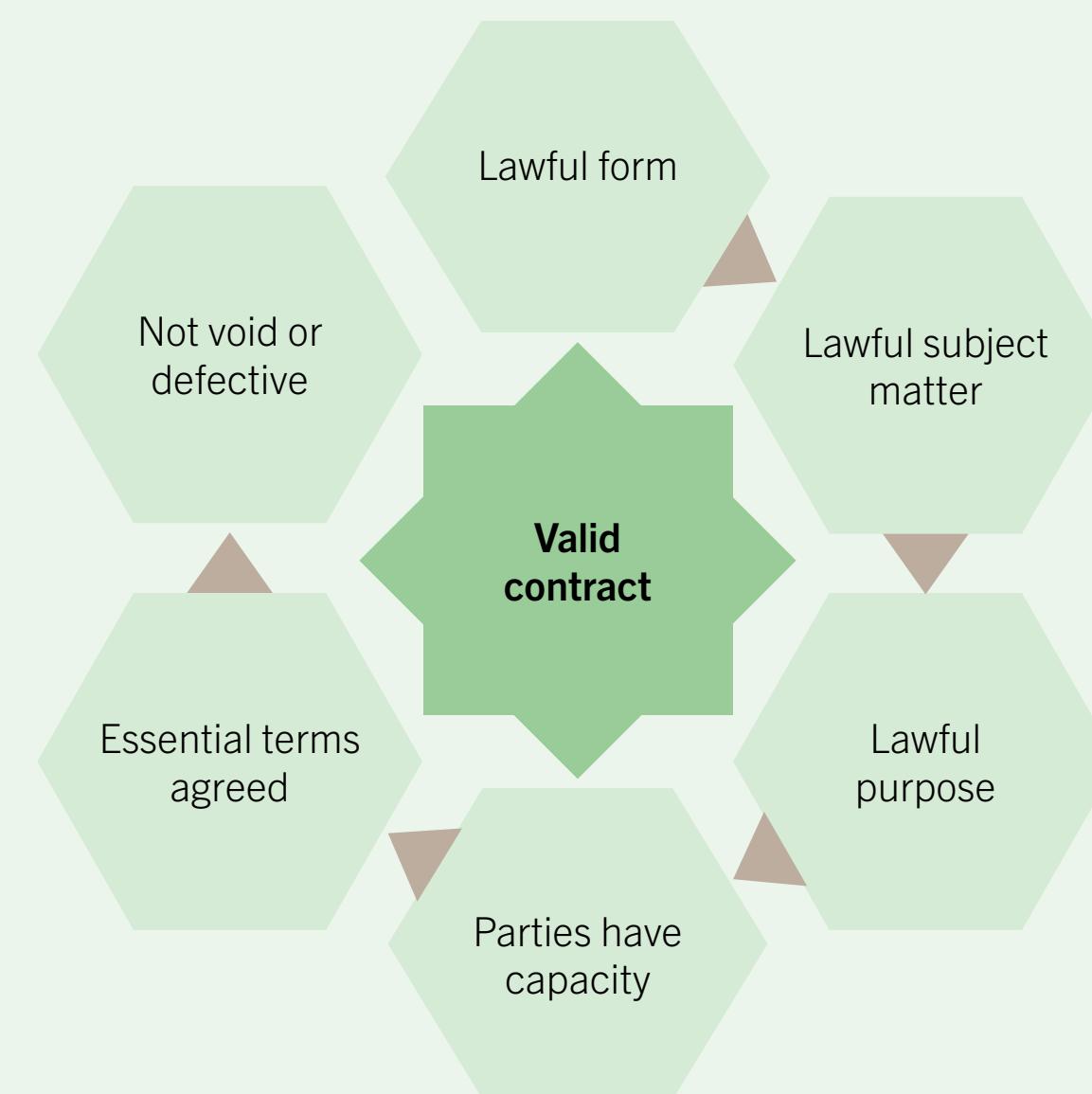
### Key contract law principles

The new framework provides detailed regulations as to a range of matters generally applicable to all contracts, including contract formation, capacity to contract, contractual interpretation, breach, termination, damages and other remedies, set-off, rights of third parties, assignments and transfers. The law contains provisions relating to mistake, deceit, duress, undue influence, exploitation and provisions as to void and revocable contracts.

### How is a contract formed?

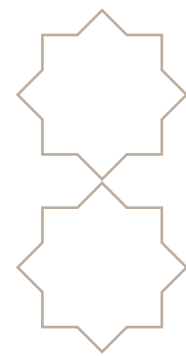


### What are the essential elements of a valid contract



There is no special form of a contract, unless required by law for specific types of contracts. The subject matter of the contract must be defined, possible and not breach public order. A contract must have a lawful purpose or “cause” (if any provision in a contract is illegal it will be void and it is possible to sever void contractual provisions from the rest of a valid contract). Parties can agree to be bound contractually provided that the essential terms are agreed, even if there are further terms to be agreed at a later stage.





### Other notable provisions

**Good faith:** A contract must be performed in accordance with its contents and in a manner consistent with the requirements of good faith.

**Custom:** Where the wording of a contract is not clear, a Saudi Arabian Court will look to determine the intention of the parties and may take into account custom, the circumstances of the contract, the nature of the transaction, the dealings between the parties and their position to assist in deducing the meaning and intention of the parties.

**Unjust enrichment:** Where one party may be regarded as being unjustly enriched at the expense of another party, the party enriched may be required to compensate the other party for losses incurred.

**Harmful acts:** If a party commits a “harmful act”, it may face civil and criminal penalties, and liability for damages.

**Exclusion clauses:** Parties cannot contract out of liability for fraud, gross negligence, or harmful acts.

### How will a Saudi Arabian Court interpret a contract?

Parties to a contract have the freedom to form a contract, subject to limited restrictions. If the contract is drafted clearly, this is evidence of the parties’ intentions and so should be enforced according to its terms. If the contract is not drafted clearly, the judge must deduce what was the intention of the parties – he/she will take into account custom, the circumstances of the contract, the nature of the transaction, the dealings between the parties and their positions.

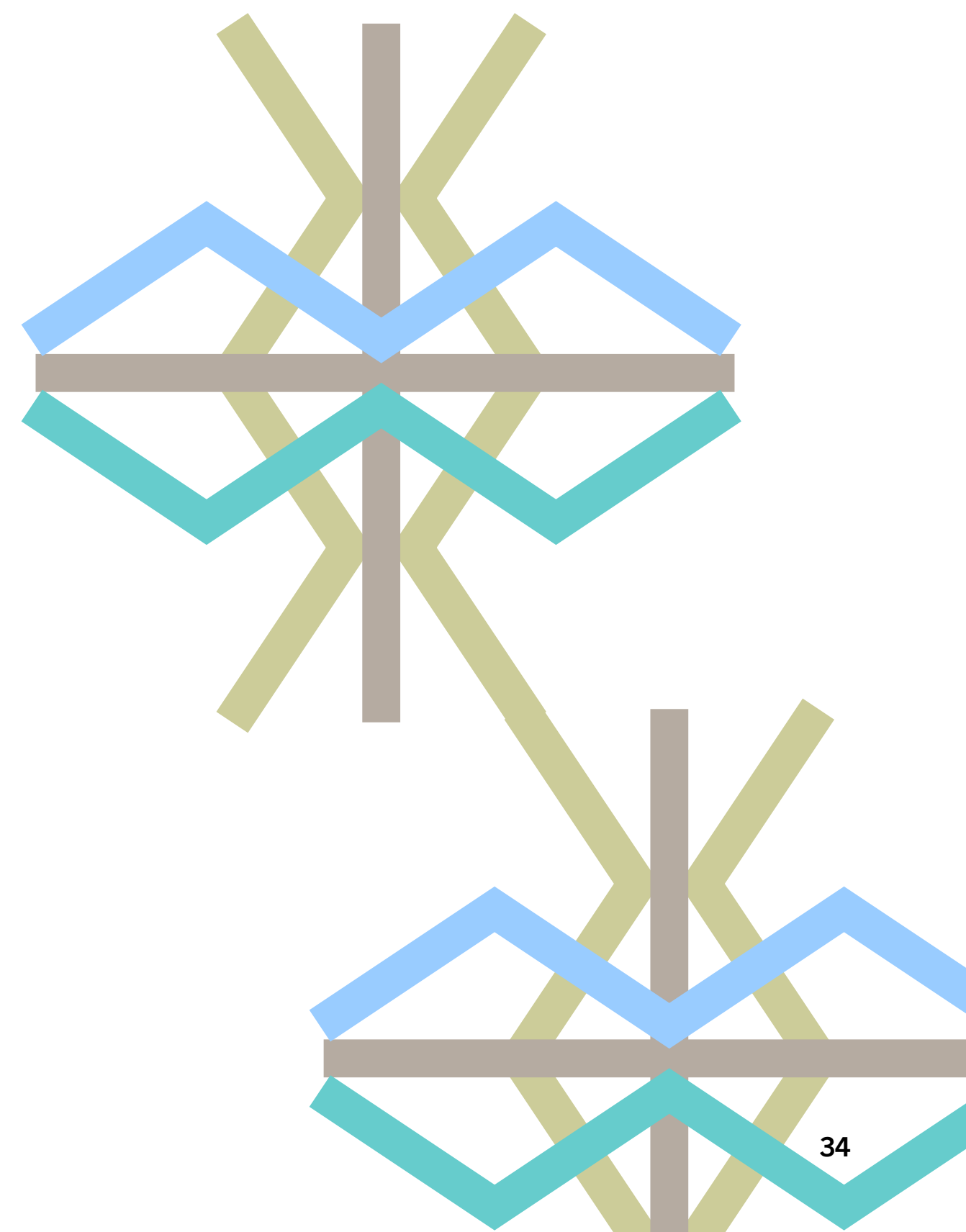
It should be noted that the Saudi Arabian Courts are required to interpret and apply published laws, including the Civil Transactions Law once it comes into force, in accordance with Shariah principles. Accordingly, it is possible that the Saudi Arabian Courts may reach differing views on the interpretation of the Civil Transactions Law and its application to contractual arrangements.

### To what extent is the legal regime in Saudi Arabia aligned with international best practices?

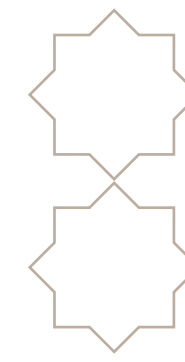
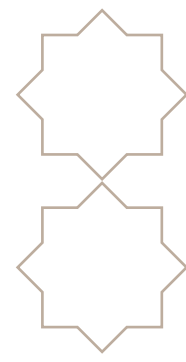
International collaboration and enhancing the Kingdom’s global reputation are central to ensuring that Saudi Arabia is an attractive destination for foreign investors, especially important in an era of cross-border regulatory scrutiny and anxiety about foreign investments into strategic sectors.

Legal and regulatory frameworks in Saudi Arabia are changing, predominantly in line with regional and global developments. These changes evidence a clear recognition that compliance with international business standards will help inbound and outbound investment succeed and so enable the non-oil economy to flourish. These reforms provide the enabling environment for Saudi Arabia to improve its global rankings. The Government adheres to a high level of transparency in the creation of new or amended laws. New laws and regulations are routinely published in an Official Gazette. Government departments and authorities (including Ministries, the CMA and the Saudi Central Bank) typically follow a process of consulting with experts in the relevant field, benchmarking legal and regulatory frameworks in other jurisdictions so as to draw on aspects of international best practice, and publishing draft laws and regulations online for public consultation prior to implementation. In taking this approach, Saudi Arabia differs from other jurisdictions in the region where transparency in the legislative process is less consistent and less comprehensive.

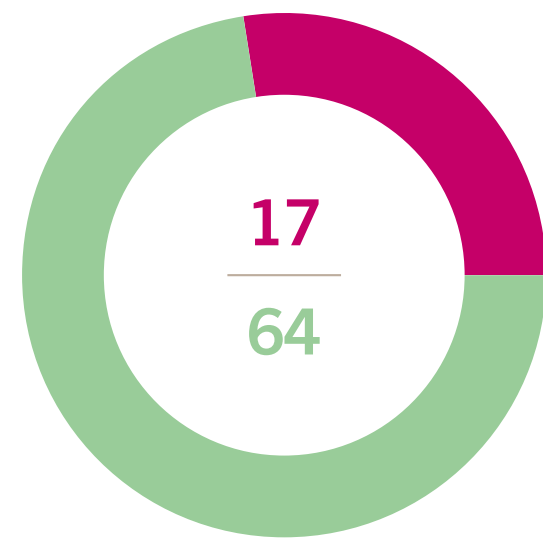
This approach encourages the engagement by the business community in the shaping of legal regimes and builds confidence in a predictable legal environment for companies and investors in the Kingdom.





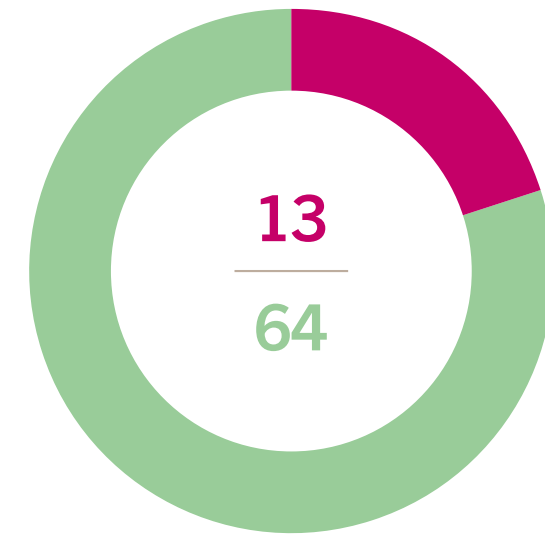


### World Competitiveness Ranking (Overall)



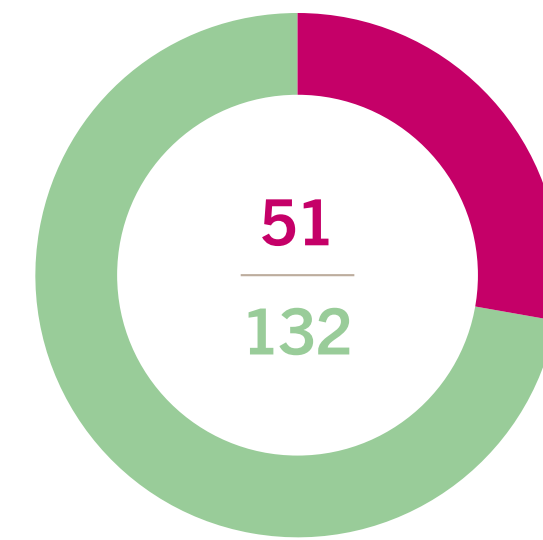
Source: IMD, 2023

### World Competitiveness Ranking (Business Efficiency)



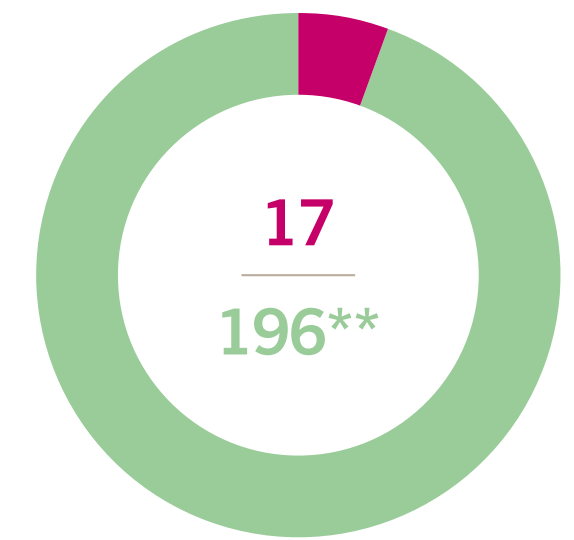
Source: IMD, 2023

### Global Innovation Index



Source: WIPO, 2022

### Nominal GDP of KSA Globally for 2022\*



Source: IMF, April 2023

### Saudi Exchange (Tadawul)



Source: Saudi Exchange, 2023

### Saudi Arabia Credit Rating (Fitch)\*\*



Source: Fitch, April 2023

### Saudi Arabia Credit Rating (Standard and Poor's)



Source: S&P, March 2023

### Saudi Arabia Credit Rating (Moody's)

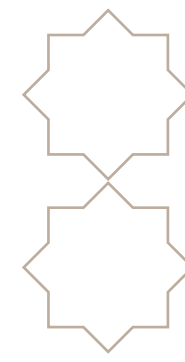
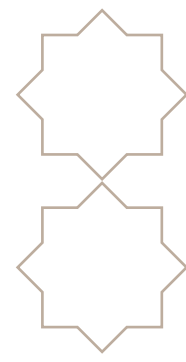


Source: Moody's, March 2023

\* IMF estimates

\*\* Excluding countries groups according to the IMF classification





# Contacts

We hope you find this guide useful. Please get in touch with any questions you may have.

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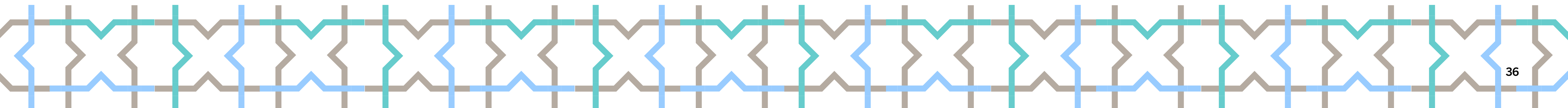
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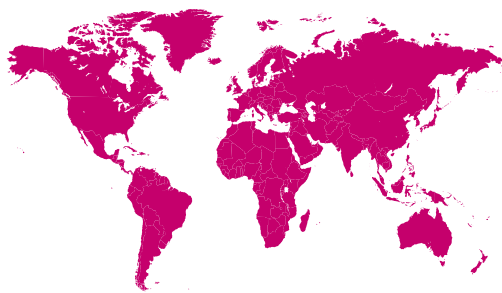
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