



DRAFT INVESTMENT LAW

Content

• PART 1 GENERAL PROVISIONS	
Article One: Definitions	3
Article Two: Objective	4
Article Three: Scope	4
Article Four: List of Reserved and Restricted Areas	4
• PART 2 ESTABLISHMENT OF FOREIGN INVESTMENTS	
Article Five: Market Access for Foreign Investors:	4
• PART 3 INVESTOR RIGHTS AND OBLIGATIONS	
Article Six: National Treatment and Most-Favored Nation Principle	5
Article Seven: Minimum Standard of Treatment	6
Article Eight: Freedom to Manage One’s Own Business	6
Article Nine: Protection Against Expropriation Without Compensation	6
Article Ten: Access to Freely Convertible Currency And Transfer of Funds	6
Article Eleven: Responsibility of Investors to Comply with the Kingdom’s Laws and Regulations	7
• PART 4 INVESTMENT INCENTIVES	
Article Twelve: Investment Incentives	7
• PART 5 DISPUTE SETTLEMENT	
Article Thirteen: Investor Grievances	8
Article Fourteen: Domestic Remedies	8
Article Fifteen: Arbitration	8
• PART 6 FINAL PROVISIONS	
Article Sixteen: Existing Rights	8
Article Seventeen: Scope Limitation	8-9
Article Eighteen: Special Zones	9
Article Nineteen: International Treaties and Investment Agreements	9
Article Twenty: Implementation	9
Article Twenty One: Implementing Regulations	9
Article Twenty Two: Publication	9

DRAFT INVESTMENT LAW

PART 1

1.1 GENERAL PROVISIONS

Article One: Definitions

Unless the context otherwise requires, in this Law, each of the below phrases shall have the meaning ascribed thereto:

- **“Law”** means the Investment Law
- **“Implementing Regulations”** means the implementing regulations of the Law.
- **“Kingdom”** means the Kingdom of Saudi Arabia.
- **“Authority”** means the Saudi Arabian General Investment Authority (SAGIA);

- **“Investor”** means any natural or legal person making an Investment.
- **“Domestic Investor”** means an Investor who is:
 - 1) a natural person who is a citizen of the Kingdom, or any natural person who, pursuant to Royal Decree or Council of Ministers Resolution, has been deemed to be treated in the same manner; or
 - 2) a legal person incorporated in the Kingdom and whose ultimate owners are natural persons who are citizens of the Kingdom, or a legal person formed or incorporated inside or outside the Kingdom, who pursuant to Royal Decree or Council of Ministers Resolution, has been deemed to be treated in the same manner.
- **“Foreign Investor”** means an Investor in the Kingdom who is not a Domestic Investor.
- **“Investment”** means any asset that an Investor owns or controls, directly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, the assumption of risk, and a certain duration, and that has been established or acquired, and operated, in accordance with the laws and regulations of the Kingdom. Forms that an Investment may take include:
 - 1) an enterprise, including, without limitation, a partnership, company or any other legal form for doing business recognized in the Kingdom;
 - 2) shares or stocks;
 - 3) bonds, debentures, and other forms of debt participation in a company and non-government bonds;
 - 4) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;
 - 5) Licenses, authorizations, permits, and similar rights conferred pursuant to the laws and regulations of the Kingdom.

Notwithstanding the above, Investments do not include:

- 1) public debt instruments;
- 2) claims to money arising solely from commercial contracts for the sale of goods and services, or the extension of credit in connection with the a commercial transaction such as trade financing; and
- 3) Portfolio Investments.

- **“Portfolio Investment”** means an Investment equivalent to less than 10 per cent of the assets or ownership rights of a business.
- **“List of Reserved and Restricted Areas”** means the list of areas which are either reserved for Domestic Investors or which include certain restrictions on Foreign Investors, as adopted and updated from time to time pursuant to Article Four of this Law.
- **“Freely Convertible Currency”** means currencies defined as such by the International Monetary Fund, and which are not subject to sanction or restriction by the Saudi Arabian Monetary Agency.

Article Two: Objective:

This Law is designed to contribute to an attractive investment climate in the Kingdom. It aims to increase investments, generate employment and promote growth to the benefit of the citizens of the Kingdom.

Article Three: Scope:

This Law applies to all Investors and Investments made by an Investor within the Kingdom.

Article Four: List of Reserved and Restricted Areas

- 1) A List of Reserved and Restricted Areas shall be approved by the [Council of Ministers].
- 2) The List of Reserved and Restricted Areas may be reviewed and updated regularly by [Council of Ministers Resolution].
- 3) The List of Reserved and Restricted Areas shall be complete and exclusive.
- 4) Reservations and restrictions may be used to protect areas of the Kingdom’s economy where domestic businesses are considered by the Kingdom to be vulnerable, and a restriction shall have preference over a reservation where that objective can be achieved by both measures.
- 5) Restrictions may include a minimum investment threshold or an ownership ceiling applied in specific or all restricted areas or any other measure designed to achieve its objective.

PART 2 ESTABLISHMENT OF FOREIGN INVESTMENTS

Article Five: Market Access for Foreign Investors:

- 1) Subject to Article Four, Seventeen and Eighteen of this Law, a Foreign Investor intending to invest in the Kingdom can invest in all sectors and all regions.
- 2) Without prejudice to paragraph (1) above, prior to making an Investment in the Kingdom, a Foreign Investor must register with the Authority and provide details of their Investment in accordance with the procedures established by the Authority and made available to all Foreign Investors pursuant to the Implementing Regulations.
- 3) The registration requirement pursuant to paragraph (3) does not exempt the Foreign Investor from any other requirements or conditions that may be imposed by any other government entities in the Kingdom.
- 4) Following registration, Foreign Investors are subject to the same licensing and clearance requirements as Domestic Investors in accordance with all relevant laws and regulations in the Kingdom.

PART 3
INVESTOR RIGHTS AND OBLIGATIONS

Article Six: National Treatment and Most-Favored Nation Principle:

- 1) Subject to the provisions of this Law, international treaties and investment agreements entered into by the Kingdom, other obligations of the Kingdom and any sanctions or restrictions imposed against any foreign country or nationals of any foreign country:
 - a. Foreign Investors shall be accorded treatment no less favorable, in like circumstances, than that accorded to Domestic Investors with respect to the expansion, management, conduct, operation, and sale or other disposition of Investments in the Kingdom; and
 - b. discriminate intentionally, in like circumstances, between Foreign Investors on any basis, including but not limited to their citizenship, residency, place of registration or incorporation or the state of origin of the Investment or any other basis.
- 2) The provision, non-provision, modification, renewal, non-renewal, removal, or reduction of any fiscal or non-fiscal incentives by the Kingdom in accordance with Article [Twelve] shall not constitute a breach of this Article.
- 3) treatment of Foreign Investors in accordance with applicable international treaties and investment agreements entered into by the Kingdom shall not constitute discrimination, nor otherwise constitute a breach of this Article. And any more favorable treatment accorded to Investors from any country pursuant to any international treaties and investment agreements shall not entitle other Investors to the same treatment pursuant to this Law.

Article Seven: Minimum Standard of Treatment:

- 1) All Investments shall be treated in accordance with the minimum standard of treatment under customary international law, including fair and equitable treatment and full protection and physical security.
- 2) For greater certainty, a breach of paragraph (1) above would occur if a measure or series of measures constitutes:
 - a. denial of justice in criminal, civil or administrative proceedings;
 - b. fundamental breach of due process, including a fundamental breach of transparency, in judicial and administrative proceedings;
 - c. manifest arbitrariness;
 - d. targeted discrimination on manifestly wrongful grounds, such as gender, race or religious belief.
- 3) A determination that there has been a breach of another provision of this Law, or any other law or regulation in the Kingdom, or a separate international agreement to which the Kingdom is a party, does not establish that there has been a breach of this Article.
- 4) The mere fact that action is taken (or failed to be taken) that may be inconsistent with an Investor's expectations does not constitute a breach of this Article, even if there is loss or damage to the Investment as a result.
- 5) The mere fact that a fiscal or non-fiscal incentive has been or has not been provided or renewed, or has been removed, modified or reduced, does not constitute a breach of this Article, even if there is loss or damage to the Investment.

Article Eight: Freedom to Manage One's Own Business:

Subject to the Kingdom's laws and regulations and to the rights pursuant to paragraph (b) of Article Seventeen, every Investor has the freedom to manage their business enterprise. This freedom includes the ability to hire and lay off workers in accordance with the relevant labor laws and regulations, determine the production process, inputs, outputs and prices, and the freedom to close and sell any company in accordance with the laws and regulations applicable to companies in the Kingdom.

Article Nine: Protection Against Expropriation Without Compensation:

Pursuant to the relevant laws and regulations, all Investors are protected against compulsory acquisition of property, save for expropriation which is for a public purpose and on payment of adequate compensation.

Article Ten: Access to Freely Convertible Currency And Transfer of Funds

- 1) Investors, with respect to all payments related to their Investments in the Kingdom, shall have the right to freely convert national currency of the Kingdom into any other Freely Convertible Currency, in accordance with the provisions of the relevant laws and regulations.
- 2) Investors have the right to transfer funds overseas in Freely Convertible Currency in accordance with the applicable laws and regulations. Such transfers include in particular though not exclusively:
 - a. profits, dividends and other current income;
 - b. funds necessary for:
 - i. for the acquisition of raw or auxiliary materials, semi-fabricated or finished products, or
 - ii. to replace capital assets in order to safeguard the continuity of an investment;
 - c. additional funds necessary for the development of an investment;
 - d. funds in repayment of loans;
 - e. royalties or fees;
 - f. earnings of natural persons;
 - g. the proceeds of sale or liquidation of the investment; and
 - h. payments arising under Article Nine of this Law.
- 3) Notwithstanding paragraph (1), the Kingdom may prevent or delay a transfer of funds through the equitable, non-discriminatory and good faith application of its laws and regulations relating to:
 - a. bankruptcy, insolvency or the protection of the rights of creditors;
 - b. issuing, trading or dealing in securities, futures, options or derivatives;
 - c. criminal or penal offences;
 - d. financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
 - e. fiscal prudential rules specified and published by the Saudi Arabian Monetary Agency; or
 - f. ensuring compliance with orders or judgments in judicial or administrative proceedings.

Article Eleven: Responsibility of Investors to Comply with the Kingdom's Laws and Regulations

- 1) Investors and their Investments shall comply with all applicable laws and regulations of the Kingdom, including with respect to human rights, environmental protection and labor laws. In the event of non-compliance, Investors and their Investments are subject to any penalties or sanctions in accordance with the relevant laws and regulations.
- 2) In particular, Investors have the following duties and obligations:
 - a. to adhere to the applicable laws, regulations and ordinances of the Kingdom, and to respect the values of Saudi society;
 - b. to maintain separate accounts and records in respect of the business enterprise in accordance with the applicable accounting standards;
 - c. to supply, in a timely manner, any information required by applicable laws and regulations to the relevant competent authorities to enable such authorities to implement their functions efficiently and effectively;
 - d. to facilitate access of the relevant investment support institutions to information on their business enterprises as required by applicable laws and regulations;
 - e. to meet or exceed national and internationally accepted standards of corporate governance for the sector, size and nature of the Investment; and
 - f. to carry out the Investment in a manner that makes the maximum feasible contributions to the sustainable development of the Kingdom and local community through high levels of socially responsible practices.
- 3) where standards increase, Investors should apply and achieve the higher level standards.

PART 4 INVESTMENT INCENTIVES

Article Twelve: Investment Incentives

- 1) The Kingdom may provide fiscal and non-fiscal incentives to Foreign Investors to attract and promote Investments.
- 2) Any such incentives must be:
 - a. designed and precisely targeted to achieve specific policy objectives,
 - b. granted according to clearly pre-defined eligibility criteria in a transparent and non-discretionary manner; and
 - c. based on an analysis of an economic feasibility study showing the benefits and associated costs to ensure their effectiveness and financial sustainability.
 - d. consistent with the Kingdom's obligations under international law.

The provision, non-provision, modification, renewal, non-renewal, removal, or reduction of any fiscal or non-fiscal incentives that meet the criteria in this Article by the Kingdom shall not constitute a breach of this Law.

PART 5
DISPUTE SETTLEMENT

Article Thirteen: Investor Grievances

- 1) An Investor may submit a grievance to the Authority in the event it is aggrieved by a measure of the Kingdom related to its Investment.
- 2) The grievance process will be guided by the principles of fairness, objectivity, and lawfulness. Involved institutions are obliged to cooperate with the Authority in its effort to find a solution acceptable for all parties.
- 3) If the Authority cannot find a solution to any dispute within 60 days, then the Investor may refer the dispute to the competent court in the Kingdom.
- 4) Grievance procedures and processes shall be issued by the Authority.

Article Fourteen: Domestic Remedies

Notwithstanding any grievances submitted pursuant to Article Thirteen and subject to applicable laws and regulations, an Investor may [directly] approach any competent court or tribunal in the Kingdom for the resolution of a dispute relating to an alleged breach of any of the rights afforded to Investors under Part 3 of this Law.

Article Fifteen: Arbitration

- 1) The Kingdom may consent to international arbitration in respect of a dispute relating to an Investment.
- 2) Foreign judgements and arbitral awards shall be enforced in the Kingdom in accordance with the relevant laws and regulations.

PART 6
FINAL PROVISIONS

Article Sixteen: Existing Rights

An Investment covered by this Law and existing at the time of the enactment of this Law which has already acquired rights or exemptions under another law or an investment agreement with the Kingdom shall continue enjoying such granted rights or exemptions up to the end of the period specified for these rights and exemptions.

Article Seventeen: Scope Limitation

This Law does not affect the right of the Authority or the relevant government entity to adopt, maintain or enforce measures:

- a. that the Kingdom considers appropriate to ensure that investment activity is undertaken in a manner sensitive to health, safety, human rights, labor rights, resource management or environmental concerns;
- b. that the Kingdom considers necessary to achieve legitimate policy objectives, such as:
 - i. to protect the security of its citizens, maintain public order or public morals;
 - ii. to ensure the integrity and stability of the Kingdom's financial system;
 - iii. to secure compliance with laws and regulations that are not inconsistent with this Law; or
- c. the adoption, maintenance or enforcement of such measures shall not constitute a breach of this Law.

Article Eighteen: Special Zones

The provisions of this law does not apply to Investments made by an Investor in any special zone established or regulated by the Kingdom pursuant to a separate law or regulation.

Article Nineteen: International Treaties and Investment Agreements

In the case of an inconsistency between the provisions of an applicable international treaty or investment agreement to which the Kingdom is a party and this Law, the applicable international treaty or investment agreement shall prevail to the extent of the inconsistency.

Article Twenty: Implementation

The Authority is in charge of implementing the provisions of this Law and its implementing regulations unless stated otherwise in compliance with the legislation of the Kingdom.

Article Twenty One: Implementing Regulations

The Board of Directors of the Authority shall issue the Implementing Regulations and shall come into effect from the date of implementation the Law.

Article Twenty Two: Publication

The Law shall be published on the official gazette and shall commence after One Hundred and Eighty days from the date of publication. The Foreign Investment Law issued by the Royal Decree No. (M-1) dated 5/1/1421 AH shall be repealed as do everything that conflicts with it on the day of publication, except for the provisions of international agreements and treaties to which the Kingdom is a party.