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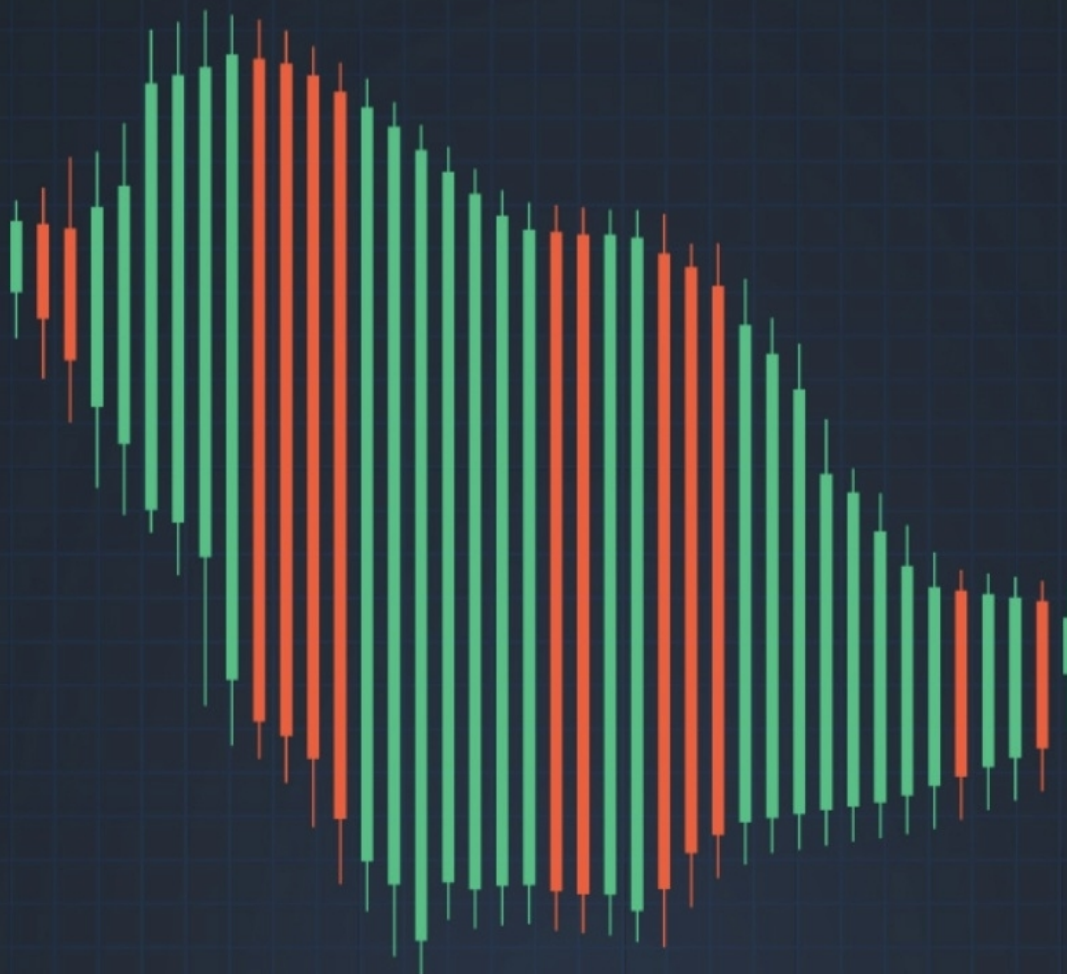
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EQUALITY & OPPORTUNITY

Saudi Arabia's new Investment Law

EQUALITY AND OPPORTUNITY

Saudi Arabia has a new Investment Law designed to create a more attractive investment environment there by better protecting local and foreign investors' rights and providing them with more opportunities, as Bedoor Alrabiah of GLA & Co explains.

“On 11 August 2024, a new investment law Saudi Arabia Cabinet Decision No. 40/1446 was issued in Saudi Arabia,” states Bedoor Alrabiah. “This law, which impacts both local and foreign investors replaces the previous Saudi Arabian Foreign Investment Law (Saudi Arabia Cabinet Decision No. 1/2021) which only impacted foreign investors. It is set to come into force 180 days after its publication in the Official Gazette.”

“Article 2 of Saudi Arabia Cabinet Decision No. 40/1446 explains its aims and objectives,” Alrabiah continues. “These include to develop and enhance the competitiveness of the investment environment in Saudi Arabia, contribute to economic development, and create job opportunities by providing an attractive investment climate there. It is hoped this law will help make it easier for investments to be established, to own assets in these investment, and crucially also to



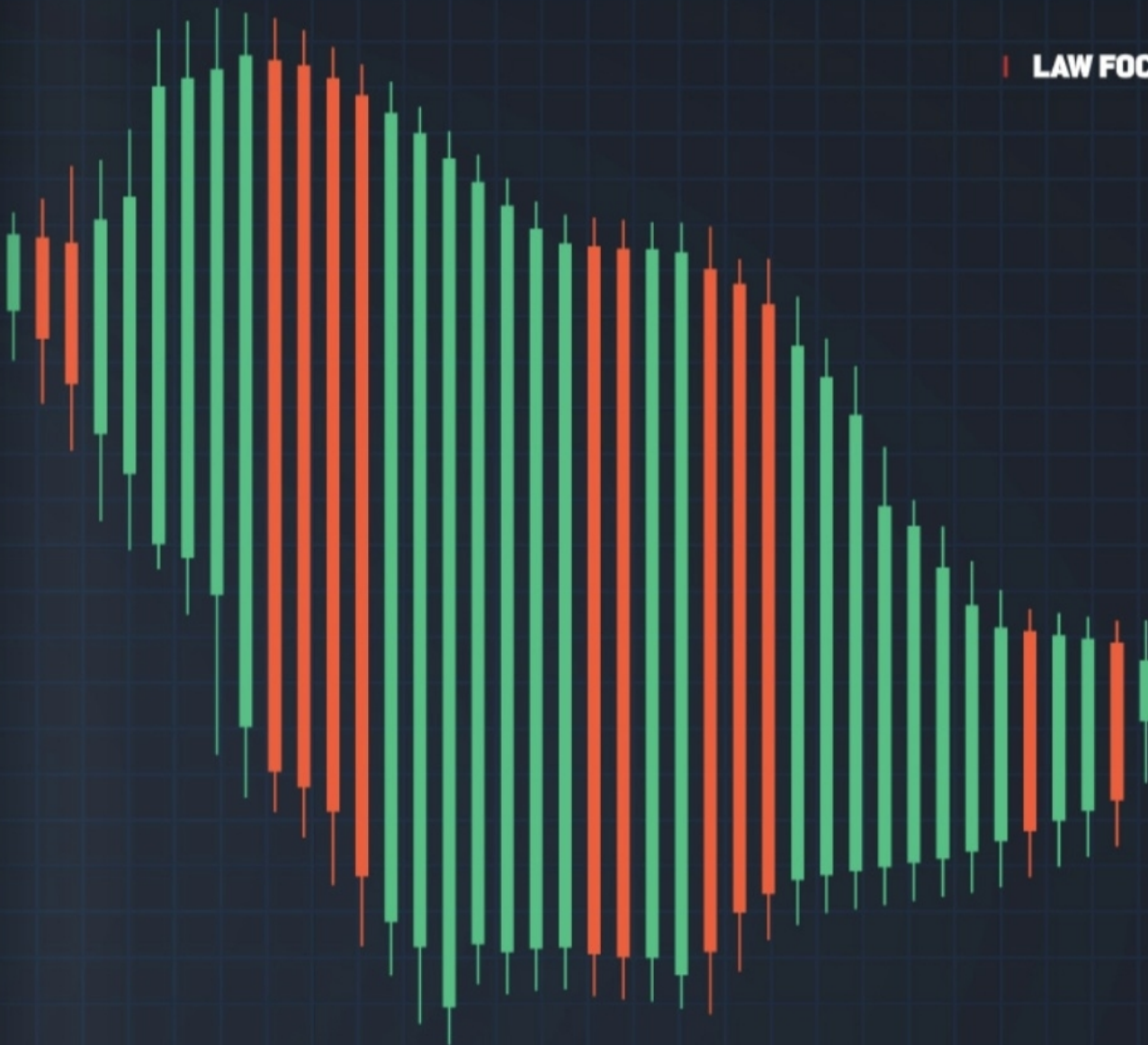
Bedoor Alrabiah

enable investors to liquidate or exit investments in Saudi Arabia more easily.”

“Saudi Arabia Cabinet Decision No. 40/1446 will help facilitate smooth and easy transfers of funds, which will make it simpler for investors to move their capital in and out of Saudi Arabia.”

“Investor protection is also seen as a key element in developing a more competitive investment environment in Saudi Arabia,” Alrabiah states. “As a result, Saudi Arabia Cabinet Decision No. 40/1446 also contains provisions which are designed to help guarantee and promote investors’ rights, ensure local and foreign investors have guaranteed equal treatment.”

“This law also promotes the principle of competitive neutrality and fairness, and ensures equal opportunities are available when it comes to investment,” Alrabiah explains. “It will also be interesting to see if this right to freedom of investment found in Article 3 of Saudi Arabia Cabinet Decision No. 40/1446 has an impact in sectors which have been traditionally dominated by local businesses.”



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"In addition, Article 6 of Saudi Arabia Cabinet Decision No. 40/1446 also provides for investment incentives although at present there is no detail on eligibility criteria which are likely to be covered in more detail in the regulations."

DEFINITION OF INVESTOR

"Another big change in this law is that the definition of who is an investor has been made more comprehensive," Alrabiah continues. "Local investors are now defined as any natural or legal person who invests and has Saudi nationality. While foreign investors are defined as a natural or legal person who invests but is not considered a local investor under the provisions of the law. This law also provides investors with freedoms and rights and increased investment opportunities."

SAFEGUARDS

"Article 4 of Saudi Arabia Cabinet Decision No. 40/1446 includes a number of new investor safeguards," Alrabiah states. "A significant feature here is the enhanced protections for property rights which

RELEVANT LEGISLATION

Article 3 of Saudi Arabia Cabinet Decision No. 40/1446

Without prejudice to the provisions of Articles 8 and 9 of this Law and the provisions of relevant laws, an investor may engage in investment in any sector or activity available for investment.

(Source: Lexis Middle East Law)

will help ensure that investors' assets are protected. This includes the protection of IP rights which will help protect investors' innovations and creations. In addition, new dispute resolution methods have been put in place which will ensure any conflicts are resolved fairly and efficiently. These protections are much stronger than they were in the past and significantly local and foreign investors will now be treated equally."

"Article 4 of Saudi Arabia Cabinet Decision No. 40/1446 also provides mechanisms for the investors to enforce their rights," Alrabiah adds. "Investors now have the right to resolve any disputes through local courts or using alternative dispute resolution methods

RELEVANT NEWS

Financial Guarantees for Foreign Small Investors

Saudi Arabia is set to extend its 'Kafalah' financing guarantee programme to small foreign investors, in order to attract foreign companies and boost investment in the local market. This change aligns with the National Investment Strategy, which has set a target to increase foreign direct investment to 388 billion Riyals by 2030, so that it constitutes 5.7% of the GDP. The Kafalah programme was established under Saudi Arabia Cabinet Decision No. 301/1437.

such as arbitration, mediation, and reconciliation as stated in Article 10 of Saudi Arabia Cabinet Decision No. 40/1446."

"Although, having these alternative dispute resolution mechanisms available will be an advantage for some investors, it is also possible investors who lack the legal knowledge to navigate these new options may initially face additional costs as they learn about these new ADR rules and procedures."

ESTABLISHMENT

"Another big change is the way in which establishing a business in Saudi Arabia has been streamlined and made much simpler," Alrabiah explains. "Rather than having to obtain a licence there is now a simplified registration process which makes it easier and faster for

investors to start their businesses. There will also be dedicated service centres which will provide efficient support to investors and help reduce delays. At present there is no further information on document requirements for establishing a business, and the time lines and fees detailed in Article 7 of Saudi Arabia Cabinet Decision No. 40/1446 but further details are likely to be issued in the regulations."

CONCEPT OF CAPITAL

"The concept of capital has also become more precise and comprehensive, and includes both local and foreign capital," Alrabiah explains. "It now includes stocks and shares in companies, contractual rights, fixed or moveable assets, intellectual property rights, as well as any rights which are granted under a licence or permit system. However, it is important to note that the definition of capital explicitly excludes loans, bonds, financing instruments, and public and private debt instruments which means that these types of investments are outside the scope of the new investment law."

"There is one area which at present is unclear," Alrabiah continues. "Article 8 of Saudi Arabia Cabinet Decision No. 40/1446 mentions a list of excluded activities but the exact list of excluded activities have not been detailed in the law. However, the broad principles have been outlined and it is expected further details on this area will be detailed in the implementing regulations which are yet to be published."

TRANSITION

"This law includes a number of positive elements but at present there are some areas which are still unclear," Alrabiah states. "As a result the transition could create temporary uncertainty for investors, in particular if

the implementing regulations which are expected to follow to fill in these gaps are delayed or are unclear. There will also be new compliance requirements which businesses will have to become familiar with. There is also a possibility that as local and foreign investors are now being treated equally, smaller local businesses could face increased competition. In addition, there is a risk we might see enhanced incentives and protections being offered in particular sectors leading to market saturation in some of those sectors."

NEXT STEPS

"The implementing regulations have not yet been issued so those interested in investing in Saudi Arabia will have to keep up to date on the likely further changes in this area, if they are to fully understand these new specific requirements and the new opportunities," states Alrabiah. "It will be important for them to consult advisers who are familiar with this new regime. There will be new registration processes to learn about and new alternative dispute resolution options to consider."

"It is also possible that this new law could impact investors' investment strategies," Alrabiah adds. "As there are likely to be specific sectors which will benefit from enhanced protections and the expected incentives which have been briefly covered here. Certain sectors, such as technology, renewable energy, and tourism, may now see significant growth as investors take advantage of this law's new opportunities."

"With these new opportunities for investment in Saudi Arabia on the way, foreign investors should also be building relationships with local partners and stakeholders to ensure a smoother and safer entry into the Saudi Arabian market. Those who are existing investors in Saudi Arabia will not need to do anything specific to comply with these amendments," Alrabiah continues. "There are no additional requirements existing investors need to comply with. It is likely the Saudi Authorities will issue detailed regulations and guidelines to clarify the provisions in Saudi Arabia Cabinet Decision No. 40/1446 which new investors will have to keep up to date on."

"The new Investment Law in Saudi Arabia is a significant step towards creating a more attractive and competitive investment environment," Alrabiah adds.

"By providing equal opportunities and safeguards for both local and foreign investors, it aims to facilitate economic growth and job creation. While some details are still awaiting clarification through implementing regulations, the law's emphasis on investor protection, streamlined processes, and incentives holds promise for increased investment and innovation in the Kingdom. As the implementing regulations are unveiled, investors will gain a clearer understanding of the specific requirements and opportunities presented by this new framework, paving the way for enhanced collaboration and mutually beneficial partnerships."