

KHOSHAIM & ASSOCIATES

Beyond the Shoreline: Saudi Arabia Introduces a New Commercial Maritime Law

Monday, 21st of January 2019



Introduction

After years of studies and discussions amongst the different governmental entities, the Commercial Maritime Law was enacted pursuant to Royal Decree no. M/33 dated 5 Rabi' II 1440H (corresponding to 12 December 2018G) and published in the Official Gazette on Friday, 4th January 2019 (the **Law**), paving the way to a new understanding of commercial maritime work and transactions.

To whom does it apply?

The Law applies to Saudi Arabian ships, foreign vessels that dock in the Kingdom of Saudi Arabia's (the **Kingdom**) ports or maritime areas, excluding warships and public vessels for non-commercial purposes.

How can a vessel acquire the Saudi Arabian nationality?

A ship will acquire a Saudi Arabian nationality if (i) it is registered in one of the Kingdom's ports; and (ii) is wholly owned by a Saudi Arabian person (or by multiple persons, whom the majority of are Saudi nationals).

Material registration process:

- Any self-propelled vessel shall not sail the flag of the Kingdom unless it is registered in accordance with the Law.
 - Ships are registered in one of the accredited registration offices in any of the Kingdom's ports (the **Registration's Office**), which has a "ship log" that contains the information of all the registered ships (the **Log**).
 - A ship cannot register in the Log if it is registered in another country's log.
 - Once the ship is issued a registration certificate, such certificate will serve as a prove of ownership.
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Non-Saudi vessels cannot practice:

- × tugboat/manoeuvring or pilotage services;
 - × catering services in the Kingdom's maritime areas; and/or
 - × costal transportation between the Kingdom's ports.
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Offshore rigs

The Law also covers offshore rigs, and states that offshore rigs should be licensed by the Public Transport Authority (the **PTA**) to operate in the Kingdom's maritime areas and are subject to periodic inspection every five years. The Law also states that offshore rigs will take the same provisions as ships, which is not clear at the moment.

Contracts

The Law requires certain contracts to be, and deems void any contract that is not, written. These are, for example:

- ship construction contract;
- ships sale contracts, which must be notarized as well;
- ship pledge/mortgage, which must be registered in the Log as well;
- ship charterparty, which must be registered in the Log if the charterparty's term exceeds a year; and
- maritime transportation contract, which we go to into a bit of details below.

In addition to the written form requirement, the Law sets a precedent in setting contractual provisions that must be included in certain maritime contracts. For example, ship's charterparty must include the ship's name; nationality; name of the parties; rent; compensation in case of delays in shipments; and term.

Employees' protection: Employees who work on ships that travels internationally are subject to the "maritime labor contract" provisions prescriber in the Law.

Maritime transportation contract is divided into:

	Goods/products transportation	Passengers transportation	Tourism transportation	Multimodal transportation
Parties	Transporter-Shipper	Transporter-Passenger	Transporter-Passenger	the Convention on Multimodal Transport of Goods between Arab States applies.
Governing document, in addition to the contact	The bill of lading.	The ticket.	The ticket and the services guide provided by the transporter.	
Liability	Covered under the Law.	Covered under the Law.	Covered, not in details.	

Insurance

The Law also covers insurance of (i) ships, (ii) rent. (iii) transported goods, and (iv) against liability, in terms of:

- when is it mandatory, such as in oil transportation;
- the insurance contracts;
- damages and liabilities; and
- insurance payments and settlements.

Maritime accidents.

The Law covers the following maritime accidents in terms of liability:

1. Collision, which is any collision of two ships, or a ship with a maritime establishment (such as the port).
2. Lost and damages, which is any unexpected lost or damages exerted to avoid danger to the ship or the good transported on the ship.

International approach

The Law, in many provisions, refer to international treaties, agreements and associations. For example, the Law requires offshore rigs to comply with the safety and environmental standards imbedded in the international treaties issued by the International Maritime Organization (IMO), refers to the provisions of the Convention on Multimodal Transport of Goods between Arab States to apply to multimodal transport contracts, and requires the membership in the International Association of Classification Societies (IACS) as a condition for the national/international classification committee which the PTA can contract with to classify and evaluate Saudi ships.

Statutes of limitation

The Law contains statutes of limitations, which are generally and relatively short. For example:

- Claims of hidden defects in ship construction contracts > **1 year** from the date of knowledge of the defect.
- Claims arising from the maritime labor contract > **12 months** from the date of termination of the employment relationship.
- Claims against the ship's owner arising from death or injury > **2 years** from the occurrence of the action initiating the liability.

Penalties

The penalties under the Law varies, from fines starting from SAR 1,000 and reaching out to SAR 1,000,000. The Law also prescribes other penalties such as warnings, suspension and revocation of licenses.

Effective Date

The Law will be in effect 180 days after its publication, meaning during July 2019. This is also the timeline set for the issuance of the implementing regulations for the Law.

About the Firm

Khoshaim & Associates is a full-service Saudi Arabian law firm with international reach that delivers first class, efficient and multidisciplinary legal services.

With a 25+ strong lawyer team led by Zeyad Khoshaim – the managing partner of the practice with over fifteen years of experience across the United States and Saudi Arabia. Zeyad currently sits as a member of the Capital Market Authority Advisory Committee advising the CMA board. He is considered as an expert on M&A, corporate governance, dispute resolution and capital markets.

Our firm includes a team of veteran Saudi Arabian and internationally qualified lawyers who advise on a wide range of practice areas, including equity and debt capital markets, local and cross-border M&A, litigation and arbitration, regulatory, corporate, projects, banking and Islamic finance transactions.

The Khoshaim & Associates' team has an unparalleled understanding of the Saudi Arabian commercial landscape, legal framework and cultural issues, and routinely handles all aspects of sophisticated transactions and litigation.

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Legal 500 Saudi Arabia 2018

Corporate/Regulatory/M&A – Band 1
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Capital Markets – Band 1
Projects & Energy – Band 1

IFLR 1000 Saudi Arabia 2019

Finance & Projects – Tier 1
Capital Markets – Tier 1
M&A – Tier 1
Project Finance – Tier

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