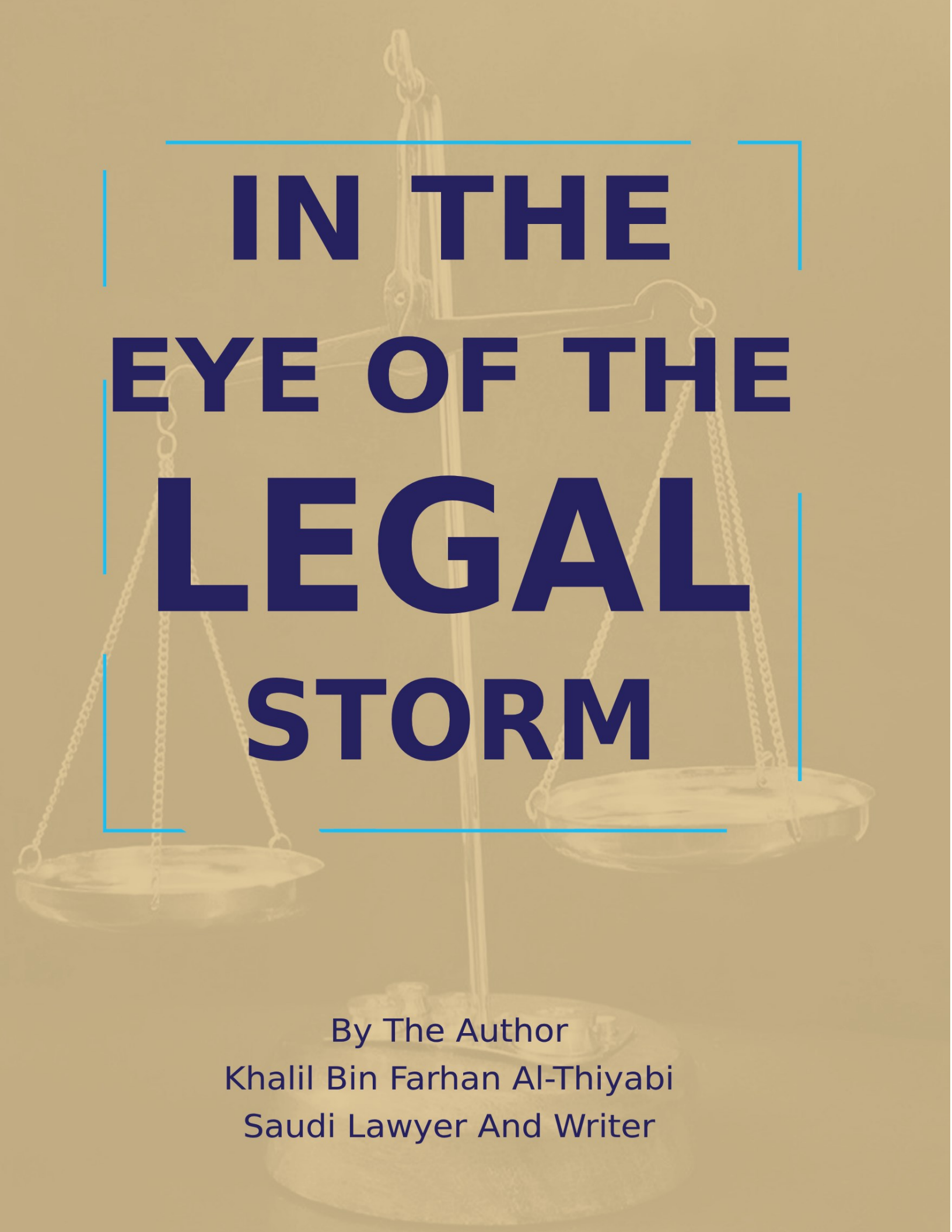

IN THE EYE OF THE LEGAL STORM

By The Author
Khalil Bin Farhan Al-Thiyabi
Saudi Lawyer And Writer

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The Eye of the
Legal Storm

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In

The Eye of the

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Khalil bin Farhan Al-Dhiyabi, 1444 AH
Saudi lawyer and Writer

First Edition

2022

From the courts, I will present my experience..

Dedication

To my father,

The shelter that I lost very soon,

To give me the opportunity to fight life's battles...

To my mother,

Who devoted her entire life to me…

To my wife,

Who inspired me to write and finish this book…

Introduction

I first got the idea of this book years ago, when I thought it would be good for a professional practitioner to write down the experiences he gleans periodically and daily, which he shares, along with his point of view, with the largest possible number of interested readers whether specialists and non- specialists.

And Since - early on - during my university studies, specifically during my bachelor's degree in law, I worked as a "Government relations officer" in a law firm.

I remember showing off to my colleagues that I have attended court hearings and did not tell them that I was only an assistant to the lawyer I was working for until I gained his trust after a long time, as he allowed me to plead in some hearings as a legal attorney...

There is no room to mention this period in detail, however, I would like to take this opportunity to advise university students about the necessity of training - even if timidly - in law firms, and that they must accept any job and any reward,

if any, and even unpaid opportunity, if necessary, as they will discover after graduation that they have answered the post-graduation question: Will the legal career be suitable for them?

This is much better than searching for the answer after graduation and wasting a lot of time running after a lofty, elegant, and stressful profession, then discovering that he is not fit for it, not because of a flaw in him, but because, in my opinion, the legal profession is not suitable for everyone, just like “medicine". A doctor who does not learn and train adequately will find himself in severe embarrassment when he enters the operating room, and this may lead to the death of the patient due to his mistake, or not recovering from his illness until he dies because of a doctor who did not understand the meaning of his profession, thus risking the patients who came to him under duress in emergency situations.... Same applies to “legal profession”. When a client turns to you because of your effective advocacy, the quality of your pleading, and your skill in characterizing his case and fighting the battle.

You would either “lose the case, thus, the client and the parties to the case would be greatly disappointed, or you would win the case.” There is no doubt that the lawyer who understands the nature of this battle and is aware with its aspects will tell the client before signing the contract that the case is almost lost, and will inform him of the weaknesses therein and the strengths that he will try to use, then, will accept to plead therein, just like a doctor who must resuscitate a patient’s heart to save him.

But the difference in the two cases is that the patient did not choose the doctor, but the client came with his case convinced, based on a recommendation, or by chance.

There is no doubt that the prudent lawyer knows that this trust is a burden and an obligation rather than an honor. There are many lawyers who were able to gain the client's trust by refusing to accept a fabricated and lost case! In contrast, other lawyers lost their clients who complained about their poor judgment and their different sayings before filing the case, during the pleading, and after the case ended!!

According to my opinion – this is due to the lawyer's lack of success, and I believe, without being certain, that the best solution for every case is to discuss with the client regarding its documents "with the eyes of the opponent and the impartiality of the judge." Then he will find the answers through which he can convince the client of the strength of the case or fail to do so, especially if he became sure from his discussion with the client that the judge considers the case with an impartial eye...

Therefore, if the client's documents are not convincing to his lawyer, they will not necessarily be convincing to the person considering the case. Then the client will see the matter from a broader perspective, imagine the path that his lawyer will take, and understand - from an early stage - the possibilities of his case, and the way his lawyer will fight this battle, armed with the weapons he was provided with by his client, which are the documents of that case.

In order to save the honorable reader's time and not delve into details of concern to fellow lawyers:

I intended, with Allah's grace, to write an independent book that I would address to university students specializing in law and Sharia, to fellow trained and licensed lawyers, and to those interested in the legal art in general.

To begin with, in order to introduce the topics of the book to the honorable reader, I have tried hard to explain to the reader the importance of the law in the business and corporate sector, and to recall some of the storms in which eye I was.

I came up with this title and found it appropriate for what I wish to say. I borrowed it from the book of the late respected Dr. "**Ghazi Al-Gosaibi**" - may Allah have mercy on him - in Al-Sharq Al-Awsat newspaper and Mr. "**Suhail bin Ghazi Al-Gosaibi**" graciously granted me approval after I suggested adding to the title the phrase: "Legal" to become, as it is now, "in the eye of the legal storm."

This title attracted me since I saw it, and I could not find a title that suits what I want to say, since in some of the topics I mentioned in this book I was in the eye of the storm, and I believe – based on my own interpretation not on physical fact - that the eye of the storm, which is the area in the center of the storm when it is at its peak, is the quietest area, so whoever is in this area sees its effect on what passes through it and what it passes through, which enables him to distinguish flying objects, the reasons for the strength of the storm, and also the reasons for the weakness of what the storm uproots or distorts…

I was in the eye of many legal storms, including what arose between partners and companies, and in the business environment in general, such as labor disputes, bankruptcy cases, inheritances, endowments, and many others, most of which I will touch upon as much as I can.

Here, I would like to alert the honorable reader that the laws relied upon in this book may be updated, changed, or abolished, so, when he relies on an article mentioned by me in this book, he should review the laws and the article itself, and considers any amendments thereon.

Finally... I ask Allah to inspire me with good presentation so that I can bring the honorable reader to a position that will make him more cohesive and stronger in the face of all the storms that he passes by, whether as a partner, facility owner, heir, or any business owner, employee, or plaintiff whose ideas and interests coincide with this book.

Author

“Cases of estates and inheritances”

Proactive solutions to inevitable conflicts.

Those who review compulsory inheritance cases will find that most of them have cumulative causes. Conflicts may have become apparent before the death of the deceased but he did not pay attention to discussing solutions for those conflicts, such as establishing a company, distributing shares, disclosing, and clarifying all the wealth to sons and daughters so that dividing it after the deceased’s death would be easier, away from the disputes that cause regrettable and painful estrangement between brothers and sisters and families in general. Perhaps I am exaggerating or being harsh when I ask the founding owner of the wealth to include heirs in his wealth and companies during his lifetime, especially since he is the one who established and developed this wealth over many decades. Also, I find justification for the refusal of some businessmen not to include their children in the ownership of the company for the purpose of distributing the estate, which is completely different from including working children into the ownership of the company for the purpose of management and development.

In the first case: The purpose is for including the heir in the ownership and not for the purpose of work. In the second case, the heir will be included and obliged to work, and prepared to lead the family ship to safety. I will devote a later title under which I will talk about family companies, constitutions, distinct and noteworthy examples from our time.

When I return to the main title, I think that every family differs depending on the nature of the relationship between its members. I found some families who ended up in court while their heir was dying due to an existing and old dispute between them. There are many reasons for these conflicts: the difference in the thinking and abilities of the children, the close relation between some of them and the “Deceased / founder” and their constant service thereto, while others devoted their time to their work and their families. As time passes, these mines form between members of the same family and suspicions accumulate between them, until they end up in a confrontation, or a confrontation that ends in long disputes in the courts. On the contrary, I experienced that some families strengthened their ties, closeness, and unity after the death of the “deceased /founder”, and they were able to continue the journey in accordance with what further developed the business.

In addition to their greater closeness or dividing the estate by mutual consent, which is called “consensual division.” That example may not necessarily apply to the grandchildren.

I conclude here: Reform in inheritance cases is a decision taken by one of the parties, whether the founder or the heirs, by distributing the inheritance before death, which is a wise decision yet difficult and not binding, and the owner of the wealth is not required to do it. The second option for the heirs is the direct and fair division between the parties.

I do not want the honorable reader to be confused about the two matters and not be able to distinguish between inheritances and their division, and between companies and family charters or constitutions.

There is a big difference that will become clear when we talk about family constitutions.

“Family Constitutions and Charters- Solutions for sustainability and growth.”

Some people think that family businesses are specific forms of legal companies, and this is not accurate. Since all companies that are established by one person, or by some relatives, are family companies, especially since this company is completely inherited from the first generation “the generation of founders” to the second generation “The generation of children”, then the next generation, until the ownership of this company continues in this family or it is converted into a closed or public joint stock company.

Considering the number of family companies in the world in general and in the Kingdom in particular, we find that they constitute a large and influential size in the private sectors.

For example, a report published by the Saudi newspaper Al-Riyadh on Tuesday, Muharram 2, 1443 AH corresponding to August 10, 2021 AD,

issued by the Riyadh Chamber of Commerce in 2019 stating that the number of family businesses in the Kingdom is estimated at about (538) establishments, representing about (63) of the total establishments operating in the Kingdom and contributing (810) billion to the national growth development product."

The report also stated that in a survey conducted on a number of family businesses, it was found that (43) of those companies did not have a plan for the succession of generations.

As a report published by Al-Eqtisadiah newspaper on Thursday, December 31, 2020, stated: "From 70 to 90 percent of the total number of companies around the world are family businesses." End.

We find through these studies, surveys, samples, etc. that family businesses are a fundamental driver and player in the world's economies and supporting them is necessary for the stability of the financial and business sectors in the world.

Regarding family businesses in the Kingdom, there is no doubt that they are radically different from each other and not all of them need a written constitution due to the young age of the establishment and the founder. However, some large companies must have a constitution, or a charter that all the founders and their families agree is mandatory.

I have previously been asked about the ideal solution to make the constitution or family charter the primary reference for resolving disputes that arise between partners in the family business?

I suggested that a clause be included in the articles of incorporation indicating: In the event of a dispute, it will be referred to the arbitration panel referred to in the charter. The charter will set specific standards for the committee or arbitration panel, the members of which will be named from family members or other experts, and this committee will consider disputes and judge them. away from the courts, and their rulings are considered binding on the parties after completing the procedures specified by the arbitration law. Thus, the company avoids the consequences of internal conflicts, or the cause of its collapse does not arise from the fault of its owners, and avoids many problems that threaten companies, such as liquidation lawsuits, exits, etc....

There is no doubt that the family charter is the constitution upon which that company is based, and it must be complete in all its chapters, clear and evident to all family members who sign it. It is a lifeboat through which the crew and passengers of this ship can choose the captain and the crew on this ship according to strict and sometimes harsh standards so that this ship is safe from sinking or collision.

I came across some family constitutions that I participated in drafting or proposing some of their provisions that set certain criteria for accepting the founders' children into the company, including, for example: that every candidate from the family must obtain a bachelor's degree for those who wish to occupy an office job such as accounting and management.

I remember that one of the sons of the founders of that company worked as a member of the board of directors and an executive within the company, and his relative, "cousin," who was about his age, was responsible for government relations and started as a supervisor. The difference between them was the academic degree and the experience that the two obtained, each in his field.

I have heard that: One of the family constitutions of a family in the Eastern Province prohibits a member of the family from joining their family company unless he works for a company outside the family business for a period of no less than three years and is supervised closely and carefully, after which he has the right to apply for the family company and start from "Zero".

Finally: There is no doubt that the constitution, or the family charter, is of great importance, and I believe that its activation should be directed by the founders because of the strong bond between them, and agreed upon decision-making is more flexible among them than their children, and more difficult between the grandchildren, "the third generation", with whom disagreements often begin.

Then the next generation, the fourth generation, will come and hammer the final nail in the coffin of that company unless the succession of those generations is controlled early.

I would like to point out that the best form of family business is the closed joint-stock company that I talked about elsewhere in the book, because of its strong governance, management control, formation of follow-up committees, etc.

It would be better for the honorable reader to refer to what was mentioned previously to avoid repetition.

Endowment: a conditional virtue

There is no doubt that endowment is one of the noblest human gifts and contributions. If we looked at major foreign companies, we would find that quite a few of them are endowment companies, such as the “Swiss company Rolex”, the “National Geographic company”, educational channels, educational and tourism facilities, and other companies.

There is no doubt that Islamic law had the precedence in encouraging such businesses, and we have the best evidence in the stories of the Companions, may Allah be pleased with them, and what they endowed to date.

At the level of our present reality, there are models and examples that are known to everyone and there is no room to mention them.

But I find that the idea of the endowment has been exaggerated as a perception of its nature, and this is the opposite of the intended reality. When the word “endowment” is mentioned, the listener’s mind will suggest real estate and lands of vast areas.

The reason for this perception, in my opinion, is the custom of endowing productive real estate and vast lands. This perception has ceased many ongoing charities and has been satisfied with permanent charity, and this is of course subject to each person's interest, his way in giving charity, or spending for the sake of Allah.

There is no doubt that some people will suffer from the nature of the human soul, forgetfulness, and preoccupation with the tasks of daily life, that distract a person from the simplest things around him.

I believe that if someone wants to endow something for himself, this is simple and easy. For example, if he decided to buy shares in one of the companies listed on the stock market with the amounts that he could endow, even if they did not exceed one hundred Saudi riyals.

Yes, one hundred riyals or more according to his ability. Then he issues electronic endowment instrument by the Personal Status Department of the competent court which proves that the named share in that company is an "endowment." He shall appoint someone he trusts as the endowment Superintendent, and when the joint-stock company spends the profits of that share, he spends it on charitable causes. Thus, he has guaranteed the development of the stock without being forced to follow it up, or to be preoccupied with its development and maintenance as if it were real estate.

Naturally, as the value of the endowed shares increases, he may then need to appoint a group of “superintendents” (not less than three persons whom he trusts), and in the event of the death of one of them, the remaining two nominate a third person, and so on to ensure the continuity of superintendence of that endowment. A person may need to endow these shares for a period for his parents, one or both, or whoever of his descendants is in need and specifies the types of need he sees as treatment, marriage, or paying off debts while stipulating the reasons for the debt and the like.

This is a simplified example of a type of endowment that I advise, and there are many examples thereof.

With this type of partner, conflict is inevitable.

There are people who have certain characteristics that you should never engage in any work with, and I mean what I say.

First: Whoever has something to lose, and I mean that person who only has his share that he paid for, therefore, he lives between hope and loss. He is afraid of losing everything he owns, so he will monitor the work with all his senses, exaggerate and obstruct, and all of this with good faith. This type of partner does not have the perseverance that every business owner must have, given the big difference between the investor and the working partner.

The investor must be careful when building his cautious company as well, as he sees it, and not to get involved with persevering investors. He is radically different from them, their goals, and circumstances.

I believe that the investor should be keen to enter as a partner in a startup company that he trusts in the efficiency of its management.

Of course, in every startup company, the chances of loss are completely equal to the chances of profit. As for sustainability, this is another story, and I will devote a separate title thereto.

Finally, I think that it is good for the partners to understand the partnership and its reasons, and the extent of the limits and powers of the partners according to the articles of incorporation. If the partners are unable to define their goals, then strict conditions must be set that all parties agree to regarding the return of capital, the distribution of profits, the periods specified for the same, the reasons for dissolving the partnership. In general, I do not recommend at all for one of the partners to manage the activity, as criticizing him would be sensitive, and because he cannot be held accountable in the event of negligence. It is better for the partners to choose a manager who specializes in this activity, who shall be paid a lucrative salary and a percentage if he achieves profits, achievements and goals of the company.

In this book, I have mentioned the types of companies mentioned in the Companies Law, which explains to the honorable reader the characteristics of each company. Then the partners can determine the type that suits the company they want to establish so that it meets their requirements, and this does not replace the need for referring to a lawyer specialized in companies, who can suggest to the partners the most appropriate form for their company and draft an appropriate agreement between them according to the nature of each relationship.

Governance is the key to achieving sustainability.

There were many definitions and interpretations that attempted to clarify the meaning of governance. For example, the Corporate Governance Regulations issued by Royal Decree No. (M3) dated 1/28/1437 AH defined it as “Rules for leading and directing the company include mechanisms for regulating the various relationships between the Board of Directors, executive directors, shareholders, and stakeholders, by establishing special rules and procedures to facilitate the decision-making process and give it a transparency and credibility for the purpose of protecting the rights of shareholders and stakeholders, and achieving justice, competition, and transparency in the market and the work environment. ..End..

Therefore, we find here the great importance of governance for organizing joint-stock companies, and I do not find another option for joint-stock companies that want development and make it their goal to achieve sustainability except by setting rules for governance,

forming supervising committees, defining their powers, and activating the role of the board of directors and monitoring its work. Thus, the company will be more attractive and safer for shareholders who want the company to be transparent and capable of development.

The best way to document the dispute between the parties to the contract.

There is no doubt that documenting the relationship between parties in contracts and agreements is important. Parties to a contract may deal in good faith. They may also experience forgetfulness, omission, and changing circumstances, which in turn changes the desire of the parties to the contract to proceed, or the desire to develop the relationship, or change its type. I believe it is important for the parties to the contract to understand that the relationship between them must be completely clear, so that the contract can interpret and explain the nature of the relationship between them and be a reference to its parties in the event of a dispute. I always compare this to the idea of charters and state constitutions. How does this contract regulate the relationship between all parties to this entity? Therefore, it is easy, in comparison with the forgoing, to reach agreement on the terms of the contract that regulates the relationship between its parties, whether a company contract or a partnership in implementing a project, or even a marriage contract if its parties have that awareness and culture.

As I see it in the contracts and agreements between the parties, some of the contracts and agreements include some clauses that are not applicable, whether because they were not formulated in a strict manner or because they are unrealistic or in violation of Sharia or public order. These clauses are considered invalid, and the contract is valid according to the case for each agreement.

For example, in partnership contracts, we find that one party holds the other party responsible for all losses, if any, and the company manager guarantees the capital that the partner pays to the company as compensation for his share in the capital. This is, of course, an invalid condition and may not be applied given the validity of the contract, its continuing effect, and its validity between its parties. We also find that some partnership contracts between the parties obligate one of the partners to perform works that cannot be controlled or carried out, or works that are renewable, variable, and unclear. I believe that if the parties had sought the assistance of technical experts or outsourced part of the work or all the work to third parties, it would have been more conducive to the stability of the relationship between the partners. The Companies Law differentiated in the way of dealing with the partner manager and the non-partner manager and gave the partner manager privileges that prevent him from being treated like a normal employee. In this regard, I refer to the Law to avoid prolongation.

Finally, what I want to say here: Being careful in drafting the contract between the parties, and writing all the duties for the parties and the technical and financial details accurately, is more correct and more effective for the continuation, preservation and development of this relationship, and does not prevent rearranging the terms of the contract, and adding some clauses according to the development of the work or the agreed subject of the contract. This reassures the parties to the contract, and each of them answers the questions that arise to most partners regarding the extent of the contract's binding on its parties, and the seriousness of the parties in implementing it, avoiding judging intentions that causes unjustified trouble, and interpretations that may not be real or logical.

Finally: Anticipating disputes while drafting the contract and trying to address and deal with them is more important for the partners than paying attention to the financial details and the percentage of profits. There is no objection to reviewing the contract and changing its clauses according to the company's conditions and circumstances, as disputes often do not arise until large profits or large losses are achieved.

The bankruptcy Law:

“A serious beginning, not the end.”

There is no doubt that when the legislator enacted the Bankruptcy Law, he intended to find direct practical and scientific solutions for companies that are struggling financially due to circumstances beyond their control. They can overcome the crises they are experiencing but are burdened by direct debts due to which judgments or judicial decisions are issued that affect the company’s business whether directly or indirectly. But after the issuance of the law, many false ideas accompanied it, including that every company that files a bankruptcy lawsuit is a closed company, and the rights of creditors will be lost. This is undoubtedly incorrect information, as filing a bankruptcy lawsuit according to the type of lawsuit filed is undoubtedly one of the solutions for creditors and debtors.

Protective settlement is fundamentally different from administrative liquidation. Article “5” of the Saudi Bankruptcy Law, paragraph (a), indicated that one of the objectives of the Law is to enable the Bankrupt Debtor or the Distressed Debtor or the Debtor expected to suffer from financial difficulties to benefit from the Bankruptcy Procedures in order to restructure its financial position, maintain its activities with an aim to contribute to the economy and support it.

Finally, I would like to say: The Bankruptcy Law is a solution for companies that are serious about regaining their strength by restructuring their internal affairs to gain the confidence of creditors, but it may be used by those who have other goals, such as evading debts, which will not be allowed by a conscious creditor, who can deal with the articles that protect creditors in the Bankruptcy Law.

I believe: It is important to address the types referred to in the Bankruptcy Law without detail. The honorable reader should refer to the Bankruptcy Law to know more about the type that is compatible with the nature of the company's business and its problems which were stated by the regulator ... I will mention them as follows:

Type 1: Protective Settlement

Protective settlement: It is a procedure aimed at facilitating the debtor to an agreement with his creditors on the settlement of his debts, in which the debtor retains the management of his business.

Article “13”, Paragraph (1), mentioned the cases for filing an application form, which are if the debtor is more likely to suffer financial difficulties leading to distress, if distressed, or if bankrupt.

It should be noted here: The bankrupt is the debtor whose debts have consumed his assets.

As for the distressed, he is the debtor who has stopped paying a claimed debt on its due date. It is worth noting that: The second paragraph of Article “13” stipulates that “A Debtor may not file an application for the commencement of a Protective Settlement Procedure if the Debtor has already been subject to such procedure or to a Small Debtors’ Protective Settlement Procedure during the twelve (12) months preceding the application to commence this procedure.”

Article “14” stipulates: “The application request for the commencement of a Protective Settlement Procedure shall be registered with the Court after filing such request together with the Proposal, information, and related documents in accordance with the provisions of the Regulations. The Proposal must include background information on the financial position of the Debtor, the effects of the economic situation thereon and classification of Creditors into categories in accordance with the provisions of Article “29” hereof, which stipulates: “If there are numerous Creditors with Debts or rights of different nature, then the Debtor must classify them into categories as stipulated in the Regulations.”

For anyone who wants more information regarding the protective settlement and the conditions required to be met in opening applications, he must review the Bankruptcy Law and its executive regulations. I will suffice with this amount to avoid prolongation, hoping that I have succeeded in providing the minimum amount of information that the honorable reader needs on such a topic.

Type 2: Financial Restructuring

Article "1" of the Saudi Bankruptcy Law defines Financial Restructuring Procedure as "A procedure under the supervision of the Financial Restructuring Officeholder, aiming to facilitate reaching an agreement between the Debtor and its Creditors for the financial restructuring of the Debtor's activity."

Here we note, dear reader, that financial restructuring is very similar to a protective settlement, but the protective settlement enables the debtor to continue to manage his activity, unlike financial restructuring, which is under the supervision of Financial Restructuring Officeholder. A logical question may come to the reader's mind here, which is: Why did the legislator define two types of these procedures despite the similarity of the conditions related to acceptance and reasons?

I think, but not certain, that the reason for the difference between the two procedures with regard to the debtor's management and the Officeholder's management is that the debtor may not have the ability to manage, and because there is high reliability in the management or supervision of a neutral party (the Officeholder), which guarantees creditors transparency that, in the eyes of some of them, a debtor who manages his activity may lack. Anyone interested in the articles of the Law will find the financial restructuring application is the most beneficial for the debtor.

It is not conceivable that one of the creditors would file an application for protective settlement due to the relatively different reasons, also because the restructuring guarantees the creditor that the debtor will not continue to tamper with the company's revenues and makes the Officeholder is the watchdog for all creditors.

Article "73" of the Bankruptcy Law stipulates that "A Creditors' Committee shall be formed in the circumstances to be specified under the Regulations, which shall specify such committee's functions, duties and work procedures".

Article "79" of the same Law stipulates in its "second" paragraph that: "The approval of the creditors whose claims represent two-thirds of the value of Debts, must be obtained."

Type: Liquidation Procedure

Regarding what we mentioned previously, it comes to the mind of everyone familiar with bankruptcy procedures that every bankruptcy is considered a final liquidation, and thus the creditors lose their dues owed by the debtor company. Perhaps they mean the case of true liquidation that we are about to address, which is defined in Article "1" as: A procedure under the management of the Liquidation Officeholder, aiming to account for Creditors' claims, the sale of the Bankruptcy Assets and the distribution of the sale proceeds to the Creditors.

It is worth noting here: Article "92" of the Bankruptcy Law stipulates:

"Without prejudice to the provisions of relevant regulations, the Debtor, the Creditor or the Competent Authority may apply to the Court for the commencement of a Debtor's Liquidation Procedure if the Debtor is Distressed or Bankrupt."

Also, Paragraph (2 - A) of Article "93" stipulates that: "the Debt must be due, and its amount, cause and related security interests (if any) must be identified"

Paragraph (b) of the same article stipulates that: "The amount of Debt - or the aggregate value of Debts of the applicants– must not be less than the amount determined by the Bankruptcy Commission", and Article "96" stipulates that: "The Court may, at its sole discretion, or at the request of an interested party, take - after receiving an application for the commencement of the Liquidation Procedure –any precautionary measure in the manner specified under the Regulations.

It is worth noting here: The debtor is prohibited from managing his activity immediately after appointing the "Officeholder," as stipulated in Article "100" of the Bankruptcy Law.

Type 4:

Settlement procedures for small debtors

Article “1” of the “Bankruptcy” Law stipulates: "Small Debtor is the Debtor who meets the criteria adopted by the Bankruptcy Commission in coordination with the General Authority for Small and Medium Entities”.

Article “127” of the “Bankruptcy” Law stipulates: “Small Debtors Protective Settlement Procedure aims to enable Small Debtors to reach an arrangement with Creditors to settle the Debts within a reasonable timeframe through simple Procedures at a low cost and with high efficiency, while maintaining Debtor’s ability to manage its business”.

Reflecting on the fundamental differences between the regular settlement procedures and the settlement for small debtors, I did not find anything worth noting for a non-specialist, except that there is a difference in the procedures, and the specialist who deals with this procedure should be familiar with them.

I would like to mention here: In order for the procedure to be accepted for small debtors, their debts must not exceed (two million riyals)

Type 5:

Small Debtors' Financial Restructuring Procedure

This procedure aims, as stipulated in Article "142" of the Saudi Bankruptcy Law, aims to facilitate reaching an agreement between the Small Debtor and its Creditors in order to restructure its activity within a reasonable timeframe, through simple, low cost and efficient proceedings and under the supervision of the Officeholder.

It is required for the opening of the financial restructuring procedure for small debtors that the small debtor must be bankrupt, distressed, or more likely to suffer financial distress., as stipulated in Article "144" of the Law.

→ The question that arises for those contemplating the Law is:
Why did the legislator differentiate and enact new types through which debtors are classified?
I believe that the reason is that the legislator wanted to consider the small debtor's good faith, not to obligate him with procedures that might burden him, and to allow him to continue his business by giving him an opportunity and appropriate times without prejudice to the creditors.

Type 6

Liquidation procedures for small debtors

Article “160” stipulates that “A Small Debtors’ Liquidation Procedure is intended to sell the Bankruptcy Assets and to distribute the proceeds thereof to Creditors within a reasonable period of time through simple, low cost and efficient Procedures under the supervision of the Officeholder”.

Anyone who contemplates this procedure will find that its aim is to facilitate the liquidation procedures for small debtors to be easy and convenient, and one of its main objectives is to preserve the validity of the procedure because the appointment of a liquidator is considered a guarantee to the creditors of the validity of the procedures, and to exonerate from existence of fraud in the liquidation, or forfeiture of creditors’ rights unless it is necessary and there are valid justifications for accepting the administrative liquidation application, which, in my opinion, is harsher on both parties of the relationship (creditor and debtor), and this will be mentioned later.

Article “163” stipulates, Paragraph (2A) from 1 to 3, that: “The application may be accepted in cases including if the debtor is bankrupt or distressed, and also if it is more likely, based on the information provided to the Court, that the Small Debtor will be unable to maintain its activities, and that his assets are sufficient to cover Liquidation Procedure expenses.”

Paragraph (b) of the same Article stipulated: “The court may reject the application in cases including if the application does not satisfy the regulatory requirements or is incomplete without justification, if it is more likely, based on the information provided to the Court that the Small Debtor will maintain its activities and will be able to settle the Creditors' claims within a reasonable period of time, if the Applicant acts in bad faith or tried to abuse the Procedure; or if the Creditor’s assets are not sufficient to cover Procedure expenses”.

Type 7:

Administrative Liquidation Procedures

Article “167” of the Bankruptcy Law stipulates: “The Administrative Liquidation Procedure aims to sell Bankruptcy assets whose sale is not expected to result in proceeds sufficient to meet the expenses of a Liquidation Procedure or Small Debtors’ Liquidation Procedure.”

Article “170” stipulates in its paragraph (2 - A) that: “The application may be accepted in cases including: if the debtor is bankrupt or distressed, and also if it is more likely, based on the information provided to the Court, that the Debtor would not maintain its activities and its sale proceeds are insufficient to cover the expenses of the Liquidation Procedure or the Small Debtor’s Liquidation Procedure”.

Here the difference between regular liquidation procedures and administrative liquidation procedures becomes clear. In (regular liquidation) there are sufficient funds to appoint the liquidator, while (in administrative liquidation there are not sufficient funds to appoint the liquidator, and the court refers the administrative liquidation procedures to the liquidation commission, and the court rejects the application to conduct administrative liquidation for the reasons for which it accepts the liquidation application, except that in administrative liquidation the court verifies the validity of Lack of sufficient funds to appoint a liquidator.

Article “213” stipulates: “The Bankruptcy Officeholder may recover any expenses or charges pertaining to any proceedings submitted to the Court or the Competent Authority under this Chapter from the Bankruptcy Assets unless the Court obliges another party to bear these expenses or charges”.

First: The types of companies mentioned

In the Saudi Companies Law

In this Chapter, I will talk about the types of companies in the Saudi Companies Law, bringing to mind the importance of a simplified, non-academic explanation, taking into account the ease of conveying the idea to the recipient, understanding the company and its type, the importance of establishing it, and when should he choose this type of company?

I hope that the honorable reader will exempt me from the legal attribution for everything I am going to mention, since I will not necessarily mention any information unless it has a legal basis that I derive from the Saudi Companies Law. I will relieve the reader of texts, most of which may need specialized interpretation and explanation, and I will suffice with an explanation of the content without addressing the legal text, which is inherently rigid.

Naturally, I would like to thank the honorable reader for his prior approval of this idea, which I believe - with certainty - that he will implicitly agree with after he completes reading this book and finds that it is a good idea to move away from the rigidity of texts to the beauty of narration and the quick access to information in narrative writing. In contrast, legal writing is characterized by rigidity for non-specialists. I cannot fail to point out the importance of the reader updating his regular information as I may referr to a specific article, and it is updated after printing, or as I indicated and mentioned in the introduction to this book.

1. Joint venture company

A “general partnership” company is a company that is hidden from others, i.e., it does not appear in front of the person dealing with it. In most cases, the apparent partners are the owner of the main activity and the owner of the commercial register, whether it is an “institution” or a “company”, for example: the owner of an institution or company sells some shares of his institution to persons who wish to enter into this activity with him and without acquiring the capacity of a merchants in exchange for money they pay to the owner of the activity, or work and tasks they participate in in exchange for shares that the owner of the activity agrees to sell to them according to a written contract between the two parties. This contract must not be registered with the Ministry of Commerce, and it must not be subject to registration procedures and must not be registered in the commercial registry. There is no objection to documenting the contract in writing and witnessing it, provided that the parties in the partnership contract must clarify the duties of each partner and his percentage of ownership.

Among its characteristics: It is not permissible to include a new partner except with the approval of the rest of the partners unless its articles of incorporation stipulate otherwise, and third parties shall have no right of recourse except against the partner with whom he dealt with this company, and when it is revealed to others, the partners are considered joint ventures before third parties. Later, I will explain the Solidarity Company, its advantages and disadvantages.

There is no doubt that the transformation of the partners in the joint-venture company into general partners will cause them great harm because they will be obligated against the creditors with their own money.

Here, I cannot fail to clarify that in the event that there are partners in a joint venture company, one of them must be assigned the activity and his powers must be stipulated, and any work that he undertakes on his own, must not harm the rest of the partners unless the articles of incorporation stipulate otherwise, and we should mention here that:

Most joint venture companies are established between partners on the basis of trust and without the existence of a contract.

Here, the partner whose partner denies the validity of his partnership must file a lawsuit to prove his partnership with the competent court, and there is no doubt that he can prove his partnership by any means whatsoever.

Articles (43, 44, 45, 46, 47, 48, 49 and 50) of the Saudi Companies Law

2. Closed joint stock company

The joint-stock company is one of the strongest types of companies, since it is a company that the regulator wanted to be a company whose characteristics revolve around consolidating the principle of governance and the strength and impartiality of management. If we know that one of the characteristics of the joint-stock company is holding the general assembly periodically, which is the assembly that organizes the group of shareholders in this company, and through holding the Founding Assembly of this company, the shareholders approve the members of the board of directors, grant them the necessary powers to manage the company, and appoint the audit committee whose tasks include monitoring the work of the board of directors, and naming external legal references, and both of them can, whenever necessary, call for holding the general assembly, and propose the topics they wish to present to the Assembly. These topics are often of great importance, such as the existence of problems in the Board of Directors, or emergency circumstances in which the Board of Directors wishes to obtain the approval of the General Assembly for its decisions which he wishes to take unless such authority is granted thereto in the bylaws of the Board of Directors.

It is worth noting here: The principle of transparency is achieved in this company through what the regulator called for, that the company's board of directors should include an independent member "who does not work for the company and does not own its shares and is a Non-executive member" which is: the member who owns shares in the company but does not work in its executive body, and an "Executive member" which is: the member who owns shares in the company and works on its executive body, even though the reality of the situation allows the founders to elect members who may not meet these qualities. However, it is important to apply these standards in order to achieve transparency. If we imagine that the members of the Board of Directors are all employees of the company's executive body, the principle of oversight and accountability will not be achieved. It is not conceivable that the members of the Board of Directors will hold themselves accountable or evaluate themselves in their capacity as "managers and executives" of this company, and so on regarding the rest of the members. The independent member who does not own the company will be the most neutral member in his opinion, if we imagine that family companies are necessarily the majority of closed joint-stock companies, the independent director can present his point of view apart from the courtesies that necessarily apply to the rest of the members of the Board of Directors who are "relative" owners. Perhaps it is important to point out here that international studies and regulations call for the separation of ownership from management in order to achieve the principle of transparency, oversight and accountability,

which are necessary for everyone who wants to establish an establishment that operates with a legal system and governance.

Perhaps I will mention later in my talk about family companies how the principle of governance is achieved through the distribution of tasks and leaders and the mechanism for selecting competencies in family companies.

Finally...I can only point out that Joint stock companies are needed by the owners of every company or large activity through which they require the distribution of powers, the activation of oversight and follow-up in all administrative and financial operations, and the major decisions that naturally coincide with the company's size and activity. A joint stock company is the beginning for every company that wishes to offer its shares for subscription, whether in the parallel market "NOMU" or in the general market, in accordance with the procedures and regulations enacted by the relevant laws and circulars issued by the Capital Market Authority.

3. The Limited Liability Company

I believe that the limited liability company is one of the most successful types of companies for founders, but it may be one of the most dangerous types of companies to deal with. I will return to explain what I mean by risks and advantages:

A limited liability company consists of a group of partners not exceeding fifty partners. It is possible for one person to establish a limited liability company called a “single person” limited liability company. The meaning of limited liability is that the company alone is responsible to others for all its obligations and debts, and this is what you I mean by the advantages and risks. The owners in a limited liability company are not liable for the company’s debts, i.e.: the creditor may not file a lawsuit against the partner in his personal capacity for debts that arose as a result of his dealings with the limited liability company.

Rather, he claims on the company he dealt with, unlike if it were a General partnership or a Limited partnership company, with the exception of cases that will be mentioned later.

Accordingly, we find that the most prominent advantage of a limited liability company is that its owners are safe from claiming their personal funds, and this draws the attention of the person dealing with this company to the fact that it is extremely dangerous to deal with a limited liability company whose capital is low, and may not exceed “fifty or one hundred thousand riyals” by large sums.

It happened that one of the companies completed a deal for an amount exceeding “twenty million riyals" with a limited liability company with a capital of one hundred thousand riyals.

I was entrusted to lead the negotiations from a legal standpoint, so I asked the other party to have the owner of this company issue promissory notes in his personal capacity as a guarantee for the company in the event of its default. He reluctantly agreed, and after several months the company defaulted on payment, so I executed those bonds and submitted them directly to the Execution Court, and they were - praise be to Allah - a reason for paying the company’s dues, “my client,” and if the matter was left unsecured, the plaintiffs’ share of the money would have been what the company was obligated to do within the limits of its responsibility,

and it is responsible for its capital, which does not exceed “one hundred thousand riyals.” Here I cannot fail to advise the owners of institutions to convert their institutions to single-person limited liability companies, as there is no need to commit to others with your personal funds. Note that some people, including me, believe that it is good for the contractor to sign with an institution or General partnership to ensure the fulfillment of financial obligations. But if I were an advisor to the other party, I would immediately advise him to convert the institution into a single person limited liability company.

There is no doubt that these advantages for the owner of the Limited liability company do not mean the absence of responsibility for the managers in this company. If the person dealing with this company finds that the managers did not put the description “limited liability”, or the amount of its capital, in front of its name in their dealings, then in this case they are considered jointly liable for the company’s debts, and he (i.e. the creditor) may file a lawsuit against them as individuals, and he may claim back the company’s owners for their private debts in the event that the company is liquidated in bad faith, or before the end of the purpose for which it was established.

4. Holding company

I call this company the “parent” company because it is a company that is concerned with management, direction, accounting, and financing. In simple terms, the holding company is a company that takes possession of the holdings, that is, it controls other companies in a way that enables it to influence their decision-making, by controlling the composition of its board of directors or owning more than half of its capital. The regulator has limited the activities of the holding company to managing its subsidiaries, investing its money in shares, providing loans to its subsidiaries, and owning the real estate and movables necessary to carry out its activity. It is possible for this company to be a limited liability company or a joint stock company, and I believe that one of the hidden reasons for the strength of this company is the presence of a unified budget that contains all the financial positions and budgets of the subsidiaries according to accounting norms, thus forming a general financial position for all subsidiaries. This gives it strength in its work and prestige with others, including loans as a type of financing, and other powerful projects, and of course, subsidiaries may not own ownership in the “parent” company.

General partnership

A General partnership is a company made up of people with natural personalities. This company is considered one of the safest companies for those dealing with it. The reason is that the founders of this company guarantee the company's debts to others in their own debts. A partner may not sell or exit except after the approval of the partners, and the sale has no effect except between the parties to the sale, and creditors may object to the partner's exit within thirty days of his exit. I believe that the General partnership represents power and responsibility, so the owners and managers therein must control the administrative process to prevent the presence of risks. They may be liable for their own money if the company incurs debts and is unable to fulfill them. It is important to point out that the manager of the General partnership who was appointed in the articles of incorporation and was a partner may not be removed except by a judicial ruling, unlike the manager who was appointed by an independent contract, as he may be removed by the numerical majority of the partners. It is worth mentioning that the General partnership expires with the death of one of the partners unless its contract of incorporation stipulates. otherwise.

Limited partnership

It is a company that includes two teams of partners, one team that includes at least one general partner who is responsible for the company's debts with his own funds, and another team that includes a limited person who is not responsible for the company's debts except for his share of the capital. The limited partner does not acquire the capacity of a merchant, and this company is subject to the provisions contained in the General partnership. The limited partner may not interfere in the work of the external management of the company, otherwise he will be considered responsible with his own funds for financial obligations if the actions he conducted lead others to believe that he is a general partner.

The limited partnership shall not be terminated by death or insolvency unless the company contract stipulates that.

From my point of view: the limited partnership company is one of the most innovative types of companies and the most suitable for anyone who wants to enter as a partner in a company through which he does not want to acquire the capacity of a and thus be a limited partner.

The manager is often the general company, in order to ensure that he manages the company in an orderly manner. Because he will be responsible for his own debts as a partner. I always call for establishing this type of company for new partners who want to control the company's governance and decision-making therein and conduct its work in an organized manner.

Conversion of companies

Companies may be converted from one type to another. For example, a limited liability company may be converted to a closed joint stock company and vice versa. I believe that the need for such a conversion is for reasons related to the company's business and objectives. If we assume, for example, that there is a limited liability company was established by a group of partners and then another group of companies was created by the same partners, there is an urgent need here for one of the companies to be converted to a holding company or to establish a new holding company to control all companies, influence their decision-making and build a strong financial position through the companies' unified budget. In another example, if one of the companies, which was a limited liability company, wanted to compete in a specific project, then one of the sources of strength in submitting its papers to the donor of the project is that it be a general partnership in order to ensure good performance,

since the partners in the General partnership are responsible for their personal funds in the face of others, unlike that in the limited liability company, considering that if the general partnership is converted to a limited liability company, the partners are not exempted from their joint liability for the debts prior to the conversion unless the creditors explicitly agree to exempt them. This has been previously explained, and we will suffice with it to avoid repetition.

Merger of companies

It is permissible to merge companies by combining one company with another existing company or by merging two or more companies to establish a new company. The merger contract specifies the conditions for this and states the mechanism for evaluating the merged company's liability and the number of shares it has in the capital. I believe here that one of the benefits of a merger is combining of two companies in two major companies in a specific activity to form a new company, or one company acquires another in the same activity with the intention of strengthening its side and maximizing its assets and financial position. These types of combinations may occur in the banking sector, such as the merger of two or more banks to establish a new entity and thus create a stronger financial position.

Foreign companies

The regulator of these companies indicated the necessity of any foreign company not practicing its activity in the Kingdom of Saudi Arabia except after obtaining a license from the Ministry of Investment, and it may not carry out its work except after registering it in the commercial registry. There is no doubt that those close to the work of these companies will clearly notice the development that has occurred in foreign investment after the work of the Authority was transferred to the Ministry of Investment. To tell the truth, I did not expect the foreign investor license to be approved within hours after we had previously spent days and weeks obtaining approval. This is evidence of the strong desire of the state to diversify investments and develop the private sector by opening the door to foreign funds and investments, which will undoubtedly be reflected in the quality of the product and local business.

Non-profit companies

Article “185” of the new Saudi Companies Law stipulates two types of non-profit companies:

1. A public non-profit company shall take the form of a joint-stock company and it may not take any other form. The profits realized from carrying out its activities shall be used in non-profit areas of spending that exclusively serve the community. The Ministry shall, in coordination with the National Center for Non-Profit Sector, designate such areas.
2. A private non-profit company shall take the form of a limited liability company, joint-stock company, or simplified joint-stock company, and it may not take any other form. The profits realized from carrying out its activities shall be used in non-profit areas of spending. End..

There is no doubt that the approval of this type of company is evidence of the urgent need in the private sector for such companies, especially with the existence of a large connection between charitable associations and institutions, and between some entities that some may see as imposing distinct governance, but it may be burdensome for some of those entities, especially the small ones.

I also find that approving this type of company may solve the problems of endowments and their connection to endowment instruments, which are considered the constitution and the reference for the endower, which, of course, and most likely, will not be understood by those who drafted it and all the variables and dealing with them.

I believe that the non-profit company is a solution to what some businessmen in family companies suffer from because there is no mechanism that regulates endowments and charitable banks, and at the same time it does not affect the ownership of the heirs after his death. For example, if the founder of a profitable company converted it to a non-profit company, and all his children entered according to the shares he deems appropriate, he stipulated in the articles of incorporation that the company be converted after his death to a non-profit company. In this way, he guarantees the distribution of shares according to what he sees fit, and also that the heirs do not interfere in his company during his life and regulate the relationship between the family after death. This is in a simplified manner, and the evidence is much more than this example due to the urgent need for this type of company.

Liquidation of companies

There is no doubt that liquidation means the end of the company and non-existence thereof. I have found that it is good for some companies to choose to be sold or liquidated if there are conflicts between the partners that do not stabilize the condition of the company and the condition of its employees and those dealing with it. Liquidation is a good solution if the partners predict the existence of future problems that have no hope of being solved, and the company can fulfill its financial obligations, including liquidating the rights of its employees, and paying its debts, and it may be optional by the decision of the partners or judicial by the desire of one of the partners, taking into account the necessity that the judicial liquidation be for legitimate, real, realistic and non-fraudulent reasons. If the judicial circle finds that the case before it does not provide a valid reason for liquidating the company, it will dismiss the case due to its lack of evidence.

Likewise, if the creditor finds that the company from which he claims his dues has been liquidated, and the liquidation decision was announced and did not address his debts, he may file a lawsuit against the liquidator or the owners, and they shall guarantee the debt from their own funds if it is proven that the liquidation was fraudulent in order to non-confronting the creditors. There is no doubt that it is one of the essential tasks of the liquidator to pay the company's debts and address the relevant authorities to end the company's association therewith and end the relationship with those parties.

The dispute between partners and the partner's provisions mentioned in the Companies Law

I firmly believe that agreement and clarity between partners is much more important than studying the feasibility of the activity or project and the success of the company, and that based on that the relationships due to which companies are established are much more important than the reasons that urged them to establish the company if we take into account that the partnership is based on the relationship between the two parties, such as kinship and friendship that preceded the partnership. And I found in the storm of partners that reliability between the parties is a major reason for the causes of conflict, if we take the reason, and the reason is not the difference in intentions between them, but rather the lack of clarity and problems that the company leads to is what creates the conflict between them. Even with the presence of profits, you will find that the partners who did not document exclusively and extensively the relationship of management work and the tasks of the managers, the extent of their powers and the extent of the limits of the partners' interference in the work of the managing partner, and this, in my opinion, is the first reason for the partners' conflict, accompanied by the ambiguity of management and other things that are not the space to mention them.

If we consider the keenness of the regulator in the Saudi Company Law to regulate the relationship between the founding parties and the partners, for example what was stated in Article "5" of the same law, where it stated that a partner's share may be in cash or in kind, and it may also be work, but it is not permissible to be based on his reputation and influence.

Here it becomes clear that the partnership is concluded for one of these reasons, taking into account the legal reasons mentioned in Islamic jurisprudence, the person pleading before the specialized judiciary in the Kingdom may notice that the general tendency to prove the conclusion of the partnership by any means of proof, and this is undoubtedly a positive matter, as the partner has good faith.

The second paragraph of the same Article stated that the cash shares and the in-kind shares alone must be the company's capital, and the capital may not be amended except in accordance with the provisions of the Law, and the conditions contained in the articles of association and its bylaws that do not conflict with them.

Here it becomes clear to the honorable reader the importance of the company contract being issued by a specialist who explains to the partners the obligations and conditions between them, and they deal with the articles of association as a contract proving partnership and a work constitution between them that clarifies the duties of each party, regardless of their capacity.

The Law did not ignore the issues related to the partner's failure to fulfill what he had committed to in the capital, as Article "7" stated "he is responsible to the company to compensate for the damage resulting from this delay.

Here we find that the regulator, just as he gave the partner the freedom to prove his partnership in the company, also placed upon him a great responsibility, which is the right of the partners to seek recourse against him for the losses they incurred as a result of his failure to provide what corresponds to his share that he committed to.

Regarding the extent to which the personal creditor of one of the partners is able, the first paragraph of Article "٨" stated that the creditor who has obtained a ruling from the competent judicial authority shall receive his right from the net profits that are the share of the debtor partner, and they may not claim shares or his debtor's share in the company's capital. The following paragraph stated that a shareholder's personal creditor may request the competent judicial authority to sell the necessary shares of that shareholder in order to receive his rights from the proceeds of their sale, provided that shareholders in the unlisted joint stock company have priority to purchase those shares. Article "9" of the same Law stipulated that partners must share profits and losses,

if it is agreed to deprive one of the partners of profit or to exempt him from loss, this condition will be considered as if it did not exist and in this case the provisions of Article “11” will be applied, which stipulates that the partner’s share in the profits or Losses according to his share in the capital...etc

Article “10” indicates that it is not permissible to distribute profits to partners except from distributable profits. If fictitious profits are distributed to partners, the company’s creditors may request each partner, including a bona fide partner, to return such profits, and the partner is not obligated to return the actual dividends that he received , even if the company incurs losses in subsequent years.

In order to complete the obligations assigned by the Law to partners and to preserve their rights, Article “11” stated in its “first” paragraph that A partner’s share in profits or losses shall be proportionate with his contribution to the capital. However, the company’s articles of incorporation may provide otherwise, subject to Sharia. The second paragraph of the same Article stated that “if a partner’s contribution is solely in the form of work and the company’s articles of incorporation do not specify his share in profits or losses, the partner’s share in profits and losses shall be proportionate to his equity as assessed in the articles of incorporation. In the case of multiple partners whose equity is in the form of work and is not assessed at the time of incorporation, they shall have equal shares in the company’s capital, unless established otherwise. If a partner has made, in addition to work, a cash or in-kind contribution, he shall have a share in the profits or losses for his work contribution and another share for his cash or in-kind contribution”.

Penalties in the Companies Law

Those who review the Companies Law will find that it gives rights to those who deal with those companies and does not make the limited liability of companies exempt their management from the penalties stipulated in the Law.

It has mentioned - in many places - some violations that may occur from the management of that company or owners, and it has given the affected person the right to claim and the concerned authorities the right to hold accountable. For example, but not limited to, if the company's manager, member of its board of directors, auditor, or company liquidator recorded false or misleading data in the financial statements, or in the reports he prepared for the partners or the general assembly or neglected to include essential facts in these statements or reports with the intention of concealing the financial position of the company from the partners, others, or every director, official, or member of the board of directors who uses the company's funds in a way that he knows is against the company's interests to achieve personal purposes, or to favor a company or person, or to benefit from a project or deal in which he has a direct or indirect interest.

Or every official, director or member of the board of directors who uses his powers or the votes he holds in that capacity in a way that he knows is against the interests of the company, in order to achieve personal purposes or to favor a company or person or to benefit from a project or deal in which he has a direct or indirect interest. Or every director, official, member of the board of directors, or auditor who did not call the general assembly of the company or partners, or did not take the necessary measures to do so, depending on the circumstances, upon learning that the losses had reached the estimated limits in accordance with the provisions of Articles "150" and "181" of the Law," or did not announce the incident in accordance with the provisions of Article "181", or "every liquidator who assumes responsibility for the company uses its money, assets, or rights with others in a way that is known to conflict with the company's interests, or intentionally causes harm to partners or creditors, whether for the sake of achieving personal purposes, or to favor a company or a person, or to benefit from a project or deal in which he has a direct or indirect interest, or his disposition of the company's funds was achieved in order to favor one creditor over another in fulfilling a right without an unlawful reason". The Law stipulates that the perpetrator of all such violations shall be punished, without prejudice to a more severe penalty stipulated by another law, with imprisonment for a period not exceeding five years and a fine not exceeding five million riyals, or one of these two penalties.

Source: Article “211” of the Saudi Companies Law. The same Law also did not ignore, in its Article “212”, other violations related to the auditor who did not inform the company through the entities, and the persons responsible for its management, of the violations he detects during the course of his duties that may involve criminal violations, and public servant who divulges to other than the relevant agencies the company’s secrets he becomes privy to by virtue of his position, and any person assigned to perform inspection of a company, where he intentionally provides false information in the reports he prepares or intentionally omits material facts that may affect the outcome of inspection; and any person who, by any means, makes an announcement or declaration in a manner that implies the registration of a company whose registration is not completed, and any person who, in order to solicit subscriptions or collect the values of shares, falsely uses names of persons as being affiliated or will be affiliated with the company in any manner, and any person who intentionally includes in the company’s articles of incorporation, articles of association or other documents, or in the company’s incorporation application or supporting documents, false information or information in violation of the provisions of the Law, and any person who knowingly signs or publishes such documents,

and any partner or non-partner who knowingly inflates or provides false statements regarding the valuation of in-kind shares, distribution of shares among partners or paying their value in full, whether upon the incorporation of the company, increase of capital or redistribution of shares among partners; and any person who impersonates a shareholder or partner, or votes as a result in an assembly of shareholders or partners, whether in person or by proxy; and any person who uses the company in other than the purposes for which it is licensed, the Law has punished everyone mentioned above by penalty of imprisonment for a period not exceeding one year and a fine not exceeding one million riyals, or one of these two penalties.

Article “213” of the Saudi Companies Law stipulates that , a fine not exceeding 500,000 riyals shall apply to any person who approves, distributes or receives, in bad faith, profits or proceeds in violation of the provisions of the Law or the company’s articles of incorporation or articles of association, and any auditor who approves such distribution with knowledge of such violation, and any board member who intentionally impedes the call for a general assembly meeting or the holding of such meeting;

and any person who consents to his appointment as a member of the board of directors of a joint-stock company or as a managing director therein, or who retains such membership in violation of the provisions of the Law, as well as any board member in a company where such violation occurs with his knowledge; and any board member in a joint-stock company who obtains a guarantee or loan from the company in violation of the provisions of the Law, and any chairman of the board of a company where such violation occurs with his knowledge; and any person who accepts to work as an auditor or continues to work as such with his knowledge of the reasons which prevent him from carrying out such tasks, as provided for in the Law; and any person who intentionally prevents a shareholder or a partner from participating in an assembly of shareholders or partners, or prevents a shareholder or a partner from exercising voting rights associated with shares or in his capacity as a partner, in violation of the provisions of the Law; and any person who obtains a benefit or receives a promise or guarantee of a benefit for voting in a particular way or for abstaining from voting, and any person who grants, promises to grant or guarantees such benefit; and any person who neglects to perform his duty to call the general assembly of shareholders or partners for a meeting within the prescribed period in accordance with the provisions of the Law; and any person who neglects to perform his duty to publish the financial statements of the company in accordance with the provisions of the Law; and any person who fails to give shareholders or partners access to necessary documents in accordance with the provisions of the Law;

and any person who neglects to perform his duty to provide the Ministry with the documents set forth in the Law; and any person who fails to record meeting minutes in accordance with the provisions of the Law; m)any person who intentionally impedes or causes to impede persons entitled under the Law to access the company's papers and documents, or refuses to enable them to perform their duties; and any person who fails to publish the company's articles of incorporation or fails to enter it in the commercial register in accordance with the Law, and any person who fails to publish amendments made to the company's articles of incorporation or articles of association or amendments made to its commercial register in accordance with the Law; and any liquidator who fails to announce the liquidation or its completion in accordance with the provisions of the Law; and any person who neglects to perform his duty to list any data provided for in Article "15" of the Law; and any auditor who violates any of the provisions of the Law; and any company or company official who, without reasonable justification, fails to comply with regulations and resolutions related to the company's business and activity, as well as with directives, circulars or rules issued by the Competent Authority.

The law stipulates that the Public Prosecution has the jurisdiction to investigate the crimes criminalized in Articles "211" and "212", and the competent authority may impose the prescribed penalties for violations stipulated in Article "213", and the person against whom the penalty decision was issued may file a grievance before the competent judicial authority.

Considerations and reflections on the general provisions mentioned in the Companies Law

Those who review the general provisions of companies will find a set of caveats mentioned by the regulator, including that any company that does not take one of the forms of companies mentioned in the Companies Law will not be considered, and the founders are considered jointly responsible for the debts of that company. The regulator also indicated in the same provisions that a partner may provide his share in the form of work he performs for the company, and I think it is necessary to limit the work to which the partner has committed, and to determine its scope so that conflict does not arise between the partners in requesting new work from the partner that was not mentioned in the contract or everyone believed that it was one of his core works. I also cannot fail to mention the responsibility that the regulator placed in the same provisions are that it is not permissible to take into account any type of company unless it is written, with the exception of the joint venture company.

The regulator also referred to the reasons for the termination of companies, and among the reasons mentioned is the issuance of a judicial ruling to dissolve or invalidate the company, or the company's merger with another company, or the partners' agreement to dissolve it and terminate its period. It is also worth noting that the creditor of the partner in his personal capacity has the right, after his right has been established, to file a lawsuit against the partner to request the recovery of his rights from his percentage of the profits, and if they are in the form of shares, he may demand that he recover his rights from it if his right is proven.

The story of negotiable instruments

Before I talk about negotiable instruments in terms of types and characteristics, I must talk about their regulatory and procedural aspects. The negotiable instrument, according to the Saudi Enforcement Law, Article "9": "Compulsory execution may not be carried out except with an enforcement document for a due and specified right, and it mentioned a group of types of enforcement documents, and he referred to the fourth paragraph of the same Article that negotiable instruments are one of the types of enforcement documents. The "first" paragraph indicated that the rulings, decisions, and orders issued by the courts are also enforcement documents, and this means that a negotiable instrument with complete conditions has the force of a judicial ruling. In other words, the creditor who owns a valid negotiable instrument against the debtor has relieved himself of the burden of pleading with the courts to forcefully issue a judicial ruling has the same effect the negotiable instrument.

This undoubtedly saves time and effort for the lawyer and the principal because he will take the enforcement path directly. There is also no doubt that the person against whom the enforcement is being executed has the right to object to the validity of the instrument by any type of objection, whether appeal in form before the Enforcement Court or in substance before the Subject matter Court.

→ **So, what are negotiable instruments and what are their types?**

First: Check

The one who considers the idea of negotiable instruments will find that it is an important practical idea, such that this negotiable instrument has a certain value according to what the instrument issuer estimates for himself, and the one who deals with negotiable instruments will find that it is useful and beneficial to him, however it may also be risky for those who do not deal with it well. If we review Article “118” of the Saudi Negotiable Instruments Law, we find that: The Law punishes who, in bad faith: a) issues a check that is not drawable or the funds for payment thereof are not available or not sufficient; b) withdraws, after drawing the check, funds rendering the remaining funds insufficient for payment thereof; c) requests the drawee not to pay the check; d) intentionally issues or signs a check in a way that renders it unpayable; and e) the beneficiary or holder receives a check the funds for payment thereof are insufficient, imprisonment for a term not exceeding three years and a fine not exceeding 50 thousand riyals, or one of these two penalties.

Article “121” of the same Law stipulated that “A judgment may order the publication of the names of persons against whom a penalty decision has been issued.”

Anyone who considers these penalties will find that the regulator criminalizes the transgressions committed by the person dealing with the check. Actually, the purpose of these penalties is the great importance of the check in managing the movement of cash for customers in the private sector and establishing high reliability for the person dealing with the check, and the necessity of having a sufficient balance for payment. The same Law, in Article “102”, has made the check payable as soon as it is reviewed, and any statement contrary to that is considered null. If the check is presented for payment before the day designated as the date for its issuance, it must be paid on the day of its presentation.

Therefore, the check under this Article is payable upon review and may not be considered a guarantee instrument, but rather a direct payment instrument, in contrast to the promissory note and the bill of exchange, which the regulator made a payment and guarantee instrument at the same time, and I will discuss that in detail.

Second: Promissory note

Taking into account the formal conditions stipulated in the law that must be met by a promissory note, a promissory note is a negotiable instrument issued by a natural or legal person in which he undertakes a pledge that is not conditional on the payment of a certain cash amount Article “89” of the Negotiable Instruments Law.

Here we find that a promissory note differs from a check in that it has two parties, and the basic principle is that it is an instrument of payment. Actually, I find it good for companies to deal with promissory notes as they do have statute of limitations directly, therefore longer-lasting than a check in which the statute of limitations is limited to six months from the submission date. As for the promissory note and the bill of exchange, the statute of limitations for them is much longer than as they may reach more than three years, depending on the status of the issuer, whether it is an individual or a legal entity.

To tell the truth, I tend to deal with checks if the dealing does not violate the law, because the issuer of the check fears of submitting it to the concerned authorities due to the existence of a public right. And if he commits the crime of issuing a check and funds for payment thereof are not available or not sufficient; the beneficiary would be more powerful, so the criminal case has a very important effect, unlike a promissory note or a bill of exchange in which the holder has only the path of enforcement. There is no doubt that a negotiable instrument with complete conditions is like a judicial ruling in the hands of its holder who can submit it to the Enforcement Court whenever he wants.

Bill of exchange

A bill of exchange is like a promissory note in some characteristics, but it differs fundamentally with regard to its parties. A bill of exchange has three parties: the drawer (the issuer), the drawee (who is obligated to pay its value), and the holder of the bill of exchange, (the beneficiary). Thus, it is similar to a check, and differs from a promissory note, which consists of two parties. But it also differs from the check in that it is possible for the drawee to be a natural or legal person, with the exception of the check in which the drawee must be a bank, with the fundamental differences related to the check being an instrument of payment, the bill of exchange being an instrument of guarantee and the penalties related to the check, which do not exist in the bill of exchange. I believe that reliance on the bill of exchange in our time has decreased significantly due to the nature of commercial transactions, and the bill of exchange has been replaced by the promissory note. Here I refer to the negotiable instruments Law for more details. Whoever wants to learn more and read more about the bill of exchange and its characteristics should review the Negotiable Instruments Law from “Article” to “Article” (86)

The story of the Saudi labor Law

Anyone who considers the Saudi Labor Law, and the recent amendments thereof will find that the legislator basically protects the worker on the grounds that the worker is the link that must be supported in the financial and business chain. Therefore, protective rules have been created for him that may not be explicit and direct, but the person dealing with this Law finds that proof always in the favor of the employee and the employer must be more knowledgeable and careful in drafting the contract which protects the his interests without unfairness to the worker, if we take into account that some of the jobs held by the employee may be more influential, and I would not be exaggerating if I say that they are more fatal to the employer and less harmful to the worker.

It is worth noting the reference to Article "8" of the Labor Law, which reflects the idea of protective rules, as the Article stipulates that "Any condition that conflicts with the provisions of this Law shall be deemed null and void. The same applies to any release or settlement of the worker's rights arising from this Law during the validity of the employment contract, unless the same is more beneficial to the worker".

Article “19” stipulates that: “Amounts due to the worker or his heirs under this Law shall be deemed first rate privileged debts and the worker and his heirs shall, for the purpose of settling them, be entitled to a privilege over all the employer’s properties.

In case of the employer’s bankruptcy or the liquidation of his firm, the aforementioned amounts shall be entered as privileged debts and the worker shall be paid an expedited amount equivalent to one month wage prior to the payment of any other expenses including judicial, bankruptcy, or liquidation expenses”.

In this chapter, I have tried to explain to the dear reader the idea of this Law, and what he should do. Here, contrary to what is expected, I target the employer, not the worker, because I believe, not firmly, that the employer needs to protect his institution or company in accordance with rights, order, and justice before that.

How many legal loopholes could be more fatal to the worker than to the employer! compatible with the Law, but conflicts with the rules of justice that our tolerant Sharia calls for. How many employers, whether I know or do not know, have refrained from taking their legal rights and waived in favor of the worker!

The opposite also exists. In life, good and evil are always in competition. Good may prevail when a person's life is made easy, and evil and injustice may prevail when a person experiences financial difficulties and seeks to take his rights, whatever they are and wherever they may be. I may not be able to mention all the details of the Law, and will just explain what this is consistent with the idea that I share with the dear reader. This idea is focused on clarifying the points that will attract the interested and non-specialized reader.

I do not want to burden the honorable reader with anything other than the subject of this chapter, so, let's move to the next chapter.

To whom does the Labor Law apply?

Article “5” of the Saudi Labor Law “Paragraph” (1) stipulates that: Provisions of this Law shall apply to any contract whereby a person commits himself to work for an employer and under his management or supervision, for a wage”.

Here we find that all work that any person referred to in the Law is obligated to provide “taking into account the cases excluded from the application of the Labor Law mentioned in Article “7” of the same Law” is to provide a specific service, and I have noticed through pleading in the courts that this article is applied only by verifying the supervision and subordination, to establish the authority for the employer to prevent the worker from working for the employer in a manner that does not conflict with the provisions of the Law and the articles related to working for others, and the types of work mentioned in the Law such as part-time work and other types referred to in the Law.

For example, this Law applies, without limitation, to government workers, public bodies and institutions, workers in pastures or agriculture, workers of charitable institutions, qualification and training contracts with non-employer workers within the limits of the special provisions stipulated in this Law, and part-time workers within the limits of what is related to occupational safety and health and work injuries as well as whatever is decided by the Minister. Article "6" of the same Law stipulated that "Incidental, seasonal, and temporary workers shall be subject to the provisions on duties and disciplinary rules, the maximum working hours, daily and weekly rest intervals, overtime work, official holidays, safety rules, occupational health, and work injuries and compensation therefore as well as whatever is decided by the Minister".

Who shall be exempted from the implementation of the provisions of the Labor Law?

Article “7” of the Saudi Labor Law stipulates that the following shall be exempted from the implementation of the provisions of the Labor Law: The employer's family members, namely, the spouse and the ascendants and descendants who constitute the only workers of the firm, players and coaches of sports clubs and federations, domestic workers and the like, agricultural workers, private herdsmen, and the like, sea workers working on board vessels with a load of less than 500 ton, and non-Saudi workers entering the Kingdom to perform a specific task for a period not exceeding two months.

Does the transfer of ownership of the firm relieve the employer of his obligations?

It happens that the ownership of companies is transferred between the current and new owners, through the complete or partial acquisition of the shares in this company, whether the acquirers are individuals or companies. I do not think that this has an impact on workers' rights, as the acquisition does not change the legal personality of the company or its legal status, with the exception of changing the form of the company from a limited liability company to a general partnership or vice versa.

But this is the problem. What if an establishment was sold by a natural person to another natural person who was less convenient than him, who would guarantee the worker's rights then!?

I believe that the Law has addressed this part in its article “18” thereof, as it stipulates that “If the ownership of a firm is transferred to a new owner or a change takes place in its legal form through merger, partition, or otherwise, employment contracts shall remain in force in both cases and service shall be deemed continuous. As for workers’ rights accrued for the period prior to the change, such as wages or unrealized end-of-service awards on the date of the transfer of ownership and other rights, the predecessor and the successor shall be jointly and severally liable. However, in the case of transfer of ownership of individual firms, for any reason, the predecessor and the successor may agree to transfer all the previous rights of the worker to the new owner subject to the written consent of the worker. If the worker disapproves, he may request the termination of his contract and collect his dues from the predecessor”.

What opportunities are available to a job seeker?

Whoever considers the Saudi Labor Law will find that there is great concern for the importance of employing citizens and not excluding them in employment. Indeed, there is a set of articles that explicitly stipulate some obligations on the employer, such as Article "25" of the Labor Law, which stipulates that "Every employer shall send the following to the competent labor office:

1. A statement of vacant and new jobs, their types, locations, wages, and qualifications within a period not exceeding 15 days from the date of vacancy or creation thereof.
2. A notice of the measures taken to employ the citizens nominated by the employment unit within seven days from receiving the nomination letter.

3. A list of the names, jobs, professions, wages, ages, and nationalities of his workers, as well as the numbers and dates of work permits for non-Saudis and other data specified in the Regulations.
4. A report on the status, conditions, and nature of work and the anticipated increase or decrease in jobs during the year following the date of the report.
5. The statements specified in paragraphs (3) and (4) of this Article shall be sent during the month of Muharram of every year".

Article "26" affirmed: "All firms in all fields, and regardless of the number of workers, shall work to attract and employ Saudis, create conditions to keep them on the job, and avail them of adequate opportunities to prove their suitability for the job by guiding, training, and qualifying them for their assigned job".

The regulator did not neglect the worker's duties either, as Article "23" stipulates that: "Every citizen of working age who is capable of work and willing to work may register his name at the employment unit along with his date of birth, qualifications, previous employment, preferences, and address".

Employing non-Saudis

Anyone who considers the Saudi Labor Law will find that the legislator wanted, directly and indirectly, to limit the work that employers provide to Saudis.

The evidence for this is what is stipulated in Article "33" of the Saudi Labor Law, as it stipulates that: "A non-Saudi may not engage in or be allowed to engage in any work except after obtaining a work permit from the Ministry, according to the form prepared by it for this purpose. The conditions for granting the permit are as follows:

1. The worker has lawfully entered the country and is authorized to work.
2. The worker possesses the professional or academic qualifications which the country needs, and which are not possessed by citizens or the available number of such citizens is insufficient to meet the needs, or that he belongs to the class of ordinary workers that the country needs.

3. The worker has a contract with an employer and is under his responsibility.
4. The word work in this Article shall mean any industrial, commercial, agricultural, financial, or other work, and any service including domestic service".

Caveats regarding contracts and employment of foreigners and their rights

There is no doubt that the regulator wanted the Labor Law to make the relationship between the worker and the employer clear and not in violation of any Law that might govern the relationship between the two parties, whether the laws related to the tolerant Sharia, human rights, and other laws, by enacting some articles, as a way to clarify the relationship between the two parties. In the event that the worker is a non-Saudi, Article "37" of the Saudi Labor Law stipulates that: "The employment contract for non-Saudis shall be written and of a fixed term. If the contract does not specify the duration, the duration of the work permit shall be deemed the duration of the contract".

As stated in Article "38", which states: "An employer may not employ a worker in a profession other than the one specified in his work permit. A worker is prohibited from engaging in a profession other than his before taking the legal measures necessary to change his profession".

Article “39” of the same Law also stipulates that: “Unless he has followed the stipulated legal rules and procedures, an employer may not allow his worker to work for others, and a worker may not work for other employers. Similarly, an employer may not employ the workers of other employers.

The Ministry of Labor shall inspect firms, investigate violations of this paragraph detected by its inspectors, and refer them to the Ministry of Interior for the imposition of prescribed penalties.

The same article also stated that: “An employer may not allow a worker to work for his own account and a worker may not work for his own account”.

The Ministry of Interior shall be in charge of detection, detention, deportation, and imposition of penalties on violators working for their own account in streets and squares, as well as absconding workers and persons employing, hiding, or transporting them as well as any person involved in such violation, and shall impose the prescribed penalties against them.

The regulator did not ignore the financial relationship before starting work.

Article “40” stipulates that: “An employer shall bear the fees pertaining to the recruitment of non-Saudi workers, the fees for issuing and renewing residence permit (Iqama) and work permit, and the fines resulting from their delay, as well as the fees pertaining to change of profession, exit and re-entry visas, and return tickets to the worker’s home country at the end of the relation between the two parties. Also, A worker shall bear the costs of returning to his home country if he is unfit for work or if he wishes to return to his home country without a legitimate reason.

An employer shall bear the fees of transferring the services of a worker who wishes to transfer his service to him. An employer shall be responsible for the cost of preparing the body of a deceased worker and transporting it to the location where the contract was concluded, or where the worker was recruited unless the worker is interred in the Kingdom with the approval of his family.

The employer shall be relieved if the General Organization for Social Insurance (GOSI) undertakes the same.

Training and qualification

The Saudi Labor Law did not neglect the necessity of obliging firm owners to train employees, but it limited this condition to the necessity that the number of workers be more than fifty workers, and the training percentage (12%) of the total number of workers annually.

Article "43" stipulates that: "Without prejudice to the conditions set forth in franchise and other agreements regarding training and qualification".

"Every employer employing 50 or more workers shall annually train, in his business, a number of his Saudi workers not less than 12% of the total number of his workers".

This percentage shall include Saudi workers who are pursuing their studies if the employer is covering their tuition fees. The Minster may raise this percentage in certain firms pursuant to a decision by him.

Article “44” stipulates that: “The training program shall include the rules and conditions to be followed in training, its duration, number of hours, theoretical and practical training programs, testing method, and the certificates to be granted in this regard”.

The Regulations shall set forth the general criteria and rules to be followed in this regard to raise the worker’s level of performance in terms of skill and productivity.

How does a qualification and training contract differ from an employment contract?

Article “45” stipulates that: “A training or qualification contract is a contract which commits the employer to train and qualify a person for a specific profession”. Article “45” stipulates that: “A training or qualification contract shall be in writing, indicating the profession for which the training is contracted, the duration of training and its successive stages, and the allowance to be paid to the trainee at each stage, provided that it is not based on piecemeal or productivity”.

The regulator has made these contracts a certain importance and mandatory, and this is what was stipulated in Article “46”, which stated: “The Minister may require firms, to be determined pursuant to a decision by him, to accept a certain number or percentage of the students and graduates of colleges, institutes, and centers to receive training and supplementary practical experience in accordance with the conditions, circumstances, durations, and trainee allowances to be specified in an agreement to be concluded between the Ministry and the management of the relevant firm”.

The Labor Law did not neglect the rights of the employer in the event that the employer finds that the trainee is unqualified, incapable of training, or incapable of training.

Article “48” stipulates in its first paragraph that: “The employer may terminate the training contract if it is established that the trainee is incapable of completing the training program. The trainee or his guardian shall be entitled to the same. The party seeking to terminate the contract shall notify the other party of this at least one week prior to the date of termination of training”.

The second paragraph of the same Article stipulated that: “Following completion of training, the employer shall be entitled to require the trainee to work for him for a period equivalent to that of the training. If the trainee refuses to work for a similar period or part thereof, he shall pay to the employer the cost of training incurred by the employer or the cost of the remaining period thereof”.

What is an employment contract and what are its most prominent characteristics?

Article “50” of the Saudi Labor Law stipulates that: “An employment contract is a contract concluded between an employer and a worker, whereby the latter undertakes to work under the management or supervision of the former for a wage”.

The law does not require that the employment contract be in writing in order for it to be concluded - with the importance of it being written if the worker is a foreigner.

Article “51” stipulates that: “The employment contract shall be executed in duplicate, one copy to be retained by each of the two parties. However, a contract shall be deemed to exist even if not written. In this case the worker alone may establish the contract and his entitlements arising therefrom by all methods of proof. Either party may at any time demand that the contract be in writing.

As for workers of the government and public corporations, the appointment decision or order issued by the competent authority shall serve as the contract”.

What is the story of the probation period between the worker and the employer?

There is a common misconception that the probation period between the worker and the employer begins as soon as the worker begins work, and this is not true. What is true is that the probation period must be explicitly mentioned in the employment contract, otherwise the contract is considered binding as soon as it is signed, and the work begins. Also. the period may not exceed “ninety” days, and if it exceeds this period, the agreement must be in a written form on a paper independent from the contract signed by both parties, and this period may not exceed one hundred and eighty days.

Our basis in that regard is Article “53”, which stipulates that: “If the worker is subject to a probation period, the same shall be expressly stated and clearly indicated in the work contract, provided that such probation period shall not exceed 90 days, exclusive of Eid Al-Fitr and Eid Al-Adha holidays and sick leaves.

The probation period may be extended by written agreement between the worker and the employer, provided that it shall not exceed 180 days. Each party shall have the right to terminate the contract during this period, unless the contract contains a provision giving the right to terminate the contract to only one of them.

Article “54” proceeded and stipulated that: “A worker may not be placed on probation more than once by the same employer. As an exception, the worker may, with the approval of contract parties, in writing, be subjected to another probation period provided that such period involves another profession or work, or if no less than six months have elapsed since the termination of the work relationship between the worker and the employer. If the contract is terminated during the probation period, neither party shall be entitled to compensation, nor shall the worker be entitled to an end-of-service award”.

What are the terms and conditions for termination or continuation of the employment contract?

There is no doubt that the legislator has set a set of conditions under which the employment contract will be terminated, whether that was lawful or illegal. We may refer later to the articles related to the unlawful termination of the employment contract.

As for the expiration and termination of the employment contract, Article "55" stipulates in its first paragraph that: "A fixed-term employment contract shall terminate upon expiration of its term. If the two parties continue to implement it, the contract shall be deemed to have been renewed for an indefinite period of time, subject to the provisions of Article "37" of this Law for non-Saudi workers.

The second paragraph of Article "55" stipulated that: "If a fixed-term contract contains a clause providing for its renewal for a similar term or a specified term, the contract shall be renewed for the agreed upon period. If the contract is renewed for three consecutive terms, or if the original contract term and the renewal period amount to four years, whichever is less, and the parties continue to implement it, the contract shall become an indefinite term contract".

Here it becomes clear to us the necessity of accuracy in drafting the legal text and the terms of the contract. As far as I know, many people overlook such points, and I do not want to affirm that most contracts related to companies' work have been drafted in ambiguous ways that are not compatible with the requirements of the Law.

Article "56" of the same Law it stipulates that: "In all cases where the contract term is renewed for a specific period of time, the contract renewal period shall be deemed an extension of the original term in determining the worker's rights which takes into account the worker's period of service".

It is worth noting: Discussing the circumstances that allow companies to clarify the relationship between them and the worker. A question may arise to the employer about the possibility of a contract between him and the worker for the completion of a specific work?

This usually occurs in projects whose completion period is specified in specific periods, and the employer does not need retain the worker after the completion of this work. Accordingly, Article "57" of the Labor Law addressed this part and stipulated that: "If the contract involves performance of a specific work, it shall terminate with the completion of the agreed upon work".

Article “58” stipulates in its first paragraph that: “The employer may not relocate the worker from his original place of work to another place that requires a change in place of residence without his written consent”.

The second paragraph of the same Article dealt with cases of necessity and stated: “The employer may not relocate the worker from his original place of work to another place that requires a change in place of residence without his written consent”. And to protect the worker from exploitation and the arbitrary directives that invoke the Law, Article “60” stipulates that: “Without prejudice to the provisions of Article “38” of this Law: “A worker may not be assigned duties which are essentially different from the agreed upon work without his written consent, except in cases of necessity dictated by transient circumstances and for a period not exceeding 30 days a year”.

What are the duties of employers and are there disciplinary rules?

There is no doubt that when the regulator enacted the Saudi Labor Law, he did not ignore the protective rules related to the behavior of employers and their dealings with their employees, because the worker works under his authority and command.

It is not imaginable that the relationship between them would be harmonious at all Conditions. There is no doubt that there are violations on both sides. The regulator here created these rules to protect the worker because he does not have the authority that the employer has.

Naturally, not all workers are aware of their actual rights and duties, and what are the limits of the employer's dealings with them.

Regarding the Law, Article “61” of the Labor Law stipulates that: In addition to the duties provided for in this Law and the regulations and decisions issued for its implementation, the employer shall be required to:

1. Refrain from resorting to forced labor or withholding the worker’s wage or part thereof without court order, or mistreating the worker in any manner that may infringe upon his dignity or religion.
2. Give the workers the time required to exercise their rights as provided for in this Law without any deductions from their wages against such time. He may regulate the exercise of this right in a manner not detrimental to work progress.
3. Facilitate the employees of the competent authorities in any task related to the enforcement of the provisions of this Law.

Here it becomes clear to us that the regulator takes into account the worker’s rights urged by Islamic sharia, human commons, and human rights.

It is worth noting in this matter what Article “62” indicates: “If the worker arrives to perform his work at the time specified for that, or it appears that he is ready to perform his work at this time, and nothing prevents him from working except for a reason attributed to the employer, he shall have the right in the wage for the period during which the work is not performed.

What are the duties of workers towards the employer?

There is no doubt that anyone who considers the Labor Law in comparison with the privacy of the private sector will find that evaluating the works in the private sector, modernizing and developing them will directly reflect on the economy, and there is no doubt that it is one of the reasons for attracting capital. Whenever the business owner senses the presence of laws that protect his firm, this will be reflected in management control and natural growth for each firm.

From this standpoint, anyone who review the Labor Law will find that it has not overlooked any aspect of the employer's rights and has clearly tried to control the relationship between the employer and the worker and make the work environments attractive to qualified people and repel those who do not find themselves serious about work.

For example, but not limited to: Article "65' stipulates that: "In addition to the duties provided for in this Law and the regulations and decisions issued in implementation thereof, the worker shall be required to:

1. Perform the work in accordance with the trade practice and the employer's instructions provided that such instructions do not conflict with the contract, the law, or public morality and that they do not expose him to any undue hazards.

2. Take due care of the employer's machinery, tools, supplies, and raw materials which are placed at his disposal or in his custody and return unused materials to the employer.
3. Abide by proper conduct and ethical norms during work.
4. Extend all assistance and help without making it contingent on additional pay in cases of disasters or hazards threatening the workplace or the persons working therein.
5. Undergo, upon the employer's request, the medical examinations required prior to or during employment to ensure that he is free from occupational or communicable diseases.
6. Keep confidential the technical, trade, and industrial secrets of the materials he produces or those to which he directly or indirectly contributes to the production thereof, as well as all trade secrets related to the work or firm, the disclosure of which is likely to cause damage to the employer's interests.

What are the disciplinary rules stipulated in the Labor Law?

The Labor Law indicated several times that: “The employer has the right to manage his work however he sees fit, and that does not prevent him from establishing policies that do not conflict with the Saudi Labor Law. Among the points of authority established by the Law are what is stated in Article “66” of the Labor Law related to the disciplinary penalties that the employer may impose on the worker, including:

“Warnings”, “Fines”, “Withholding or postponing a raise for a period not exceeding one year if prescribed by the employer”, “Postponement of a promotion for a period not exceeding one year if prescribed by the employer”. “Suspension from work and withholding wages”, and “Dismissal from work in cases set forth by the law.

Taking into account that an employer may not inflict on a worker a penalty not provided for in this Law or in the work organization regulation as stipulated in Article “67” of the Labor Law,

and to prevent abuse by the employer against the workers, the employer is prohibited from increasing the penalty in the event of a repeat violation, if one hundred and eighty days have passed since the previous violation from the date the worker was notified of the imposition of the penalty thereon, as stipulated in Article “68”, provide that: “A worker may not be accused of any violation discovered after the elapse of more than 30 days, nor shall he be subjected to a disciplinary penalty after the elapse of more than 30 days from the conclusion of the investigation and establishment of the worker’s guilt” as stipulated in Article “69”.

Also, “a worker may not be subjected to a disciplinary penalty for an act committed outside the workplace unless such act is related to the job, the employer, or the manager in-charge. Nor may a worker be fined for a single violation an amount in excess of a five-day wage, and not more than one penalty shall be applied for the same violation. No more than the equivalent of a fiveday wage shall be deducted from his wage in one month in the payment of fines, and his suspension from work without pay may not exceed five days a month” as stipulated in Article “70” of the Labor Law.

In addition, Article “71” stipulates that: “A disciplinary action may not be imposed on a worker except after notifying him in writing of the allegations, interrogating him, hearing his defense, and recording the same in minutes to be kept in his file. The interrogation may be verbal in minor violations the penalty for which does not exceed a warning or the deduction of an amount equivalent to one-day wage. This shall be recorded in the minutes”.

What are the conditions under which the employment contract ends?

There is no doubt that job security is one of the pillars that makes the work environment more productive because it is reflected in the employee's giving, regardless of his job, but at the same time it is good to take into account the saying: "Those who know no punishment, will misbehave" and that does not apply to everyone, as, naturally, the more experienced a person is, the more responsible he is than beginners, and so on until the experience leads him to assume responsibilities and accomplish work while anticipating the consequences and being flexible in dealing with them. In this context, I find it good for a person to remember how he began his professional life, and I believe, without certainty, that the more there is no control over a person's work, the closer he will be to comforting himself, and tending to do what he likes of pursuing places of comfort, postponement, and procrastination. While the more there is follow-up and accountability, the closer he will be to completing his work for fear of blame or accountability sometimes, and the change of the opinion of the person dealing with him, regardless of the nature of his work.

There is no doubt that whoever establishes an institution, and a project is more in need of this control than others. I firmly believe that successful entities gain a lot from the identity of their leaders.

Perhaps those who are familiar with the science of management have thoroughly researched this topic, and their books have been referred to because they are specialists and know the secrets of this science and the sources of benefit therein.

Regarding the title of this paragraph: The Labor Law has paid great attention to these issues, taking into account the powers granted to the employer and the options available to the worker. The evidence for this is what is stipulated in Article “74” of the Labor Law, which stipulates that: “An employment contract shall terminate in any of the following cases:

1. If both parties agree to terminate it, provided that the worker’s consent is in writing.
2. If the term specified in the contract expires, unless the contract has been explicitly renewed in accordance with the provisions of this Law. In such case, it shall remain in force until the expiry of its term.
3. At the discretion of either party in indefinite term contracts, as stated in Article “75” of this Law.
4. When the worker reaches the age of retirement in accordance with the provisions of the Social Insurance Law unless the parties agree on continuing work after this age.

5. Force majeure.
6. Permanent closure of the firm.
7. Termination of the line of business for which the worker is employed, unless agreed otherwise.
8. Any other case provided for by any other law.

Article "75" added that: "If the contract is of an indefinite term, either party may terminate it for a valid reason to be specified in a written notice served to the other party prior to the termination date as specified in the contract, provided that such period is not less than 60 days if the worker's wage is paid monthly, and not less than 30 days for non-monthly wages".

Article "76" stipulates that: "If the party terminating an indefinite term contract fails to observe the notice period specified in accordance with Article "75" of this Law, such party shall be required to pay the other party a compensation equal to the worker's pay for the duration of the notice period, unless the two parties agree on a greater compensation".

Article “77” of the Labor Law: Why all this controversy?

Article “77” is an article related to the compensation established by the regulator to preserve the rights of the worker who was found to have been arbitrarily dismissed. It is worth noting here: If the worker leaves work, the employer is permitted to file a lawsuit against the worker to claim the benefits directly, and so as not to burden the honorable reader,

Article “77” stipulates that: “Unless the contract includes specific compensation for the termination by either party for an invalid reason, the party affected by termination shall be entitled to compensation as follows:

1. For indefinite term contracts: an amount equivalent to fifteen-day wage for each year of the worker’s employment.
2. For fixed-term contracts: the wage for the remainder of the contract term.

3. The compensation referred to in paragraphs (1) and (2) of this Article shall not be less than the worker's wage for two months.

   Here we can say: The employer must restrict this Article by stipulating in his contracts an amount to be paid as "compensation," preferably not less than "two months," to the worker in the event that he dismisses him arbitrarily, so that he does not bear the burden of paying the rest of the employee's salaries until the end of the contract. At the same time, the employee who left work without accepting his resignation does not bear those financial burdens either.

How does the relationship between the worker and the employer end and what is Article “80”?

I previously mentioned the idea of the relationship between the worker and the employer and the necessity of it being a relationship between the parties, and even if it is not equal of course, it must have guarantees that preserve the rights of the worker and the rights of the employer together.

Perhaps the most eloquent is what was mentioned about the rights of the employer and the activation of his powers, which are based on direct supervision, and taking measures that would protect the organization managed by the employer or the managers entrusted with the tasks of managing the business.

Here, it is necessary to mention Article “80” of the Labor Law, which stipulates that: “An employer may not terminate the contract without giving the worker an award, advance notice, or indemnity except in the following cases, and provided that he gives the worker a chance to state his reasons for objecting to the termination:

1. If, during or because of the work, the worker assaults the employer, the manager in-charge, or any of his superiors.

2. If the worker fails to perform his main obligations arising from the employment contract, or fails to obey legitimate orders, or if, in spite of written warnings, he deliberately fails to observe instructions related to the safety of work and workers which have been posted by the employer in a visible place.
3. If it is established that the worker has committed a misconduct or an act infringing on honesty or integrity.
4. If the worker deliberately commits or omits any act with the intent to cause material loss to the employer, provided that the employer reports the incident to the competent authorities within 24 hours after becoming aware of its occurrence.
5. If it is established that the worker has committed forgery to obtain the job.
6. During the probation period.
7. If the worker is absent without a valid reason for more than 30 days in one contractual year or for more than 15 consecutive days, provided that the dismissal is preceded by a written warning from the employer to the worker if the latter is absent for 20 days in the first case and for 10 days in the second.
8. If it is established that the worker has unlawfully taken advantage of his position for personal gain.

9. If it is established that the worker has disclosed trade secrets.

Article “84” stipulates that: “Upon the end of the employment relation, the employer shall pay the worker an end-of-service award equivalent to the amount of a half-month wage for each of the first five years and a one-month wage for each of the following years. The end-of-service award shall be calculated on the basis of the last wage and the worker shall be entitled to an end-of-service award Page 22 for the portions of the year in proportion to the time spent on the job”.

Article “85” stated that: “If the employment relation ends due to the worker’s resignation, he shall, in this case, be entitled to one third of the award after service of not less than two consecutive years and not more than five years, to two thirds if his service is in excess of five consecutive years but less than 10 years, and to the full award if his service amounts to 10 years or more.”

The Law of Evidence

I firmly believe that the Law of Evidence is the start point of the legal development that the Kingdom of Saudi Arabia is witnessing, as this Law has allowed litigants to know the extent of the validity of their evidence based on texts in which diligence is not permissible, while stressing that the issuance of this Law did not abolish the judge's authority in diligence, but rather made it easier for the judiciary authority carries out its work as an enforcement authority that implements regulations without going into the details of extensive jurisprudence, which is based on jurisprudential statements in which there may be multiple opinions, thus expanding the jurisprudence, and thus combining contradictory statements in terms of opinion that are strong in terms of reasoning, so the judge of the case falls into confusion, the reasons for which are addressed by the issuance of this Law, with the importance of pointing out that the Law did not restrict the judge's authority to exercise judgment in some issues, rule in the interest, and eliminate harm, which is the basis of justice. There is no doubt that every litigator must review the Law of Evidence, especially what relates to the mechanism of agreement between the parties based on Article "5" of the Law of Evidence, which stipulates that: "A specific form is not required to prove commitment, unless there is a special text, or an agreement between the opponents."

And Article “6”, which stipulates that: “If the opponents agree on specific rules of evidence, then the court shall apply their agreement unless it violates public law, and the agreement of the parties stipulated in this law shall not be valid unless it is written, and other procedures related to the rules of evidence stipulated in the law.

Judicial Costs Law

We cannot talk about the Judicial Costs Law without talking about the importance of issuing this Law, and the goal for which it was enacted.

Anyone who considers the objectives of the Law and the will of those who drafted its provisions clearly shows that this Law is different from other comparative Laws. The Saudi Judicial Costs Law aims to limit malicious and fictitious lawsuits, and this is the feature that distinguishes it from the rest of the comparative judicial costs laws, which come in the form of a nominal fee paid in a fixed amount, regardless of the amount of the claim or the cause of the lawsuit. This differs from the Judicial Costs Law, which sets a percentage on the amount of the claim to prove the seriousness.

However, as of writing these lines at the very least, the justice system in the Kingdom is in the process of being established and has not been completed yet. By the justice system, I mean: These systems prevent litigants from ambiguating the fate of the cases they wish to bring, and the reason is the judge's diligence, which may tip the scales and put the lawyer in embarrassment with his clients. The judge does not necessarily have to be wrong,

but, strengthening the appeal side, making strict observations, and monitoring the rulings may make the judge listen to the plaintiffs completely, and respond in reasoning his rulings to all the evidence presented, and give the case its due right of pleading. The most important thing is not to rely directly on evidence that has no control, and it is possible for someone who explores the jurisprudence to find evidence that completely contradicts it, and here is the problem. But considering the acceleration of the justice system is evidence of the state's desire to develop this facility and reduce the ambiguity of interpretations and reasons for rulings.

The Enforcement Law is the prompt justice.

We cannot talk about the Enforcement Law without talking about the Enforcement courts to which the regulator has entrusted the implementation of the Law. When the case enters the Enforcement court, this means that the plaintiff has completed all stages of litigation, and has acquired a definitive right, and wishes to enforce it, or that he has a negotiable instrument such as a cheque, promissory note, and bill of exchange, and wishes to enforce it if it is correct in form.

I have previously talked about negotiable instruments in this book, so the honorable reader can refer back thereto as needed, and in brief, the Enforcement Court has jurisdiction, as stated in Article "9" of the Enforcement Law, against the judgements, decisions and orders issued by the courts, the arbitrators' rulings appended to the enforcement order in accordance with the Arbitration Law, and the conciliation minutes issued by the authorities authorized to do so, or ratified by the courts. negotiable instruments, contracts, notarized documents, judgments, judicial orders, arbitrators' awards, notarized documents issued by a foreign country, and ordinary papers that acknowledge the validity of their content, in whole or in part. End.

I do not want to preoccupy the honorable reader with listing the sanctions articles (46), which include suspending bank accounts, correspondence with the Central Bank, and notifying SIMAH Company of the non-enforcement, even though they have become inevitable decisions for every requester of enforcement, even though the dealer in the enforcement sector noticed the slowness in the ability to collect funds because of are some evaders who transfer money and dispose of real estate before the execution decision is issued against them. The solution, I believe, is to activate Article “47” of the Enforcement Law, which allows the Enforcement judge to assign an expert to trace the funds of the person against whom the enforcement judgment is rendered (debtor). This article, in my opinion, in particular is the essence of the Enforcement Law. My advice here: for the enforcement officers to ask the Enforcement Department to activate this Article to reveal the extent of the possibility of finding money or real estate that has been disposed of suspiciously without a legal reason. Therefore, the enforcement judge - in my opinion - only has to issue a letter assigning the expert and specifying the work to be done before the parties specified in the letter, such as a statement of his bank accounts and his transactions for the last “two months” or “one year” before filing the lawsuit, or requesting enforcement against him, *

The notary public may request the last actions or real estate transactions he carried out during the period of suspicion that is most likely to be evasion.

Other than these steps, I believe that we will keep that strong horse, which I will call the “Enforcement Law”, and in front of it the cart of punitive measures that prevent it from moving, because we placed the cart in front of its slaughter, and its correct place is behind that horse.

Arbitration Law

I believe that the Arbitration Law is one of the laws that helps in accelerating the prompt justice system, and I can define arbitration as: the agreement of the parties to a contract or dispute to appoint arbitrators to settle the dispute existing between them according to procedures specified by the Law.

Also, Article "1" of the Saudi Arbitration Law stipulates that: "the Arbitration Agreement: It is an agreement between two or more parties to refer to the arbitration all or some of certain disputes that have occurred or might occur between them concerning a certain regulatory relation, whether it is in the shape of a contract or not, whether the arbitration agreement appears as an arbitration condition mentioned in a contract, or as an independent arbitration stipulation."

The same Article added in its second paragraph that "The Arbitration Authority: It is the individual arbitrator including its team of arbitrators that judge in the dispute referred to the arbitration".
End.

Here we find: Arbitration is like a private court in which the parties to the dispute agree to appoint an arbitration tribunal consisting of one arbitrator, or several arbitrators.

I cannot fail to point out that arbitration is a flexible and quick means of litigation, far from delaying the settlement of disputes that are referred to the courts, due to the huge influx of cases.

Accordingly, I advise the option of arbitration in simple and not-so-large cases, because the parties to arbitration in most cases may lean toward someone who appoints them, or there may be a prior acceptance of the authenticity of the documents presented to the arbitrator before his appointment by the parties to the case, and this may deepen the dispute due to the conflicting belief among the arbitration tribunal in the validity of their position, not to mention the conflict of interests between them that cannot be limited or confirmed.

We cannot fail to clarify: The Law has guaranteed the arbitration parties the right to object before the competent court in the event of any violations, transgressions, or procedures that conflict with the Arbitration Law.

About the author

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IN THE EYE OF THE LEGAL STORM

In this book, the author discusses:

- An explanation of the types of companies, and the best type for each activity.
- Reasons for the partners' dispute and prposing solutions.
- Family businesses (companies), and the family constitution.
- An explanation of the types and cases of bankruptcy stipulated in the bankruptcy law.
- Common mistakes of companies when when dealing with the employment contract and the Saudi Labor Law.
- He also talked about negotiable instruments, inheritance, wills, endownments and other topics in a simplified essayistic style , takning into account the specialized and non-specialized reader.

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