

Will Saudi Arabia's Neom Turn Out to be a Legal Oasis for Investors – or a Mirage?

By Jochen Hundt*

In Saudi Arabia, the phenomenon of the desert oasis – a place of water, fertility and shelter in the midst of extreme hardship – is more than food for legend and film. It's a palpable reality and source of historic pride in a nation built around a wealth of oases stretching from the world's largest, Al-Hasa, to Medina, and UNESCO heritage site Dir'iyah near Riyadh.

It's also the best way for western investors to understand the ambitious Saudi development project called Neom, the proposed \$500 billion futuristic city to be built 1,000 km north of Jeddah along the Red Sea and the Gulf of Aqaba, a vast economic zone the size of Belgium with 450 km of unspoiled coastline. Neom is supposed to operate under its own social norms, regulations and legal rules, a futuristic, sustainable crossroads 33 times the size of New York City close by Egypt and Jordan. The project is so attractive that Egypt in March said it would set aside land to join.

But Neom is more than just the latest in a series of dizzying mega projects announced by King Salman and his visionary reform-loving son, Crown Prince Mohammad bin Salman, which includes the world's largest solar park, the world's biggest IPO, Aramco and the world's tallest office tower, the 170-story, one-kilometre high Jeddah Tower, set to open in 2020.

Neom is conceived to be a litigious free trade zone, a legal oasis, so to speak, that gives western investors security and familiarity in the midst of Saudi Arabia's conservative and Shariah-based legal landscape. If companies know that they can invest in Saudi under western rules, standards and best practices, the thinking goes, they will invest more.

Creating a safe, attractive legal framework for global investors is critical, if Saudi is to diversify its economy, as it wants, away from oil. New economic sectors require creative energy, state-of-the-art technology and knowledge and above all, foreign funds, to get off the ground.

But investing in a modern Islam-based economy like Saudi Arabia's – the second largest in the Middle East after Turkey's – is not easy for western companies. Looking back over my 20 years of legal practice and law firm management in the Kingdom, I know this only too well.

Saudi Arabia's society and economy runs according to a strict interpretation of Shariah law, whose Islamic roots are often at odds with western legal systems. To make Neom into a flourishing investment destination that can attract the needed capital, the Saudis finally seem ready to permit a new legal system that recognizes Shariah law but is driven by international standards and best practices.

Along with the acceptance of international legal best practices comes the need for state-of-the-art legal assurances for conflict resolution, collection and enforcement that doesn't put German or American businesses, for example, at an automatic disadvantage. And to a cross-border lawyer, a burning question will be: What other body of law, if not Sharia law alone, will constitute the backbone of Neom's legal system? English common law? The German (or Swiss or French) civil code? Or, to meet somewhere in the middle: the law of the U.S. state of Louisiana, the only state with French civil law roots? Creating an entirely new legal system is not an option: It would take decades of preparation.

These questions may sound minor to the non-jurist, but they are at the very heart of what Neom is and will be about. Connected to it are many other important issues such as the structure of Neom's judiciary, its regulatory competence and, last but not least, the language that will be used in court.

Western investors will also want to know whether Neom will truly do away with legal privileges favouring members of the Saudi Royal family, starting with questions of land ownership and ending with the efficiency of execution proceedings. They will also want to know whether Saudi Arabia's stringent rules for employing Saudi locals will be part of Neom's labor regulations.

And economists are already asking another crucial question, which they probably see as the ultimate one: What will be the monetary currency used in Neom, and will Neom have its own central bank?

As Neom moves forward – the project was announced less than a year ago – the resolution of these daunting legal questions will be critical in determining whether the project achieves its goals of creating a new oasis of global capitalism driving the Saudi economy into the future.

As a lawyer, these issues give me pause. But as a German who has lived for two decades in Saudi Arabia, I am confident the Saudis will navigate the political sensitivities of their conservative base to make Neom the new must-see stop on the new Silk Road.

The winds of change that have blown over the Kingdom over the past two years have indeed surprised many observers, including the best informed. Who would have thought a few years ago that Saudi Arabia would rein in its religious police or that free mixing of men and women in public would be not only condoned, but socially accepted? Who would have thought that billionaire celebrities including many members of the inner circle of the Royal family would one day be persecuted for corruption?

My take is that if Saudi Arabia has stunned the world so far with the speed of the changes taking place, much more substantial changes can be expected.

The Neom chief executive, German-native Klaus Kleinfeld, the former CEO of America's Alcoa and Germany's Siemens, is working day and night to "make this thing fly," as he puts it.

Answering my question at a recent meeting in Riyadh, Mr. Kleinfeld confirmed that Neom would soon invite bids from large international law firms to make sure Neom's legal system is made of what he calls "world class regulations for people" and be "the easiest place in the world for companies to do business." Will Neom then become a gigantic version of the UAE's Dubai International Financial Centre, which hosts its own separate jurisdiction and court system and is a de facto exclave of English common law?

And will the Saudis amend their "Basic Law of Rule" – as the UAE did 15 years ago to enable their own free-trade zone? Once these fundamental questions are answered, for example by committing Neom to follow the Dubai model and using English common law, outside investors will know that Neom is the real deal: a place where business can be risked and made in a proper, conducive legal climate.

That will be the time to take Neom, and outside investment in Saudi's future, to a new level. Then investors will know Neom is a real oasis, with the kind of fiduciary ecosystem that breeds new business and trade, and not one, like an ever-receding vision, that turns out to be a mirage.

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