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A Guide to doing business in the Kingdom of Saudi Arabia

contents

Clifford Chance Middle East

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Our team of over 120 lawyers advises clients on domestic, regional and international matters and has delivered many first-of-a-kind deals. We opened our first UAE office in 1975 and are well known for innovative, market-leading work. We specialise in:

- Banking, Finance and Projects;
- Corporate, M&A and Equity Capital Markets;
- Financial Services Regulatory;
- Debt Capital Markets and Structured Products;
- Litigation & Dispute Resolution and Arbitration; and
- Real Estate and Construction.

Our lawyers combine international experience and capability with an intimate and detailed knowledge of local requirements in the region and advise on international, regional and domestic matters. In particular, we

- have over 120 lawyers, fully integrated into the firm's international network, serving the Middle East region;
- have been present in the Middle East for almost 40 years with offices today in Abu Dhabi, Dubai, Doha and Riyadh;
- are able to coordinate legal advice and services throughout the Middle East through our close contacts with leading independent firms; and
- have valuable Arabic language skills within the practice, at both associate and partner level, enabling us to work with Arabic documentation.

Clifford Chance is also Saudi Arabia's leading transactional law firm and its first joint Saudi and foreign owned law firm

On 1 January 2014, Clifford Chance opened Saudi Arabia’s first joint Saudi and foreign owned law partnership when it integrated into its practice the transactional lawyers of Al-Jadaan & Partners Law Firm with whom Clifford Chance has had a cooperation agreement since 1998.

We have an extensive on the ground presence with a team of more than 30 permanently based Saudi and foreign lawyers and 20 support staff.

We offer our clients access to a team of forward-thinking legal experts with considerable insight of the local Saudi market. Our five partner team includes two of the leading and most awarded Saudi lawyers in Saudi Arabia, Abdulaziz Al-Abduljabbar and Khalid Al-Abdulkareem, and recognised English lawyers, Omar Rashid and Paul Latto. Tim Plews manages the office.

Mohammed Al-Jadaan remains Managing Partner of Al-Jadaan & Partners Law Firm, and together with partners Yousef Al-Jadaan and Abdullah Al-Hashim, focus on litigation, mediation, legal strategies and structuring related advice. Mohammed continues to support Clifford Chance in his role as special adviser and Clifford Chance will continue to maintain a co-operation agreement with Al-Jadaan.

Introduction

The purpose of this guide

This guide is designed to provide an overview of key considerations for doing business in the Kingdom of Saudi Arabia (Saudi Arabia). It has been limited to a general description of areas that are of most interest.

The legal environment in Saudi Arabia is complex and rarely static. As the pace of development of domestic law continues unabated this publication cannot serve as a substitute for current and necessarily detailed advice on particular problems that may arise, but it is hoped that it will provide a valuable and informative outline of the relevant law for our clients.

Unless the context otherwise requires, references in this publication to the masculine include the feminine.

This publication is designed to provide a general summary of the key considerations as at January 2014 (unless otherwise stated). It does not purport to be comprehensive or to render legal advice and, consequently, no responsibility can be accepted for loss occasioned by any person acting or refraining from acting as a result of any statement in this publication.

Certain statistical information in this guide originates from third-party sources which are publically available. We do not take any responsibility for the accuracy or completeness of such information and it has not been independently verified by us.

Finally, please note that Clifford Chance is not licensed or qualified to provide tax or zakat advice in Saudi Arabia.

Further information

Online services: The Clifford Chance online services are useful know-how resources that can keep you up to date with industry and market developments, provide a useful overview of the issues that affect the structuring or financing of cross-border transactions and help you assess and manage risk more effectively. Should you wish to have access we can set up an account for you, please follow the link to select your preferences www.cliffordchance.com/preferences, after which you will receive an email with login details and instructions on how to log into the service for the first time.

Political environment

Saudi Arabia is by far the largest country by size, population and economy in the Middle East.

Historic overview

Saudi Arabia was created in 1932 when Abdulaziz bin Saud (the first King of Saudi Arabia), also known as Ibn Saud, unified the areas he controlled in the Arabian peninsula under one nation, the Kingdom of Saudi Arabia. Ibn Saud gained complete control over Saudi Arabia and installed an absolute monarchy in which the Al Saud family became the ruling royal family.

Religion has been central in the development of Saudi Arabia. Wahhabism, a conservative branch of Sunni Islam, has had a major influence in how the Al Saud family built Saudi Arabia. Islam influences all of the decisions being made by the royal family and the government of Saudi Arabia (the Saudi Government). Saudi Arabia is also the "Land of the Two Holy Mosques" (located in Mecca and Madinah) and the Saudi sovereign adds "Custodian of the Two Holy Mosques" to his royal titles.

Opposition to the Saudi Government or to the royal family is strictly prohibited and censorship of media and newspapers remains part of the daily life in Saudi Arabia. Any cultural activity that is not purely "Islamic" is also prohibited in Saudi Arabia.

The current King of Saudi Arabia, King Abdullah, has introduced many reforms since he came to power in 2005. The economy of Saudi Arabia is developing at a rapid pace and Saudi Arabia is increasingly becoming a strategic business hub. King Abdullah has also pushed initiatives aimed at including women in the active society, through greater access to higher education for instance. He appointed women to the consultative Shura Council, which is the main body advising the King on policies, and granted voting rights to women in future municipal elections. However, the King has been very careful in seeking the approval of religious leaders for his policies and continues enforcing the conservative religious norms of the country. Hence, women are still prohibited from driving in Saudi Arabia.

The King is widely appreciated by the population and was able to govern and maintain a stable government despite the Arab Spring and uprisings across the Middle East. Massive investments in infrastructure, education and healthcare have helped to maintain such stability.

As legal advisers, we do not claim to be experts in political analysis but our view is that Saudi Arabia should remain stable in the coming years and continue its modernization and development. It is worth noting, however, that substantial risks subsist given the current political situation in the Middle East. It is also uncertain if King Abdullah's successor will pursue the same policies of liberalisation, modernisation and economic development.

Structure of government

Saudi Arabia is a monarchy. Its Basic Law, issued by Royal Decree number A/90 and dated 27/8/1412H (corresponding to 2 March 1992G), specifies that the King must be chosen from among the sons of the first King, Abdul-Aziz bin Saud, and their male descendants. In 2006 the Allegiance Council was established, comprised of (i) King Abdul-Aziz bin Saud's surviving sons; (ii) one son of each deceased/disabled son of King Abdul-Aziz bin Saud and (iii) one son of the King and one son of the Crown Prince, both appointed by the King, to determine which member of the royal family will be the next King and the next Crown Prince.

The King controls the legislative, executive, and judicial bodies and royal orders and royal decrees that together form the basis of Saudi Arabia's legislation. The King is also the Prime Minister, and he presides over the Council of Ministers (Majlis al-Wuzara), which comprises the first deputy Prime Minister and 23 Ministers with portfolio and five Ministers of State. The King makes appointments to and dismissals from the Council of Ministers. The Council of Ministers is responsible, among other things, for such executive and administrative matters as foreign and domestic policy, defence, finance, health and education.

The Saudi Government acts through a number of Ministries and agencies. The main entities are described below[1].

Ministry of Finance

The Ministry of Finance has numerous duties that include the following:

- supervising the implementation of Saudi Arabia's fiscal and monetary policy and monitoring policy implementation by the relevant agencies

[1] Information available on the website of SAGIA, CMA, Tadawul and SAMA.

- preparing the Saudi Government's budget, discussing it with government agencies, and monitoring its implementation
- controlling the current accounts between the Ministry of Finance and all other government agencies
- monitoring the pre-disbursement phase of budgetary funds for all government agencies
- supervising Saudi Arabia revenue-collection activities and ensuring compliance with the relevant rules and regulations
- supervising the annual closing of the Saudi Government's accounts and expenditures
- supervising and protecting the Saudi Government's properties
- representing the Saudi Government in relevant international economic and financial institutions
- monitoring international financial and economic developments, and preparing the necessary studies and reports
- implementing the Saudi Government's resolutions with respect to external assistance
- monitoring the implementation of the Saudi Government's policy for providing loans to individuals and national corporations for various developmental activities (other than housing) through Saudi Arabia's banks and funds, including the Saudi Agricultural Development Fund, the Saudi Credit and Saving Bank, the Saudi Industrial Development Fund, the Saudi Fund for Development, and the Public Investment Fund.

Department of Zakat and Income Tax (DZIT)

As part of the Ministry of Finance and National Economy, the DZIT has responsibility for tax policy and tax collection in Saudi Arabia.

Ministry of Economy and Planning

The Ministry of Economy and Planning works to ensure that all government agencies work in a well-coordinated and well-informed manner to achieve Saudi Arabia's economic priorities.

The Ministry of Economy and Planning is responsible for the following functions:

- preparing a periodic economic report on Saudi Arabia, featuring analysis of the economy, progress made and likely developments
- preparing the five-year development plan
- estimating the magnitude of financial resources required for the implementation of the development plans approved by the Council of Ministers
- conducting economic studies as required, submitting the findings, and collecting, analysing and publishing statistical data in economic, social and demographic fields.

Ministry of Commerce and Industry (MOCI)

Established in 2003, the MOCI is responsible for all aspects of commercial and industrial activity in Saudi Arabia.

Ministry of Labour (MOL)

The MOL is responsible for the development and use of Saudi Arabia's human resources, including manpower planning, labour relations and the general monitoring of all matters relating to employment, such as labour visas.

Ministry of Social Affairs

The Ministry of Social Affairs is responsible for social insurance, social care and development. It has charities and co-operative societies, as well as social research, within its jurisdiction.

In keeping with Saudi Arabia's Islamic foundation, the Ministry is charged with ensuring that the less fortunate citizens of Saudi Arabia, the physically or mentally handicapped, the aged and the destitute, are cared for within a humane society. Throughout Saudi Arabia, facilities for the disabled and those needing rehabilitation have been established.

Ministry of Municipalities and Rural Affairs

Established in 1975, the Ministry for Municipal and Rural Affairs is responsible for the administration of municipalities throughout Saudi Arabia. Its primary functions include town and city planning, as well as the development and maintenance of the basic infrastructure.

Supreme Economic Council

The Supreme Economic Council was formed in 1999 under the leadership of King Abdullah and includes members who conduct business in the private sector. The Supreme Economic Council is the coordinator between Saudi Arabia's many economic agencies, integrating their activities and facilitating effective decision-making on economic issues. Among other things, the Supreme Economic Council is responsible for deciding which industries are opened to foreign investment and which are restricted.

Saudi Arabian Monetary Agency (SAMA)

SAMA is the central bank of Saudi Arabia, which is responsible for the following:

- issuing the national currency, the Saudi Riyal
- acting as a banker to the Saudi Government
- supervising commercial banks
- managing Saudi Arabia's foreign exchange reserves
- conducting monetary policy for promoting price and exchange-rate stability
- promoting the growth and ensuring the soundness of the financial system.

Saudi Arabian General Investment Authority (SAGIA)

SAGIA is the main agency for foreign investments in Saudi Arabia. It oversees most of the foreign investment licensing requirements.

The Saudi Arabian Foreign Investment Law stipulates that SAGIA must license all foreign investment in Saudi Arabia. Foreign capital is allowed in all investment activities, except those areas expressly excluded by the list issued by the Supreme Economic Council pursuant to its authority in accordance with Article 3 of the Saudi Arabian Foreign Investment Law. This "negative list" is updated regularly. SAGIA has the jurisdiction to license foreign investment in Saudi Arabia, unless the licensing of a particular type of foreign investment is entrusted to another state agency (this is the case for oil or mining investments for example).

Capital Market Authority (CMA)

The CMA in Saudi Arabia unofficially started in the early fifties, and continued to operate successfully, until the government set its basic regulations in the eighties. The current Capital Market Law formally brought it into existence. The CMA enjoys full financial, legal, and administrative independence, and has direct links with the Prime Minister of Saudi Arabia.

The CMA's functions are to regulate and develop the Saudi Arabian capital markets by issuing required rules and regulations for implementing the provisions of the Capital Market Law. Its basic objectives are to create an appropriate investment environment, boost confidence, and reinforce transparency and disclosure standards in all listed companies, as well as to protect investors and dealers from illegal acts in the market.

The Capital Market Law provides for the establishment of a Saudi Stock Exchange that operates as the only authorised entity to carry out the trading of securities in Saudi Arabia. The official establishment of the current Saudi Stock Exchange, known as the Tadawul, was approved by the Council of Ministers on 19 March 2007G. Tadawul now has more than 150 companies listed on its exchange representing a total market capitalisation of approximately US$360 billion.

Saudi Industrial Property Authority (Modon)

Established by legislation in 2001, Modon is responsible for developing and supervising industrial land in Saudi Arabia. Modon's mission is to undertake, as an independent public agency, the regulation and promotion of industrial estates and technology zones in Saudi Arabia on both public and private industrial lands and to encourage the private sector to become involved in the development, operation and maintenance of industrial estates and technology zones.

General Directorate of Passports

The General Directorate of Passports has responsibility for implementing and monitoring policies and programs related to residency within Saudi Arabia, such as:

- the Iqama (Residence Permit) System organizing expatriate arrivals in Saudi Arabia and related visa, registration and renewal issues
- monitoring and regulating arrivals and departures of individuals into and out of Saudi Arabia
- monitoring and regulating companies and establishments that employ non-Saudis and aliens.

Key policies of government

The Saudi Government's key policies focus on education, welfare and healthcare as well as urbanization and economic development. Saudi Arabia has pursued dynamic policies of economic growth and development while carefully maintaining a balance between modernization and traditions. Formal policy planning began with the introduction of the First Development Plan in 1970 under King Faisal. This marked a series of five-year plans that continues today.

In 2009, the Saudi Government approved the Ninth Five-Year Development Plan, which allocated US$385 billion (SAR1.4 trillion) to projects across all sectors until 2014. The ninth plan set forth the main objectives of the Saudi Government: (i) improving the standard of living, (ii) increasing employment, (iii) balancing economic development across all regions of the country, and (iv) increasing the competitiveness of the country's economy. A key policy put forward by the Saudi Government, as an important component of its strategy to increase employment, is the policy of "Saudization" which regulates and promotes the employment of Saudi nationals instead of expatriates.

The previous Five-Year Development Plan (2005-09) focused on increasing foreign as well as national investments and on developing human resources.

On the foreign policy front, three themes have been central to Saudi Arabia's foreign policy: regional security and stability, Arab nationalism and maintaining a close and special relationship with the United States. In recent years, King Abdullah and high-ranked officials of the Saudi Government have regularly spoken publicly against terrorism.

Outlook and political stability

Saudi Arabia enjoys domestic political stability and maintains generally healthy international relations.

Reforms led by King Abdullah promoting women's rights are seen as a positive step forward in making sure women can fully participate in the development of Saudi Arabia. Despite opposition from religious leaders, the King gave the green light for the construction of the first co-ed university in Saudi Arabia which some commentators say could one day become the MIT of the Middle East. He has also granted scholarships to a large number of students to enable them to pursue advanced studies in Saudi Arabia and abroad.

Major projects are underway throughout the country and should result in increased work opportunities for Saudis and have a positive spillover effect on the general economy. These projects include the Riyadh Metro, King Abdullah Financial District in Riyadh and King Abdullah Economic City near Jeddah.

In spite of a very positive outlook, there is always a risk that regional political instability could impact the country. In 2011, in the midst of the Arab Spring, the Saudi Government announced a generous stimulus package with the hope of preventing unrest in the population. The stimulus and the Saudi Government's vision for the country, which seems to be endorsed by the people, have allowed the royal family to maintain an impressive level of stability for now.

In addition to a political risk, Saudi Arabia's economy remains highly dependent on oil and could be significantly impacted by a fluctuation of international oil prices. Any sustained material reduction in the price of oil may materially and adversely affect Saudi Arabia's GDP and revenues.

Rankings and indicators of political stability and development

The table below shows Saudi Arabia's rankings for the past three years in certain publically available indices.

	2012	2011	2010
Corruption Perceptions Index	44	44	47
Human Development Index	0.782	0.780	0.777
Global Peace Index	2.214	2.175	2.255

Source: **Transparency International, UNDP, Vision of Humanity**

Key considerations

The foreign investor should consider the current general environment in the Middle East and although Saudi Arabia remains safe and stable, keep in mind that the situation may change very rapidly.

Saudi Arabia is a monarchy and the King has all powers. Any law or policy affecting the foreign investor's business in Saudi Arabia could change at any time, without prior notice.

Religion permeates every sphere of the Saudi society. Saudi Arabia is one of the most conservative societies in the world and can be perceived as a difficult environment for foreign employees and executives to live and work. Recruiting foreign employees can thus be challenging.

On the positive side, the development of major projects in Saudi Arabia combined with reforms aimed at modernizing the country have the potential to stimulate economic growth considerably and therefore, to strengthen the domestic market.

Economic environment

According to the IMF, Saudi Arabia has been one of the best performing G20 economies in recent years and has played a key stabilizing role in the global oil market.

Overview

The Saudi Arabian economy is petroleum-based. In 2009, approximately 75% of budget revenues and 90% of export earnings came from Saudi Arabia's oil industry. The oil industry comprised approximately 45% of Saudi Arabia's gross domestic product in 2009, with an additional 40% derived from the private sector. According to the OPEC 2012 Annual Statistical Bulletin, Saudi Arabia holds approximately 265.4 billion barrels of oil reserves, representing 22.1% of OPEC's total proven reserves and possibly second only to Venezuela.

Saudi Arabia's economy has continued to show robust performances, thanks to high oil prices and output, strong private sector growth, and government spending, say International Monetary Fund (IMF) economists.

Real GDP growth averaged 6.25% per annum during 2008–12, third behind China and India. A 2009 IMF report indicated that Saudi Arabia has been able to overcome the adverse effects of the global financial crisis due to the country's strong economic fundamentals, including: its robust macroeconomic position; implementation of structural reforms to boost growth with the concurrent leadership of the private sector; and a strengthening financial sector buttressed by an expansionary fiscal policy. Members of the IMF Board also commended the actions taken by Saudi Arabia, in line with G20 resolutions, to enhance bank liquidity, achieve greater stability in inter-bank transactions and further reduce the impact of global economic recession at the public finance level.

IMF's near-term outlook for Saudi Arabia is positive as they expect that growth in the non-oil private sector should remain strong. Standard & Poor (S&P), in May 2013, issued a AA- rating for Saudi Arabia's long- and short-term foreign and local currency sovereign credit. S&P also revised its outlook for Saudi Arabia from stable to positive.

Budget

Saudi Arabia's budget for fiscal year 2012 focused on internal development and investment programmes through spending on projects related to human resources development, transport and communications, economic resources development, health services and social development, infrastructure development, municipal services, defence and national security. The state budget has included new programs, projects, and additional phases of previously approved projects with a total value of SAR265 billion.

The budget for 2013 fiscal year was adopted by the Council of Ministers on 29 December 2012. Analysts noted that Saudi Arabia had adopted another expansionary budget with record spending to support the economy and the development of the country. Here are the main highlights of the 2013 budget:

- The Saudi Government projected a surplus of SAR9 billion (US$2.4 billion) based on revenues of SAR829 billion and expenditure of SAR820 billion
- For the second consecutive year, Saudi Arabia has budgeted a surplus
- Education and healthcare are the biggest spending items, accounting together for 37% of total spending
- Analysts note that this budget confirms the Saudi Government's intention to continue to stimulate the economy with massive investments in different sectors. Although revenue projection seems less conservative than in previous years, analysts agree that in the event of a shortfall in revenues, any deficit can be financed comfortably by drawing from SAMA's huge reserve of foreign assets, which stood at US$635 billion at the end of November 2012.

GDP and growth rate

Economic studies show that 2012 was a healthy year for the economy of Saudi Arabia with growth of 6.8% Private sector growth, non-related to oil, performed well with a strong growth of 7.5% per annum during 2011-2012, with the manufacturing, transport, retail and wholesale sectors all seeing double-digit growth. The previous year had been a record year with strong growth of 8.5% according to the IMF.

The unemployment rate has been estimated by the World Factbook in 2012 at 10.6%, which ranks Saudi Arabia 113th in the world for employment of its nationals. Unemployment was estimated to be slightly higher in 2011, at 10.9%. Note that the data provided are for Saudi males only. Some estimate the real unemployment rate in Saudi Arabia to be as high as 25%.

Key considerations

Saudi Arabia has a very dynamic economy with consistent growth in all sectors. However, as previously highlighted, it is overly dependent on oil revenues, with about 90% of its revenues being derived from oil. Experts generally agree on the following observations:

- Even though high oil prices have increased revenues for Saudi Arabia that allowed the country to have a very large surplus (among the largest in the world) Saudi Arabia runs the risk of seeing its public finances deteriorating if the oil prices fall because of a reduced demand caused by a global recession or an increase in the global production and supply of oil
- Despite decent efforts by the Saudi Government to replace expatriates by Saudi citizens (the "Saudization" programme), the significant number of expatriates in the country drains Saudi Arabia's revenues to other developing and developed countries, mainly through remittances
- Stricter Saudization requirements could become an impediment to foreign investments.

Natural and social environment

Saudi Arabia has scored remarkably well in well-known business indices such as the World Economic Forum's Global Competitiveness Report and the annual IFC/World Bank Doing Business report.

Overview

Saudi Arabia is the second largest Arab country and the largest nation in the Persian Gulf region, with a territory of 2,149,690 sq km. Arid and covered in large parts by desert, Saudi Arabia has undergone significant changes and has become urbanised. Large infrastructure projects in Riyadh, Jeddah and across the country are modernizing Saudi Arabia at a rapid pace and are changing the landscape.

Saudi Arabia has a large and increasingly urban population. The official religion is Islam and thus, according to the Saudi Government's statistics, 100% of the population are Muslims (expatriates living in Saudi Arabia are not taken into account in this statistic).

Natural environment

Saudi Arabia is located on the Arabian Peninsula, bordering the Red Sea on the West, Jordan, Iraq and Kuwait on the North, the Arabian Gulf, Bahrain, Qatar and the UAE on the East and Yemen and Oman on the South.

Saudi Arabia has a very hot and dry desert climate with great temperature extremes. Only 1.45% of its land is arable. It is also the largest country in the world without a river. It does have, however, extensive coastlines on the Persian Gulf and the Red Sea.

Environmental issues facing Saudi Arabia include desertification, coastal pollution from oil spills and the depletion of underground water resources. The lack of rivers or permanent water bodies has prompted the development of extensive seawater desalination facilities. For instance, Saudi Arabia's production of desalinated water during 2011 went up by 19.3%.

In 2012, Saudi Arabia introduced nine environmental laws to tackle environmental degradation and the Saudi Government allocated US$7 billion for water related projects.

Demographics

Saudi Arabia has a population estimated by the World Bank at 28.3 million (however, the World Factbook estimates Saudi Arabia's population at 26.9 million as of July 2013) and is the 46th most populous country in the world. This figure includes 5.6 million non-nationals living and working in Saudi Arabia.

Saudi Arabia's population is young: according the World Factbook, in 2013, 67.7% of the Saudi Arabian population belonged to the 15–64 age group, 28.2% were in the 0–14 age group, and just 3.1% were aged 65 or above. The median age in Saudi Arabia is 26 years old.

According to the World Bank, the male/female ratio in Saudi Arabia is as follows:

	2012	2011	2010
Male (%)	57.1	56.7	56.5
Female (%)	42.9	43.3	43.5
Total	28,287,855	27,761,728	27,258,387

Source: **World Bank**

Saudi Arabia's population is now mostly urban with 82.3% of the people living in cities. Riyadh, the capital, is the most populous city with 4.7 million people. Jeddah follows with 3.2 million people. Mecca and Medina each have more than one million people living there.

Religion, education and healthcare

Religion

As previously highlighted, Saudi Arabia is a country governed by Islamic law and officially, 100% of its population is of Muslim faith. Nevertheless, a small minority of immigrants belonging to different religions such as Hinduism and Christianity reside in Saudi Arabia.

Education

Saudi Arabia has tens of thousands of public and private schools and has invested a large portion of its budget to improve the standards of education at all levels. Here are some relevant facts:

- The Saudi Government allocates about 25% of its annual budget to education
- Saudi Arabia's educational system comprises more than 30 public and private universities, and more than 26,000 primary schools
- Approximately five million students are enrolled in the system, which has a student to teacher ratio of 11-to-1, representing one of the lowest in the world
- Islam is central to Saudi education and Islamic principles are an important part of the curriculum
- The literacy rate, according to the Saudi Government, has risen to 96%, up from 35% 40 years ago (however, the World Factbook estimates the literacy rate to be 87.2%)
- In 2006, King Abdullah established the King Abdullah Scholarship Program for study abroad which has allowed more than 130,000 students to study abroad, in more than 20 countries worldwide.

Healthcare

The fourth and the fifth five-year development plans adopted by the Saudi Government made healthcare one of the priorities. Since 1970, however, the Saudi Government has invested massively in developing healthcare programmes and hospitals. In the 2013 budget, the health and social affairs expenditures accounted for 12.2% of the total budget. Allocations toward healthcare and welfare grew by 16% compared to 2012 and amounted to US$26.7 billion. These funds were used to build 19 new hospitals and healthcare centres, to continue the work at 102 hospitals across the country and to complete five medical cities currently in construction.

Operational considerations and expenses of setting up in Saudi Arabia

Several operational tasks and expenses need to be taken into consideration when setting up a company or a joint venture in Saudi Arabia. Among these are the licensing requirements and the incorporation process that may take time and require significant resources.

That said, Saudi Arabia has scored remarkably well in well-known business indices:

- Ranked as the 18th most competitive economy in the world, according to World Economic Forum's 2012-2013 Global Competitiveness Report; and
- Ranked 22nd out of 185 economies surveyed in the annual IFC/World Bank Doing Business 2013 report.

Below is a practical overview of the general costs of doing business in Saudi Arabia (provided by SAGIA):

Commercial and industrial rents

Inside industrial cities	SAR1 – 2 per square metre per year [US$0.26]
Elsewhere	SAR20 to SAR100 per square metre per year [US$5.33 to US$26.67]

Residential rents

Rentals for residential accommodation can vary immensely. Worker accommodation is usually inexpensive but the annual rent for senior management accommodation will likely exceed US$50,000 for a three bedroom furnished villa in a residential compound in a major city.

Utilities

<table>
<tr><th colspan="5">Electricity</th></tr>
<tr><th colspan="5">Rate of industrial consumption of loads (1000 KwH) or less</th></tr>
<tr><th rowspan="2">Time period</th><td colspan="2">Seasonal Rate
(For plants with electromechanical counters)</td><td colspan="2">Rate
(For plants with digital counters)</td></tr>
<tr><td>Time period</td><td>Rate (KwH/H)</td><td>Time period</td><td>Rate (KwH/H)</td></tr>
<tr><td>Oct – April</td><td>All times</td><td>12</td><td>All times</td><td>12</td></tr>
</table>

May – Sep			Off-peak time	10
	All times	15	Sat-Thu: 08:00-00:00 Fri: 09:00-00:00 21:00 – 00:00	
			Peak time Sat-Thu: 12:00- 17:00	26
			The other times	15
Rate of industrial consumption of loads (1000 KwH) or more				
Time period	Seasonal Rate (For plants with electromechanical counters)		Rate (For plants with digital counters)	
	Time period	Rate (KwH/H)	Time period	Rate (KwH/H)
Oct – April	All times	14	All times	14
May – Sep	All times	15	Off-peak time Sat-Thu: 08:00-00:00 Fri: 09:00-00:00 21:00 – 00:00	10
			Peak time Sat-Thu: 12:00- 17:00	26
			The other times	15

Water	Rising from SAR0.10 [US$0.027] over four further bands to a maximum of SAR6.00 [US$1.6] per cubic metre.

Employee costs

Employee incomes vary according to the status, position and experience of the employee as elsewhere in the world.

In addition, an 18% General Organization for Social Insurance (GOSI) contribution for annuities is payable (9% by the employer and 9% by the employee) for Saudis employed and 2% for occupational hazards for all employees (Saudis and non-Saudis): health insurance, transportation or compensation in lieu of cars for more senior personnel, return tickets to the country of origin and an end of service bonus payment.

Key considerations

- Warm and arid climate
- Dominance of Islam and Islamic law
- Very young population
- Employment of Saudis is required and might prove to be difficult in certain industries or for certain positions for which a particular expertise or knowledge is needed
- Delays can be long and expenses can be higher than expected in relation with setting up a business in Saudi Arabia
- In general, the cost of doing business in Saudi Arabia is low compared to other markets. Costs of utilities and oil & gas as well as taxes are very low.

Financial and tax regime

Overview

Saudi Arabia's financial system is evolving rapidly and becoming more sophisticated. Its tax regime is one of the most competitive in the world.

Financial authorities and regulators

As previously highlighted, SAMA and CMA are the main financial authorities in Saudi Arabia. SAMA acts as the central bank of Saudi Arabia and its role includes overseeing the Saudi currency as well as regulating and monitoring commercial banks and dealers. CMA's role is to supervise and regulate the Saudi capital markets.

Regulation of foreign exchange

Saudi Arabia's currency is the Saudi Arabian Riyal (SAR). The SAR is pegged to the US dollar (one US dollar = SAR3.75).

There are currently no laws or regulations affecting foreign exchange and impeding the repatriation of capital and/or profits after dissolution of a corporate entity. It should be noted, however, that the dissolution of a company in Saudi Arabia may take time and be burdensome.

Availability of finance

There are many well-established commercial banks in Saudi Arabia. These banks generally extends credit and financing to businesses in Saudi Arabia, including foreign investors. As of 31 December 2012, the commercial bank prime lending rate was 6.8%.

Major banks and financial institutions

Major commercial banks in Saudi Arabia include:

- Arab National Bank
- Al Jazira Bank
- Al Rajhi Banking and Investment Corporation
- Bank AlBilad
- National Commercial Bank
- Riyad Bank
- Saudi Investment Bank
- Saudi Fransi Bank
- Saudi Hollandi Bank
- SAMBA (previously Saudi American Bank)
- Saudi British Bank (SABB, a joint venture with HSBC)
- Alinma Bank

There are also a number of boutique investment banks and asset managers active in the country (Jadwa Investment for example).

Tax

Specific tax advice should be sought from tax advisors and consultants in Saudi Arabia. Clifford Chance is not licensed or qualified to provide tax advice in Saudi Arabia.

The following is an overview of the general tax regime in Saudi Arabia.

Zakat/Income tax

In general, all entities doing business in Saudi Arabia are required to submit income tax and zakat returns to the DZIT on an annual basis and obtain a tax and zakat clearance certificate. Non-Saudi Arabian and non-GCC entities pay income tax on their allocable share of income and Saudi Arabian and GCC entities pay zakat, a form of religious wealth tax, based upon principles established in Islamic law. Each shareholder in a company is responsible for paying the zakat or income tax (as the case may be) attributable to its share of income. The company pays this on behalf of the shareholder by debiting the shareholder's account with the company. If the company makes profit but pays no dividend then tax/zakat will be payable by the company on the retained profit.

The rate of zakat is 2.5% of all capital employed that is not invested in fixed assets, long-term investments and deferred costs as adjusted by net results of operation for the year. Complex rules apply to the calculation of zakat.

Income tax is payable by the non-Saudi Arabian/non-GCC shareholders of the company at a flat income tax rate of 20% However, the tax rate of taxpayer engaged in the natural gas investment business is 30%, and the tax rate of the taxpayer engaged in the production of oil and other hydrocarbons is 85%.

Zakat/taxpayers are required to register their activity with DZIT before the end of their financial year, failing to do so would lead to a fine between SAR1,000 and SAR10,000. Taxpayers are required to file a tax return in the DZIT prescribed form and any such tax return must be filed within 120 days of the end of the tax year for which the tax return was made (75 days apply to certain taxpayers).

An audited financial statement together with certain supporting schedules as required by DZIT forms, must be submitted with the tax return to DZIT. Upon review of the return, the DZIT will either send the zakat/taxpayer a letter requesting additional information, or a notice of assessment stating the zakat/tax liability. Occasionally, the DZIT may conduct a field audit of the zakat/taxpayers books and records at the zakat/taxpayer's premises.

In case of failure to file the declaration within the fixed time, there is a delay fine of 5% of the unpaid tax if the delay does not exceed 30 days of the statutory date; 10% if the delay exceeds 30 days and does not exceed 90 days; 20% if the delay exceeds 90 days and does not exceed 365 days and 25% if the delay exceeds 365 days of the statutory date. In addition to the delay fines, in some circumstances a fine of 25% of the true tax liability may be levied if it is found that untrue information has been filed by the taxpayer or his accountant with the intent to evade taxes.

The zakat/taxpayer can appeal the assessment issued by the DZIT by filing a notice of appeal within 60 days of receipt of the assessment letter. Such appeal will not be accepted unless the taxpayer pays the undisputed items of the tax assessment within the appeal period. The appeal is heard by the Preliminary Tax Appeal Committee (PTAC). The zakat/taxpayer and/or zakat/taxpayer's representatives, and a representative of the DZIT may attend the hearing before the PTAC.

The zakat/taxpayer or the DZIT can also appeal the decision of the PTAC within sixty days of the date or receipt of the said decision to the appeal committee. The taxpayer who wants to appeal against a PTAC decision is required to pay the due tax pursuant to the said decision or submit an acceptable bank guarantee. The decision of the appeal committee is final unless appealed against before the Board of Grievances within 60 days of the date of receipt of notification.

Withholding tax

Companies, any establishment or natural persons resident in Saudi Arabia, whether or not they are taxpayer, making payments to a non-resident from a source in Saudi Arabia, are required to withhold tax from such payments with rates starting from 5% and going up to 20% as follows:

Management fees	20%
Royalties or proceeds; Payments for services to a head-office or related company	15%
Payments for rent; Payments for technical and consulting services; Payments for air tickets, air freight and maritime freight; Payments for international telecommunications services; Dividends; Loan charges (where the debt is secured by property located in Saudi Arabia, the borrower is resident in Saudi Arabia, or the loan is related to an activity carried out in Saudi Arabia); Insurance or reinsurance premiums	5%
Other payments	15%

If the resident non-Saudi party is lending monies directly from its representative office or branch in Saudi Arabia (and the monies to be lent are booked in the representative office or branch) any payments to be made to the representative office or branch will not be subject to withholding tax provided the representative office or branch (as the case may be) has a DZIT file and the borrower has complied with all the DZIT requirements.

A person withholding tax is obliged, besides other requirements, to register with the DZIT and pay the amount withheld during the first ten days of the month following the month of payment to the beneficiary. The party paying and the party receiving the payment that is subject to withholding tax are jointly liable for the payment of the amount of tax outstanding and any delay fines and penalties. A person subject to withholding tax under the Income Tax Law who fails to withhold tax as required, fails to pay withheld tax, or fails to report withholding statements is personally liable to pay the unpaid tax and any resulting delay fines which is 1% of the unpaid tax for every 30 days of delay calculated from the stipulated date of payment. A withholder who is found guilty of evasions of withholding tax is personally liable to pay an additional 25% of the unpaid taxes as a penalty.

Since 2000, foreign investors are generally allowed to carry forward losses indefinitely.

Transfer pricing

Saudi Arabia does not have sophisticated transfer pricing rules. Related parties must simply conclude their transactions as if they are independent parties and at arm's length. According to KPMG, the DZIT is increasingly scrutinizing cross-border transactions between related parties and challenging such transactions where arm's length principles are not satisfied. KPMG notes in one of its publications on transfer pricing that even though there is a need to maintain arm's length pricing under Saudi tax law, there are no detailed transfer pricing rules in Saudi Arabia to reach an acceptable arm's length price for a particular transaction. KPMG adds that in the absence of such detailed rules, the Saudi tax authority generally accept a price if they are satisfied that it represents a fair market value of the subject services or supplies in Saudi Arabia. Finally, KPMG warns that the lack of specific transfer pricing rules unfortunately provides wide powers to the Saudi tax authorities to accept or reject any particular pricing mechanism.

Key considerations

- SAMA and CMA play an important role in supervising and regulating financial and capital markets. These institutions are well staffed and increasingly sophisticated
- The Saudi Arabian banking sector is developing rapidly and Saudi Arabia’s main banks are stable, profitable and well capitalized
- The foreign investor should seek tax advice directly from a tax consultant or an accounting firm licensed to practise in Saudi Arabia.

Trade environment

On 11 November 2005, the General Council of the World Trade Organisation (WTO) formally concluded negotiations with Saudi Arabia on the terms of Saudi Arabia's membership in the WTO. Saudi Arabia became the 149th member of the WTO on 11 December 2005.

Overview

Saudi Arabia's concessions and commitments given in the context of its accession to the WTO (the WTO Commitments) were enacted into Saudi Arabian law by Royal Decree No. M/54 dated 21/9/1426 H (corresponding to 25 October 2005G), which was published in the Saudi Arabian Official Gazette on 16/10/1426H (corresponding to 18 November 2005G) and came into force immediately.

Saudi Arabia's WTO Commitments were given in respect of a variety of economic activities. While some of Saudi Arabia's WTO Commitments simply reflect existing provisions of Saudi Arabian law, other WTO Commitments represent changes to existing Saudi Arabian laws. Foreign investors should regard Saudi Arabia's membership in the WTO and the liberalisation of certain sectors of the Saudi Arabian economy positively.

Saudi Arabia is a key member of the Gulf Cooperation Council (GCC) which was founded in May 1981 by the UAE, Bahrain, Saudi Arabia, Oman, Qatar and Kuwait. The GCC Charter documents the special political and economic union of these six states. Saudi Arabia is also a signatory of the Pan-Arab Free Trade Area (or Greater Arab Free Trade Area) which includes Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Qatar, Saudi Arabia, Sudan, Syria, Tunisia, United Arab Emirates and Yemen. The GCC members agreed on a customs union that came into effect in 2003. As a consequence of this customs union, there are usually no import tariffs that apply to imports from within the GCC.

Import and export regime (including the GCC Customs Union)

In order to import goods into Saudi Arabia, a customs declaration, commercial invoice, certificate of origin, packing list and transport document are required. Licences from Saudi Arabian agencies or ministries are also often required.

As a member of the GCC, no import tariffs apply to most imports from a member-state of the GCC. Also, as a member of the Pan-Arab Free Trade Area, Saudi Arabia has eliminated most tariffs with the 16 other member-states. A standard duty of 5% is generally applied to imports from outside the GCC. Higher duty rates ranging from 12% to 20% can apply to certain imports. It is important to bear in mind that some imports are prohibited, including all imports from Israel. It is also worth noting that Saudi Arabia has ratified the Unified Rules of Granting Priority in Government Procurements to National Products and Products of National Origin in the GCC.

Exporting from Saudi Arabia will require a customs declaration, a commercial invoice, a certificate of origin, a packing list and a transport document. Licences are not required for the majority of exports. There is usually no taxes or tariffs on exports from Saudi Arabia. Again, exporting to Israel is strictly prohibited.

Double taxation and trade agreements between Saudi Arabia and other countries

Based on information made available by SAGIA, below are the relevant agreements in force between Saudi Arabia and other countries.

- Investment Promotion & Protection Agreements with:
  - Italy
  - Germany
  - Belgium
  - Taiwan
  - China
  - France
  - Malaysia
  - Austria
- Avoidance of Double Taxation Agreements with several countries

- Economic, Trade and Technical Cooperation Agreements with several countries as indicated in the table below:

Country	Type of Agreement	Date of Signing
Algeria	Economic, Cultural, Technical	21/3/1407H 24/11/1986G
Argentina	Economic, Technical	12/10/1401H 13/8/1981G
Australia	Economic, Technical	6/5/1400H 23/3/1980G
Austria	Economic, Technical	11/8/1408H 29/3/1988G
Azerbaijan	Economic, Investment, Cultural, Sports, Technical, Trade	2/2/1415H 31/7/1994G
Bangladesh	Economic, Trade	10/1/1399H 21/12/1978G
Belgium/ Luxembourg	Economic, Technical	3/6/1398H 11/5/1978G
Canada	Economic, Trade	12/2/1408H 6/10/1987G
China	Economic, Trade, Investment, Technical	11/5/1423H 21/7/2002G
Denmark	Economic, Industrial, Scientific, Technical	1/8/1394H 19/8/1974G
Egypt	Economic, Trade, Investment	10/8/1410H 8/3/1990G
Finland	Economic, Technical	6/5/1396H 6/5/1976G
France	Economic	15/7/1395H 25/7/1975G
Germany	Economic, Industrial, Technical	10/2/1397H 30/1/1977G
Greece	Economic, Technical	13/1/1407H 18/9/1986G
Holland	Economic, Technical	12/8/1404H 14/5/1984G
India	Economic, Technical	10/6/1401H 15/4/1981G
Indonesia	Economic, Trade	15/7/1410H 17/4/1984G
Iraq	Economic, Trade	11/4/1404H 15/1/1984G

Country	Type of Agreement	Date of Signing
Ireland	Economic, Technical	14/1/1404H 21/10/1983G
Italy	Economic, Technical, Financial	21/2/1395H 5/3/1975G
Japan	Economic, Technical	18/2/1395H 2/3/1975G
Jordan	Economic	2/6/1382H 31/10/1962G
Korea	Economic, Technical	10/6/1394H 1/7/1974G
Lebanon	Economic, Trade	23/9/1391H 12/11/1971G
Malaysia	Economic, Trade	17/1/1395H 30/1/1975G
Morocco	Cultural, Media, Trade	20/5/1386H 6/9/1966G
Pakistan	Economic, Technical, Trade	10/6/1413H 5/12/1992G
Philippines	Economic, Investment, Trade, Technical	12/5/1415H 18/10/1994G
Russia	Economic, Investment, Trade, Technical	17/6/1415H 21/11/1994G
Syria	Economic, Trade	19/2/1392H 4/4/1972G
Tunisia	Trade	21/7/1408H 10/3/1988G
Turkey	Economic, Technical, Trade	18/5/1394H 9/6/1974G
USA	Secured Private Investment	10/2/1395H 22/2/1975G
Uzbekistan	Economic, Investment, Cultural, Sports, Technical, Trade	25/6/1416H 19/11/1995G
Yemen	Cultural, Trade, Technical	11/8/1408H 29/3/1988G

In addition, Saudi Arabia is party to a number of trade and economic agreements with the GCC and Arab League countries:

- The Coordinated Gulf Efforts
- The GCC Joint Economic Accord
- Undertaking economic activities in the Kingdom by GCC citizens

- The GCC countries' joint strategy for industrial development
- The Integrated Statutes Regulating Foreign Investment in the GCC Countries
- The Foundations for Economic Integration in the GCC Countries
- The Integrated Regulations for Protecting Industrial Products
- Trade Facilitation and Development Agreement Between the Arab Countries
- The Integrated Agreement on Investing Arab Capital Funds in the Arab Countries
- Transit Agreement Between Arab League Countries
- The Agreement on Mutual Exemptions from Taxes and Administrative Charges the Activities and Equipment of Arab Airlines.

Key considerations

Saudi Arabia is a well-known trade gateway for the Gulf and the rest of the Middle East.

The GCC Customs Union and the Pan-Arab Free Trade Area reduced tariff barriers and simplified the process of importing and exporting goods within the GCC and the Middle East.

However, the foreign investor needs to be aware of the prohibitions such as the ban on imports from and exports to Israel. The foreign investor should also consult with a trade specialist or a customs agency to properly assess the costs related to custom duties and tariffs.

Employees and trade unions

Overview

Companies operating in Saudi Arabia have to comply with a set of requirements and regulations regarding the employment of its workforce.

Categories of employees

There are two general categories of employees in Saudi Arabia: Saudi nationals and expatriates. According to statistics from the MOL, the total labour force working in the private sector in Saudi Arabia in 2011 stood at 7.8 million, increasing by 11.3% over the preceding year. The ratio of Saudi Nationals employed in the private sector to total employed workers was 10.9%.

Labour regulations also state that certain positions can never be held by non-Saudis. These jobs include: Executive HR manager, HR manager, labour affairs manager, staff relations manager, staff relations specialist, staff relations clerk, recruitment clerk, staff affairs clerk, attendance control clerk, receptionist (general), hotel receptionist, health receptionist, claims clerk, treasury secretary, security, Public Relation officer, female sales specialists (women only).

Saudization

As previously mentioned the term "Saudization" refers to the various initiatives of the government of Saudi Arabia to encourage the employment of Saudi nationals in the private sector. The latest Saudization initiative which has been launched under the auspices of the MOL is "the Nitaqat programme".

"Nitaqat" in Arabic literally means "categories." Under the programme, companies are categorised in accordance with a basic colour scheme: red, yellow, green and premium. In summary, companies classified as green or premium are fulfilling MOL-sanctioned Saudization requirements and will receive specified benefits. On the other hand, those companies classified as red or yellow are non-compliant and will be subject to various sanctions.

Legal basis

The Saudi Labour Law provides that Saudi nationals must comprise at least 75% of an employer's workforce, although the MOL has the authority to reduce this percentage. We note that, the MOL has now introduced the Nitaqat programme which stipulates the amount of Saudi nationals a company must employ.

The Saudi Labour Law requires that the initial employees of the Saudi joint venture company, or any LLC for that matter, be Saudi nationals. Only after the appointment of a Saudi national, can work visas and then Iqamas (Saudi Arabian residence permits) be issued for non-Saudi employees.

Nitaqat programme

All Saudi companies (whether owned by Saudis or non-Saudis) with at least ten employees are required to comply with the Nitaqat programme.[2]

The percentage of Saudi nationals required to be employed by each company will depend on two factors:

- the activity of the company
- the number of employees working for the company.

For example, if a company is engaged in trading activities (wholesale and retail), the Saudization percentages that determine under which category the company is classified will be contingent on the number of people it employs.

Hiring

Prior to be able to hire or transfer any employees, a new Saudi entity will have to be established and relevant post-incorporation formalities completed. In particular, a "700 file" has to be opened with the Labour Office in the company's name, which requires the submission of the following documents:

- a copy of the company's commercial registration certificate
- a copy of the company's Articles of Association (AoA)
- a copy of the company's Chamber of Commerce membership certificate
- a copy of the lease agreement for the company's premises
- a map showing the location of the company's premises
- a completed Labour Office application form.

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[2] Entities other than companies (e.g. partnerships or foundations) are also obliged to comply with the Nitaqat programme. The term "company" is simply used in this note for ease of reference.

The company also has to register with GOSI. Setting up a new account with GOSI requires the submission of the following documents:

- a copy of the company's commercial registration certificate
- a copy of the company's AoA
- a copy of the company's municipality licence
- a map showing the location of the company's premises.

Once the formalities are completed, the company can hire employees provided that the "Saudization" and other legal requirements are met.

Any non-Saudi employee who intends to work in Saudi Arabia will need to have a work visa and to enter the country on the basis of such visa. The new Saudi entity will not be able to sponsor work visas prior to (i) the commercial registration certificate's issuance date and (ii) its registration with the Labour Office. One of the requirements for having a work visa issued is the existence of an employment contract between the company and the non-Saudi employee.

Discrimination

As highlighted above, the Saudi Government has enacted laws and regulations encouraging companies to hire Saudi nationals. However, aside from these legal requirements, discrimination is generally not a major issue given the large community of expatriates coming from all over the world to work for Saudi Arabian companies.

Contracts of employment

The Saudi Arabian Labour Law, which was enacted by Royal Decree M/51 dated 23/8/1425 H and came into force on 25/3/1427 H/23 April 2006G (the Saudi Labour Law) applies to all employment contracts in Saudi Arabia. Article 5 of the Saudi Labour Law states that its provisions apply to any contract whereby a person commits himself to work for an employer under his supervision for a wage. Article 52 requires that the work contract must include the name of the employer, venue, the name of the worker, nationality, identification, wage agreed upon, type and location of work, date of employment, and duration of the contract if fixed.

Contracts of employment may be definite or indefinite. However, it is worth noting the following:

- contracts for non-Saudi workers should be for a specified period. If it is not specified, its term shall be deemed to be the term of the work permit (Art. 37)
- for Saudi workers the fixed term contract terminates on its expiry; however, if the parties continue to implement it, it shall be deemed renewed for an indefinite period. If the contract is renewed for two consecutive terms or if the renewal period and the original term amount to three years, whichever is less, and the two parties continue to implement the contract, the contract becomes one of an indefinite term (Art. 55).

Pay and benefits

Salaries and benefits can obviously differ immensely depending on the nature of the job. There is no individual income tax in Saudi Arabia.

The Saudi Arabian Labor Law imposes certain minimum standards, such as working hours, the overtime rate, vacation, safety standards and end-of-service awards.

Social security

Saudi Arabia has a fairly comprehensive social security system. The Ministry of Labor (www.mol.gov.sa) and GOSI (www.gosi.gov.sa), administer a social insurance programme. There are basic social insurance contributions that are levied on the salaries of employees.

With respect to Saudi Arabian employees, an employer is required to pay an amount equal to 9% of the employee's salary, and withhold 9% of the employee's salary for social security contributions, which are remitted to GOSI. These funds are pooled together with the Saudi Government's subsidies to support the grant of old-age pensions, disability pensions, survivor pensions, marriage grants and death grants.

The employer is also required to pay 2% of Saudi Arabian and foreign workers' salaries for occupational hazards insurance. This insurance programme covers private-sector Saudi nationals and non-Saudi employees in case of work injury or occupational disease. Accidents that occur while commuting to and from work are also covered. This insurance allows the employee to receive temporary disability benefits of 100% of his daily wage or 75% if receiving inpatient treatment in a medical centre at the expense of GOSI. This benefit is paid for each day that the insured employee is not able to work. In case of total disability, Saudi insured employees receive 100% of average monthly earnings. The average monthly earnings are based on the three-month period immediately before the disability began. For non-Saudi insured employees, they should receive a lump sum of 84 months of permanent disability pension, up to SAR330,000. In all cases, the

GOSI's medical board assesses the degree of disability of the employee.

Hours of work

Working days in Saudi Arabia are from Sunday to Thursday. Working hours depend on the employer:

Public Sector	7:30 a.m to 2:30 p.m
Private Sector	Traditionally 8:00 a.m to 12 p.m. and 4:30 p.m to 7:30 p.m. but more commonly 9:00 a.m. to 7:00 p.m.
Banks	9:30 a.m. to 4:30 p.m.
Shopping Stores	Weekdays: 10:00 a.m. to 12:00 p.m. Friday: 4:00 p.m. to 10 p.m.

Weekends in Saudi Arabia are Friday and Saturday.

Holidays and time off

Dates of Saudi Arabian Holidays cannot be determined in advance with absolute accuracy, even by the Saudi Government. The official Holidays are Eid Al Fitr (26th Ramadan to 5th Shawwal or, in Gregorian dates for 2013, 3 August to 12 August), the Saudi Arabian National Day (23 September) and Eid Al Adha (7th Thi Alhijja to 15 Thi Alhijja or, in Gregorian dates for 2013, 12 October to 20 October).

Saudi Arabia celebrates Ramadan and during this period, the working hours may change considerably. Ramadan is the ninth month in the Islamic calendar. It is a time when Muslims around the world focus on prayer, fasting, giving to charity and religious devotion. Ramadan follows the lunar cycle and in the last year commenced in and July and ended in mid-August.

Industrial relations and trade unions

There are no trade unions in Saudi Arabia. Collective bargaining and strikes are also non-existent.

Termination

Under Article 74 of the Saudi Labour Law, a work contract terminates in the following cases:

- If both parties agree to terminate it, provided that the employee's consent be in writing
- If the term specified in the contract expires, unless the contract has been explicitly renewed in accordance with the provisions of the Saudi Labour Law in which case it shall remain in force until the expiry of its term
- At the discretion of either party in indefinite term contracts
- When the employee attains the age of retirement, which is 60 years for males and 55 years for females, unless the two parties agree upon continuing work after this age
- In case of force majeure.

Under Article 75 of the Saudi Labour Law, if the contract is of an indefinite term, either party may terminate it for a valid reason to be specified in a written notice to be served to the other party at least thirty days prior to the termination date if the employee is paid monthly and not less than 15 days' notice in other circumstances.

Article 80 of the Saudi Labour Law also provides a list of causes for termination:

- If, during or by reason of the work, the worker assaults the employer, the manager in-charge or any of his superiors
- If the worker fails to perform his essential obligations arising from the work contract, or to obey legitimate orders, or if, in spite of written warnings, he deliberately fails to observe the instructions related to the safety of work and workers as may be posted by the employer in a prominent place
- If it is established that the worker has committed misconduct or an act infringing on honesty or integrity
- If the worker deliberately commits any act or default with the intent to cause material loss to the employer
- If the worker resorts to forgery in order to obtain the job
- If the worker is hired on probation
- If the worker is absent without valid reason for more than twenty days in one year or for more than ten consecutive days, provided that the dismissal be preceded by a written warning from the employer to the worker if the latter is absent for ten days in the first case and for five days in the second
- If the worker unlawfully takes advantage of his position for personal gain
- If the worker discloses work-related industrial or commercial secrets.

In addition, it should be noted that a non-Saudi employee who wishes to work for another entity in Saudi Arabia must first obtain from the employer a non-objection letter to be transferred to the new employer. Issuing such a letter is at the discretion of the original employer. If such letter is not issued and the employment contract is expired or terminated, the employer can deport the non-Saudi employee and the employee will not be able to return to Saudi Arabia on a work visa for a period of two years thereafter, unless the previous employer permits the return of non-Saudi employee to Saudi Arabia on a work visa.

Upon termination of employment, an employee is entitled to an end of service award. This amounts to half a month's salary for each year of the first five years of employment, and one month's salary for each year following the first five years (the employee's most recent wage is the basis for the end of service award calculation). The amount of end of service award payable is reduced if the employee leaves employment voluntarily.

Foreign employees

For the employment of foreign nationals in Saudi Arabia, a valid foreign investment licence and a commercial registration certificate is necessary for the entity before it can formally hire employees. Saudi companies are required to register their employees' contracts with the Ministry of Interior before a residency permit (iqama) can be issued to such employees. Once issued, the permit will be valid for either one or two years (or such other date written in the permit/iqama).

Similarly to other Gulf countries, Saudi Arabia has a sponsorship system, which means that expatriate workers can enter, work, and leave the country only with the permission of their sponsor. The Saudi Labour Laws prohibits foreign employees to work without a work permit or for a person other than their sponsor/employer. Companies found hiring employees not under their sponsorship are heavily fined and may be restricted from hiring expatriate employees for a period of time.

Not all the expatriate managers of a local entity must have a residence permit. Only the managers who reside in Saudi Arabia and the person who is appointed as the general/executive manager must have a valid residence permit. Board members who are not executives do not need a residence permit. To apply for a residence permit, an employee must usually provide a medical certificate, CV, educational certificates, a passport (must be valid for at least six months) and the employer company's constitutional documents.

There is no restriction on nationalities for work visas, except for Israeli citizens although certain nationalities have visa quotas. On average it takes a few months for a visa application to be processed.

Key considerations

- The foreign investor should consult its legal counsel in Saudi Arabia to obtain more details on Saudization requirements and to make sure it complies with such requirements;
- The foreign investor also needs to consider the delays, the paperwork and the time-consuming process associated with the issuance of work visas.

Land/real estate

Overview

Real estate in Saudi Arabia recognises the two principal interests in land, namely legal ownership and leasehold interests.

Until recently, ownership of real estate by non-Saudis was restricted. However, these rules have been relaxed recently.

Leases

Leasehold interests are permissible under Saudi Arabian law.

Registration of rights and interests

Ownership of real estate is traditionally evidenced by title deeds which are held and administered by designated notaries. However, the Realty in Kind Registration Law issued by Royal Decree No. 6 on 9/2/1423H (corresponding to 24 February 2004G) established the legal framework for a central land registry. However, this has yet to be implemented in practice.

The Registered Real Estate Mortgage Law was promulgated by Royal Decree 258 dated 13/8/1433H (corresponding to 3 July 2012G). This law provides the legal framework for the creation and registration of real estate mortgages along with provisions regarding the rights of parties and other matters such as ranking assignment and termination. If a property is registered, any mortgage thereupon must also be registered. If a mortgage is unregistered, the interest is endorsed on the title deeds and the associated registry by the relevant court or notary.

Foreign ownership restrictions

The Real Estate Ownership and Investment by Non-Saudis Law was promulgated by Royal Decree No. M/15 dated 17/4/1421H (corresponding to 19 July 2000G).

This law allows non-Saudis to own real estate required for the conduct of their licensed professional, technical or economic activities, subject to obtaining the approval of the licensing authority. This includes real estate for their private residences or the housing of their employees.

However, non-Saudis are not permitted to own real estate in the holy cities of Mecca or Medina, except through inheritance or endowment.

The law also permits non-Saudis to invest in real estate as long as the total cost of any real estate investment project, both land and construction, is not less than SAR30,000,000 in each instance.

The restrictions on non-Saudis do not affect privileges granted to GCC nationals who have broader rights of real estate ownership in Saudi Arabia.

Key considerations

The foreign investor should carefully consider the options for establishing its industrial premises and staff accommodation in Saudi Arabia. Good opportunities for foreign investors in specific locations such as economic cities, financial district and industrial parks exist and should be considered.

Legal environment

Islamic law permeates every aspects of the Saudi life and all laws and regulations must strictly comply with the *Shari'ah*.

Overview

Saudi Arabian law is based on Islamic law (*Shari'ah*) which is considered by Muslims to be divine. In the Arabic language the word *Shari'ah* literally means "path" or "way". The two main sources of Islamic law are the Qur'an (a divine revelation to the Prophet Mohammed) and the writings detailing the Prophet Mohammed's sayings and actions (known as the Sunnah). Islamic law is the basis of Saudi Arabia's constitution.

In Islamic law, there are four main schools of jurisprudence, namely: *Hanbali*, *Hanafi*, *Shafai* and *Maliki*. The Saudi Arabian courts and judicial committees generally apply the *Hanbali* school.

From time to time the Saudi Government, issues rules and regulations with the objective of supplementing Islamic law when the need arises. If there is a conflict between Islamic law and the Saudi Government's rules and regulations, Islamic law will generally prevail. Where enacted rules and regulations are silent, reference should be made to the relevant rules under Islamic law.

The following are some general principles of Islamic law:

Interest	The payment or receipt of sums in the nature of interest is not enforceable.
Principles of fairness	Contracting parties must maintain principles of fairness and equity in their dealings. Contracts where one party gains unjustly at the expense of another are considered void. In each contract the commercial substance of the transaction must be analysed to evaluate whether or not it would amount to unjust enrichment under Islamic law.
Everything is permitted unless expressly prohibited	Contracting parties are free to negotiate the terms of their contracts unless those terms relate to activities which are expressly prohibited under Islamic law.
Speculation	Contracts which involve speculation (*maisir*) are not permissible (*haram*) and are therefore considered void. The speculation that is prohibited under Islamic law is not general commercial speculation (which is evident in most commercial transactions) but speculation which is akin to gambling, more particularly, gaining something by chance rather than by productive effort.
Uncertainty	There should be no element of deception or uncertainty (*gharar*) in the contract. Where there is uncertainty as to the fundamental terms of a contract, such as the subject matter or price, such contracts could be considered as void.
Consequential loss and insurance	Saudi Arabian courts and judicial committees may not award damages representing loss of profits, indirect losses or other forms of consequential loss. Neither will they enforce a foreign judgment awarding such damages. Any provision for liquidated damages should be considered in this context. Moreover, it is a principle of Islamic law that contractual damages are only payable to cover losses which have actually been incurred. Saudi Arabian law on insurance is not clear. Recent rules have been issued in connection with certain types of insurance. However, as such rules have not yet been subject to judicial scrutiny it is difficult at this stage to offer a view on these rules. Under Islamic law, insurance contracts could be viewed as void on the grounds that they involve elements of uncertainty, speculation and gambling. It is likely that an obligation to effect or maintain insurances which contain provisions incompatible with Islamic law would be unenforceable in Saudi Arabia (and cannot form the basis of a claim for damages or termination).

Ownership and risk	It is a feature of Islamic law that the owner of an item bears any risk in relation to the item. Accordingly, as a general remark, it should be noted that risk cannot pass unless ownership passes. That said, risk can pass without ownership passing where (i) a person is in the business of looking after/protecting/maintaining the asset left in his care; or (ii) the asset is damaged by a negligent/wrongful act of the custodian.

Saudi Arabia's courts and judicial committees

There are a number of courts and judicial committees in Saudi Arabia which have jurisdiction in relation to certain types of claims. The following is a brief description of the main courts and judicial committees in Saudi Arabia:

The Grievances Board	Most commercial disputes in Saudi Arabia are resolved before the Grievances Board. The Grievances Board has exclusive jurisdiction to hear (among other things) claims against the Saudi Government and to supervise insolvency/bankruptcy proceedings. Appeals against decisions of the Grievances Board may be made to the Court of Appeal and decisions of the Grievances Board on certain issues are subject to automatic appeal.
Islamic law courts	Criminal and civil cases which are not specifically assigned to any other court or judicial committee and disputes relating to land and personal property are generally heard before general Islamic law courts. Appeals against decisions of the general Islamic law courts may be made to the Court of Appeal. Where a sentence of capital punishment is issued this is automatically referred to the Supreme Judicial Counsel for review.
The SAMA Committee	Disputes of a banking nature involving Saudi Arabian or foreign banks are usually resolved before the Banking Disputes Settlement Committee of the Saudi Arabian Monetary Agency (the SAMA Committee).

Precedent and interpretation of Saudi Arabian legislation

There is no concept of judicial precedent in Saudi Arabia which means that the decisions of a court or a judicial committee will have no binding authority in respect of another case. There is also no system of court reporting. However, there is a drive to increase transparency and it has been widely reported that the Board of Grievances has stated to publish more judgments online which date back to 2007. It is not always possible to reach a conclusive interpretation on Saudi Arabian law and how a Saudi Arabian court or committee would view a particular transaction.

The Saudi Government enacted the *Shari'ah* Court Procedure Law, however, which sets out the rules and procedures as to how cases are adjudicated by the Islamic law courts. The *Shari'ah* Court Procedure Law offers certainty as to who can initiate a claim and how this is to be done. It also details the evidential requirements, in accordance with Islamic law principles and provides a clear procedure for processing cases before Saudi Arabia's Islamic law courts, ensuring the reliability, fairness and integrity of the legal process.

Arbitration in Saudi Arabia

Parties to a contract in Saudi Arabia may agree to resort to arbitration pursuant to the new Saudi Arbitration Law 2012 (save that Saudi Government bodies may only do so upon approval from the President of the Council of Ministers or if authorised by law). The new law is based on the UNCITRAL Model Law.

The new law can be applied to Saudi and international arbitration and recognises the right of the parties to choose the language of proceedings, the applicable law, the seat of the arbitration (whether inside or outside Saudi Arabia), the arbitrators, the use of temporary and precautionary measures and the procedural rules that they want to use in the arbitration, provided that Islamic law as enforced in Saudi Arabia is not violated.

However, to date the implementing regulations for the Saudi Arbitration Law have not been published so it is difficult to determine how the law will be applied in practice at this stage. We do not typically encourage clients to determine disputes by way of arbitration in Saudi Arabia.

Enforcement in Saudi Arabia

In principle, judgments issued by courts outside of Saudi Arabia can be enforced in Saudi Arabia. An application to enforce a foreign judgment will be assessed on two bases:

- Reciprocity (the jurisdiction that issued the foreign judgment must reciprocally enforce judgments of Saudi courts)
- Consistency with Islamic law as enforced in Saudi Arabia (the applicant must show that the terms of the foreign judgment are in compliance with Islamic law as interpreted, applied and enforced in Saudi Arabia).

Consistency with Islamic law is a requirement that foreign judgments frequently cannot meet. Many commercial practices upheld in common law and civil law jurisdictions – such as conventional insurance and the charging of interest – are generally unenforceable under Islamic law as applied in Saudi Arabia.

Regarding the enforcement of arbitral awards, Saudi Arabia has acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. However, when it did so it invoked a "reciprocity reservation" so as to limit its recognition of awards made in foreign jurisdictions. A 'competent authority' (Saudi court) has the power to hear an application to invalidate the arbitral award. Subject to invalidation, an arbitral award once issued is final, not appealable and enforceable but the successful party must obtain an enforcement order from the courts which, among other things, may of their own volition declare that the award is incompatible with Islamic law as enforced in Saudi Arabia.

In summary, it is possible to enforce a foreign judgment or arbitral award in Saudi Arabia. In practice, however, this may well require a re-hearing in Saudi Arabia to establish the merits of the claim (and the application by the Saudi courts of *Shari'ah* principles as enforced in Saudi Arabia thereto), which in essence means the conduct of a new suit or action.

Key considerations

The foreign investor should understand the fundamental principles of Islamic law since they will be applied to contracts where disputes in relation to them are litigated in Saudi Arabia, notwithstanding the governing law of the relevant contract.

The *Shari'ah* applies to all contracts and all actions in Saudi Arabia and having a basic understanding of these principles can be very helpful when doing business in Saudi Arabia. The foreign investor should also be aware that enforcing foreign judgments or arbitral awards involves a certain degree of uncertainty and risks and that until there is further clarity in relation to how the Saudi Arbitration Law will be implemented in practice in Saudi Arabia, arbitration is not recommended.

Investment policies

The Saudi Government aims to become one of the world's ten most competitive nations and one of the most lucrative markets for investing.

Overview

Saudi Arabia's growing economy and massive investments in its development attract a large amount of foreign investments. Saudi Arabia has also made real efforts in terms of promoting itself to the world as being open for business.

Foreign direct investment

Saudi Arabia is the largest destination for foreign direct investment in the Arab world and remains, according to the United Nations Conference on Trade and Development's World Investment Report 2013, the most attractive destination for foreign investment in the Arab world. United States and China are the largest sources of foreign direct investments in Saudi Arabia.

According to SAGIA, as of March 2011, Saudi Arabia had attracted approximately US$147 billion in foreign direct investments, including US$57.1 billion in the industrial sector.

In general, foreign investment is permitted in all sectors of the Saudi economy and the exceptions to this general rule are included in a so-called "negative list", in accordance with the Foreign Investment Law together with its Executive Rules (together, the Foreign Investment Law).

Preferential policies and incentives for foreign investment

King Abdullah chairs the Saudi Supreme Economic Council which, according to SAGIA, is focused on building out an effective national economy, including supervising and encouraging foreign investments. In 2000, the Saudi Government enacted the Foreign Investment Law which introduced major regulatory incentives including:

- The establishment of SAGIA, which improves considerably the investment process and transparency
- Accelerated investment application, business registration and set-up process
- Direct property ownership is allowed for licensed companies, in accordance with regulations
- Transfer of capital and profit abroad allowed
- Flexibility for transferring/allocating shares of companies between shareholders, in accordance with regulations
- Sponsorship for the investor and its employees (non-Saudis) by the company.

Financial incentives include:

- Availability of financing
- No personal income taxes
- Corporate taxes are 20% of total profits of companies
- Ability to transfer losses for future years in regard to taxes
- Foreign investors have access to generous regional and international financial programs and incubators.

Regional incentive policies

GCC members enjoy a series of privileges when it comes to trade and investments within the GCC. As previously noted, Saudi Arabia has entered into a number of trade and economic agreements with the GCC and Arab League countries, including the Integrated Statutes Regulating Foreign Investment in the GCC Countries. However, it is worth noting that in order to take advantage of these privileges, a GCC company will only be considered a GCC national if 100% of its shares are owned by GCC nationals.

Anti-trust/competition

Saudi Arabia has strict competition laws which should be kept in mind in the context of pricing policies. Saudi Arabia's Competition Law was enacted by Royal Decree No. M/25 on 4/5/1425H (corresponding to 22 June 2004 G) (the Competition Law).

The Competition Law has a broad scope and applies to all plants, establishments, companies, and associations carrying out commercial, agricultural, industrial or service works or buying and selling goods or services in the Saudi markets (Establishments), whether or not they are physically located in Saudi Arabia. It is important to note, however, that the Competition Law does not apply to public corporations and wholly state owned corporations. The Competition Law establishes an independent council named the Council of Competition Protection (the Competition Council) that is responsible for administering the Competition Law. Among other tasks, the Competition

Council is responsible for approving cases of merger, acquisition, or the combining of two or more managements into one joint management resulting in a dominant position in the market.

The Competition Law prohibits all practices, agreements, and contracts – whether written or verbal, express or implied – between competing Establishments or likely competing Establishments where the intention or the result of such practices, agreements, or contracts is to restrict commerce or limit competition between Establishments. The Competition Law also prohibits any Establishment or group of Establishments that is able to influence the market price of a product or service through control of a certain percentage of the aggregate demand from engaging in practices that limit competition between Establishments.

Violating the Competition Law currently results in a fine not exceeding SAR5 million. However, the fine may be extended to up to SAR10 million if, among other things, the violator has previously been convicted under the Competition Law.

In addition to the financial penalties that may be imposed on any party that has violated the Competition Law, the Competition Council may order any party that has violated the Competition Law:

- To remedy the violation of the Competition Law within a set period of time and/or
- To dispose of some of its assets, shares, or property rights and/or
- To pay a daily fine of not less than SAR1,000 and not more than SAR10,000 until the violation is remedied.

The Competition Council is becoming more active in enforcing the Competition Law and has recently proposed amendments to the Competition Law to increase the penalties which will be payable by violators. These amendments have not been implemented yet as they have not yet been published in the Official Gazette.

Anti-dumping

Saudi Arabia acceded to the WTO in 2005 and signed the agreement on anti-dumping. In its latest Trade Policy Review for Saudi Arabia (Trade Policy Report), the WTO noted that Saudi Arabia had no national laws or regulations related to anti-dumping but had adopted the GCC Common Law on Anti-dumping, Safeguards and Countervailing Measures through Royal Decree.

The General Department of Anti-dumping, Countervailing and Safeguard Measures of the MOCI administers the rules and regulations relating to anti-dumping.

Key considerations

The foreign investor can carry out its proposed activities in Saudi Arabia provided that it fulfils all the requirements for the foreign investment licence and complies with the relevant foreign investment laws and regulations. However, each new business activity to be undertaken by the local entity in Saudi Arabia will require a new licence if the entity has foreign ownership.

Intellectual property rights

Overview

Saudi Arabia is party to the principal international treaties governing intellectual property rights including:

- Paris Convention for Protection of Industrial Property (since 2004)
- Universal Copyright Convention (since 1994)
- Berne Convention for Protection of Literary and Artistic Works (since 2004).

There is no intellectual property office in Saudi Arabia as such. Trademarks are registered with the trademark registry at the MOCI. Patents and design certificates are granted by the King Abdulaziz City for Science and Technology (KACST).

Enforcement of intellectual property disputes varies by right and is considered in each section below.

Trademarks

Trademarks in Saudi Arabia are governed by the Trademarks Regulations promulgated by Royal Decree No. M/21 dated 28/5/1423 H (8 August 2002 G).

Trademarks must be distinct and able to distinguish products, projects or services.

Trademarks are registered with the MOCI. Saudi Arabia follows the International Classification of Goods and Services for the Purposes of the Registration of Marks under the Nice Agreement.

The MOCI issues a decision on trademark applications within 30 days. If the application is rejected, the applicant has 90 days to satisfy the conditions for approval given by MOCI. Appeals may be filed to the Board of Grievances within 30 days of the final rejection notification.

Once registered, trademarks are protected for a period of ten Hegira years from the date of application. Registrants can apply for renewals of the registration within the last year of validity. Registrations can be cancelled for non-use after five years.

Enforcement of the Trademarks Law is by the Board of Grievances.

Every merchant in Saudi Arabia must have a trade name registered in the Commercial Register at the MOCI pursuant to the Law of Trade Names promulgated by Royal Decree No. M/15 dated 12/8/1420H (21 November 1999 G). Trade names so registered are protected and may not be used by another person.

Patents

Patents in Saudi Arabia are governed by the Regulations for Patents, Layout Designs of Integrated Circuits, Plant Varieties and Industrial Models Law promulgated by Royal Decree No. M/27 dated 29/5/1425 H (17 July 2004 G) (the Patent Law).

A patent may be granted in respect of an invention if it is novel, involves a creative step and is capable of industrial application. Patents are granted by KACST. A patent is protected for 20 years from the date of filing the application. The patentee is required to pay annual renewal fees.

Patent disputes are resolved by the KACST. The KACST has the authority to grant injunctions and impose fines. Appeals against the KACST decision must be made to the Board of Grievances within 60 days from the date of notification.

In addition to Saudi national patents, Saudi Arabia has adopted the GCC Patent Law. This office grants patents that are valid in Saudi Arabia, United Arab Emirates, Bahrain, Oman, Qatar and Kuwait.

Industrial designs and industrial drawings

In addition to patents, the KACST is also responsible for the issue of design certificates. Designs are governed by the Patent Law and enforcement of design certificates is by the KACST.

Layout designs

An application for registration of a design of an integrated circuit may be filed if the design has not been commercially exploited before or was subject to commercial exploitation for a period not exceeding two years in any part of the world. The design must be original: i.e., it is a result of a mental effort exerted by the designer himself, and was unfamiliar to creators of designs and manufacturers of integrated circuits when it is produced.

Layout design certificates protect layout designs for ten years from the date of filing the application or ten years from the date of start of its commercial exploitation anywhere in the world. In any case, the protection period may not exceed fifteen years from the date of developing the design.

Industrial designs

An industrial design is a composition or shape that gives an industrial product a special appearance provided that this is not only for a functional or technical purpose. The design must be novel and have features that distinguish it from known industrial models.

Industrial design certificates protect industrial designs for ten years from the date of filing.

Copyright

Copyright in Saudi Arabia is governed by the Copyright Regulations promulgated by Royal Decree No. M/41 dated 2/7/1424 H (30 August 2003 G) (the Copyright Law).

The Copyright Law protects original works created in the fields of literature, arts and science, irrespective of their type, means of expression, importance or purpose of authorship. "Works" include sound and audio-visual works and computer programs. In most cases, the rights of the author are protected for his lifetime and for a period of 50 Hegira years after his death (or in the case of computer programs and sound/audio visual works, 50 Hegira years from publication). Certain works (e.g. photographs) are protected for 25 Hegira years from publication.

Foreign works are protected by virtue of the international conventions of which Saudi Arabia is a member, namely the Universal Copyright Convention and the Berne Convention for the Protection of Literary and Artistic Works.

There is no system of copyright registration in Saudi Arabia.

Copyright is enforced by a Committee of the Ministry of Culture and Information. Appeals are heard by the Board of Grievances.

Domain name

The country code (ccTLD) of Saudi Arabia is .sa.

Saudi NIC is the entity that is responsible for the administration of the domain name space for Saudi Arabia. Domain names can be registered in English and Arabic.

In order to register a .sa domain name, the applicant must either be: physically in Saudi Arabia, a Saudi citizen with a valid Saudi ID card, a registered entity with a permit from a government office or have trademarks or trade names that are registered in Saudi Arabia.

Trade secret and business confidentiality

Trade secrets are governed by the Ministry of Commerce and Industry's decision no. (3218) dated 25/03/1426 H (4 May 2005 G).

Any information shall be deemed a "commercial secret" if:

- it is usually not known or if it is not usually easily obtainable by those engaged in the relevant business
- it is of commercial value due to its confidentiality
- the rightful owner takes reasonable measures to maintain its confidentiality.

Obtaining, using or disclosing any commercial secret in a way that is inconsistent with honest commercial practices and without the consent of the owner is an abuse of the commercial secret.

Enforcement is by the competent judicial authority.

Key considerations

The foreign investor should ensure that its intellectual property is adequately protected in Saudi Arabia before commencing operations in Saudi Arabia.

Company law and corporate governance

Incorporating a company in Saudi Arabia can be burdensome. Legal advisors can guide foreign investors through the process which is relatively lengthy.

Overview

Although there are some particularities with regard to the rights of shareholders and the management of Saudi companies, the basic corporate governance principles found in Saudi Arabia are generally similar to those found in most jurisdictions around the world.

Licensing

Saudi Arabian entities that are not wholly Saudi or GCC owned and GCC entities that are not wholly owned by GCC nationals are not permitted to carry on any business activities within Saudi Arabia unless they are licenced to do so by SAGIA and such activities do not appear on the "negative list". Further, in certain circumstances, one or more additional operational licences may be required pre- or post- incorporation if the activity also falls under the remit of another Saudi Government ministry such as oil and gas (Ministry of Petroleum and Natural Resources). A foreign investor must therefore be appropriately licensed to carry on business in Saudi Arabia.

SAGIA has recently created new sub-categories for licensing entities with foreign ownership such as "light manufacturing".

The Executive Rules of the Foreign Investment Law provide that the conditions to be granted a foreign investment licence by SAGIA shall include the following:

- The investment activity to be licensed should not be in the "negative list"
- The intended product should comply with Saudi Arabia's rules and regulations, or the laws of the European Union or the United States of America in the absence of those laws, in terms of standards and specifications, raw materials and production processes
- The licence applicant should be a natural or nominal person who has come to Saudi Arabia for investment
- The foreign investor should not have been convicted in the past for substantial violations of the provisions of the Foreign Investment Law
- The foreign investor should not have been convicted in the past of financial or commercial violations whether in Saudi Arabia or in other countries
- The grant of a licence shall not result in the breach of any international or regional agreement to which Saudi Arabia is a party.

See Section "Incorporation Process and Timing" for more details on the licensing process.

Forms of entity

The foreign investor has different options for the corporate form of its Saudi Arabian presence. The main forms of legal entities available in Saudi Arabia are described below.

Subsidiary company

The Foreign Investment Law permits registration of 100% foreign-owned companies in respect of certain activities (such as services activities). Such subsidiary companies can either take the form of a limited liability company (LLC) or a joint stock company (JSC). For various practical reasons, the Saudi Arabian LLC is generally considered the most appropriate corporate form available to foreign companies under the Saudi Arabian Companies Law, enacted by Royal Decree No. M/6 dated 22/3/1385 H (corresponding to 22 July 1965 G) and amended from time to time (the Saudi Companies Law).

See Section "Types of Corporate Vehicle Available" for details on LLCs and joint stock companies.

Branch office

Foreign investors can open local branch offices without any local equity participation. As a matter of practice, a branch office is a common business structure for foreign entities whose business in Saudi Arabia relates to a contract with the Saudi Government. A branch of a foreign investor would need a foreign investment licence from SAGIA and would not be a separate legal entity from the entity it represents (although it will have its own commercial registration certificate). Note that investment activities which require Saudi ownership/participation cannot be set up as a branch in Saudi Arabia.

Commercial agency

Foreign companies wishing to distribute their products in Saudi Arabia normally appoint local agents. Restrictions imposed by the "negative list" and the Saudi Commercial Agencies Law limit the capability of foreign manufacturers to establish their own distributorships in Saudi Arabia.

The Supreme Economic Council, in accordance with Saudi Arabia's WTO commitments, has relaxed the restrictions imposed on foreign companies wishing to be involved in retail and wholesale trade in recent years. Foreign investments in retail and distribution are now possible under certain conditions. Under these conditions, the foreign investor must, among other things, make a minimum investment of SAR20 million and the foreign investor cannot hold an equity participation of more than 75% in the local Saudi entity conducting retail and wholesale trade.

See Section "Commercial Agencies Law and its Prohibitions" for a detailed overview of the Saudi Commercial Agencies Law.

Technical and scientific office

Foreign investors with products distributed in Saudi Arabia through a Saudi commercial agent or distributor can establish a technical and scientific office in Saudi Arabia without any capital requirements or any local equity participation. The purpose of such office has to be exclusively to provide support to the agent or distributor and to assist the end-users of the products. As technical and scientific offices essentially provide support services for the Saudi commercial agents/distributors, they do not generate profit for the foreign investor/and must specifically be non-profit. Prior setting up a technical and scientific office, it should be noted that the commercial agency agreement between the foreign principal and the local distributor will need to be registered with MOCI.

Incorporation of commonly used corporate entities

In terms of process, incorporating a LLC, which is the most common type of entity used by foreign investors, involves five principal steps:

- Application for SAGIA licence for LLC
- Review by the MOCI of the AoA
- Execution and registration of the AoA of the new company
- Publication of the summary of the AoA in the Saudi Arabian Official Gazette
- Application to obtain the certificate of commercial registration (CR) of the new company.

See Section "Incorporation Process and Timing" for more details on the incorporation process and on the requirements related to a share subscription or acquisition in an existing Saudi entity.

Management structure

While there is no mandatory requirement under the Saudi Companies Law for a LLC to have a board of managers (Board), the shareholders in a LLC may agree to form a Board or appoint a sole general manager. The term "board of directors" is not used when referring to the board of a LLC. If the shareholders desire to have a Board and further agree that an individual shareholder may appoint one or more members of the Board in their sole discretion, then such shareholder should be given the ability in the shareholders/joint venture agreement and in the AoA to dismiss the manager appointed by him (without prejudice to the dismissed manager's right of compensation if the dismissal occurred improperly). An individual shareholder's right to replace any member of the Board must also be stated in the AoA.

It is usually recommended that each shareholder not only appoint but also have the right to remove its managers. The appointment and removal of managers should be carried out when a shareholder provides a written notice to the other shareholders and the company of such appointment or removal.

In a LLC, the role of "Chief Executive Officer" is usually fulfilled by an individual with the title executive manager (or general manager if the LLC does not have a board of managers) (Executive Manager). The powers of the Executive Manager can be set out in the draft AoA.

It is also usually recommended that the shareholders explicitly set out in the shareholders/joint venture agreement and the AoA any additional powers that the Chairman of the Board will have other than the ability to call and preside over meetings of the Board.

The powers of the Executive Manager should be set out in the draft AoA or it should state that they will be set out in a separate resolution of the Board. Note that if the powers of the Executive Manager are set out in the AoA at the outset it will require 75% of the shareholding voting in the affirmative and all shareholders signing the amended AoA before a notary public, among other things, to subsequently amend the Executive Manager's powers in the AoA. The powers given to the Executive Manager should not exceed the powers given to the Board.

It is worth noting that the Saudi Companies Law does not contain provisions relating to the appointment and operation of a Board of a LLC and thus, the shareholders have wide discretion to delegate powers to the Board and set out the manner in which such Board will operate.

Duties, responsibility and liability of shareholders and managers

Shareholders of a LLC enjoy a great deal of discretion and flexibility when setting out the duties of the Board (if a Board is desired by the shareholders), the Chairman and the Executive Manager.

Under Saudi law, certain matters require unanimity among the shareholders or a specific percentage of shareholders voting in the affirmative to be validly passed. See Section "Statutory Reserved Matters" for more details.

The liability of each shareholder of a LLC is generally limited to their capital contributions in such company. Nevertheless, Article 180 of the Saudi Companies Law provides that if a LLC incurs losses amounting to 50% or more of its share capital, the shareholders must either convene within 30 days thereof and resolve to continue the company on the basis that they will be responsible for its debts or liquidate the company, otherwise, if they fail to meet or resolve anything, the protection afforded by limited liability status will be lost and the shareholders will be personally liable for the company's debts in such instance. Therefore, foreign investors should ensure that their local entities are not thinly capitalised.

Key considerations

The foreign investor should remember that SAGIA and MOCI play an extremely important role in the investment process and complying with their requests in a timely manner will be important.

The foreign investor should expect delays and formalities during the process. Such formalities and the related paperwork can involve considerable set-up costs. Furthermore, it is worth noting that SAGIA has complete discretion to ask for additional information requests or documentation in the context of any line application.

The foreign investor should also consider its potential liability, if it becomes a shareholder of a LLC, for the debts of such company if it incurs significant losses and fails to comply with Article 180.

Commercial agencies law and its prohibitions

Overview

Pursuant to the Commercial Agencies Law[3], only Saudi nationals can engage in wholesale or retail activities in Saudi Arabia. Non-Saudi producers of goods are permitted to appoint local Saudi agents as their representatives to sell their products and/or services in Saudi Arabia. Whether the relationship is structured as a distributorship, sales agency, franchise, or otherwise, it is governed by the Commercial Agencies Law, which lays down the minimum protections a Saudi agent is entitled to benefit from, and is regarded by the law as a "commercial agency agreement." All commercial agency agreements are required to be registered with MOCI, but failure to register an agreement does not render it unenforceable. A commercial agency agreement can only be registered if the relevant commercial agent is a Saudi national or a Saudi commercial entity that is wholly owned by Saudi nationals.

Registration is mandatory

The Commercial Agencies Law requires the registration of a commercial agency or distributorship agreement within three months of the date of such agreement, otherwise a fine may be imposed by MOCI. It is the responsibility of the commercial agent, and not the foreign principal, to ensure registration with MOCI.

That said, the lack of registration should not of itself prevent the non-registered agent from importing, selling and providing maintenance for, the products which are the subject of the commercial agency.

The Commercial Agency Agreement

The agreement must:

- be in writing and executed with the principal[4] (or its representative) in the principal's home country and clearly set out the rights and obligations of each of the parties, including the obligations of each of the parties vis-à-vis the consumer in respect of providing maintenance and spare parts in relation to the relevant products.
- In addition, the agreement must contain the following information:
  - the capacity and nationality of each of the parties
  - the subject of the agency and the territory covered
  - the duration and method of renewal of the agency
  - the method of termination or expiry of the agency.

The contract may contain such other conditions as are not inconsistent with the laws of Saudi Arabia.

Procedure and required documents

- There is a bespoke application form to be completed by the commercial agent and submitted to MOCI. In particular, some other information required to be provided includes:
  - the name of the commercial agent or distributor (whether a legal or natural person)
  - the commercial registration number of the entity or branch authorised to conduct commercial agency activity
  - the names and types of goods stated in the contract
  - the name and nationality of the principal
  - the area and term of the agency.
- An application to register a commercial agency should be submitted with the relevant supporting documentation, which has been properly authenticated and notarised in accordance with the Commercial Agencies Law.

De-registration of a commercial agent

In order to terminate any existing registered commercial agency, the agent's consent will be needed to de-register it from the MOCI register. If an agent disputes the de-registration this could mean that the principal and agent would need to enter into mediation to resolve the dispute before the local Chamber of Commerce and if not resolved there, the dispute would proceed to the Board of Grievances. In practice, such disputes usually lead to the principal paying out monies to the commercial agent to de-register; however, please note that the Commercial Agencies Law does not expressly require the principal to pay the agent to terminate a commercial agency or to indemnify it in such circumstances.

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[3] As enacted by Royal Decree No. M/11 dated 20/2/1382H (corresponding to 22 July 1962), as amended, and including the implementing regulations of the Commercial Agencies Law as issued by Ministerial Resolution No. 1897 dated 24/5/1401H (corresponding to 31 March 1981), as amended, and resolutions issued by the Minister of Commerce and Industry in relation thereto.

[4] The principal is the manufacturer of the relevant products.

Bidding for government tenders

The Saudi Arabian Government Tendering and Procurement law[5] (the Procurement Law) and its implementing regulations do not include any clear prohibition or restriction on agents who are not registered tendering for government contracts.

Whether a joint venture company with a foreign shareholder can or cannot tender for certain contracts therefore depends upon the tender rules of the relevant procurement process being adopted by the government entity seeking products in each specific instance.

If the rules of the relevant tender permit unregistered agents to bid for the work or product or if they do not provide for only registered commercial agents to do so, then the joint venture company with a foreign shareholder can tender for such contract. However, that being said if registration is required, the certificate of registration will likely need to be included and submitted as part of the bid package and that will make the joint venture company with a foreign shareholder ineligible for the tender process.

Key considerations

The foreign investor wishing to be directly involved in retail in Saudi Arabia should bear in mind that a Saudi partner will be needed in order to be allowed to set up a trading joint venture company in Saudi Arabia.

Alternatively, if the foreign investors does not wish to set up a company in Saudi Arabia, it should consider entering into a commercial agency agreement with a Saudi distributor.

Commercial agency agreements can be negotiated and the foreign investors should insist on the non-exclusivity of the agreement. Otherwise, it can be very difficult for the foreign investor to replace its Saudi distributor by another one in case of non-performance or disagreement.

5 (Enacted by Royal Decree No. 58 dated 27 September 2006.)

Types of corporate vehicle available

The Saudi Companies Law provides the regulatory framework for the formation and governance of companies in Saudi Arabia.

As previously mentioned, the two most popular forms of corporate vehicle through which to invest in Saudi Arabia are LLCs and JSCs.

LLCs must not have less than two or more than 50 shareholders and the liability of each shareholder is generally limited to their capital contributions in the company. The shares of a LLC are of equal value and must each be fully paid up in cash or kind on incorporation.

The table below provides a brief overview of the advantages and disadvantages associated with both, LLCs and JSCs.

ADVANTAGES	
Joint Stock Company	**Limited Liability Company**
Commercial banks in Saudi accept pledges over shares in respect of financings	Four to eight weeks for incorporation after SAGIA authorisation
Public Offering of Shares are permitted if approved by the Capital Market Authority	More flexible: less capital required and easy management of the company
Shareholders liability only to the extent of value of shares	No Lock-up period required to dispose the shares
No pre-emption rights for new cash shares unless bylaws provide otherwise	Only two shareholders required to set up a LLC
DISADVANTAGES	
Joint Stock Company	**Limited Liability Company**
Six months for incorporation after SAGIA authorisation (a feasibility study must be submitted to MOCI for approval)	Pledges over shares are less acceptable to commercial banks in Saudi Arabia in respect of financings
Less flexibility: minimum of five shareholders, minimum three board members etc. Minimum capital of SAR2,000,000 required. More administratively burdensome with MOCI.	Pre-emption rights over existing shares under the Companies Law
Founding shareholder are subject to a lock-up period of at least two years before they can dispose of their shares (other than to other founding shareholders)	Preferred shares not permitted
MOCI representatives must attend shareholders' meetings of JSCs – more public scrutiny	Shareholder liability (i) if losses reach 50% of the issued share capital and the shareholders do not meet with 30 days and resolve to support the company, or (ii) for wrongly valued contributions in-kind to capital

Key considerations

- The LLC is the entity of choice for most foreign investors, especially for joint ventures. LLCs are more flexible and requires only two founding shareholders unlike the JSC that requires at least five founding shareholders.
- Exit and disposal of shares are easier with a JSC however:
  - LLCs will need to be converted into a JSC prior to an initial public offering
  - LLCs feature a statutory pre-emption right granted to shareholders which severely restricts the ability of a shareholder to dispose of its shares (JSCs do not feature such statutory pre-emption right).

Incorporation process of a joint venture company and timing

Licensing and formation process

As trading LLCs are the most common joint venture entities found in Saudi Arabia, we summarise in this Section the process for incorporating a trading (wholesale and retail) LLC in Saudi Arabia. The process for establishing other types of entities is fairly similar, with some differences specific to the nature of the activity. Essentially, the process involves five steps, each of which are summarised below.

Application for SAGIA licence

Under the Foreign Investment Law, any investment by foreign entities in Saudi Arabia requires an investment license to be issued by SAGIA. Such licence will permit a foreign entity to carry on business in Saudi Arabia by way of setting up a company (or a branch). However, SAGIA's requirements for a foreign entity wishing to carry on business in Saudi Arabia vary based on the activities the foreign entity intends to conduct.

In order to obtain an investment licence for the joint venture company, a completed licence application form must be submitted to SAGIA together with a significant number of supporting documents relevant to its trading activity.[6]

We are aware that SAGIA has recently established a committee (the Committee) based in Riyadh which is responsible for reviewing and assessing any application to determine whether or not an application is approved (wherever such application is filed in Saudi Arabia).[7]

Once a completed licence application, together with all supporting documents, has been submitted to SAGIA,[8] the application is normally scrutinised by SAGIA's licensing department to confirm that the documents that have been submitted are complete and in good order. Thereafter, the licensing department will transfer the application along with all supporting documents to the Committee to conduct a review of the application. The Committee will then determine whether or not the application is approved. Unless issues are encountered (e.g. the Committee requires further documentation to support the application), SAGIA will issue an approval letter in respect of the joint venture company. The actual investment licence will be issued by SAGIA after the AoA of the joint venture entity has been signed before public notary by the shareholders or their lawful representatives. In the absence of complications, the process to issue the approval letter can take thirty days (although in practice a longer period is often required if the set of documents submitted to SAGIA is incomplete or if the Committee requests further documents in support of the application).

The minimum capital required is generally determined by SAGIA in its sole discretion. However, based on the SAGIA application form (which is an official document), the amount of equity capital generally deemed appropriate and invested for a company conducting wholesale and retail trading activities must be not less than SAR26 million of which the foreign shareholder(s) must invest at least SAR20 million. The ownership share of the foreign shareholder cannot exceed 75% of the company's capital. The remaining capital is required from one or more Saudi shareholders and must represent at least 25% of the company's capital.

Additionally, as part of its approval process, the MOCI desk at SAGIA needs to approve the name of the joint venture company. This will involve the publication of the proposed name on the MOCI/SAGIA website. A name can usually be easily reserved if it comprises part of the investing shareholders' names.

Review by MOCI of the AoA

After SAGIA has issued the approval letter, the parties will next need to submit the joint venture company's draft AoA to the MOCI desk at SAGIA for its review and approval. MOCI normally insists that, in order to be approved, the joint venture company's AoA must closely follow the standard form AoA issued by MOCI (although the standard form is not mandatory). In our experience, any deviation from the standard form AoA increases the time for incorporation as MOCI will generally take more time to

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6 Please note that all non-Arabic documents need to be translated by a Saudi licensed translator and locally attested before being submitted in support of an application to SAGIA.

7 Please note that SAGIA seems to have changed its attitude in respect of approving new applications. SAGIA may require the foreign investor to provide additional documentation that was not required previously and on a case by case basis.

8 An appointment must be reserved with SAGIA in advance in order to submit the application together with the supporting documents. SAGIA has a new practice whereby the application and documents now have to be submitted online before the physical documents will be accepted by SAGIA.

review the AoA (and/or may not accept any amendments). However, please note that certain provisions of the AoA (such as those relating to shareholders' reserved matters and management of the joint venture company) may generally be amended without receiving objections from MOCI.

Execution and registration of the AoA of the joint venture company

After the joint venture company's AoA have been approved by the MOCI desk at SAGIA, they must be signed by each shareholder (or its lawful representative) at the notary public desk at SAGIA. The notary public will review the powers of attorney presented, in order to determine whether the legal representative on behalf of each shareholder is authorised to sign the AoA before him. In the case of foreign shareholders, these documents must be fully notarised, legalised and consularised by the appropriate authorities in their jurisdiction of incorporation, and by a Saudi notary public for the Saudi shareholder. This part of the process also requires an appointment to be booked in advance with the notary which can take at least one to two weeks if no problems are encountered.

As mentioned above, certain documents of the foreign shareholders must proceed through a several-step process in connection with their preparation including the requirement to be notarised, legalised and consularised.

Publication of the AoA in the Saudi Arabian Official Gazette

After the execution, and notarisation by the notary public, of the AoA, a summary thereof, as recorded by the notary public, must be submitted for publication to *Umm Al-Qura* (the Official Gazette) and the MOCI website. Before the summary of the AoA is actually published in *Umm Al-Qura*, it is possible to proceed with the commercial registration and foreign investment licence formalities by submitting a receipt evidencing that the joint venture company has submitted an application to publish the summary of the AoA. In this way, obtaining the CR (the final step in each company's formation and registration process) can be accomplished even though the required summary of its AoA has not yet appeared in the Official Gazette – provided it has been paid for.

Application to obtain the commercial registration

The next step in the process is obtaining the foreign investment licence and the registration of the joint venture company with the Commercial Registry, again at SAGIA and the MOCI desk at SAGIA. Several additional documents are required to secure the joint venture company's CR including, but not limited to:

- a certificate of capital from a Saudi bank (licensed to conduct banking activities in Saudi Arabia) certifying that the entire capital of the joint venture company has been deposited into a blocked account in such bank in Saudi Arabia[9]
- a shareholders' resolution to appoint the joint venture company's general manager or the board of directors (as the case may be) if such persons have not been appointed in the AoA[10]
- a copy of the joint venture company's initial office lease (which will need to be at a premises located in the city where it is established and recorded by MOCI as the registered address of the joint venture company).[11]

Upon the issuance of the CR, and after the joint venture company has registered with the requisite ministries, the joint venture company will be fully authorised to engage in the activities set out in its AoA. We note that it can take up to 2 weeks to issue the CR.

Following this, the capital of the joint venture company that was deposited into the blocked bank account will be 'unblocked' by the relevant bank upon the presentation to such bank of a copy of the joint venture company's CR. Once the bank confirms that the joint venture company has obtained its CR, the bank will automatically and

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9 The joint venture company will need to open a bank account with a Saudi licensed bank following the notarisation of the AoA before a public notary in order to deposit an amount equal to the capital of the joint venture company. The bank will need to be provided with the name of the company's authorised manager who will operate the account.

10 Although technically needed only at this stage we have found that SAGIA is increasingly requesting the appointment or selection of management prior to issuing the foreign investment licence.

11 Telephone, fax and P.O. Box number details will also need to be provided. This information will also be required when completing the SAGIA application form. We are noticing that different SAGIA offices are adopting different stances on this requirement.

immediately release the funds to the joint venture company and permit the authorised manager to operate the account.

Please note that there are other post-incorporation formalities that should be completed after obtaining the CR. Such formalities include (without limitation) opening files in the joint venture company's name with, and obtaining certificates from the Labour Office, GOSI and the DZIT.

The total time required for the formation of the joint venture company, from submission of the file to SAGIA to obtaining the CR, is approximately 12 weeks but it generally takes longer (given that there are so many steps which are sequential rather than being capable of being run in parallel). Additionally, if part of the period includes Ramadan and the Eid Al-Fitr holiday period, the Hajj and Eid Al-Adha holiday period, or the summer vacation period, the length of time to incorporate a company is likely to be even longer.

Investing in an existing Saudi entity

Should the foreign investor decide to subscribe to, or acquire the shares of, an existing Saudi entity rather than incorporate a joint venture company, a similar process to the one described above will have to be followed. SAGIA will need to approve the foreign investment in the Saudi entity, such entity will need to obtain an approval letter to amend its foreign investment licence, and its AoA will also need to be amended to reflect the name of the new shareholder thereafter. The amended AoA will need to be notarised and submitted to MOCI, following which, an amended foreign investment licence and CR will be issued to the existing entity. The foreign investor should expect the timeline to be similar to that described above for the incorporation process.

Indicative timeline

Below is an indicative timeline for the process (not taking into account the preparation of the documents and the post-incorporation registrations at the different ministries):

Month	One	Two	Three	Four	Five	Six	
SAGIA – From submission							Two to four months
MOCI							One to two weeks
Notary Public							One to two weeks
Bank Certificate							One to two weeks
Foreign Investment Licence/ Commercial Registration Certificate							One to two weeks

Shareholder issues

Certain high-level issues to consider when investing in a Saudi Arabian LLC are set out below.

Identity of shareholders

It is imperative to ensure that any Saudi shareholder in the joint venture company is a corporate entity in order to avoid succession issues. In the event that the Saudi investor is an individual, succession and division of assets among heirs may become an issue upon the death of the Saudi investor. It is possible that the foreign investor would potentially have to deal with a multitude of other shareholders being forced upon it as a result of the application of Islamic succession laws, which could potentially cause significant business disruption.

Foreign shareholders are generally asked to demonstrate their experience and track record in their home jurisdiction relevant to the activities of the company when applying to SAGIA. This may include, among other things, submitting two to three years of audited financial statements which show a profit, material contracts and experience statements which demonstrate that they are responsible corporate citizens with global experience.

In addition to demonstrating past experience and a track record, when acquiring shares in an existing Saudi entity, SAGIA may need to approve the objects of the AoA of the incoming shareholder. If the objects of the AoA of the investing shareholder and existing Saudi entity are not viewed as compatible, SAGIA may require the investing shareholder to amend its objects to ensure that they conform with the objects of the Saudi entity.

This is important to bear in mind since a foreign investor may not be able to obtain a licence from SAGIA if the investment vehicle or the investor itself does not have a demonstrable track record.

Contributions in-kind

The shareholders must make their total capital contributions (whether such contributions are made in 'cash' or 'in-kind') prior to the issuance of the joint venture company's CR certificate. Whereas the Saudi Companies Law permits and envisages that such contributions can be made in 'cash' or 'in-kind' (on incorporation), due to recent issues in relation to erroneous valuations of land contributed 'in-kind' to JSCs, we believe that MOCI has taken a harder stance in relation to 'in-kind' contributions. Therefore, in order to avoid potential delays in the incorporation process, we recommend that all capital contributions should be made in cash.

We note that pursuant to Article 162 of the Companies Law, the AoA of a company must contain an undertaking by the shareholders whereby they agree to be held jointly liable to third parties for inaccurate valuations of 'in-kind' contributions for a period of three years thereafter.

Distributions

Article 8 of the Saudi Companies Law provides that dividends may not be distributed to shareholders except from net profits. Furthermore, if distributions are made to shareholders other than out of net profits, the creditors of the company may claim from such shareholders an amount equal to the amount by which such distribution exceeded net profits. This applies even though the shareholders may have received the distribution in good faith. This is important when examining under what circumstances a shareholder receives monies from a joint venture and whether it is appropriate i.e. some fees for 'services' may not be appropriate.

Article 176 of the Saudi Companies Law requires a LLC to set aside at least 10% of its net profits as a statutory reserve on an annual basis. The shareholders may resolve to discontinue such deduction when the reserve totals half of the share capital of the company. The shareholders may wish to have the flexibility to create a further reserve which provides for funds to be reinvested in the business of the company and provides for working capital for the forthcoming financial year.

Article 9 of the Companies Law provides that if the AoA fails to specify how the profits and losses are to shared between the shareholders, each shareholder shall share in proportion to his share of the capital. Therefore, the split between profit and loss may be agreed upon by the shareholders in the AoA notwithstanding, their relative ownership percentages of the share capital (e.g., if the foreign investor holds 60% of the share capital, it can stipulate, in the AoA that it will be entitled to 80% of the profit and will bear only 40% of the losses of the joint venture company). It is worth mentioning that in the event of a dispute, Saudi courts may require distribution of losses to be the same as the ownership percentage, based on the interpretation of certain Islamic principles. It is worth noting that notwithstanding the different split of profits and losses, and shareholding in the company, that on liquidation after payment of the required statutory debts, the assets of the company are divided in accordance with the shareholdings and if stated in the AoA any surplus is divided in accordance with the split of profits and losses unless stated otherwise in the AoA pursuant to Article 171 of the Companies Law.

Shareholders' liability limited to capital contribution

In a LLC, subject to Article 180 of the Saudi Companies Law, the liability of a shareholder will generally be limited to the amount of capital contributed by such shareholder.

Article 180 of the Saudi Companies Law is the only statutory limitation to the doctrine of separate legal personality in Saudi Arabia. However, the courts of Saudi Arabia will also "pierce the corporate veil", in cases where there is clear evidence of fraudulent conduct.

Article 180 of the Saudi Companies Law provides that if a LLC incurs losses amounting to 50% or more of its share capital, the shareholders must resolve, within 30 days of such losses reaching the 50% threshold, either to continue the LLC on the basis that they will provide additional financial support to the LLC or liquidate the LLC. Such a resolution must be approved by all the shareholders (and, in practice, follow a form of wording prescribed by MOCI), and must be published in the official gazette. If an LLC continues to exist after the 30-day period has expired without a resolution as described above being passed, the shareholders become jointly responsible (personally liable) for the payment of all the company's debts, and any interested party may request dissolution of the company. Therefore, joint venture entities are not typically thinly capitalised.

Key considerations

- The past experience/track record requirement imposed by SAGIA can impact the structure of the investment in the joint venture company as the use of special purpose vehicles or new subsidiaries will not qualify the foreign investor with respect to the experience requirement (unless such entity can demonstrate three years of relevant experience), even if the entity is a wholly-owned subsidiary of the investor/parent company with the relevant experience.
- Personal liability of shareholders of LLCs under Article 180 of the Saudi Companies Law if LLCs incur losses amounting to 50% or more of its share capital.

Statutory reserved matters

The Saudi Companies Law sets out a number of matters that require a certain percentage of shareholders voting in the affirmative to be validly passed. These are set out below:

100%

Shares representing 100% of the joint venture company's share capital must vote in the affirmative in order to:

- change the joint venture company's nationality
- have all the shareholders (rather than some of them) pay the debts of the joint venture company where the losses of the joint venture company exceed a value equal to 50% of the joint venture company's share capital
- increase the financial liability of the shareholders (by, for example, increasing the nominal value of the shares).

75%

Shares representing 75% of the joint venture company 's share capital must vote in the affirmative in order to amend the AoA. Due to the matters which are required to be set out in the AoA, this means that those matters also require shares representing 75% of the joint venture company's share capital voting in the affirmative (e.g. increase of capital, change of capital, change of objects).

50%

Shares representing 50% of the joint venture company's share capital must vote in the affirmative in order to:

- appoint the joint venture company's auditors or
- approve the joint venture company's balance sheet, profit and loss statement, and distribution of net profits (if any).

Transfer of shares/exit

Pre-emption right

As previously noted, under Article 165 of the Saudi Companies Law, each shareholder has a pre-emptive right to purchase the shares in an LLC in which the other shareholder wishes to sell to a third party (including to affiliates in an intra-group transfer). If an existing shareholder wishes to sell his shares to any other party, he must first serve a notice to the Board of the company. The Board will then notify the other existing shareholders, within 30 days, of such intention. Any existing shareholder may, therefore, exercise its pre-emptive right within the relevant time period; otherwise the selling shareholder may sell to a third party. Thus, in theory, the approval of the existing non-selling shareholder(s) will not be required after the expiry of the relevant period.

In practice, a transfer in an LLC to a third party will need the other shareholders' consent in any event. The reason for this is because the names of the shareholders (and the amount of shares they own) must appear in the AoA of the joint venture company and the joint venture company's AoA may only be amended if all the shareholders (or their attorneys or representatives) appear before a public notary to sign up to such an amendment to make it valid and effective (a public notary will not typically agree to transfer shares without confirmation that non-transferring shareholders agree to the transfer of shares).

SAGIA will also require that the joint venture company's shareholder's partners' consent is obtained if the foreign investor wishes to invest in a competing or similar activity. This is not a legal requirement but SAGIA's practice.

Summary of key considerations for foreign investors

- **Legal due diligence**: There is no central searchable database for information on companies. Therefore, legal due diligence on potential joint venture partners can only really be carried out in so far as the other party is co-operative.
- **Type of vehicle**: It is recommended that a LLC be the corporate vehicle used for a start-up investment in Saudi Arabia as it is fairly flexible. A joint stock company must have a minimum of 5 shareholders, is more administratively burdensome to operate and would normally take longer to incorporate.
- **Foreign investment**: SAGIA will need to approve any foreign investor. It is preferable that the foreign investor (or the entity actually investing) has a demonstrable track record in the relevant field of activity. In accordance with the Saudi Foreign Investment Law, in order to establish a LLC carrying out, for example, wholesale and retail activities in Saudi Arabia, a Saudi partner must own at least 25% of the equity and the LLC's share capital must be at least SAR26 million (assuming the foreign investor has 75% of the equity in the local entity) and the foreign investor's investment must be at least SAR 20,000,000.
- **Incorporation**: The incorporation (including the SAGIA approval) process or investment in an existing entity could take between 16-24 weeks. The foreign investor should commence preparing the relevant documentation well in advance of the SAGIA application. It is important to remember that the documents need to be translated by an official translating office and that these documents also need to be notarised, legalised and consularised in the jurisdiction of incorporation of the foreign investor.
- **Liability of shareholders**: Unlike a JSC, for a LLC, under Article 180 of the Saudi Companies Law, where the losses of the joint venture company are equivalent to 50% or more of its paid-in share capital, the managers should convene an extraordinary general meeting of the shareholders within 30 days, at which time they should determine whether or not to continue trading (if they continue to trade, they will need to provide financial support to the company to reduce its losses). However, where they fail to meet within 30 days, or at all, and the company continues to trade, the shareholders become personally liable for the payment of the debts of the company on a joint basis (i.e. they lose the benefit of the limited liability of the company). We would recommend that a foreign investor ensure that the joint venture entity is not thinly capitalised.
- **Reserved matters**: Under the Saudi Companies Law, there are certain matters which require an affirmative vote of a specific super majority of the shareholders to be approved.
- **Pre-emption right**: The Saudi Companies Law provides existing shareholders in LLCs with pre-emption rights on a sale of existing shares to any third party (this also applies to an intra-group transfer).
- **Transfer of shares/exit**: A LLC's shareholders will need to consent to any transfer of shares to a third party. As the names of the shareholders are incorporated in the AoA of any LLC, when the shareholders change, this requires an amendment to the AoA and therefore must, in practice, be executed by all the shareholders or their attornies before a notary public.
- **Dividends**: The shareholders must set aside 10% of the net profits of the joint venture company annually before distributing the remainder of the profits. A statutory reserve must be built up equal to at least 50% of the share capital.
- **Profit/loss sharing**: It is possible for the shareholders to specify in the AoA that they will distribute profits or share losses on a different basis than to their pro-rata interest in the shares.
- **Shareholders' agreement**: It is worth noting that certain customary clauses in a shareholders' agreement such as options and rights of first refusal are not enforceable in Saudi Arabia. Therefore, in a deadlock situation, we would only suggest a put or call option of the company shares as a "gentlemen's agreement" but also suggest a liquidation of the joint venture company itself as the final resort.
- **Saudization/Nitaqat**: A LLC must employ the requisite percentage of Saudi employees. The MOL has set out the percentage of Saudi employees

required depending on the category of activity and size of the LLC.

- **Commercial agency**: Under the Saudi Commercial Agencies Law, non-Saudi manufacturers of goods are allowed to appoint local Saudi agents as their representatives to sell their products and/or services in Saudi Arabia. These agents must be Saudi nationals and need to be registered as commercial agents with MOCI.
- **Government tenders**: If a key part of the foreign investor's business plan is to participate in government tenders, it should be noted that depending on the tender rules of the relevant government entity, a joint venture company with a foreign shareholder may be ineligible from participating in the tender process. Therefore, such investor should consider if it is appropriate to appoint a wholly Saudi owned entity to act as agent for the government tender.
- **Disputes**: If the local partner assets are mainly in Saudi Arabia, it is recommended that the governing law of the joint venture agreement be Saudi law and that Saudi courts have jurisdiction over any dispute. In particular, we re-iterate that previous decisions of the Saudi courts are considered not to establish a binding precedent for decisions in later cases.
- **Delays**: Saudi Arabia, despite its economic and geopolitical power, remains a developing country and the high bureaucracy can be frustrating for a foreign investor in a hurry to establish its presence in Saudi Arabia. Foreign investors should expect unanticipated delays and requests from the relevant governmental entities.
- **Professional advice**: Saudi Arabia is a complex jurisdiction for foreign investors. Foreign investors should seek proper guidance from local advisors with regard to legal, corporate, financial, immigration and tax matters.

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