

KSA Foreign Investment Update

Ohod Wasfi - Associate - Corporate Structuring
- Jeddah

February 2017

This emphasizes that KSA is working to diversify its income resources to promote a sustainable economy as the country transitions away from dependence on oil. It also reflects KSA's eagerness to open its investment doors to the international market. The Saudi Vision 2030 and the National Transformation Plan (launched by the Saudi Government as part of the implementation of the Saudi Vision 2030) include a strong emphasis on increased private sector involvement and direct foreign investment in KSA.

However, the unsettled political environment around the Middle East, especially in Yemen, has caused some interested investors to re-evaluate their potential investment plans in KSA. Despite the challenges brought by low global energy prices, we consider that the KSA market continues to offer a wide range of business opportunities. By announcing Vision 2030 as its roadmap to diversify its economy, KSA has taken bold steps to address its dependence on oil, and also begin to open the market in relation to other business fields such as trade, renewable energy, manufacturing, education and engineering activities.

To support the aims of Vision 2030, the Saudi Arabian General Investment Authority ("SAGIA") has been updating its policies and regulations concerning foreign investment, relaxing a number of barriers to direct foreign investment. Recently, SAGIA removed several foreign investment restrictions, and has expedited the procedures for obtaining foreign investment licenses.

This article will be divided into four sections. The first section provides an overview about foreign investment in KSA and the most recent updates in this respect. We then set out the criteria required for qualifying to obtain a foreign investment license within 10 minutes (the "Instant License"), which SAGIA has only recently instituted (in January this year). We then comment on the practical implications of the Instant License and provide some closing comments.

Foreign Investment Overview in KSA

On April 2000, SAGIA was established to oversee foreign investment in KSA. The primary vision of SAGIA is "*empowering differentiated investments for a sustainable economy*". SAGIA is usually the first regulatory authority that foreign investors would encounter, as it is the primary licensing authority for those investors seeking to establish a business in KSA.

SAGIA, in its efforts to promote the Vision 2030 goals, is actively trying to create a suitable licensing environment to encourage and help foreign investors successfully meet their business goals and ultimately contribute towards the KSA economy. Therefore, it has opened investment opportunities in many business fields for foreign investments (although there continue to be certain exceptions that are restricted to Saudi investors, such as oil exploration or real estate investment in Makkah and Medinah).

It has also opened the door for foreign investors to own 100% of the share capital of their investment in KSA across most business activities, subject to meeting certain criteria. For example, it recently announced that foreign investors could now establish 100% foreign owned trading entities if they meet SAGIA criteria. Prior to this, foreign investors were required to have a Saudi shareholder owning at least 25% of the share capital, which was not acceptable within the corporate structures of many foreign investors. SAGIA also announced that it would soon allow investors seeking to establish engineering consultancy firms to own 100% of their entities in KSA - the criteria for the engineering exemption have

not been released yet by SAGIA.

SAGIA's progressive development has also included improvements to investment license procedures. The requirements and procedures for obtaining a foreign investment license used to be overly complicated and, in many cases, frustratingly lengthy. It was normal for foreign investment license approval to take over 6 months with hand submission of all documents to SAGIA being required.

First SAGIA introduced the fast-track concept. Investors could pay a fee to enjoy a faster processing time for their investment license applications. After that, the fee was abolished and some investors were given preferential treatment at SAGIA's discretion (usually for larger foreign investors with an excellent international reputation that could contribute skills and revenue into the Saudi economy). As SAGIA's processing times have improved (the time from application to receipt of license is now usually around two weeks), the fast-track concept fell away.

In January 2017, SAGIA initiated the Instant License service, announcing on its website as "*Instant License: Get Yours [the investment license] in Less than 10 Minutes*". The Instant License service is reserved for large listed entities - the criteria is listed below. We would like to note that foreign investors that do not qualify for the Instant License can still apply for the normal foreign investment license.

Additionally, while SAGIA has not stipulated a particular business activity that could benefit from the Instant License, officials in SAGIA have confirmed to us that this service targets trading entities.

Criteria for Obtaining an Instant License

To qualify for the Instant License, the investor must tick the following boxes:

- The investor or one of its shareholders is listed on an international or local stock market.
- In addition to 1 above, one of the following must also be achieved:
 - The revenues for the investor or the parent company in the last two years should exceed Saudi Riyals 70 million (USD\$18,66 million). Such revenues should be reflected in audited financial statements.
 - The assets for the investor or one of its shareholders should exceed SAR100 million (USD\$26,66 million).
 - The net profit for the investor or the parent company should exceed SAR50 million (USD 13.33 million).
 - The investor or the parent company should own three regional branches outside of its jurisdiction.
 - The exported products by the investor in its country should be at least 50% of the total investor's production.
 - The investor should have over 10,000 employees.
 - The investor should own a patent related to the activity, which the investor wishes to carry out in KSA.

To provide evidence in respect to revenues and net profit, submitting audited financial statements is sufficient. Applicants are also required to submit a company profile setting out ownership structure, remarkable achievements, etc. Additionally, a business plan should be submitted that should include, amongst other things, short and long term plans for the business, how the business could contribute to KSA economy growth, how the business will meet its Saudisation obligations, and how the business intends to train its Saudi workforce.

Conclusion

From a practical perspective, it is apparent that SAGIA is targeting large entities to invest in KSA. This does not in any way suggest that small to medium size entities would be rejected, as smaller entities continue to establish a presence in the Kingdom.

SAGIA does not have a clear-cut definition of what is a "large entity", although the criteria above give an indication of the revenues, assets and business size that are required.

SAGIA has also started giving due consideration to not only the immediate shareholders of the license applicant, but also of its respective shareholders and parent companies as applicable. This means that SAGIA can take other group companies into account, rather than just the immediate parent of the KSA entity, when assessing the business plans and ability of the foreign investor to contribute to the Saudi economy. As a result, presentation of the license application documents is extremely important. Moreover, it is important that the documents emphasize the history and achievements of the applicant, its shareholders, parent companies, and subsidiaries as being suitable. The documents must clearly outline the tangible contribution that the applicant, supported by those other indirectly related entities/individuals, would add to the Saudi economy.

In addition, from our daily interactions with SAGIA, it is clear that the authority conducts online research before approving any application to gather as much information as possible about the applicant. Once again, presentation of the application documents is a key component of the licensing process, and effort should be made to make this job as easy as possible for SAGIA.

In summary, SAGIA as a licensing authority is the gateway for foreign investors to enter KSA. Recently, SAGIA has reduced the restrictions that apply to foreign investors to enhance the investment environment. SAGIA is also focusing on attracting large foreign entities, leading to the establishment of the Instant License service that allow eligible investors to obtain their investment licenses expeditiously.

The presentation of complete, accurate and well thought out documents to SAGIA will assist the authority in its decision making process. It is recommended that investors obtain professional advice before making a submission to give the applicant the best chance of SAGIA approval.

Al Tamimi & Company's Corporate Structuring team regularly advises on set up of foreign entities in KSA. For further information please contact Hesham Al Homoud, Head of Corporate Structuring in Saudi Arabia (h.alhomoud@tamimi.com), Matthew Kelleher, Senior Associate (m.Kelleher@tamimi.com) ; and, Ohod Wasfi, Associate (o.wasfi@tamimi.com), or any other member of Al Tamimi's specialist corporate structuring team in KSA.