

Vision 2030: Why Don't You Consider Exporting to Saudi Arabia?

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The Kingdom of Saudi Arabia ("KSA") is the second largest oil producer and the world's largest oil exporter as well as the only Arab country to be part of the G-20.

With approximately 31 million inhabitants, Saudi Arabia has a globally important, and by far the largest, economy in the Middle East. Historically, the economy has been oil based and revenue from oil dominates export earnings and government revenue.

The Islamic *Shari'ah* is the primary foundation of all Saudi Arabian laws. The formation and enforceability of contracts is governed by and relies upon uncodified *Shari'ah* principles. Under *Shari'ah*, contracts which are not expressly prohibited by the Holy *Qur'an* or the *Sunnah* are permitted as binding and valid. In practice, the parties are generally free to agree their commercial bargain except and to the extent that it contravenes *Shari'ah* principles as interpreted and applied in Saudi Arabia or any secular law.

In recent years the Saudi government has introduced a number of measures aimed at developing the country's economy. These include limited deregulation, the encouragement of foreign investment and privatisation in selected areas of the economy. In 2016 the Saudi Government launched its Saudi Arabia's Vision 2030, a roadmap to diversify its economy and address the challenges brought by lower global energy prices. The implementation of Saudi Vision 2030 will lead to major changes and opportunities across all sectors of Saudi business.

In this article, we focus on commercial agency arrangements in the KSA as those will inevitably form a significant part of the development of Saudi economy over the coming decades.

Main Body

In terms of the available structures for setting up in the KSA, businesses should keep in mind they may be able to export goods to the Kingdom and sell them through a local distributor, without having to obtain a business registration in the KSA.

Legal Framework

Agency arrangements in the KSA are governed by the Commercial Agencies Law (Royal Decree No. 11 dated 20/02/1382 H), ("Law"), and the Implementing Regulation of the Agency Law (Decision of the Minister of Commerce and Investment No 1897 dated 24 / 05/ 1401 H), ("Regulation"). Under Saudi law, a commercial agency is a contractual relationship formed between a producer and its representative in the Kingdom ("Agency Contract"). Under the Agency Contract, an agent/a distributor performs the commercial activities to make profit. Under Saudi law, if the local agent engages any sub-agents in the carrying out of the Agency Contract, the local agent remains responsible for all legal obligations towards the customer in the KSA.

Who Can Be an Agent?

Under Saudi law, only a Saudi national (natural or legal person) can be a commercial agent. The capital of the local agent's business must be contributed by Saudi partners only, all the directors, managers and authorized signatories of the local agent must be Saudi nationals.

The agent shall: (i) provide the required spare parts to its customers in the KSA at reasonable prices (including providing rare spare parts within 30 days of the customer's request); and (ii) provide the maintenance needed for the products at reasonable charges and according to the standard specifications of the Kingdom.

Goods Specification

In order to obtain customs clearance, all imported goods must have a "Conformity Certificate for the Goods Exported to the Kingdom of Saudi Arabia". A conformity certificate must be issued by an accepted accreditation body authorised by the relevant official agency in the country of origin.

The Saudi Standards, Metrology and Quality Organisation ("SASO") formulates national standards for products including labelling, inspection and testing. The party submitting the conformity certificate must declare compliance of the goods with SASO's requirements.

Imported goods must identify the country of origin on both the shipment packaging and the product itself.

Conditions of Registration

Under Saudi law, the foreign principal and the local commercial agent must enter into the Agency Contract which must be registered within three months of it commencing with the Commercial Agencies Department of the Ministry of Commerce and Investment ("Agencies Department"). Failure to register can result in fines and other penalties.

The registration application documents must be submitted for validation with Under Secretary of the Ministry of Commerce and Investment ("MOCI") before the Agency Contract is registered. The information required under the application form are the name, the address of the commercial agent or distributor, the name the authorized signatories, and the duration of the commercial agent, description of the goods to be brought into the KSA for distribution, name, nationality, and address of the principal.

Pursuant to the regulation, to meet the registration requirements, the following documents must be filed with the Agencies Department:

- Two copies of the Agency Contract (one of them shall be original and notarized by the competent authorities in the KSA);
- An accredited Arabic translation of the Agency Contract and any other documents in the language of the principal;
- A copy of the commercial registration of the local agent that allows the agent to act as agent in relation to the goods to be distributed, in the KSA;
- A written confirmation issued by the MOCI confirming 100% of the share capital of the local agent is held by Saudi natural/legal persons; and
- Copy of Chamber of Commerce certificate of the local agent; and
- Receipt confirming the relevant fees for the registration of the arrangement with the Agency Department have been paid.

Export documentation

The commercial documents required for all shipments from outside the Kingdom into it include, in relation to the goods to be imported into the KSA:

- Commercial invoice with Arabic translation;
- Certificate of origin;
- Bill of lading or airway bill;
- Steamship or airline certificate;
- Insurance certificate (where goods are insured by the exporter); and
- Packing list.

There may also be additional authorisations and requirements applicable to the particular products.

How About the Letterhead?

All correspondence in relation to the distributed product taking place in the Kingdom (e.g. corporate correspondence, contracts, advertisements, and invoices) shall bear the agent's name, the nature and territory of the agency, and the registration number of the agency under the Agencies Department.

Violation and Penalties

Under Saudi law, certain government officials have been appointed to monitor compliance by businesses with the Law and the Regulations. Their authority extends to accessing documents and inspecting business premises of the agent/other parties to verify compliance with the Law.

A penalty may be imposed by authorities in the KSA against any person violating the Law. Penalties vary. They shall be between SAR 1,000 and SAR 50,000 per violation. Also, if a penalty has been imposed, the authorities will process a publication of information about it in a local newspaper, at the expense of the local agent. If the non-Saudi principal or the non-Saudi principal and the local agent (acting jointly) have been found in breach of the Law/Regulations, the authorities in Saudi may order that the local business that had been carrying out the arrangement in breach of Saudi law be liquidated and banned from operating an agency for an unlimited period of time/permanently.

Termination

The commercial agent has no statutory right to compensation upon the lawful non-renewal or termination of the Agency Contract. However, claims are often made by commercial agents for compensation for their contribution to the goodwill of the principal's business. Commercial agents may sometimes refuse or delay de-registering commercial agencies on expiry or termination with a view to obtaining compensation from the foreign principal, although it is generally possible to register a new agent without de-registration.

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