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AL TAMIMI & CO.

Doing Business in Saudi Arabia

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About Al Tamimi & Company

As the largest law firm in the Middle East, Al Tamimi & Company knows more than just law.

We pride ourselves on understanding the business environment in which we operate ultimately benefiting the clients we work with. The firm has 17 offices across 9 countries and has operated in the region for over 25 years. Our lawyers combine international experience and qualifications with expert regional knowledge and understanding, especially in the Kingdom of Saudi Arabia.

We provide not only professional expertise but superior client serve and quality strategic advice. We combine internally qualified and locally qualified and experienced lawyers with deep local roots. Along with this, the ability to practice local law in each of the jurisdictions where we operate, rights of audience before local courts, and licenses litigators in each of our offices, really sets us apart.

Our firm specialises in advising and supporting major international corporations, government organisations and local, regional and international companies.

Our Riyadh, Jeddah and Al Khobar offices are supported by a network of offices in Bahrain, Egypt, Iraq, Jordan, Kuwait, Qatar, Oman and United Arab Emirates. Our business and regional footprint continues to grow, and we seek to expand further in line with our commitment to meet the needs of clients doing business across the Middle East.

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Foreword

Saudi Arabia is by far the largest economy in the Middle East. Historically, the economy has been primarily driven by oil production and revenue from this has dominated export earnings. To date Saudi Arabia is still known as the world's largest exporter of oil.

In recent years the 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. Education and training, tourism, health, transport, infrastructure, water, agriculture and municipality services are just some of the key government priorities which offer opportunities to foreign businesses.

2016 saw the launch of the Saudi Vision 2030, a roadmap to diversify the 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. As a law firm with a strong presence in Saudi Arabia, now with 3 offices in the Kingdom, we are very excited about the opportunities that this initiative presents.

This guide provides an overview of some of the legal considerations which may arise when considering a business opportunity in Saudi Arabia. We trust you will find this of great benefit and we look forward to working with you in Saudi Arabia.

Essam Al Tamimi
Senior Partner & Founder
Al Tamimi & Company

Husam Hourani
Managing Partner
Al Tamimi & Company

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Doing Business in
Saudi Arabia? So are we...

And our unique ability to combine:

local knowledge and international standards | national coverage with regional strength | a local service in a globalised marketplace

makes us the natural choice for those doing business in Saudi Arabia.

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Introduction

About Saudi Arabia

Recent History

The Kingdom of Saudi Arabia was founded in 1932 by Ibn Saud, known within the Arab world as Abdulaziz. It is the second largest oil producer in the world and is the only Arab country to be part of the G-20.

Saudi Arabia is a desert country surrounding most of the Arabian Peninsula. The Kingdom is well-known as the birthplace of Islam and is home to the religion's two most sacred mosques: Masjid al-Haram, in Mecca, and Medina's Masjid an-Nabawi, the burial site of the prophet Muhammad.

Population:

Approximately 31 Million

Religion:

Islam

Currency:

The Saudi Arabian Riyal (SAR) is the currency of Saudi Arabia. The Riyal is pegged to the USD at the rate of SAR3.75 = USD1.

Language:

The official language of KSA is Arabic, although English is widely used in business circles.

Government:

The King of Saudi Arabia is both the Head of State and the Head of Government.

The Legal System

Shari'ah

Saudi Arabia is an Arab Islamic state and, pursuant to the Basic Law of Governance, the Holy Qur'an serves as the constitution of the country together with the Sunnah (the traditions of the Prophet Muhammad, PBUH).

Together, these form the Islamic Shari'ah which is the primary foundation of all Saudi Arabian laws.

Governance

Saudi Arabia is governed by His Majesty King Salman bin Abdulaziz Al Saud, who governs in consultation with the Shoura Council, a consultative body made up of Saudi national leaders in various civic and other areas. The King also chairs the Council of Ministers, made up of the Ministers of the various portfolios in the Kingdom.

Each region of Saudi Arabia (an Emarah/Principality) is overseen by a Governor/Prince who manages the region in consultation with a municipal council made up of a combination of government appointees and members voted into office through publicly held elections.

Judiciary

The independence of the Judiciary is a principle enshrined in the Basic Law of Governance and the Law of the Judiciary.

Contracts are Fully Enforceable

The formation and enforceability of contracts is governed by and relies upon Shari'ah principles. The Shari'ah rules relating to contracts are not codified.

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. This is the basis on which, for example, obligations relating to the payment of interest (known as riba or more generally the payment of money on money) are generally not enforceable in Saudi Arabia. It is advisable that contracts be reviewed for compliance with Saudi law and Shari'ah before being entered into.

A Saudi court has considerable discretion to apply the basic Shari'ah precepts to a particular set of circumstances. Saudi courts generally regard themselves as competent, consistent with general Shari'ah principles, to determine each particular case before them as it considers is necessary to achieve a fair result in all the circumstances of that case.

Saudi Vision 2030 and The National Transformation Plan

Saudi Vision 2030 and The National Transformation Plan

The Saudi Vision 2030 was announced in April 2016. This is the government's roadmap to diversify the Saudi economy and address the challenges resulting from lower global energy prices. The plans outlined in Saudi Vision 2030 cover wide ranging business and social elements which will, if fully implemented, result in fundamental changes, developments and opportunities across all business sectors in Saudi Arabia.

In June 2016 the National Transformation Program 2020 was also launched by the Saudi Government as part of the implementation of the Saudi Vision 2030 with the aim of meeting interim targets by 2020 through various strategic initiatives across 24 Saudi governmental bodies.

The Saudi Vision 2030 and the NTP include a strong emphasis on increased private sector involvement and investment and the privatisation of a large number of Government businesses as well as the development of various industries.

Expected Cost of NTP Initiatives over 5 years	SAR Billion	Percentage
Government	268	60
Private Sector	179	40
Totals	447	100

A. Highlights of Saudi Vision 2030 and the National Transformation Program

The Saudi Vision 2030 sets out a wide range of strategic and economic goals aimed at reducing the dependency on oil production and Government spending. Particular highlights include:-

- *Defence Industry* - 50% of military equipment spending to be localised by 2030;
- *Mining Industry* - to be reformed to stimulate massive growth with target of SAR97 billion by 2020 and 90,000 job opportunities;
- *Non-Oil Sectors* - the development of the non-oil sectors by 2020 with consequent reduced dependence on hydrocarbons;
- *Oil and Gas* - the continued localisation of the sector from 40% to 75%,development of support sectors, increased gas production with a national gas distribution network;
- *Private Sector Investment* - increasing the private sector contribution from 40% to 65% of GDP with particular focus on energy, healthcare, housing and municipal services;
- *Saudi Aramco IPO* - the listing of up to 5% of Saudi Aramco , the Government owned oil company, with proceeds of the IPO to go to the Public Investment Fund ("PIF");
- *Overseas Investment* - the PIF to become a global sovereign wealth fund valued at up to US$ 3 trillion;
- *Privatisations* - a wide range of Government assets to be privatised;
- *Renewable Energy Industry* - to be developed with private sector participation;
- *Retail and trading Sector* - to be developed with a view to creating a million jobs through the easing of foreign investment restrictions;

- *Education* - increasing private sector involvement with a target of increasing percentage of students in non- Government higher education from 6% to 15%;

- *Health Sector* - increasing the private sector contribution to heath care expenditure from 25% to 35% with a number of public to private partnerships expected;

- *Housing* (the biggest area of Government expenditure under the NTP) - establishment of fast track licences, special finance packages and partnerships to encourage private sector investment in housing projects and development of Government land for housing projects;

- *Royal Commission for Jubail and Yanbu* (second only to the Ministry of Housing in its size of budget under the NTP) - increased private sector investment and encouraging diverse and integrative industries with target of increasing number of value added manufacturing and transformation products;

- *Foreign Investment* - increasing direct foreign investment from SAR 30 billion to SAR 70 billion and plans to significantly speed up investment approval times;

- *Telecommunications Industry* - to develop the telecommunications and information technology infrastructure including high speed broadband; and

- *Transportation* - the creation of a regional logistics hub with completed and linked internal and cross border infrastructure.

A total of 534 initiatives were approved for 2016 with a total cost to the Government over the next 5 years of around SAR 270 billion.

Saudi Vision 2030 and the accompanying National Transformation Program are therefore essential reading for international and domestic companies investing and operating in Saudi Arabia.

B. Investment Opportunities

Developments since the launch of Vision 2030 and the National Transformation Program provide strong evidence of the fast pace of change, with both foreign and local investors being involved in significant opportunities in Saudi Arabia and the Governmental authorities being proactive in seeking and promoting initiatives and private sector involvement.

The range of initiatives and opportunities spans social and community related projects (housing, sports centres, public facilities) and the education, healthcare, municipal services, energy, environmental, industrial and manufacturing, oil and gas, technology and transportation sectors.

Investments may take the form of joint ventures and/or public private partnerships, and a new law dealing with such public private partnerships is expected.

It is also expected that there will be a number of privatisations with related opportunities for foreign and local investors, lenders and advisers.

Setting up in Saudi Arabia

Setting up in Saudi Arabia

A. Overview

Deciding on a form of business presence in Saudi Arabia requires consideration of many factors. For foreign (that is to say, non-GCC) businesses, obtaining a foreign investment license is a necessary pre-condition. Other considerations, including type of business to be conducted, sector/industry and taxation/zakat[1] will also factor in the investment decision about the most appropriate type of presence.

B. Regulation of Foreign Investment

Foreign Investment Licences

The Foreign Investment Law, originally issued in 2000 and supplemented since then through regulation, is the centrepiece of the Saudi government's foreign investment regulatory regime.

Generally speaking, foreign businesses wishing to establish commercial operations in Saudi Arabia must obtain a foreign investment licence from the Saudi Arabian General Investment Authority, generally referred to as "SAGIA"[2]. There are exceptions, for example, professional companies.

Serious penalties (which may include criminal penalties as well as heavy fines) can result if activities are undertaken in contravention of the Foreign Investment Law and even more so if the business activity involved "fronting arrangements" in breach of Saudi Arabia's Anti-

Concealment Law. Breaches will also put in peril future investment in Saudi Arabia.

The general rules applicable to Licence Applications are published on SAGIA's website (www.sagia.gov.sa).

What Level of Foreign Ownership is Allowed?

Foreign investors may be allowed to own up to 100% of the capital of the enterprise depending upon the business activity. However, certain business activities (for example banking and insurance) have prescribed minimum Saudi ownership requirements.

Business Activity	Maximum Foreign Ownership
Services	100%
Manufacturing	100%
Trading (wholesale and retail)	75-100%[2]
Professional Companies	75%[3]

The Negative List

Some business activities are completely closed to foreign investment. This group of activities comprises the so-called "Negative List".

Business activities included in the Negative List are:

- Oil exploration, drilling and production. Except certain services related to the mining sector.
- Manufacturing of military equipment, devices and uniforms.
- Manufacturing of explosives for civilians.
- Military catering services.
- Security and detective services.
- Real estate investment in Makkah and Madinah.
- Tourist orientation and guidance services related to Hajj and Umrah.

- Recruitment and employment services including local recruitment offices.
- Real estate brokerage.
- Printing and publishing (subject to a number of prescribed exceptions).
- Commission agents (this includes distributorships, commercial agencies and franchises).
- Audiovisual and media services.
- Land transportation services, excluding inter-city passenger transport by trains.
- Services provided by midwives, nurses, physical therapy services and paramedics.
- Fisheries.
- Blood banks, poison centres and quarantines.

How Long Will it Take To Obtain a Foreign Investment Licence?

The licence application period will vary according to the type of business enterprise proposed to be established and how quickly it takes for the application to be lodged along with the required supporting documentation. Typically an investment licence will be issued within 2-4 weeks following submission of all required information.

C. Forms of Legal Entities

Introduction

Depending on the circumstances one or more types of business structures may suit a foreign investor. However, ultimately the choice of structure will depend upon a matrix of commercial, taxation and legal considerations. They include whether the investor wishes to invest alone or with a Saudi partner, although there are times when a Saudi partner may be mandatory. Examples of these mandatory situations include trading or professional companies as well as certain industry specific ones like insurance, banking, financing and telecommunications.

A new Companies Law came into force in 2016 totally replacing the previous law and introducing a number of significant changes which are reflected in this Guide.

Set out below is further detail on the most common forms of entities formed by foreign investors.

Limited Liability Company

A limited liability company (an "LLC") is suited to a broad range of business activities and is often the favoured structure of foreign businesses. Where a joint venture is entered into with a Saudi partner, the LLC is usually the business structure of choice.

An LLC acts in its own name in its business dealings. It can sponsor foreign employees for residency in Saudi Arabia, an important characteristic for those investors looking to build their own employee base in the country. It may also be able to obtain finance on favourable terms from the Saudi Industrial Development Fund for Industrial Investment.

An LLC's business activities are limited by the objects set out in its articles of association and its foreign investment licence.

Limited Liability

Generally speaking, the personal liability of shareholders is limited to the shareholder's contribution to the LLC's share capital. Prior to the Companies Law 2016, shareholders could incur personal liability in certain situations, for example where the LLC's losses amount to 50% or more of its share capital and the LLC continues to trade without following the correct procedures. Following the Companies Law 2016, this no longer appears to be the case.

Minimum Capital Requirements

A decision will be made by SAGIA or the Ministry of Commerce and Investment about the company's capital requirements as part of the foreign investment licence approval process.

Business Activity	Likely Minimum Capital
Services	SAR500,000
Manufacturing	SAR1 million
Trading (wholesale and retail)	SAR26 million (with a minimum of SAR20 million (approximately)from the foreign investor[4]
Professional Companies	SAR500,000 (recommended)

The amount of capital required will depend on the company's proposed business activities and projected expenditure for the first five years of operation.

Shares

An LLC can have between 1 and 50 shareholders[5]. Only one class of shares is allowed and different voting rights are not permitted.

Generally speaking, each shareholder must hold at least 5% of the share capital. An LLC may not offer its shares to the public and is not allowed to engage in certain types of business activity (such as banking and insurance).

Transfers of Shares

Share transfers are permitted subject to statutory pre-emptive rights enjoyed by the other shareholders and regulatory approvals.

Management

An LLC may either have one manager or a board of managers (directors). An LLC with more than 20 shareholders must have a supervisory board to oversee and advise management. There is no requirement for a manager/director to be a Saudi national unless the company is 100% Saudi/GCC owned and managed but an expatriate who is a general manager would need a residency permit (Iqama).

Branch Office

If the foreign business does not want or require a Saudi partner, opening a Saudi Arabian branch office may be a suitable choice. The advantages of doing so are that a branch is normally the quickest entity to establish, it can carry on a broad range of activities (as approved by SAGIA), and the minimum capital requirement is usually SAR500,000.

Because the branch is not legally distinct from the foreign business itself, the business activities of the branch will be limited to those of the foreign business and the foreign business will be liable for the debts and other liabilities of the branch. Note also that business entities with Saudi ownership may be preferred for certain Saudi Arabian government contracts.

Joint Stock Company

A joint stock company can be either “open” (which means that its shares are offered to the public) or “closed” (meaning its shares can’t be offered to the public).

All companies listed on the Saudi Stock Exchange (the Tadawul) are open joint stock companies. Certain types of activities may only be carried out by a JSC (either open or closed), for example banking and finance businesses.

A joint stock company may be formed with a single shareholder if the joint stock company has a share capital of at least SAR 5 million. Otherwise it must have at least 2 shareholders. The shareholders are exempt from personal liability on the same basis as shareholders in an LLC and are also not personally liable for the debts of the JSC should its debts exceed 50% of its stated capital. Until recently it used to be the case that directors must hold (or have pledged on their behalf) shares in the company of not less than a specified value but this requirement was removed by the Companies Law 2016.

Founders’ shares (i.e. shares owned by the promoters of the company) cannot be transferred until financial statements for the joint stock company have been published for two complete financial years.

The capital must be sufficient for the joint stock company to achieve its purpose subject to a minimum capitalisation requirement of SAR500,000.

Importantly, the annual audited financial statements of a joint stock company must be published in a Saudi Arabian daily newspaper.

Temporary Commercial Registration

An investor can apply for a Temporary Commercial Registration ("TCR") if the intended business activity will be conducted in Saudi Arabia over a relatively short period of time, is related to the performance of a government contract and no further business activities are contemplated. The registration process is similar to that for a branch although less documentation is required to support the foreign investment licence application and no capital is needed.

As such, the issuance of a TCR is restricted to those companies which have contracts with government or semi-government entities. The licence application must be supported by a letter of contract award or a signed contract from the contracting government agency.

The principal disadvantage of a TCR is that it is limited to the scope and terms of the particular contract, and cannot be used to undertake general business activities.

Technical and Scientific Services Office

A foreign company may establish a Technical and Scientific Office ("TSO") to provide technical and scientific support to its registered Saudi agents, distributors and consumers. A TSO may not engage in any commercial activities or earn revenue. Its activities are limited to providing technical information, market and technical research.

The registration process is similar to that for a branch. There are no capitalisation requirements and a minimum number of Saudi nationals will need to be employed. However, the regulatory authorities may set a cap on the number of expatriate employees (usually not more than 10 although exceptionally a higher number may be permitted).

A TSO does not enjoy the benefit of investment incentives under the Foreign Investment Regulations but can sponsor its own foreign employees.

Professional Companies

While there are other forms of entities that can carry out certain business activities in Saudi Arabia, a professional company is the only type of entity that can legitimately conduct engineering, architectural, accounting and other professional services.

A professional company would require a joint venture arrangement with a Saudi entity (or individual) currently licensed to carry out the particular profession, for example, an engineer registered with the Saudi Council of Engineers. The Saudi Council of Engineers is a professional semi-independent body under the supervision of the Ministry of Commerce and Investment and must approve the proposed joint venture.

Under Saudi Arabian law, a professional company is treated more akin to a partnership than a limited liability company, though it has similarities with a limited liability company. As with a partnership, the partners of a professional company have joint and several liability for the debts and obligations of the professional company. However, partners are able to apportion liability as between themselves.

Provided the foreign applicant meets certain experience and other criteria, it may own up to 75% of the professional company. It is usually left to the partners to decide capitalisation, although typically SAR200-500,000 is allocated. Establishing this type of entity currently does not require a foreign investment license from SAGIA.

In June 2016 SAGIA announced that it would "soon" start to accept applications from international companies to establish 100% foreign owned engineering companies. No details as to how this will be implemented have been announced at the time of this Guide.

Foot Notes:

1 Zakat is a form of religious tax in Islam which is mostly applicable to Saudis.

2 SAGIA may permit international companies to establish wholly owned trading companies subject to certain conditions including an initial capital contribution of SAR30million and a commitment to invest a further SAR170million over five years and other requirements targeted at major foreign investors making a significant long term contribution to Saudi Arabia's economy.

3 In June 2016 SAGIA announced that it would "soon" start to accept applications from international companies to establish 100% foreign owned engineering companies. No details as to how this will be implemented have yet been announced.

4 If a foreign investor wishes to own more than 75% of the shares of a Trading company then higher capital contribution requirements and other conditions apply.

5 Although single shareholder LLCs are permitted under the Companies Law, currently SAGIA is not permitting foreign investors to establish single shareholder LLCs , so wholly owned subsidiaries would require a minimum of 2 shareholders. Conversion of an existing LLC to a single foreign owned single shareholder LLC is, however, permitted by SAGIA.

Exporting to Saudi Arabia

Exporting to Saudi Arabia

Exporting to Saudi Arabia Without Having a Legal Presence in the Country

Sales to End Users

A foreign business does not require a legal presence in Saudi Arabia where goods are being sold to an end user in Saudi Arabia.

Commercial Agencies

A foreign business does not need to set up legal presence in Saudi Arabia where its goods are imported for sale or resale through distributorship, commercial agency or franchise arrangements, which are known as "commercial agencies". This is a commonly employed and relatively straightforward way for a foreign business to arrange for its products to enter the Saudi market.

The foreign business and the commercial agent must enter into a written commercial agency agreement and the agency must be registered within three months of it commencing with the Commercial Agencies Department of the Ministry of Commerce and Investment. Failure to register can result in fines and other penalties.

Only Saudi nationals or companies organised under Saudi law which are wholly owned and managed by Saudi nationals can be commercial agents.

The commercial agent must guarantee the quality of the products, and provide necessary maintenance and spare parts to consumers.

The commercial agent has no statutory right to compensation upon the lawful non-renewal or termination of its commercial agency. 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.

Approvals for the Import of Goods into Saudi Arabia

If a foreign business wants to import directly into Saudi Arabia, it is important to note that the approval requirements for the import of goods into Saudi Arabia are extensive and vary according to the nature of the goods. Import agents are routinely appointed to ensure that importation proceeds smoothly.

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 labeling, 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.

Export Documentation

The commercial documents required for all shipments include:

- 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).
- Packing List.

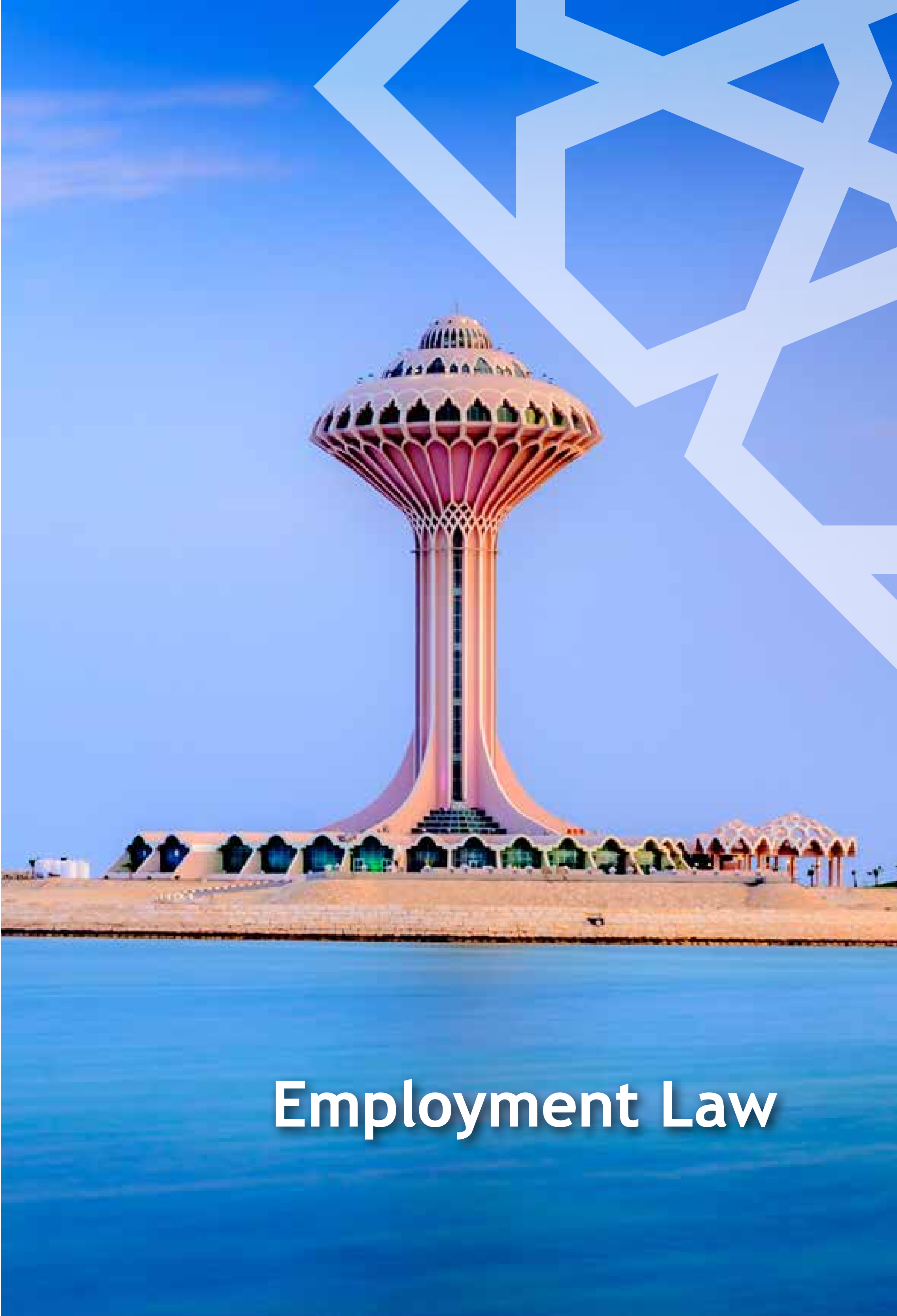
There may also be additional authorisations and requirements applicable to the particular products.

The Business Visit

Visit visas are required by all visitors to Saudi Arabia except nationals of GCC States and must be obtained before travelling. An invitation must be obtained from a Saudi business (and lodged with the Ministry of Foreign Affairs) in order to apply for the visit visa.

Application for a visit visa is made through an online process as specified by the Saudi Embassy in the applicant's country of residence. The maximum permitted stay under a business visit visa is 1 month.

Application for a visit visa should be arranged well in advance.



Employment Law

Employment Law in Saudi Arabia

The Labour Law

The Labour Law, originally issued in 2005 and since amended and supplemented by regulation, is the principal legislation governing the employer – employee relationship. The Labour Law is administered by the Ministry of Labour and Social Development.

The Labour Law applies to all workers in Saudi Arabia irrespective of whether the parties nominate a foreign law as the governing law of the employment contract.

Amongst other things the Labour Law outlines terms for terminating employment, prescribes annual vacation entitlements, establishes a retirement age, provides for end of service benefits and requires a minimum age of 14 for employees.

Non-Saudis

Non-Saudis may work in Saudi Arabia provided the requisite approvals are obtained:

- the employee must have entered the country on a valid employment visa issued by the Saudi Embassy in the country for which the employee holds a passport; and

- the employer must obtain a work and residence permit (Iqama) for the employee within 90 days of the employee's arrival.

Employment Contracts

Employment contracts may be for fixed (applicable to expatriates and Saudi/GCC Nationals) or unlimited periods (applicable to Saudi/GCC Nationals).

Indefinite term contracts terminate at the discretion of either party provided written notice is given to the other party stating a valid reason for termination. At least 60 days' notice is required for contracts where the worker is paid monthly or not less than thirty days' notice in any other case.

Unfair dismissal may result in an award of monetary compensation.

Probationary Periods

An employer may request an employee to undergo a probationary period of no more than 90 days with the possibility of an extension by a further period of no more than 90 days. The probationary period must be stated in the contract.

If an employee is working under a probationary period, the employee may be dismissed for any reason by the employer during or at the end of the probationary period.

Social and Health Insurance

The Social Insurance Regulations require employers who have at least one employee to make monthly contributions to the General Organisation for Social Insurance ("GOSI") on behalf of each employee. These contributions are calculated as a percentage of the employee's wage.

Employers must also provide medical insurance that covers the employee and the employee's family living in Saudi Arabia as dependents of the employee. This is normally done at the employer's cost.

Public Holidays and Annual Leave

Paid annual leave can vary but under the Labour Law employees are entitled to 21 days leave on full wages. This increases to a period of not less than 30 days if the worker has spent five consecutive years' service with the same employer. Provisions are contained in the Labour Law dealing with parental leave, religious leave, unpaid leave, educational leave and sick leave.

End of Service Benefits

At the end of the labour contract the employee is entitled to receive an end-of-service award (also known as a "gratuity"). Generally the amount of the award is calculated as half a month's wage for each of the first five years of service and one month's wage for each of the following years. However, the amount of the award can vary depending on a number of factors including whether the employee resigned or was terminated (without cause).

Saudisation (Nitaqat)

Foreign investors setting up in Saudi Arabia should be aware of the Saudisation policy that requires a minimum number of Saudis to be employed by a business. This minimum number depends on the type of company, industry and job titles.

In 2011 the Ministry of Labour and Social Development introduced the Nitaqat Programme by which employers are penalised if they fail to achieve the Saudisation targets which are applicable to them.

Under the Nitaqat Programme companies fall within one of four categories: Platinum, Green, Yellow and Red. The classification is based upon the percentage of Saudisation of the company. Companies in the Excellent or Green categories have the greatest privileges for visa requests for foreign workers. Companies in the Yellow and Red categories are subject to various restrictions in relation to visa applications and work permits. They are also not able to restrict their employees from transferring sponsorship to a company in the Platinum or Green category.

Visas

Foreign workers must initially obtain a work permit visa and then, with the assistance of their employer, make application for a residency permit, the Iqama. The employee will require an Iqama to open a Saudi bank account and enter into a lease of residential accommodation.

Dispute Resolution

The Saudi Court System

The basic structure of the Saudi court system is as follows:

General Courts

Subject to certain exceptions, the General Courts have jurisdiction over any type of dispute. Broadly speaking the General Courts adjudicate in civil and real estate disputes. The General Courts fall under the auspices of the Ministry of Justice, as are the Criminal Courts and Personal Status Courts. The Ministry of Justice is also progressing the establishment of 2 further specialised courts, one to adjudicate in labour disputes and the other related to commercial disputes. The General Courts have 3 levels: first instance courts, appellate courts and the High Court (there is only one High Court in Saudi Arabia).

Board of Grievances or the Administrative Court

The Board of Grievances has jurisdiction in relation to disputes in which a governmental organisation is a party. In addition, commercial disputes are currently heard by the Board of Grievances (pending the establishment of the Commercial Courts). The Board of Grievances is an independent government body reporting directly to the King. As is the case with the General Courts, the Board of Grievances has 3 levels: first instance administrative courts/circuits, the appellate administrative courts and the High Administrative Court (there is only one High Administrative Court).

Quasi-Judicial Committees

Quasi-Judicial Committees are specialised committees which have jurisdiction over particular types of disputes. Examples include the Banking Disputes Committee (which operates under the auspices of the Saudi Arabian Monetary Agency), the Committee for Resolution of Securities Disputes (which operates under the auspices of the Capital Market Authority) and the Customs Committee for customs disputes (which operates under the auspices of the Ministry of Finance). Decisions of these Committees may be subject to challenge either in an upper appellate committee or the Board of Grievances.

Judicial Reforms

In 2007 King Abdullah bin Abdulaziz Al Saud issued royal decrees with the aim of reforming the court system. Some of the changes foreshadowed by the reforms have already been implemented.

Arbitration

The decision whether to arbitrate or litigate through the court system will depend upon the circumstances of the particular case. Where the dispute is set in an international context, arbitration tends to be the formal dispute resolution mechanism of choice.

Arbitration is not permitted where one of the parties is a Saudi government entity unless permitted by the Council of Ministers.

The parties to the dispute usually choose the arbitrator or the majority of them.

A new Saudi arbitration centre has been established in Riyadh.

Saudi Arabia's Arbitration Law

Saudi Arabia issued a new Arbitration Law in 2012. This sets out requirements in relation to the arbitration agreement including the appointment of arbitrators.

Arbitration proceedings can proceed in accordance with the rules of internationally recognised arbitration forums. They can also be conducted in a language other than Arabic.

Once the arbitration award is final, there is only limited scope to challenge it. Also, the decision to challenge it does not of itself preclude the enforcement of the award.

How is a judgment or arbitration award enforced in Saudi Arabia?

Execution Law

In 2012 a new Execution Law was issued setting out the framework and procedures for the enforcement of judgments and arbitration awards in Saudi Arabia. The Execution Law applies to domestic and foreign judgments and awards.

Arab League and GCC State court judgments

A judgment of a court in a country that is a signatory to the Arab League Treaty on the Reciprocal Enforcement of Judgments or the Agreement on Enforcement of Judgments, Delegations and Judicial Summonses in the States of the GCC for the Arab States will be enforceable in Saudi Arabia provided the judgment is not inconsistent with Islamic law, public policy or the laws and regulations of Saudi Arabia.

Non-Arab state arbitration court judgments and awards

Saudi Arabia is a party to the New York Convention relating to the recognition and enforcement of foreign arbitral awards. However, the KSA maintained a public policy exception to the reciprocal enforcement of awards and can decline to enforce an award if reciprocal arrangements are not in place with the relevant country, or if the award or judgement does not comply with Sharia Law. However, as a practical matter, Saudi courts have rarely enforced a non-Arab State arbitration award or court judgment.

Government Contracting

Government Contracting

Supplies of goods and services to all government agencies and most government owned companies are regulated by the Government Bids and Procurement Law, issued in 2006 and its associated Executive Regulations. The more important features of the Procurement Law are summarised below:

Tenders

All government tenders are announced and publicised.

Bidders

Bidders must be appropriately licensed in the particular activity. The bidder must generally have a registered legal presence in Saudi Arabia, though in the case of construction contracts the bidder may lodge a qualifying bid if it does not have a commercial registration when the bid is lodged. It will, however, have to establish such a presence following an award of the government contract.

Priority is given to bidders with nationally manufactured goods and services (to be disclosed by the bidder in the bid).

Certain contracts (e.g. for supply of military equipment, goods available only through one supplier, certain consultancy and technical services) may be exempted from the tendering requirements.

Bids

Bids must generally include a preliminary bank guarantee of 1-2% of the contract value.

Bids must be valid for 90 days from the date specified for the opening of bids. If a bidder withdraws a bid during this period, the preliminary bank guarantee is forfeited.

Contract Phase with Successful Bidder

The prevailing language of all government contracts is Arabic. The contract forms are prepared by the Ministry of Finance and can be bilingual, although the Arabic version prevails.

Government authorities must submit contracts with an execution period of more than one year and a value exceeding SAR 5 million to the Ministry of Finance for review prior to entering into the contract.

The period of continuing service contracts may not exceed 5 years without the approval of the Ministry of Finance.

The successful bidder must submit a final bank guarantee of 5% of the contract value, usually within 10 days of being awarded the tender. If it fails to do so, then the preliminary guarantee is forfeited and negotiations commence with the next bidder.

Government authorities may increase the obligations of a contract within the scope of the contract by up to 10% of the value or decrease those obligations by up to 20%.

Contract payment entitlements, termination, penalties and extensions of contract are all regulated in the Procurement Law.

If a government authority defaults:

- The contractor may lodge a claim for compensation with the Compensation Committee but may not file a legal claim in the courts in the initial stages.
- The contractor cannot refuse to perform its contractual obligations on the basis that the government authority is in default.

The Banking Sector

The Banking Sector

The Saudi Arabian Monetary Agency

The Saudi Arabian Monetary Agency (commonly referred to as "SAMA") is the central bank of Saudi Arabia and is the regulator of the banking sector.

Licences

SAMA is primarily responsible for issuing licences to start up a banking business.

Commercial Banks

Commercial banking operations are undertaken by both Saudi financial institutions and branches of foreign banks.

Banks are required to separate their investment and securities business from their banking business and hold separate licences for asset management, advisory and securities services.

Recent Banking Industry Reforms

The Saudi Government issued a package of laws in 2012 to reform key areas of the finance industry.

Real Estate Mortgage Law

This Law provides for the registration of mortgages. It also facilitates a secondary mortgage market by allowing mortgages to be transferred by the mortgagee and thereby gain access to the capital markets for refinancing. The Law is intended to pave the way for the private sector to assume a greater role in housing finance leading to reduced borrowing costs.

Real Estate Finance Law

This Law requires real estate finance companies to be licensed by SAMA.

Law on Supervision of Finance Companies

This Law provides for SAMA to be the regulator of licensed finance companies operating in Saudi Arabia. Finance companies must be joint stock companies.

Finance Lease Law

This Law provides for the leasing of assets. The lessee has an obligation to use the leased asset for the agreed purpose and be responsible for the operational maintenance of the asset.

Securities and Mortgages

Securities and Mortgages

Historically it has been difficult for holders of a security interest to register their claim over assets located in Saudi Arabia other than in respect of specific categories of property like marine vessels, aircraft, automobiles, land, certain types of company shares and intellectual property and a number of challenges associated with many kinds of security remain.

Land

Under Registered Land Mortgage Regulation a mortgage over specific land takes precedence over all creditors in satisfying his debt out of the price of that land in the hands of whoever it may be. Mortgages must be registered to be effective, and take effect upon registration. It is possible to register second ranking and successive mortgages.

However, there is a reluctance on the part of many notaries to notarise securities over land (a necessary prerequisite for legal efficacy and enforcement) because of concerns that this may be a prohibited interest under Shari'ah law.

Except in limited circumstances foreigners may not acquire interests in Saudi land.

Sometimes a financier may take custody of the title deeds to land or property and to retain possession of them until the debt obligation has been satisfied. The land may not be transferred until the title deed is released because registration of any transfer of land or property requires the original title deed to be supplied as evidence to the notary public.

Taking a transfer of the freehold to land or property in Saudi Arabia and registering it in a special purpose vehicle company of the financier is the most common structure for creating the mortgage security (with a transfer back taking place on satisfaction of the loan obligation).

Moveable Assets

The Commercial Mortgage Law 2004 provided for the establishment of a Unified Centre for Lien Registration ("UCLR"). However, the UCLR has only recently become operational making it now possible to register security interests over moveable assets.

In general terms, the assets to be secured must be:

- in existence (i.e. not future assets);
- in the possession of the debtor;
- owned by the debtor and capable of being disposed of by the debtor;
- tradeable, with details stated in the relevant security agreement; and
- identifiable without ambiguity.

The application form for registration of the secured asset with the UCLR contemplates registration of the following:

"Individual Items" that can be uniquely identified (for example, cars, boats, airplanes, serial-numbered equipment); and

"General Collateral" that does not have any unique identifying characteristics (for example, inventory and accounts receivable).

Because of doubts surrounding the efficacy of the UCLR (for example, the legal consequence of registration), a new Commercial Pledge Law is proposed. However, no date for the adoption of the proposed new Law has been published.

Following implementation of the new Law, registration will operate to give notice of possession to third parties.

The proposed new Law will, amongst other things permit:

- security to be taken over future items (such as future debts) and cash deposits;

- pledged property to be traced (where it has been transferred to a third party);

- more than one pledge to subsist over the same property; and

- floating securities which attach the security to assets in defined circumstances.

In short, the proposed Law contemplates many of the types of security commonly associated with project financing.

The Ministry of Commerce and Investment is to establish a directorate which will be responsible for operating the Register referred to in the new Law.

Insolvency

Insolvency

Saudi Arabia does not have a comprehensive insolvency regime, though the Commercial Court Law (dealing with the insolvency of traders) and the Companies Law, contain elements of an insolvency law regime.

Liquidations

The Ministry of Commerce and Investment has adopted a policy that liquidation under the Regulations for Companies is not available for insolvent entities.

The company or a creditor of the company may apply to the Board of Grievances for a declaration of bankruptcy, based on a statement of the bankrupt company's assets and liabilities and books of account. After examination of the application for declaration of bankruptcy, the Board of Grievances may issue an order declaring bankruptcy and seizing the bankrupt company's assets. With effect from the date of the order declaring bankruptcy, the bankrupt entity ceases to have legal capacity to contract.

In practice, formal insolvency processes are very rare and the court process can be reckoned to be a long one.

Proposed Insolvency Law Reform

In 2015 the Ministry of Commerce and Investment (MOCI) published a policy paper relating to a proposed new insolvency law for Saudi Arabia. This follows an extensive benchmarking review of the laws in a number of countries.

The policy paper contemplates that no distinction will be made between traders and non-traders.

The policy paper also envisages:

Increased Supervision through the establishment of courts with jurisdiction over bankruptcy and insolvency matters and the establishment of a regulatory body responsible for the supervision of liquidators.

Categorising debtors according to value and in some cases according to business with procedures applicable according to categorisation.

Protective Settlement: this is a process, initiated by the debtor, where creditors and debtors attempt to reconcile out of court. A short stay on enforcement proceedings is granted to allow the creditors and debtor to reach a settlement. The court would have to approve the final settlement.

Rehabilitation: this is the more formal bankruptcy process. The initiator does not need to be technically insolvent, but needs to be in financial difficulty. An insolvency practitioner would be appointed to manage the debtor. The court would have to bless the final settlement and would have the power to impose settlements on different classes of creditor.

Liquidation: which has heavier involvement of an insolvency practitioner as opposed to the court.

Recognition of the Corporate Veil limiting the liability of a company to its assets in Saudi Arabia but with sanctions for debtors, shareholders, directors and others who engage in negligent or fraudulent conduct.

It is as yet unclear when the proposals envisaged by the policy paper will be brought into law.

Real Estate

Real Estate

Who Can Own Land?

Ownership of land in Saudi Arabia is generally restricted to Saudi citizens, but this is subject to a number of qualifications:

- A GCC company (with shareholders who are all GCC nationals) or an individual (who is a GCC national):
  - may lease or purchase land to use it to conduct any licensed business activity from the land; and
  - may own residential properties in KSA, subject to a number of restrictions and conditions.

This concession does not apply to properties within the vicinity of Mecca and Medina.

- even the smallest equity interest held by a non-GCC entity will make a corporate entity "foreign", triggering the requirement for a foreign investment licence including conditions stipulating the amount of capital that must be invested and the timeframe for the investment by the foreign entity.
- a non-GCC entity generally may own Saudi real estate which is reasonably required for:

- the conduct of its professional, technical or economic activities;
- private residences for housing employees of a licensed project; or
- residential use by individuals with normal legal residency status.

New Land Title System

In an effort to modernise the land transfer and registration process, the Saudi government has initiated the massive and ambitious task of identifying all Saudi land (and all property interests in particular parcels of land) and including that information on a real estate register for each designated realty area.

The main benefit of the new system is that it will provide an investment friendly environment with technically accurate land identities to facilitate property dealings.

Strata/Fractional Ownership

The System of Ownership of Units, a law issued in 2002, provides for fractional or "strata" ownership of buildings, that is, buildings which are subdivided into individual ownership units.

Off the Plan Sales

In recent years KSA has taken a number of significant steps to regulate the sale and marketing of off-the-plan lots in order to:

- protect the rights of buyers and developers;
- raise the level of transparency;
- discourage property speculation (and prevent real estate bubbles);
- reduce the cost of ownership of real estate units; and
- increase the supply of developed real estate throughout Saudi Arabia.

Mining

Mining

Saudi Arabia has extensive deposits of phosphate and bauxite and commercially viable deposits which include gold, silver, lead, zinc, copper, iron ore and rare earths. Saudi Arabia also has large deposits of many of the key minerals used in the construction industry.

Saudi Arabian Mining Company ("Ma'aden") is a diversified mining company, formed for the purpose of facilitating the development of Saudi Arabia's mineral resources. Ma'aden is the largest mining company in Saudi Arabia. The Government owns 50% of Ma'aden's shares (through the Public Investment Fund) while the remaining 50% are listed on the Tadawul (the Saudi Stock Exchange).

The Ministry of Energy, Industry and Mineral Resources has an extensive data base of geological data, maps and reports.

A new Mining Code was adopted in 2004 to facilitate investment in the mining sector. There are no mineral royalties.

Non-exploitation and exploitation licences are available to companies and individuals.

Non-exploitation licences include reconnaissance and material collection licences, valid for 2 years, and exploration licences, which are valid for 3 years. Exploration areas are limited to 100 square kilometres.

Exploitation licences include mining and quarry licences, both valid for 30 years. Small mine licences are valid for 20 years and building materials quarry licences for 5 years.

Exploration and exploitation licences may be transferred with the approval of the Ministry of Energy, Industry and Mineral Resources.

Saudi Vision 2030 and the National Transformation Plan have targeted reform of the mining sector to stimulate massive growth with a target of SAR97 billion by 2020 and 90,000 job opportunities.

Intellectual Property

Intellectual Property

Patents Law

The Patents Law provides the means by which legal protection can be obtained for:

- Patentable inventions.
- Layout designs of integrated circuits.
- Plant varieties.
- Industrial designs.

The Patents Law is administered by King Abdul-Aziz City of Science and Technology whose General Directorate of Patents ("Directorate") operates as the "Patent Office" in Saudi Arabia, receives applications and has the authority to grant patents in the country.

Applications may be made by both Saudi citizens and foreign people.

The protection periods are:

- Patents: 20 years from the date of filing the application.
- Layout Designs: 10 years from the date of filing the application, or 10 years from the start date of its commercial exploitation, anywhere in the world but subject to a maximum protection period of 15 years from the date of creation of the design.
- Plant patents: 20 years from the date of filing the application but the protection period for trees is 25 years.
- Industrial designs: 10 years from the date of filing the application.

Saudi Arabia acceded to the Patents Cooperation Treaty ("PCT") in 2013. Any international application filed on or after that date will automatically include the designation of Saudi Arabia. In addition, nationals and residents of Saudi Arabia are entitled to file international applications under the PCT.

Trademarks

The Trademarks Law of 2002 sets out procedures for the registration of trademarks (including service marks). Applications may be made by both Saudi nationals and foreign persons.

The registration process is handled by the Ministry of Commerce and Investment. The Ministry maintains a register of trademarks which is available for public inspection.

Infringement of trademarks may attract heavy fines and criminal penalties. Claims for compensation may be made by anyone who has suffered loss as a result of the infringer's actions. There is also provision for the owner of the trademark to apply for "precautionary measures" such as the seizure of goods and papers (including imported items) prior to the commencement of any civil or criminal lawsuit which infringe the owner's rights.

Copyright

The Copyright Law of 2003 protects works created in the fields of literature, art and science, irrespective of their type, means of expression, importance or purpose of authorship.

The Law also protects derivative works such as translations, compilations and databases.

The copyright work must be attributed to the author, for example, by mentioning his name on the work.

The period of copyright protection is the life of the author and the period of 50 years after his death. A lesser period of 20 years applies to broadcasters from the date of first transmission.

The Law prescribes the penalties applicable to infringement, which may include fines, confiscation of infringing materials, closure of the business establishment and imprisonment.

Saudi Arabia is a member of the Universal Copyright Convention and the Berne Convention for the Protection of Literary and Artistic Works.

Competition Law

Competition Law

Saudi Arabia adopted a Competition Law in 2004 with the Law being brought into effect in January 2005. The Competition Law and the associated Regulations and Competition Rules make up Saudi Arabia's competition law regime and they are enforced by a Competition Council.

Who does the Competition Law Apply to?

It applies to all firms, i.e. any corporation or company and business doing business in Saudi Arabia. A non-Saudi entity can be a firm. The Competition Law does not apply to public (i.e. government) corporations and fully–owned state enterprises.

What does the Competition Law do?

The broad aim of the Competition Law is to protect and encourage fair competition and combat monopolistic practices that affect competition. It seeks to achieve this by:

- prohibiting agreements and arrangements between firms if their objective or effect is to restrict commerce or competition;
- restricting the ability of a firm to acquire a dominant position in the market; and
- making abuses of dominant market position by a firm illegal.

What Sort of Practices and Agreements are Prohibited?

- Article 4 of the Competition Law says that practices, agreements or contracts among current or potential competing firms, whether the contracts are written or verbal, express or implied are prohibited, if the objective of such practices, agreements or contracts, or their effect, is the restriction of commerce or the violation of competition between firms.

- Any practice, alliance or agreement, explicit or implicit, between competing entities which violate, restrict or prevent competition is prohibited.

- The Competition Council may decide not to apply the prohibitions contained in Article 4 of the Competition Law to practices and agreements in violation of the Competition Law which are deemed to improve efficiency and realise benefits to consumers which outweigh their anti-competitive effect.

Abuse of Dominating Position

The existence of a dominating position in the Saudi market is not of itself prohibited. The abuse of that dominating position is.

"Dominating Position" is in broad terms defined as:

- having sales of at least 40% of total sales in the market for a period of 12 months; or

- an entity or group of entities being in a position to influence the prevailing price in the market at any time.

"Abuse" of a dominating position requires an act of the kind described in Article 4 of the Competition Law or Article 6 of the Competition Law Regulations. Broadly speaking those provisions target any practice which restricts competition between firms, in particular:

- price control;

- restricting the free flow of goods and services;

- barriers to entering and leaving markets;

- forcing out competitors;
- partitioning markets;
- customer Discrimination;
- compelling or agreeing with a client to refrain from dealing with a competing entity (third line forcing); and
- making the sale of a commodity or offer of service contingent on the purchase of another commodity or service (first line forcing).

Economic Concentration

The Dominating Position provisions of the Competition Law are reinforced by other provisions which focus upon the acquisition of ownership which is referred to in the Regulations as "Economic Concentration".

Economic Concentration happens where an entity acquires a position of domination of an entity or group of entities through merger, takeover, acquisition or the combination of managements.

An entity intending to achieve Economic Concentration in order to dominate 40% of a commodity's total supply in the market is required to make written application to the Competition Council and provide prescribed information including a report detailing the consequences of the proposed Economic Concentration, in particular its positive effect on the market. The entity can proceed to complete the Economic Concentration if the Council notifies its approval or if the Council doesn't notify its refusal within 60 days of the application date.

Complaints

A party claiming to be affected by conduct which it believes breaches the Competition Law or its Regulations, may request the Competition Council to conduct an investigation to determine whether breaches of the Competition Law have occurred. The Competition Council may also initiate investigations without any prior complaint.

Penalties

The Competition Council may require prohibited conduct to stop, disposal of assets and take other action to remove the effects of the violation. Violators may also become subject to financial penalties.

Compensation

Anyone suffering harm caused by conduct prohibited under the Competition Law may apply to the court for compensation.

Taxation

Taxation

Corporate Income Tax

A foreign partner or shareholder in a resident Saudi company and a non-resident who does business in Saudi Arabia through a permanent establishment are subject to corporate tax income rate on income and realised capital gains.

Registration of a company or branch with the General Authority for Zakat and Income Tax is mandatory.

The rate of tax is generally 20% on net profits except for some specified businesses. Saudi and GCC nationals in corporate structures are subject to a religious levy (Zakat) of 2.5% which is derived from what is known as the "Zakatable Base", a rather complex formula linked to the number of shares of the company and other values.

Saudi Arabian Tax Law does not distinguish between different categories of income. Capital gains are treated as ordinary income.

Customs Duty

Rates of duty vary depending on the type and quantity of the commodity. Most basic consumer products are duty free.

Withholding Tax

Withholding tax is levied at rates between 5% (dividends, interest, certain service fees, branch remittances abroad) and 15% (royalties and certain service fee payments to related parties) paid to non-residents, subject to the provisions of any applicable double taxation treaty.

Value Added Tax

In line with the other GCC countries, in April 2017, Saudi Arabia approved the introduction in 2018 of value added tax at 5%.


ARABIAN
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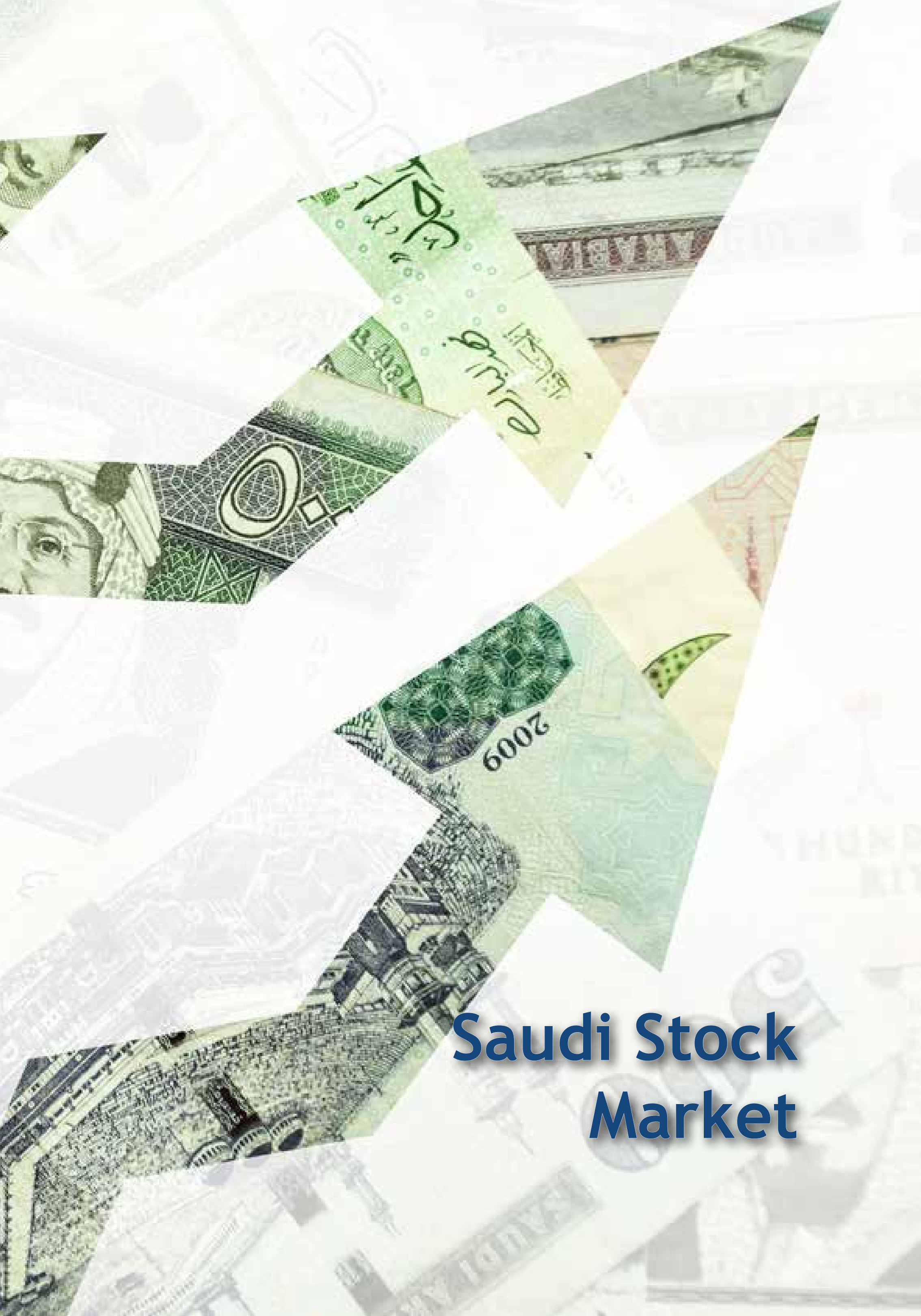

Saudi Stock Market

Saudi Stock Market Open For Foreign Investment

With a market valuation in the region of USD575 Billion, the government of Saudi Arabia has for quite some time explored methods of improving stability in the Gulf's largest listed share market - Tadawul.

Volatility in listed share values regularly highlights perceived weaknesses in the Saudi capital market. When the Tadawul All Shares Index ("TASI") nosedived following plummeting oil prices in 2015, many market commentators remarked that the extent of the dive was, to a large extent, unjustified.

The vast majority of significant investors in Tadawul are local retail investors having short term goals underpinning their investment strategy.

In 2008 the Capital Market Authority ("CMA") introduced equity swap arrangements where foreign investors could purchase only the economic benefit of listed shares for a defined period of time. Swaps never attracted the level of investment the CMA hoped for, mainly because they were cumbersome to implement and gave no underlying shareholder rights.

In 2014 the CMA issued draft rules enabling certain qualified foreign institutions to directly access share trading on Tadawul for themselves and on behalf of their clients. The rationale behind opening up the

Tadawul for direct foreign investment was:

- improvement in market stability and a reduction in pricing volatility;
- an increase in local expertise of financial markets;
- encourage listed entities to raise their overall performance;
- improved corporate governance and transparency for listed entities; and
- to lift the international rating of Tadawul.

In 2015 the CMA formally released the "Rules for Qualified Foreign Financial Institutions Investment in Listed Shares", pursuant to Resolution Number 1-42-2015 ("Rules") and the amended rules came into effect in September 2016. The objectives of the Rules are the following:

1. to set out the procedures, requirements and conditions for the registration of a qualified foreign investor ("QFI") – (defined as a foreign investor registered with the CMA in accordance with the Rules to invest in listed shares);
2. to set out the procedures, requirements and conditions for the approval of QFI clients to invest in listed shares; and
3. to specify the obligations of KSA registered securities businesses in their dealings with a QFI.

Under the Rules, investors are able to exercise shareholder rights that include voting, participation in appointing board members and trading in rights issues. These rights were not present in equity swap arrangements.

QFIs may invest in all securities listed on the Tadawul (including from January 2017 as part of an IPO).

The Rules impose the following restrictions and limits on investment:

- a QFI may not own more than 10% of the shares or convertible securities of any Tadawul-listed issuer; and
- all foreign investors (in all categories, whether resident or non-resident) cannot own in aggregate more than 49% of the shares or convertible securities of any Tadawul-listed issuer.

Investments by QFI's will also be subject to any other regulatory limitations on foreign ownership in joint stock companies, the rules of any other relevant regulatory body and the provisions of the issuer's constitutional documents

Eligibility for Registration as a QFI

Broadly speaking, in order to qualify as a QFI, an applicant must satisfy each of the following criteria:

1. be a bank (including a central bank), brokerage/securities firm, fund manager or insurance company and must be duly licensed or otherwise subject to regulatory oversight and incorporated in a jurisdiction that applies regulatory and monitoring standards equivalent to those of the CMA;
2. have assets under management of at least USD1Billion; and
3. have been engaged in securities and investment related activities for at least five (5) years.

The Rules do not apply to nationals and companies of States that are members of the Cooperation Council of the Arab States of the Gulf as these persons may invest directly in KSA listed shares.

Applications for QFI registration are initially assessed by a CMA authorised person ("Authorised Assessing Person") and, if approved by the Authorised Assessing Person, a further CMA review and approval process.

In August 2016 new rules were enacted allowing foreign investors to purchase shares in IPOs from January 2017.

Anti-Corruption Laws

Anti-Corruption Laws

In recent times Saudi Arabia has made significant efforts to identify and prosecute corrupt officials from within the public sector.

The principal laws dealing with corruption among public officials are the Civil Service Law 1977 and the Anti-Bribery Law 1992.

Under the Civil Service Law, public officials are not permitted to accept gifts of any nature. The Anti-Bribery Law also applies to public officials as well as to those persons or companies that are involved in offering bribes to public officials or using force or threats against them in order to obtain a benefit.

Public Officials

Under the Anti-Bribery Law, the following positions are regarded as that of a public official ("Public Officials"):

- temporary or permanent employees of the government or a governmental body;
- an arbitrator or expert appointed by the government or judicial body;
- a commissioner of a government authority or administrator given specific tasks;
- employees, chairmen and board directors who work for companies:

- providing public utility services;
- that are joint stock companies in which the government holds capital; and
- companies that carry out banking activities.

What Must be Received to Constitute a Bribe?

Under the Anti-Bribery Law, receipt of any benefit or advantage (financial or non-financial) would be considered a bribe and includes a promise, gift, bounty, favor or recommendation and there is no exception for facilitation payments.

Crimes by Public Officials

Public officials who demand a bribe for themselves or another person for performing their normal duties (or abstaining from performing such duties) are deemed to be a bribe taker. This applies even if the public official had no intention to fulfill the promise given to the other party or even when such a demand was made after the performance or abstaining of the duties without pre-agreement.

It is also a crime for a Public Official to demand or receive a bribe for themselves or another person for using an actual or pretended power so that any public authority will give preferential treatment in relation to any action, order, decision, commitment, license, supply agreement, post or service. The crime also includes attempts to use the actual or pretended power.

Penalties for Crimes by Public Officials

Under the Anti-Bribery Law the principal penalties vary according to the severity of the circumstances. The most severe penalties are 10 years imprisonment and/or SAR 1,000,000 fine. The lesser crimes still carry imprisonment penalties of up to 3 years and/or a fine of up to SAR 100,000.

In addition to the principal penalties that apply in particular cases, the public official may also:

- be discharged from official duties and prevented from holding office as a public official (although this may be revised by the Council of Ministers 5 years after the principal penalty has ended); and/or

- have money or any other advantage or benefit obtained from the offending behavior confiscated.

Other Crimes

Every public official who demands for themselves or another person or accepts or receives a bribe because of their position to follow up a transaction at a government authority (and not otherwise covered by the Anti-Bribery Law) is liable, along with the other parties involved, to imprisonment of 2 years and/or a fine up to SAR50, 000.

Use of Force and Threats

Persons who use force or threats against a public official in order to get an illegal action performed are liable to the principal penalties under the Anti-Bribery Law.

Bribes Made but not Accepted

A person who offers a public official a bribe that has not been accepted can face a penalty of up to 10 years imprisonment and/or a fine of up to SAR1,000,000.

Parties to the Bribe

Under the Anti-Bribery Law the briber and whoever contributed to the crime is punishable by the applicable penalty. In addition, those who knowingly assist or collaborate in the commitment of, or after the actual crime has been committed, are liable. This includes people who have been appointed by the principal offenders to take the bribe when knowing the reason for it.

Whistleblowers

Where a person provides information of a crime under the Anti-Bribery Law and such information leads to the proof of crime (and provided that person is not a party to the crime) then a reward of not less than SAR 5,000 is payable and also up to one half of the value of any confiscated money. In addition, a discretionary reward of a greater amount may be dispensed by the Ministry of Interior once approved by the Council of Ministers.

The Anti-Bribery Law allows for the briber (or other party not being the Public Official) to be excused from the applicable Anti-Bribery Law penalties if that person informs the Ministry of Interior of the crime before it is discovered.

Recidivist Offenders

A Public Official is deemed to be a recidivist offender if that same person commits another crime under the Anti-Bribery Law within five years from the date of his previous penalty expiring. In such cases recidivist offenders may be punished with up to twice the prescribed penalty.

Consequences for Companies

Companies involved in bribing Public Officials risk penalties of either a fine up to ten times the bribe or being prohibited from entering into contracts with government ministries and government departments. This provision applies to any Saudi or foreign company.

The Council of Ministers may reconsider the prohibition on entering into the above contracts after 5 years have elapsed from the date the previous judgment was issued.

Public Announcements of Bribery

The Ministry of Interior publishes and announces judgments issued on breaches of the Anti-Bribery Law.

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