



**DOING BUSINESS IN
SAUDI ARABIA**

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ABOUT US

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

Established in 1989, Al Tamimi & Company is a full-service, commercial law firm. We combine our expertise, experience, and local insight, to ensure our clients have access to commercially sound and cost-effective legal solutions across the Middle East.

Recognising the importance of the Saudi Arabian market, we opened our Riyadh office in 2008, followed by offices in Jeddah (2015) and Al Khobar, Eastern Province (2016). Today, we are the largest law firm in Saudi Arabia, servicing client needs across the Kingdom.

We take great pride in the fact that a significant number of our lawyers are Saudi nationals, including a number of Saudi-qualified women lawyers.

We have a deep understanding of the Saudi Arabian business landscape, and its legal and regulatory systems. Working seamlessly with our colleagues across the region, our Saudi offices combine the expertise of locally qualified lawyers with that of lawyers from across the Middle East and around the world, to provide a full range of legal services.

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www.tamimi.com



FOREWORD

Saudi Arabia is by far the largest economy in the Middle East. Historically, the economy has been driven by oil production, and oil revenue has dominated export earnings.

In recent years, the Saudi government has introduced a number of measures aimed at developing the Kingdom's economy. Early 2016 saw the launch of Saudi Vision 2030, a roadmap for economic diversification.

The plans outlined in Saudi Vision 2030 include limited de-regulation, the encouragement of foreign investment, and privatisation in selected areas of the economy. Technology, education, entertainment, tourism, healthcare, transport, infrastructure, mining, water and agriculture, are just some of the key government priorities providing commercial opportunities to businesses.

The implementation of Saudi Vision 2030 will lead to major changes across all sectors of the Saudi economy. As a law firm with a strong presence in the Kingdom, Al Tamimi & Company is very excited about the significant opportunities that this initiative presents.

Our Doing Business in Saudi Arabia guide provides an overview of some of the legal considerations that may arise when considering business opportunities in Saudi Arabia. We trust you will find it of some benefit, and we will be pleased to be of further assistance.

Doing Business in Saudi Arabia?

So are we.



ESSAM AL TAMIMI

Senior Partner & Founder
Al Tamimi & Company



HUSAM HOURANI

Managing Partner
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Seeing the bigger picture

Al Tamimi & Company knows more than just the law. We focus on the here and now and also understand that our advice may affect the future. We therefore ensure our lawyers think about the situation at hand, current and future challenges and potential opportunities.

In a region where the legal landscape is never black and white, we have the knowledge, expertise and cultural awareness to make sure our clients are at the forefront of doing business in the Middle East.

17 Offices | 9 Countries | 350 Lawyers

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LEGAL SYSTEM



LEGAL SYSTEM

Shari'ah

According to the Basic Law of Governance, the Kingdom of Saudi Arabia is a fully sovereign Arab Islamic state. Its religion is Islam and its constitution is the Holy Qur'an and the Sunnah (traditions) of the Prophet Muhammad (PBUH). The Qur'an and the Sunnah form the Islamic Shari'ah, which is the primary foundation of all Saudi laws.

Governance

Saudi Arabia is a monarchy, governed by His Majesty King Salman bin Abdulaziz Al Saud, in consultation with an appointed consultative assembly called the Shoura Council. The King is both the Head of State and the Head of Government, and chairs the Council of Ministers, a cabinet made up of ministers responsible for the various governmental portfolios in the Kingdom.

Each region of Saudi Arabia is overseen by a Governor/Prince, who manages his region in consultation with a municipal council made up of a combination of government appointees and members elected through public elections.

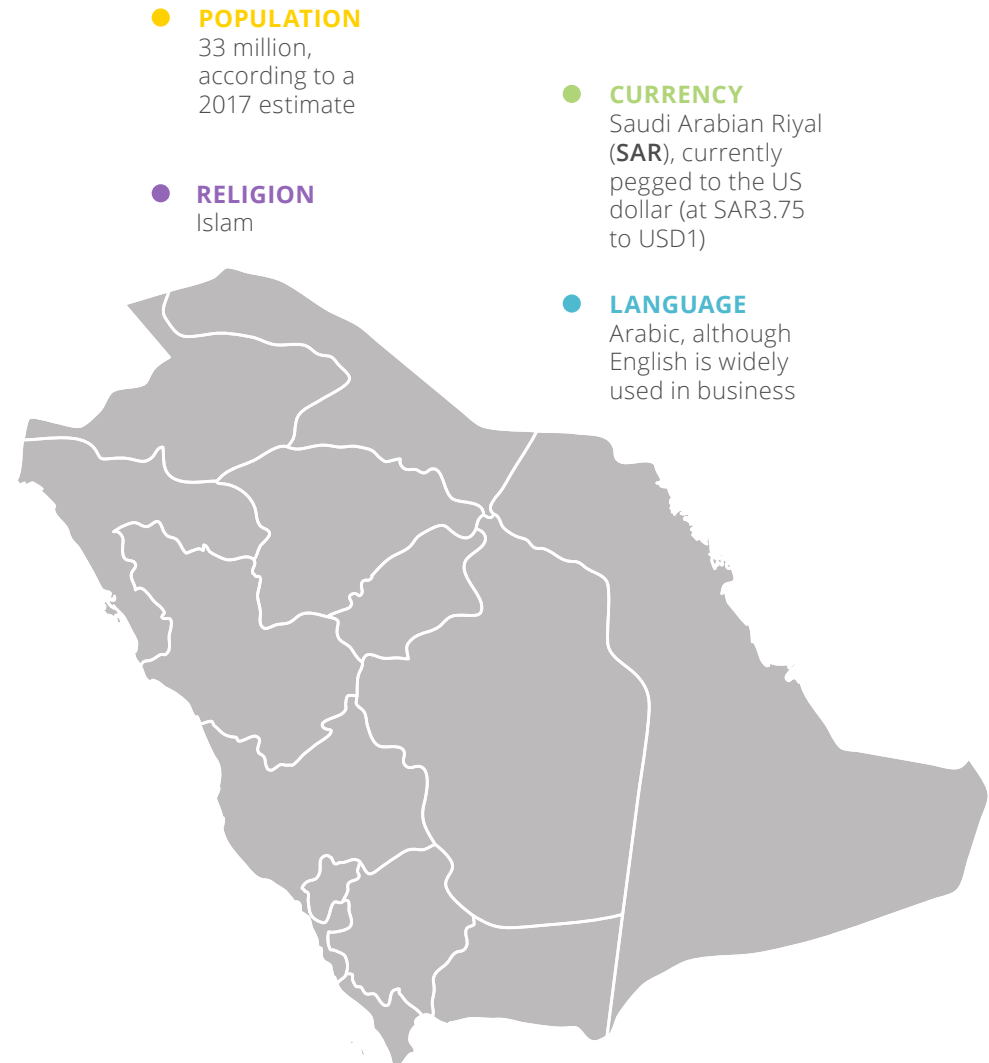
Judiciary

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 in order to achieve a fair result in all the circumstances of the case. The independence of the judiciary is a principle enshrined in the Basic Law of Governance and the Law of the Judiciary.

Contracting

The formation and enforceability of contracts is governed by Shari'ah principles. Under Shari'ah, contracts which are not expressly prohibited are permitted. Contracts should be reviewed for compliance with Saudi law and Shari'ah before being entered into. If a local court accepts jurisdiction, it would not give effect to a provision providing for a foreign law to govern the contract.

In practice, 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 or other statutory or regulatory considerations. This is the basis on which, for example, obligations relating to the payment of interest (prohibited in Islam) are generally not enforceable in Saudi Arabia.





SAUDI VISION 2030

SAUDI VISION 2030

Saudi Vision 2030, the Saudi government's roadmap to diversify the economy and address challenges resulting from lower global energy prices, was announced in April 2016. In June 2016, the National Transformation Program 2020 (NTP) was launched, with the aim of meeting interim targets through various strategic initiatives across 24 governmental bodies.

The plans outlined in both Saudi Vision 2030 and the NTP cover wide-ranging business and social elements that will result in fundamental changes and opportunities across all business sectors in the Kingdom. There is a strong emphasis on increased private sector involvement, the privatisation of a large number of government activities, and the development of various industries. The range of initiatives and opportunities spans social and community related projects (e.g. housing, sports centres, public facilities), education, healthcare, municipal services, energy, environmental, industrial & manufacturing, oil & gas, technology and transportation sectors.

Developments since the launch of Saudi Vision 2030 and the NTP provide strong evidence of the fast pace of change. Governmental authorities are being proactive in seeking, and promoting, private sector involvement. A number of privatisations are anticipated, with related opportunities for foreign and local investors, lenders and advisors. Other investments could take the form of joint ventures or public private partnerships, and a new law dealing with public private partnerships is expected.

Expected cost of NTP initiatives from 2016 to 2020:

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

Particular highlights of Saudi Vision 2030 and the NTP include:

- *Privatisations* – a wide range of Government assets to be privatised;
- *Saudi Aramco IPO and Overseas Investment* – the listing of up to 5% of Saudi Aramco, the government-owned oil company, with proceeds to go to the Public Investment Fund (PIF), making it a globally active sovereign wealth fund valued at up to USD 3 trillion;
- *Private Sector Investment* – increasing the private sector contribution from 40% to 65% of GDP, with particular focus on energy, healthcare, housing and municipal services;
- *Foreign Investment* – increasing direct foreign investment from SAR 30 billion to SAR 70 billion, and plans to speed-up investment approval times;
- *Defence Industry* – 50% of military equipment spending to be localised by 2030;
- *Mining Industry* – to be reformed to stimulate massive growth with target of SAR 97 billion by 2020, and 90,000 job opportunities;
- *Telecommunications Industry* – the development of telecommunications and information technology infrastructure, including high speed broadband;
- *Transportation* – the creation of a regional logistics hub, with linked internal and cross border infrastructure;
- *Oil & Gas* – the continued localisation of the sector from 40% to 75%, development of support sectors, increased gas production, and development of a national gas distribution network;
- *Renewable Energy Industry* – to be developed with private sector participation, with consequent reduced dependence on hydrocarbons;
- *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 health 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 the development of government land for housing projects; and
- *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.

In April 2018, the government issued the Privatization Program (Delivery Plan 2020). Known as the Vision Realization Program, it provides for the privatization programme contemplated in Saudi Vision 2030 to be managed by the recently established National Center for Privatization & Public Private Partnership. The Vision Realization Program also establishes a number of key privatization initiatives that are expected to have an impact by 2020.

Saudi Vision 2030, the NTP, and the Vision Realization Program, are all essential reading for anyone operating in, or investing in, Saudi Arabia - or considering doing so.

Key Sector MINING

Saudi Vision 2030 and the NTP have targeted reform of the mining sector to stimulate massive growth with a target of SAR 97 billion by 2020 and 90,000 job opportunities.

Saudi Arabia has extensive deposits of phosphate and bauxite, and commercially viable deposits of minerals including gold, silver, lead, zinc, copper and iron ore, as well as rare earths. It also has large deposits of many of the key minerals used in the construction industry. The Ministry of Energy, Industry & Mineral Resources has an extensive database 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 licences and exploitation licences are available to companies and individuals.

- Non-exploitation licences include reconnaissance and material collection licences, valid for two years, and exploration licences, which are valid for three 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 five years.

Licences may be transferred with the approval of the Ministry of Energy, Industry & Mineral Resources.

Saudi Arabian Mining Company, which trades as “Ma’aden”, is a diversified mining company (the largest in the Kingdom), formed for the purpose of facilitating the development of Saudi Arabia’s mineral resources. The Government owns 50% of Ma’aden’s shares (through the Public Investment Fund), while the remaining 50% are listed on the Saudi stock exchange (**Tadawul**).



Key Sector

EDUCATION

The success of Saudi Vision 2030 depends in large measure on reforms in the education system generating a better basis for employment for young Saudi nationals. The government contemplates preparing a modern curriculum, focused on rigorous standards in literacy, numeracy, skills and character development, as well as working closely with the private sector to ensure higher education outcomes are in line with the requirements of the job market. The education focus of Saudi Vision 2030 is further reflected in the NTP's strategic objectives.

Specific plans include:

- A comprehensive framework for the professional development of teachers and educational leaders;
- Developing a national strategy to upgrade the teaching profession by raising the professional level of teachers, improving the profession's ecosystem and raising the quality of services provided to teachers;
- Shifting to digital education to support teacher and student progress;
- Encouraging the private sector to invest in public education including at kindergarten level;
- Attracting private investments to finance school construction;
- Develop the Independent Schools model to reach 2000 public schools run by small establishments; and
- Establishing a practical framework to align university graduates with labour market needs.

Taken together these measures represent a sea change in the education sector in the Kingdom.

There are several broad opportunity areas for the private sector to explore in the education sector, including: setting up privately operated colleges and universities; establishing pre-school institutions and day-care offerings; enhancing labor market linkages and job placement programs to match graduates to jobs; creating and delivering blended learning innovations. In addition, there will be an opportunity for private sector provision of support services to existing public and private education institutions. Examples include site maintenance, canteen operations, cleaning services, IT infrastructure and management services.

The scope of private sector involvement in the financing and construction of education infrastructure is clear, but whether the same access will be given to the actual delivery of educational services is less so. The potential for joint ventures around items such as technical curriculum development and teacher training is significant. The franchise model, adjusted as necessary to accommodate the specific traditions of the Kingdom, also has potential to play a role.

Education is a fundamental building block of the Vision as a whole and its progress is likely to be scrutinized carefully.

Key Sector

HEALTHCARE

Healthcare is another key focus area of Saudi Vision 2030. There is a definite move towards privatisation, with a stated objective in the NTP of increasing private healthcare expenditure from the current 25% to 35% of total healthcare expenditure. This represents a projected increase in revenue generated from SAR 3 billion to SAR 4 billion. In addition to this, the Ministry of Health plans to spend over SAR 23 Billion on new initiatives over the next five years.

The NTP has identified various healthcare-focussed strategic objectives, including:

- Improve the efficiency and effectiveness of the healthcare sector through the use of information technology and digital transformation;
- Increase the attractiveness of nursing and medical support staff as a preferred career path;
- Improve healthcare provision before hospitalisation and in the main hospitals (ER & ICU);
- Improve the infrastructure, facility management and safety standards in healthcare facilities;
- Improve governance in the health system in order to enhance accountability with regards to quality issues and patient safety;
- Adopt a national plan for emergency response to public threats in line with international standards;
- Improve public health services with focus on obesity and smoking;
- Improve the quality of life and healthcare service provided to patients outside hospitals; and
- Ensure sufficient supply of basic medicines.

Saudi Vision 2030 offers many opportunities in healthcare for the foreign investor, and these have been identified in the NTP as follows:

- Additional private medical facilities;
- Increased medical insurance;
- Increased use of information technology;
- Healthcare Education;
- Provision of improved training facilities;
- Enhanced professional development; and
- Local manufacture of pharmaceuticals.

Foreigners are able to own and manage hospitals in Saudi Arabia but are unable to own or manage other healthcare institutions. It is envisaged that foreign participation and investment in new hospitals will take place through public-private partnerships and joint ventures with Saudi-owned entities.

Medical insurance is already compulsory for expatriates and Saudi nationals (and their dependents) working within the private sector. Citizens working within the public sector currently receive free coverage in government health care centres and public hospitals. It is not known at this stage how medical insurance will develop, but as more public services are privatized and public-private partnerships are entered into, the provision of healthcare will naturally transfer to the private sector. In anticipation of this, medical insurance providers are developing products that cater for public sector employees.

Digital healthcare innovations are key to supporting Saudi Vision 2030. The Ministry of Health is aiming for at least 70% of Saudi citizens to have unified digital records by 2020. In addition, information technology solutions, including diagnostic equipment and software, and telemedicine solutions, will improve the performance and productivity of healthcare providers, and improve quality.

There is a recognised need for qualified Saudi healthcare practitioners and support staff. The increased education and training needs will be catered for domestically and internationally, potentially with links

to world-renowned institutions and public-private partnerships. Furthermore, this increased need could also be addressed through management and operational arrangements with internationally recognised service providers.

Saudi Arabia is mostly dependent on imports for its pharmaceutical requirements and there is a desire for pharmaceuticals to be manufactured locally to ensure an adequate supply. Foreign pharmaceutical manufacturers are being actively encouraged to establish plants in Saudi Arabia through public-private partnerships and joint ventures with local entities. Incentives are being offered in the form of preferential treatment in future volume tenders. As an additional incentive, foreign owned manufacturers within Saudi Arabia are able to distribute and sell pharmaceuticals within the country, whereas imported pharmaceuticals can only be distributed through a Saudi distributor.

The manufacture of medical devices and equipment is an investment opportunity for foreign investors. Currently, the majority of medical devices and equipment is manufactured abroad and imported into the country. The Ministry of Health is supporting local manufacturing by partnering multinationals with Saudi companies with the incentive of guaranteed volumes for Ministry of Health purchases and preferential treatment in future volume tenders. Furthermore, foreign owned manufacturers within Saudi Arabia have the additional benefit of being able to distribute and sell medical devices within the country, without the need for a local distributor.



EXPORTING TO SAUDI ARABIA



EXPORTING TO SAUDI ARABIA

Commercial agencies

A foreign business does not require a legal presence in Saudi Arabia where goods are being sold directly to an end user in the Kingdom. Similarly, where its goods are imported for sale or resale through distributorship, commercial agency or franchise arrangements (referred to generally as 'commercial agencies'), it is not necessary for a foreign company to establish a legal presence in Saudi Arabia.

Commercial agencies are a common and relatively straightforward way for a foreign business to arrange for its products to enter the Saudi market. Only Saudi nationals, or Saudi companies 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 in the market.

Commercial agency agreements must be in writing, and the agency must be registered with the Commercial Agencies Department of the Ministry of Commerce & Investment within six months of commencement of the agreement. Failure to register can result in fines and other penalties.

A commercial agent has no statutory right to compensation upon the lawful non-renewal or termination of its commercial agency. Despite this, 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 of the existing agent.

Export and import

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, and they should be able to provide specific and current details of the documentation that must accompany goods destined for Saudi Arabia.

The Saudi Standards, Metrology and Quality Organisation (**SASO**) formulates national standards for products, including labelling, inspection and testing. In order to obtain customs clearance, all imported goods must have a "Conformity Certificate for Goods Exported to the Kingdom of Saudi Arabia". A conformity certificate must be issued by an approved accreditation body, authorised by the relevant official agency in the country of origin. The party submitting the conformity certificate must declare compliance of the goods with SASO's requirements. There may also be additional authorisations and requirements applicable to the particular products (e.g. 'type approval' requirements for telecommunications equipment).



SETTING UP IN SAUDI ARABIA

SETTING UP IN SAUDI ARABIA

Deciding on a form of business presence in Saudi Arabia requires consideration of many factors, including the type of business to be conducted, the industry or sector, and taxation implications. For foreign (i.e. non-GCC) businesses, obtaining a foreign investment licence is a necessary pre-condition.

Regulation of foreign investment

The foreign investment landscape is undergoing a period of change and, to some extent, relaxation of regulatory requirements as a result of Saudi Vision 2030. However, the Foreign Investment Law, issued in 2000, remains the centre-piece of the Saudi government's foreign investment regulatory regime. Serious administrative and criminal penalties can result if activities are undertaken in contravention of the Foreign Investment Law, and even more so if the conduct involves 'fronting arrangements' in breach of Saudi Arabia's Anti-Concealment Law. Breaches will also jeopardise future investment in Saudi Arabia.

Generally speaking, and with limited exceptions, foreign businesses wishing to establish commercial operations in Saudi Arabia must obtain a foreign investment licence from the Saudi Arabian General Investment Authority (**SAGIA**). The general rules applicable to a SAGIA licence application are published on SAGIA's website (www.sagia.gov.sa).

The licence application period (and process) will vary according to the type of business enterprise to be established (and licence to be obtained), and the time taken by the applicant in putting together all the required supporting information and documentation. Once all the required information has been submitted to SAGIA, and assuming the application meets all requirements, it would typically take up to four weeks for a foreign investment licence to be issued. If, depending on the nature of the activities, approvals are required from other Saudi Arabian authorities, the timeframe could take longer. SAGIA is constantly making great efforts to reduce the period required to obtain the SAGIA licence and streamline its process but, at present, four weeks is a realistic timeframe.

It is important to note that the foreign investor needs to demonstrate its experience in the relevant field of activity by at least providing one

years' worth of audited accounts. This currently limits the possibility of using a special purpose vehicle when establishing in Saudi Arabia.

Some business activities are completely closed to foreign investment. This group of activities comprises the so-called 'Negative List', which sets out activities that are exclusively reserved for Saudi-owned businesses. As a result of Saudi Vision 2030 and a desire to open the Kingdom to foreign investment, the Negative List is under constant review and future changes are expected. To better understand what is and what is not prohibited to foreign investors it is essential to obtain current, on-the-ground insight into the optimal 'going to market strategy' for the relevant business.

Examples of business activities included in the Negative List at the date of publication are:

- Oil exploration, drilling and production
- Manufacturing of military equipment, devices and uniforms
- Military catering services
- Security and investigation services
- Makkah and Madinah real estate investment
- Hajj and Umrah tourist orientation and guidance services
- Recruitment and employment services
- Real estate brokerage
- Printing and publishing (with certain exceptions)
- Distributorships, commercial agencies and franchises
- Land transportation services (with certain exceptions)
- Midwifery, nursing, physical therapy and paramedics
- Fisheries
- Blood banks, poison and quarantine centres

For all activities not covered by the Negative List, foreign investors may be allowed to own up to 100% of the capital of an enterprise, depending upon the business activity and compliance with SAGIA's requirements. Some business activities (e.g. banking and insurance) have prescribed minimum Saudi ownership requirements.

Examples of maximum permitted foreign ownership for certain business activities:

Business Activity	Permitted Foreign Ownership (Maximum)
Services	100%
Manufacturing	100%
Trading (wholesale and retail)	75%*
Professional services	75%**

*SAGIA may permit major foreign investors, making a significant, long-term contribution to Saudi Arabia's economy, to establish wholly owned trading companies - subject to certain conditions, currently including an initial capital contribution of SAR 30 million (about USD 8 million), and a commitment to invest a further SAR 270 million (about USD 72 million) over five years or SAR 170 million (about USD 45.5 million) over five years if other specific requirements are met.

**SAGIA has announced that it is permissible (subject to certain requirements) for international companies to establish 100% foreign-owned engineering professional services companies.

After the SAGIA licence has been obtained, the foreign investor will need to seek the approval of the Ministry of Commerce & Investment for the relevant entity and obtain an appropriate commercial registration certificate for it.

Forms of legal entities

Depending on the circumstances, and subject to a matrix of commercial, taxation, and legal considerations, one or more of the types of business structures referred to below may suit a foreign investor. A new Companies Law came into force in 2016, completely replacing the previous law and introducing a number of significant changes. We have set out below some further detail on the most common forms of entities formed by foreign investors wishing to do business in Saudi Arabia.

Branch Office

If the foreign business does not want (or require) a Saudi partner, opening a Saudi Arabian branch office (**Branch**) maybe a suitable choice. 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 SAR 500,000 (about USD 135,000).

Despite this, business entities with at least some Saudi ownership may be required in certain circumstances (e.g. government contracting), so it important to consider this in the context of assessing whether a Branch will be an appropriate means of setting-up in the Kingdom.

A Branch is not legally distinct from the foreign business itself, so 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.

Limited Liability Company

A limited liability company (**LLC**) is suited to a broad range of business activities. Where a corporate joint venture is entered into with a Saudi partner, the LLC is often seen as the business structure of choice.

An LLC's business activities are limited by the activities (objects) set out in its articles of association and in the foreign investment licence issued by SAGIA. An LLC acts in its own name in its business dealings, and it can sponsor foreign employees for residency (an important characteristic for businesses looking to build their own employee base in the Kingdom). An LLC carrying out activities that require a SAGIA industrial licence may be able to obtain finance on favourable terms from the Saudi Industrial Development Fund.

As part of the foreign investment licence approval process, a decision will be made by SAGIA and the Ministry of Commerce & Investment about the minimum capital required to establish the LLC. This will be influenced by the LLC's proposed business activities and its projected expenditure for the first five years of operation.

An LLC can generally have between one and 50 shareholders. Only one class of shares is allowed, and different voting rights are not permitted. An LLC may not offer its shares to the public, and is not allowed to engage in certain types of business activity (e.g. banking and insurance). Share transfers are permitted, subject to regulatory approvals and statutory pre-emption rights enjoyed by the other shareholders.

Generally speaking, the personal liability of a shareholder 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 (e.g. where the LLC's losses amount to 50% or more of its share capital, and it continues to trade without following the correct procedures). Following the issuance of the Companies Law 2016, this no longer appears to be the case.

An LLC may either have a general manager or a board of directors. An LLC with more than 20 shareholders must have a supervisory board to oversee and advise management. Subject to compliance with general requirements relating to employment of foreigners, there is no specific restriction on the appointment of a foreigner (with residency, iqama, in Saudi Arabia) as a general manager of a SAGIA licensed LLC.

Joint Stock Company

A joint stock company (**JSC**) can be either 'open' (which means that its shares are offered to the public), or 'closed' (meaning its shares cannot be offered to the public). All companies listed on the Tadawul, the Saudi stock exchange, are open JSCs. Certain types of activities (e.g. banking and insurance) may only be carried out by a JSC.

A JSC requires share capital sufficient for the JSC to achieve its purpose, subject to a minimum capitalisation requirement of SAR 500,000 (about USD 135,000). There must be at least two shareholders, unless the JSC will have a minimum share capital of SAR 5 million (about USD 1.35 million), in which case the JSC may be formed by a single shareholder.

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

Shareholders in a JSC are exempt from personal liability on the same basis as the shareholders in an LLC, and are also not personally liable for the debts of the JSC should such debts exceed 50% of the JSC's stated capital.

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 there is no capital requirement.

The issuance of a TCR is restricted to companies that 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 relevant 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 & Scientific Services Office

A foreign company may establish a Technical & Scientific Services Office (**TSSO**) to provide technical and scientific support to its registered Saudi agents, distributors and consumers. A TSSO 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, although less documentation is required to support the foreign investment licence application, and there is no capital requirement.

A TSSO is able to sponsor its own foreign employees, although a minimum number of Saudi nationals will need to be employed. The authorities impose a restriction on the number of technical employees employed by a TSSO, beyond which this number may not be increased except with the authorities' prior approval.

Professional Services Company

While there are various forms of entities that can carry out business activities in Saudi Arabia, a Professional Services Company is the only type of entity that can legitimately conduct engineering, architectural, accounting, and other professional services (Engineering activity should not be confused with the activities of an EPC company, the form of which would be either an LLC or a JSC).

A Professional Services Company generally requires a joint venture arrangement with a Saudi individual or entity licensed to carry out the particular profession. (For example, a foreign engineering firm could partner with a Saudi engineer or engineering firm registered with the Saudi Council of Engineers.)

Although it has some similarities with an LLC, under Saudi law, a Professional Services Company is treated more akin to a partnership than an LLC. As with a partnership, the partners of a Professional Services Company have joint and several liability for the debts and obligations of the Professional Services Company – although they are able to apportion liability as between themselves.

Establishing this type of entity currently does not require a foreign investment licence from SAGIA, and capitalisation requirements are not prescribed. Provided a foreign applicant meets certain experience and other criteria, it may own up to 75% of a Professional Services Company. There has been some talk of SAGIA removing this cap in respect of certain professional services, although no concrete details have been published.





TAXATION

TAXATION

Corporate income tax

It is compulsory to register a Saudi company (or a branch of a foreign company) with the General Authority for Zakat and Income Tax.

Saudi and GCC nationals in corporate structures are subject to Zakat, a religious levy of 2.5%. Zakat is derived from the 'Zakat-able Base', determined by a formula linked to the number of shares of the company and other values.

For foreign partners or shareholders, and for non-residents who do business in Saudi through a permanent establishment, the rate of corporate income tax is generally 20% on net profits, with limited exceptions (notably in the hydrocarbons sector, where oil production is taxed at a rate of 85%).

There is no distinction between different categories of income, and realized capital gains are treated as any other corporate income.

Saudi Arabia has entered into more than 40 double taxation treaties.

Personal income tax and social security

There is no personal income tax in Saudi Arabia.

Social insurance is payable monthly by the employer for non-Saudi employees at 2% of the total of basic monthly salary, housing allowance and commission payments. For Saudi nationals, 10% is payable by the employees and 12% by the employer. Social insurance is calculated based on a maximum wage limit of SAR 45,000.

Value Added Tax

On 1 January 2018, Saudi Arabia implemented a value added tax of 5%. This is in line with a 2017 decision of all GCC countries, although at the time of writing only Saudi Arabia and the UAE have actually implemented VAT.

Unless a supply is specifically zero rated or exempt, VAT is imposed on the supply of goods and services in Saudi Arabia, as well as imports of goods and services.

Examples of VAT zero-rated supplies: the export of services and goods

to recipients outside the GCC; the international transportation of goods and passengers; the supply of medicine and medical equipment; and the supply of investment grade precious metals.

Examples of VAT exempt supplies: the supply of margin based financial services; the supply of life insurance; and leases of residential real estate.

Businesses in Saudi Arabia are required to register for VAT if the value of annual taxable supplies exceeds the mandatory registration threshold of SAR 375,000 (about USD 100,000). A business may register for VAT if the value of annual taxable supplies exceeds the voluntary registration threshold of SAR 187,500 (about USD 50,000). Non-residents that are liable to account for VAT must register, irrespective of the value of the supplies.

Withholding tax

Withholding tax applies at rates between 5% (dividends, interest, certain service fees, branch remittances abroad) and 20% (royalties and certain service fee payments to related parties) paid to non-residents by resident companies and permanent establishments in Saudi Arabia, subject to the provisions of any applicable double taxation treaty.

Customs duty

Rates of duty vary depending on the type and quantity of the commodity. Customs duty applies to imported goods, generally at the rate of 5% of the cost, insurance and freight (CIF) invoice value. However, certain goods may be subject to customs duty at a higher rate. Most basic consumer products are duty free.

Excise tax

On 11 June 2017, Saudi Arabia implemented excise tax. The excise tax applies on the importation and production of excise goods released for consumption in Saudi Arabia. At the time of writing, excise tax applies to tobacco products at 100%, carbonated drinks at 100%, and energy drinks at 50%. The excise tax is based on the higher of i. the retail sales price of the excise goods, and ii. a list price determined and published by the government.

Property tax

Undeveloped land within urban boundaries attracts a land tax of 2.5%.

A city skyline at sunset, with a large red rectangular overlay on the right side containing the word "COMPETITION" in white, bold, uppercase letters. The skyline features several prominent buildings, including a tall, light-colored tower on the left and a large, multi-story building on the right. The sky is a mix of blue and orange, and the water in the foreground reflects the buildings and the sky.

COMPETITION

COMPETITION

Saudi Arabia's Competition Law came into effect in January 2005, and was amended by subsequent implementing regulations in 2014. The Competition Law, which is enforced by the Competition Council, applies to any company doing business in Saudi Arabia. It does not apply to public (government) corporations or fully-owned state enterprises.

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.

The Competition Law prohibits practices, agreements or contracts (whether written or oral, express or implied) among current or potential competitors, where the objective or effect of such practices, agreements or contracts, is the restriction or prevention of competition. The Competition Council has some discretion in enforcing the law, when it concludes that such practices and agreements improve efficiency and provide benefits to consumers that outweigh the anti-competitive effect.

The abuse of a dominant market position in the Saudi market is prohibited. A 'dominant position' refers to entities that have a market share of at least 40% of total sales in the relevant market in a 12 month period, or that are in a position to influence the prevailing price in the market at any time.

Broadly speaking, 'abuse' would involve practices in the nature of the following, that restrict competition:

- 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; and
- making the sale of a commodity, or offer of a service, contingent on the purchase of another commodity or service.

The Competition Law also addresses conduct such as the acquisition of ownership or management control that results in a dominant position in the market. An entity planning to achieve economic concentration that will result in control of 40% of a commodity's total supply in the market is required to make an initial electronic application, and then (if determined by the Competition Council as necessary) a subsequent written application to the Competition Council providing prescribed information including a report detailing the likely consequences of the proposed economic concentration (in particular, its positive effect on the market). The entity can proceed with the transaction if the Competition Council confirms its approval – or does not decline approval within 60 days of the entity's application.

The Competition Council may initiate investigations into possible breaches of the Competition Law either at its own discretion, or by acting on the complaint of an aggrieved party. If it concludes that a breach has occurred, the Competition Council may order that the prohibited conduct cease, issue fines, and take other action to remove the effects of the violation and penalize the perpetrator. Anyone suffering harm caused by conduct prohibited under the Competition Law may apply to the court for compensation.

A cityscape at dusk with a prominent water tower in the foreground and a semi-transparent teal box containing the word 'EMPLOYMENT'. The water tower is illuminated with blue and yellow lights. The sky is a mix of purple, orange, and blue. In the background, there are various buildings and a minaret. A semi-transparent teal box is overlaid on the right side of the image, containing the word 'EMPLOYMENT' in white, bold, uppercase letters.

EMPLOYMENT

EMPLOYMENT

Saudization

Increasing the number of Saudi nationals participating in paid work is a key driver for many of the changes happening in the Kingdom. The Nitaqat Programme, which promotes the employment of Saudi nationals, is an important initiative of the Ministry of Labour and Social Development.

Essentially, there are minimum requirements for the number of Saudi nationals that should be employed in certain types of businesses. The minimum number depends on the type of company, industry and roles/job titles.

Through the Nitaqat Programme, employers are rewarded - or penalized - depending on the extent to which they achieve 'Saudization' targets applicable to them. For example, employers categorized as 'platinum' or 'green' receive privileges when it comes to employing foreign workers; employers categorized as 'yellow' or 'red' are subject to various restrictions in relation to visas and work permits, and are unable to prevent their workers from transferring to employers in the 'platinum' or 'green' categories.

Employment of foreign nationals

Non-Saudis may work in Saudi Arabia, provided the requisite approvals are obtained. Specifically,

- 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 subsequently obtain a work and residence permit (Iqama) for the employee within 90 days of the employee's arrival. (The Iqama is required for various practical purposes, including to open a Saudi bank account and to enter into a lease of residential accommodation.)

Non-Saudi GCC nationals are generally not subject to the same requirements and have the right to work in Saudi Arabia without a work visa.

Anecdotally, the process of obtaining Employment visas for foreigners outside the Kingdom can be very time-consuming, and it is important to bear this in mind for business planning purposes. Hiring someone

already in-country can be less time-consuming, although not without its own challenges.

A Business Visit visa (rather than an Employment visa) may allow key staff to get on-the-ground in the Kingdom, relatively quickly, as a preliminary step – although this is not a long-term solution, and care should be taken to comply with the requirements of the Business Visit visa.

Labour Law

Originally issued in 2005, the Labour Law is the principal legislation governing the employer - employee relationship in Saudi Arabia, irrespective of whether the parties nominate a foreign law as the governing law of the employment contract. The Labour Law is administered by the Ministry of Labour and Social Development.

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.

Some key considerations relevant to employment contracts for companies wishing to do business in Saudi Arabia are as follows:

- *Probation:* Provided it is mentioned in the employment contract, 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 employee may be dismissed by the employer for any reason during the probationary period.
- *Social and health insurance:* The Social Insurance Regulations require employers to make monthly contributions, calculated as a percentage of an employee's wage, to the General Organisation for Social Insurance (**GOSI**) on behalf of such employee. Employers must also provide (usually at the expense of the employer) medical insurance that covers the employee and the employee's dependents (family) living in Saudi Arabia.
- *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.
- *End of service benefits:* Employees are generally entitled to receive an end-of-service award, commonly known as a 'gratuity'. The gratuity

is typically calculated as half a month's wage for each of the first five years of service, and one month's wage for each subsequent year. The amount of gratuity can vary depending on a number of factors, including whether the employee resigned or was terminated (without cause).

- *Term and termination:* Employment contracts may be fixed term or, in the case of Saudi and GCC nationals, unlimited as to term. Unlimited term employment contracts may be terminated, for a valid reason, by written notice. Where the employee is paid monthly, notice of not less than 60 days is required; in other cases, notice must be not less than 30 days. Unfair dismissal may result in an award of monetary compensation.

BUSINESS VISIT

Visit visas are required by all visitors to Saudi Arabia (except nationals of GCC States), and must be obtained before travelling to the Kingdom. An invitation must be obtained from a Saudi entity (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, and subject to the specific requirements identified by the Saudi Embassy in the applicant's country of residence. The maximum permitted stay under a business visit visa is one month. Application for a visit visa should be arranged well in advance.



A photograph of an industrial refinery or chemical plant at sunset. The sky is a mix of blue and orange. Several tall distillation columns and complex piping systems are visible, illuminated by warm yellow lights. A semi-transparent red banner is overlaid on the right side of the image, containing the text 'GOVERNMENT CONTRACTING' in white, bold, uppercase letters.

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

The following are some key features of the Government Bids and Procurement Law.

- All government tenders are announced and publicised.
- Generally, bidders must have a legal presence in Saudi Arabia, and be appropriately licensed for the activity the subject of the bid. Priority is given to bidders who specify the supply of Saudi manufactured goods and services.
- 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.
- 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.
- The prevailing language of all government contracts is Arabic. The contract forms are typically prepared by the Ministry of Finance and can be bilingual, although the Arabic version will prevail.
- The government party must submit contracts with an execution period of more than one year and a value exceeding SAR 5 million (about USD 1.35 million) to the Ministry of Finance for review prior to entering into the contract. Service contracts with terms in excess of 5 years require the prior approval of the Ministry of Finance.
- The government party may increase the obligations 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 Government Bids and Procurement Law.
- If the government party defaults, the contractor may not refuse to perform its obligations on the basis that the government party is in default, but it may lodge a claim for compensation with the Compensation Committee. It is not permitted for the contractor to file a claim before the courts in the initial stages.

As regards PPP projects, the new National Center for Privatization & Public Private Partnership was established in 2017. This new entity oversees the development of projects across sectors and will, in due course, promulgate further regulation and guidance in this regard.



ANTI-CORRUPTION

ANTI-CORRUPTION

Along with other developments in Saudi Arabia, there is a significant focus on corruption, and the cost it imposes on the economy and national finances. The recent detention of high profile Saudi businessmen and subsequent criminal settlements relating to corruption garnered global attention, providing an indication of the extent to which local authorities are seeking to crack-down on corruption in Saudi Arabia. Anecdotally, it seems that issues relating to anti-bribery prosecutions are getting more and more exposure in local media, indicating that the authorities are being more active in enforcing the law.

The National Anti-Corruption Commission (**Nazaha**) has overall responsibility for anti-corruption efforts in Saudi Arabia, and works with audit bodies and law enforcement authorities to take action. Furthermore, in an effort to bolster investigative and prosecutorial powers of the authorities, a new Anti-Corruption Committee was recently established by royal decree with a view to eliminating illicit practices in the Kingdom.

The primary anti-corruption provisions are laid down in the Anti-Bribery Law, which was issued in 1996. More recently, a decree setting out rules relating to gifts for public officials was issued in 2015, and a decree to provide adequate protections to whistleblowers was issued in 2018.

Bribery of public officials

The Anti-Bribery Law is primarily focused on 'public servants'. The definition is fairly broad, and extends to employees of joint stock companies, along with their board members and directors. It could also extend to private sector individuals who are working on government-related projects, such as consultants to government projects, and anyone working in banking. The definition includes:

- anyone who works, permanently or temporarily, for the government or any public corporate entity;
- any arbitrator or expert assigned by the government or any judicial authority;
- any person assigned by a government agency or any other administrative authority to perform a specific task;

- any person who works for companies or sole proprietorships that manage, operate or maintain public facilities or provide public services, as well as any person who works for joint stock companies, companies partially owned by the government and companies and sole proprietorships engaged in banking services, and chairmen and members of the board of directors of any such entities.

Under the Anti-Bribery Law, a 'bribee' is any public servant who solicits, accepts or receives for himself or for others, a gift or payment of any sort, or a promise thereof, as consideration for (amongst others):

- performing any of his official duties or an alleged office duty, even if the action taken is legitimate (and regardless of his intent not to perform the promised act);
- not performing an official duty or an alleged office duty, even if such inaction is legitimate (and regardless of his intent not to perform the promised act);
- breaching his official duties, or as a reward for the same, even in the absence of a prior agreement;
- using a real or alleged influence to obtain, or attempt to obtain, from any public authority, a contract, order, decision, commitment, licence, supply agreement, job, service or a privilege of any type; or
- breaching his official duties by performing or refraining from performing any such duties as a result of a plea, recommendation or an intercession.

Penalties and enforcement

Penalties for the offences set out above range from imprisonment for a term not exceeding three years and/or a fine not exceeding SAR 100,000 (about USD 27,500) through to imprisonment for a term not exceeding ten years and/or a fine not exceeding SAR 1,000,000 (about USD 275,000).

Along with the specific penalties applicable to bribes of public servants, it should be noted that the Anti-Bribery Law provides for the briber, and any accomplice, to be liable to corresponding punishments. Additionally, anyone who offers a bribe that is rejected shall be punished by imprisonment for a term not exceeding ten years and/or a fine not exceeding SAR 1,000,000 (about USD 275,000). Recidivists (persons proven to have committed another offence under the Anti-Bribery Law within five years of the completion of punishment for a previous conviction under the Anti-Bribery Law) can be

subjected to a penalty higher than the maximum limit of the prescribed punishment for the offence. A public servant convicted of any offence set forth in the Anti-Bribery Law shall be dismissed and prevented from assuming any public position or performing any acts that are the responsibility of public servants, for a minimum period of five years. In all cases, where possible, any money, benefit or privilege the subject of the offence shall be confiscated. The publication of judgements issued on bribery offences is also available as a punishment.

The Anti-Bribery Law provides for rewards for individuals who provide incriminating information relating to an offence (i.e. whistleblowing). Any person who is not a briber, or an accomplice, and who provides incriminating information substantiating any offence set out in Anti-Bribery Law, shall receive a reward not less than SAR 5,000 (about USD 1,350) and not more than half of the money confiscated. There may be scope for a higher reward to be approved in appropriate circumstances.

An allegation of bribery would typically be directed to the National Anti-Corruption Commission and/or the Public Prosecutor for further investigation. Legal steps typically taken against a bribe-giver would involve a preliminary investigation, a summons, arrest, indictment, trial, settlement with government, judgment. The culpability of the bribe-giver will not be affected by his or her nationality, with the bribery provisions applying to domestic and foreign nationals alike.

Exposure for corporate entities

Significantly, where the manager or any employees of a private company is convicted of any offence under the Anti-Bribery Law, and the offence was committed for the benefit of such company, the law provides for corporate liability through a fine not exceeding ten times the value of the bribe and/or a ban from entering into public procurement or project contracts. Such ban would be for a minimum period of five years. The briber can be exempted from punishment if he informs the authorities prior to the discovery of the offence, and this may provide some means by which corporate entities can limit their exposure upon becoming aware of any apparent offences under the Anti-Bribery Law.

The Anti-Bribery Law does not specifically contemplate any reduction in legal exposure to corporate entities where they can show that they have adopted anti-bribery compliance training. Despite this, as a best practice approach, it is typical for international companies operating in the Kingdom to adopt the type of compliance programs required of them in other jurisdictions.

Gifts and hospitality

Requirements relating to legitimate gifts and hospitality are not exempted in the Anti-Bribery Law. Any benefit or privilege obtained by the bribee, regardless of its type or designation, whether material or otherwise, shall be considered a (prohibited) gift or promise. Despite this, in practical terms, modest hospitality, such as reasonable meals in the context of negotiating a deal or working on a transaction, are unlikely to be considered bribery subject to the Anti-Bribery Law, provided however that there is no corrupt intent involved. A corrupt intent may be inferred subject to the circumstances, due to which companies are advised to be cautious in regards to provisions of gifts and hospitality, and to document all such occasions in a transparent manner.

Separate to the Anti-Bribery Law, a decree referred to as the Rules on Gifts to Officials was issued in 2015. Pursuant to these Rules, an official may accept gifts, given at visits and official occasions or at receptions of official guests, in accordance with custom and the courtesy protocols of such visits and occasions. Under the Rules, gifts cannot be cash, and the type and value of the gift must be consistent with what is customarily given in accordance with the type of its occasion. Additionally, the person giving the gift should not have any special interest in something (a benefit) to be granted by the official or the public body to which the official belongs. Generally, gifts given to officials will be owned by the public body to which the official belongs, and should be kept on such body's premises in a suitable place for storage or presentation. There are some exceptions that allow an official to keep a gift for himself. These include gifts of modest value (generally, less than SAR 4,000; about USD 1,000); and perishable/consumable type gifts, usually for personal use, regardless of their value.

Anti-Corruption reform

Legislative changes to the Anti-bribery Law are expected to be implemented in the near future, following approval of draft amendments by the Shoura Council in July 2018, which may supersede many of the provisions contained in the existing law. Such reform could have a profound impact on conventional business practices within the Kingdom by providing stronger deterrents against corrupt activity, particularly if considered in conjunction with other improved enforcement tools, such as the recently established specialized anti-corruption units within the Public Prosecution. Overall, authorities have taken significant steps to improve their capacity to detect and prosecute corruption and strengthen the market's security against associated crimes.



STOCK MARKET

STOCK MARKET

The government of Saudi Arabia has for some time explored methods of improving stability in Tadawul, the Gulf's largest listed share market by market capitalization. The vast majority of significant investors in Tadawul are local retail investors or high net worth individuals. Volatility in listed share values regularly highlights perceived weaknesses in the Saudi capital market.

A recent upgrade of the Kingdom of Saudi Arabia to an 'Emerging Market' by MSCI, a leading provider of global equity indexes, is expected to enhance the diversity of the investor base as well as the liquidity of the Saudi capital market. The Kingdom, which was added in March 2018 to the FTSE Russell as a 'Secondary Emerging Market', will be included in MSCI's Emerging Market Index in two phases concurring with the May 2019 Semi Annual Index Review and the August 2019 Quarterly Index Review.

To facilitate participation by international investors in the Saudi capital market, the Capital Market Authority (CMA) issued in 2014 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 included:

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

In 2015, the CMA formally released the Rules for Qualified Foreign Financial Institutions Investment in Listed Shares, which came into effect in September 2016. The Rules do not apply to GCC nationals and companies, as these persons may invest directly in Tadawul-listed shares.

The Rules, which have most recently been amended in January 2018, set out the procedures, requirements and conditions for the registration, and approval, of qualified foreign investors (QFIs) to invest in listed shares;

and the obligations of Saudi Arabian registered securities businesses in their dealings with QFIs. Under the Rules, QFIs are able to exercise shareholder rights that include voting, participation in appointing board members and trading in rights issues. QFIs may invest in many securities listed on the Tadawul, including many IPOs. QFIs may also access the Nomu – Parallel Market of Tadawul, which is a parallel equity market with lighter listing requirements that serves as an alternative platform for companies looking to go public.

The assessment of the applicant institutions seeking to obtain a QFI status is made by an assessing authorized person (i.e. an entity authorized by the CMA to conduct securities business in KSA) rather than by the CMA. The assessing authorized person examines the application on the basis of criteria and procedures set out in the Rules.

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

- be a bank, brokerage/securities firm, investment fund, insurance company, or government and government related entity 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; and
- with the exception of government and government related entities, have assets under management or custody of at least USD 500 million.

The affiliates of a QFI or a foreign portfolio manager who meets certain specified criteria, and the funds managed by them, shall also be considered as QFIs, without the need for a separate application.

The Rules impose the following restrictions and limits on investment:

- no QFI may own more than 10% of the shares or convertible debt instruments of any Tadawul-listed issuer; and
- no more than 49% of the shares or convertible debt instruments of any Tadawul-listed issuer may be owned by foreign investors.

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



BANKING & FINANCE

BANKING & FINANCE

SAMA and banking business

The Saudi Arabian Monetary Authority (**SAMA**) is the central bank of Saudi Arabia and the regulator of the banking sector. The Banking Control Law 1966, together with its implementing regulations, constitutes the principal law governing banking activity in Saudi Arabia. The Banking Control Law defines 'banking business' as follows:

"The business of receiving money on current or fixed deposit account, opening of current accounts, opening of letters of credit, issuance of letters of guarantee, payment and collection of cheques, payment orders, promissory notes and similar other papers of value, discounting of bills, bills of exchange and other commercial papers, foreign exchange transactions and other banking business."

This chapter is focused on banking business. Banking business should be distinguished from 'securities-related business', which is regulated by the Capital Markets Authority (**CMA**). The Securities Business Regulations issued by the Board of the CMA pursuant to its Resolution Number 2-83-2005 dated 21/05/1426H (28 June 2005) sets out the requirements for applying for a securities business authorisation from the CMA, in respect of the securities activities of dealing, arranging, managing, advising and custody.

Shari'ah compliant transactions

According to the Basic Law of Governance, the Kingdom of Saudi Arabia is a fully sovereign Arab Islamic state. Its religion is Islam and its constitution is the Holy Qur'an and the Sunnah (traditions) of the Prophet Muhammad (PBUH). The Qur'an and the Sunnah form the Islamic Shari'ah, which is the primary foundation of all Saudi laws.

Shari'ah principles relating to contracts are not codified in Saudi Arabia. Accordingly, the broad and general nature of the Shari'ah means that Saudi courts can be expected to apply a combination of discretionary powers and established legal principles in the review and interpretation of contracts. Given this flexibility, Saudi law generally provides parties the freedom to negotiate the terms of their dealings, unless such dealings relate to activities prohibited under the Shari'ah.

Financing structures used in Saudi Arabia typically are structured using Islamic finance arrangements such as *Ijara* or *Forward Ijara* (similar

to a finance lease), *Mudaraba* or *Musharaka* (similar to a joint venture or partnership), *Murabaha*, etc.

Banking industry reforms

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

- *Commercial Pledge Law*: This law, issued in 2018, deals with the taking of security over movable assets, including future movables, and the creation of floating charges.
- *Real Estate Mortgage Law*: This law provides for the registration of mortgages. It also facilitates a secondary mortgage market (and thereby enables access to the capital markets for refinancing) by allowing mortgages to be transferred by the mortgagee. 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 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.

Security creation and guarantees

Commercial Pledge Law

The Commercial Pledge Law has changed the landscape in relation to the creation of security over 'movables' in Saudi Arabia. These changes will have an impact on the law and practice of banking in the Kingdom and will provide a wider variety of options when structuring lending transactions.

- *Movables – current and future property and future rights*: Previously, it was possible to create security over movables that were in existence, but it was generally not possible to create securities over future movables (e.g. machinery under-construction or future deposits in a bank account). The Commercial Pledge Law contemplates the creation of security over movable property, whether in existence already or yet to come into existence. For movables that will come into existence, the pledgor should have a contract for purchase or

construction and should be able to describe the asset, its value and date of completion. Future rights include debts that can be pledged or assigned by way of security, and this would cover receivables under contracts or invoices.

- *Security for a commercial debt:* Significantly, the Commercial Pledge Law applies to pledge contracts that secure 'Commercial Debts'. A Commercial Debt is a debt that arises from business or professional activities.
- *Registered pledges, possessory pledges and priority:* Where registration of pledges is applicable under the Commercial Pledge Law, pledges are required to be registered at the Unified Register of Commercial Pledges. If there is a special register for a type of asset (e.g. vehicles, ships, aircraft), registration on the relevant special register would suffice. A pledge contract relating to movable property is valid as against third parties if it is registered, or if possession of the movable property is transferred to the pledgee or to a trustee. For inventory and raw material, a floating charge is required to be created (discussed below). It is possible to create more than one pledge on the same pledged property. A registered pledgee will have priority over an unregistered pledgee in respect of the same pledged property. If there is more than one registered pledgee, the pledgee having the earlier date of registration will have priority. Unless otherwise agreed between the pledgees, a pledgee under a pledge contract shall have priority over a pledgee under a floating charge or a pledge over economic enterprise. At the time of writing, the Ministry of Commerce & Investment has published a draft of the Commercial Pledges Unified Register Regulation, which aims to provide for the electronic registration of pledges.
- *Pledge over bank accounts:* A significant development under the Commercial Pledge Law is that it is now possible to pledge both present and future deposits in a bank account. Under the Commercial Pledge Law, it is possible to take security both over the deposits standing to the credit of the bank account as at the date of the pledge, as well as future deposits. This is especially important where security is to be taken over deposits in current and operating accounts, where deposits and withdrawals occur on a regular and on-going basis. Unless the pledgor and pledgee agree otherwise, the pledgor is not permitted to operate the bank account.

- *Floating charge:* The Commercial Pledge Law defines a floating pledge or floating charge as a pledge created over movable property, without determining the elements of the movable property. Effectively, the pledgor and the pledgee are not required to identify the specific assets that are subject to the pledge. Inventory and raw materials are covered under the scope of a floating charge. A floating charge must be registered in the Unified Register of Commercial Pledges in order for the security to be effective against third parties. The pledgor is required to provide monthly reports of the stock available, and the quantity is not permitted to fall below 50% of the required pledged property unless the parties have agreed otherwise.
- *Pledge over economic enterprise:* The pledge over economic enterprise, or pledge over commercial business, enables the secured party to obtain security over an entity that carries out commercial or professional activities. The pledge over economic enterprise creates security over all elements of the commercial or professional business, including its intangible elements (goodwill and customer database) and its tangible elements including its movable assets, rights (receivables and book debts), as well as the location where commercial activities are carried out. Inventory of products sold by the business would be excluded.
- *Pledge over securities:* The Commercial Pledge Law excludes from its application shares of companies that are listed as well as shares of unlisted companies (being shares of Joint Stock Companies Closed). However, portions in entities (e.g. a portion or shares in a limited liability company) may fall under this Commercial Pledge Law and require registration at the Unified Register of Commercial Pledges. Other unlisted securities may also require registration unless they are governed by a special law governing perfection requirements.
- *Pledge contract:* The Commercial Pledge Law sets out the constituent elements of a pledge contract. The key elements include: (a) where the pledged property is not in existence, the expected description, approximate date of existence and approximate value of the pledged property should be specified; (b) the general description, amount or maximum limit of the secured debt should be specified; and (c) the due date or expected due date of the secured debt should be specified.

Mortgage of Real Estate in Saudi Arabia

The Registered Real Estate Mortgage Law (the 'Mortgage Law'), issued in 2012, was a significant step towards encouraging real estate finance in Saudi Arabia. Until recently, local banks typically took an outright conveyance of

the title to real estate (*lfragh*) to a nominee entity. The transfer of title structure involves the obligor transferring legal title to a special purpose company, set up by the bank providing the financing, for the duration of the financing. The title to the property would revert to the obligor once the financing is repaid.

The Mortgage Law has now paved the way for a traditional mortgage structure, whereby the title to the property would remain with the borrower and the bank would obtain a registered mortgage. Some of the key features of the Mortgage Law are as follows:

- *Once a mortgage over property is registered, the secured debt can be recovered from the sale of the property in priority to other creditors;*
- *The mortgage should be created in respect of a specific debt, or future or contingent debt, provided that the amount of the secured debt or maximum limit of the debt is specified in the mortgage agreement;*
- *The owner of the property (mortgagor) continues to receive the rentals and other proceeds being generated from the property;*
- *The mortgagor and mortgagee may agree in the mortgage agreement that the receivables from the mortgage property will be used to pay the debt, in accordance with the amortisation schedule, and to service any other fees, charges, and profits;*
- *A lease of more than five years will not be enforceable if the property has been mortgaged; and*
- *A property may have more than one mortgagee, allowing for the creation of a succession of mortgages (e.g., first mortgage, second mortgage, and so on).*

In May 2017, SAMA issued a circular urging banks and finance companies to: comply with the notarisation of real estate mortgages and to stop the process of transferring title to property rather than mortgaging the real estate; remedy the status of properties that are currently registered in their name within a three-year period, and inform their clients accordingly; and inform SAMA about the cases in which the notary public refrains from registering a mortgage. This circular, in effect, restricts the outright transfer of title, and instead requires any security over real property to be registered as a mortgage under the Mortgage Law.

Importantly, following publication of SAMA's circular, notaries have issued guidelines as to the information banks will be required to present in order to register mortgages. Most notably, banks are required to provide a letter

confirming that the debt being secured by the mortgage relates to a Shari'ah compliant transaction (either a *tawarruq* or *murabaha*). Yet another recent development is the issuance by SAMA of standard form *ijara* and *murabaha* documentation to be used when providing real estate finance.

These legal and regulatory developments, coupled with government-sponsored housing schemes, are indications of further reform in the real estate and housing market in Saudi Arabia.

Guarantees

Guarantees are generally recognized under Saudi law, and are commonly provided by corporations and individuals for third party debts as an undertaking to make payment where the primary obligor has failed to make the payment. While both corporate and personal guarantees justifiably provide lenders with some comfort and recourse to the guarantor, there are various aspects a cautious lender must be aware of in respect of guarantees in Saudi Arabia.

- *Primary Obligations:* The obligations of a guarantor under a guarantee are secondary to those of the primary obligor. Furthermore, if the creditor releases the principal obligor from any guaranteed obligation, the guarantor will also be released from such obligation. In the same vein, if the primary obligations are found to be void, the guarantee will also be void as a result. Lenders should also be aware that if the primary obligor's obligations relate to a transaction that does not satisfy the primary objective of Islamic finance, there is a risk that the guarantee may not be enforceable. For instance, derivative contracts are generally not recognised as enforceable from a Shari'ah perspective. Therefore, if a guarantee was provided to secure such transactions, it is unclear whether it would be deemed enforceable if the underlying obligations are seen as too uncertain or speculative in nature.
- *Demands:* Any demands under the guarantee contract should be in writing. Furthermore, in certain instances, Saudi courts and other judicial authorities have acted in a manner which suggests that no reliance may be placed on any notice given by facsimile, telex, bank wire or electronically. Accordingly, from an evidentiary perspective, lenders should ensure that all communications to guarantors, including demands, are delivered by way of hard copies.
- *Enforceability:* Lenders should note that the Saudi courts and judicial committees are likely to interpret guarantees in favour of the guarantor; under Saudi law, guarantees are considered 'voluntary'

obligations. By way of example, while Saudi law does not stipulate a time period or limitation period during which a demand must be made, the Banking Disputes Settlement Committee has found that any delays on the part of a lender to exercise its rights against a guarantor can be construed as a waiver of the lender's rights against the guarantor.

- *All monies guarantees*: The distinction between specific guarantees and all monies guarantees is an important one. Under an all monies guarantee, a guarantor guarantees any and all obligations from the principal debtor to the lender, whether existing at the time of the guarantee or arising in the future. Lenders should be aware that guarantees for 'all monies' may face issues upon enforcement in Saudi Arabia. A fundamental rule of Shari'ah is that contracts must be free from uncertainty. In applying this principle, Saudi courts generally require that guarantees are issued with respect to a specified debt or a thing certain in amount. Additionally, Saudi courts have shown a preference for guarantees to include a maximum amount recoverable and to have a fixed period of validity.
- *Promissory notes*: Lenders should also note the importance of promissory notes, a form of quasi-security in Saudi Arabia. Promissory Notes fall within the definition of commercial papers as provided for in the Law of Commercial Papers 1964 and are commonly used in Saudi Arabia as they are generally quick to enforce. Any claims under a promissory note can be filed directly with the Execution Court, which would generally not examine the underlying transaction to which the promissory note relates (as promissory notes are treated as independent of their underlying agreements). A promissory note can be enforced in a few months (in contrast with a guarantee, for which enforcement can take up to two years or longer). For this reason, a market practice has developed wherein promissory notes are taken for financings from both borrowers and guarantors. Provisions for the granting and reissuance of promissory notes can be built into the guarantee, providing the lender a more efficient avenue for enforcement. Promissory notes may also be enforced by a foreign lender not licensed in Saudi Arabia, although successful enforcement would be subject to the liquidity of the borrower.
- *Upstream guarantees*: With regard to upstream guarantees (i.e. guarantees provided by subsidiaries for the benefit of their shareholders), and the extent to which these are permitted, this is

a somewhat controversial issue under Saudi law. In particular, there are differing views as to whether Article 10 of the KSA Law No. 999 of 2015 (the 'Companies Law'), which states that only profits from distributable profits may be distributed to the shareholders, applies to guarantees. Lenders should be aware that there are two views on this. The more restrictive view considers that where payments under guarantees are not made out of net profits, this would constitute a prohibited distribution of dividends. The alternative view is that payments under guarantees do not constitute a prohibited distribution where made for a proper purpose and there is demonstrable corporate benefit for the guaranteeing subsidiary. As this is a grey area, lenders should consider the impact of including an upstream guarantee in a security package. Additionally, Article 10 of the Companies Law is not thought to prohibit cross-stream guarantees (i.e. guarantees provided to affiliated companies), although it is generally necessary to demonstrate corporate benefit for this. Similarly, downstream guarantees (i.e. guarantees from parents to their subsidiaries) are not affected by this provision.



INSOLVENCY

INSOLVENCY

The lack of a modern fit-for-purpose insolvency regime has been a major bugbear for businesses, professional advisors and others doing business in Saudi Arabia. Some of the problems encountered include:

- Disorderly collection of debts, resulting in some creditors being paid but others missing out entirely;
- Little scope for workouts, potentially disadvantaging both creditors and debtors;
- Reduced prospects of survival of a viable business that may simply be experiencing a temporary hurdle;
- Lack of information on the financial well-being of a proposed counterparty;
- Lawsuits resulting from a multiplicity of legal claims; and
- Debtors attempting to defeat creditors' claims by concealing assets or disposing of them prior to insolvency at less than fair value or for no value at all.

In 2016, following a policy paper issued in 2015, the Ministry of Commerce & Investment announced plans to issue a Bankruptcy Law and published a draft of the law. The new Bankruptcy Law was published in the Official Gazette in February 2018, and came into force in August 2018. The new law contains many of the features of a modern, Western-styled insolvency regime.

The new law generally applies to:

- Individuals and corporations carrying on commercial, professional or for-profit businesses in Saudi Arabia; and
- Non-Saudi investors who have assets in Saudi Arabia, or who carry on commercial, professional or for-profit business in Saudi Arabia through a licensed entity.

The new law establishes work out procedures intended to forestall the need for liquidation where a person is bankrupt or insolvent.

- *Preventative Settlement:* A debtor may apply to the court for preventative settlement, and request a suspension of claims. The court may order a temporary extension for up to 90 days,

extendable to a total period not exceeding 180 days. During the period of suspension, and subject to limited exceptions, claims against the debtor, and enforcement procedures, are stayed.

- *Financial Restructuring:* This is a procedure aimed at facilitating a debtor coming to terms with its creditors regarding the financial restructuring of the debtor's business under supervision of a financial restructuring officer appointed by the court. The financial restructuring officer supervises the debtor's activity during the financial restructuring to ensure fairness of the procedure and its execution. The debtor will also need to obtain the officer's approval before undertaking certain actions that may have an impact on his asset and liability position. The court and creditors whose claims represent two thirds of the value of debts in the same class must approve the financial proposal. Once the court approves the financial restructuring, it applies to all creditors.
- *Liquidation:* Given the alternative forms of insolvency administration provided for by the new law, liquidation should be regarded as last resort. Liquidation will result in the assets of the bankrupt being sold and the proceeds distributed amongst the creditors under the management of a liquidation trustee. The liquidation trustee will liquidate the debtor's assets, list debts, and distribute proceeds of liquidation between creditors according to their debt's priority. Upon completion of liquidation, if there are no surplus assets, the liquidation trustee will take the necessary measures to wind up the company (if the debtor is a company). There are special arrangements for the liquidation of small debtors.

Rights of set-off are regulated in order to maintain equity between creditors. An order of priority is set-out in the new law, with a 'higher priority debt' being paid before a 'lower priority debt'. Transactions done with the intent to defraud creditors, conceal debtor's assets, or harm creditors and stockholders may be set aside. The new law also contemplates the establishment of an official Bankruptcy Register, open for inspection.



REAL ESTATE

REAL ESTATE

Who can own real property in Saudi Arabia?

Ownership of real estate in Saudi Arabia is generally restricted to Saudi citizens, but this is subject to a number of qualifications.

With the exception of properties within the vicinity of Mecca and Medina, a GCC company (with shareholders who are all GCC nationals), or a GCC national individual, may:

- lease or purchase land in Saudi Arabia to use it for the purposes of conducting any licensed business activity; and
- own residential property in Saudi Arabia, subject to certain restrictions and conditions.

Even the smallest equity interest held by a non-GCC individual or entity will make a corporate entity 'foreign', triggering the requirement for a foreign investment licence from SAGIA (including conditions stipulating the amount of capital that must be invested, and the timeframe for such investment). Saudi Arabia has a strict anti-fronting law, which must be carefully considered when structuring investments through an entity.

Generally speaking, and subject to addressing SAGIA foreign investment licence requirements, a non-GCC company may own Saudi real estate (not in the vicinity of Mecca and Medina, or in zones specifically excluded by royal decree) reasonably required for:

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

Non-GCC nationals may also own property in Saudi Arabia, if they have normal legal residency status and the required permits from the Ministry of the Interior.

Titles and the registration system

The Saudi government has initiated the massive and ambitious task of identifying all land within the Kingdom (and all property interests

in particular parcels of land) and including that information on a real estate register for each designated realty area. The system is intended to provide an investment-friendly environment, with technically accurate land identities to facilitate property dealings.

Saudi Arabia has laws in place for land identification, ownership, survey and registration. The implementation of these laws has not been entirely consistent or effective across the Kingdom. In practice, the system could be compared with a 'deeds system', whereby ownership is traced through the various contractual agreements between buyers and sellers, with notaries public completing changes in ownership and recording such details in a register kept by the Ministry of Justice. The practice may vary in different regions, and separate rules will apply in the Economic Cities.

Economic Cities

There are a number of 'Economic Cities' under development in Saudi Arabia. At the time of writing, these are: the King Abdullah Economic City (Makkah Region, on the West Coast, near Jeddah), the Knowledge Economic City (Medina Region), the Prince Abdulaziz bin Mousaed Economic City (Ha'il Region, in the North of the Kingdom) and the Jazan Economic City (in the South West of the Kingdom).

Regulations have been issued by the Economic Cities Authority for the registration of all foreign companies established in the Economic Cities, the registration of all land title deeds in the name of foreign entities established in the Economic Cities, and the issuance of licences and other approvals to service providers, including district cooling, warehousing and logistics in the Economic Cities.

REITs

In 2016, the Capital Market Authority introduced new rules allowing the formation of Real Estate Investment Traded Funds (**REITs**) on the Tadawul, the Saudi Stock Exchange, in an effort to open the real estate market to investment by a wider range of investors. The rules cover the management, operation, and ownership of the REITs. Subscription in a REIT is not only open to Saudis, but also to GCC citizens and non-Saudi residents in Saudi Arabia. Non-resident foreign investors are also allowed to trade in the units of the REITs on the Tadawul.

Off-plan sales

In recent years, Saudi Arabia 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.

In 2016, regulations were passed to provide added consumer protection in relation to off-plan sales in the Kingdom. Prior to any off-plan sales, a developer is now required to register the project with the Off-Plan Sale Committee at the Ministry of Housing, in order to show evidence of its financial ability to carry out the project and to open an escrow account to ensure that collections from unit purchasers are not diverted to other purposes.

The regulations also provide for the supervision of the construction progress by a consultation office (accredited by the Organisation of Saudi Engineers), which will provide quarterly technical reports on the project status until completion.

Mortgage of real estate

The Registered Real Estate Mortgage Law was issued in 2012, to create certainty over the priority of a debt secured by a registered mortgage and to do away with the practice whereby a lending bank would cause the borrower to make an outright transfer of title to the real estate to a nominee named by the bank until the loan is repaid. However, it is important to note that, the debt being secured by the mortgage must be the subject of a Shari'ah compliant financing transaction, and must not relate to a conventional finance arrangement, whereby interest is payable.

Jointly owned property

New laws have been issued to better regulate the formation of homeowners' associations and the management of jointly owned property. In practice, however, the level of implementation of such homeowners' association laws is variable, and developers often retain a management role in such jointly owned properties. As the popularity of ownership of apartments is likely to grow, the Ministry of Housing has taken a greater role in supporting and regulating homeowners' associations, and has recently published a bylaw setting out best practices in relation to the internal operations of homeowners' associations.

Fractional ownership

The System of Ownership of Units Law, issued in 2002, provides for fractional or 'strata' ownership of buildings, such as apartments, subdivided into individual ownership units.

Value Added Tax

VAT of 5%, effective in Saudi Arabia from 1 January 2018, is applicable to transfers of commercial and residential properties. However, leases, as well as sales of occupied commercial buildings (which may constitute sales of a business), are exempted from VAT.

Government initiatives

A number of Government initiatives have been introduced in the Kingdom with a view to promoting real estate development and to provide greater confidence in the real estate market. Among the Government initiatives are Etmam, Ejar, the Real Estate Regulatory Authority (**REGA**) and the Idle Land Tax Law.

- *Etmam* is a government initiative aimed at assisting real estate developers through various stages of their development projects. Etmam acts as a liaison centre by coordinating with the relevant authorities to avoid inordinate delays in the licensing and approval process for real estate developments, including approvals for subdivision of lands, and issuance of building permits, off-plan sales licences and building completion certificates.
- *Ejar* is a rental service e-network that can be used by both landlords and tenants (including expatriates). It is of particular benefit to tenants who can check if a landlord owns a property, if the landlord's representative is duly authorised and if a real estate agent is duly licensed for renting property. The service also allows tenants to report violations to the supervisory team at Ejar, such as brokers charging excessive commissions, brokers charging commissions on renewal of tenancy agreements, brokers colluding with the aim of manipulating the rent, and landlords failing to register the tenancy agreements on the Ejar network.
- *REGA* is a regulatory authority set up to enhance transparency, stimulate investment and provide consumer protection in the real estate industry. REGA is developing a number of measures, including price indicators (selling and rental) to avoid abuse by developers and landlords. It is also carrying out benchmarking exercises with reputable real estate regulators in Australia, the United States, Hong Kong, Singapore and

the United Arab Emirates, with a view to implementing best practices. REGA plans to organise various training programs and accredited courses in order to increase skills and quality among the various stakeholders in the real estate market.

- *Idle Land Tax Law* (or the “White Lands Tax Law”) is aimed at taxing undeveloped urban land (so-called ‘white lands’), in order to encourage landowners to address the issue of land shortage by developing land in urban areas. The annual tax rate is 2.5% of the value of the land. This new tax is consistent with the government’s policies for stimulating development and increasing affordable housing across the Kingdom.





INFORMATION TECHNOLOGY & COMMUNICATIONS

INFORMATION TECHNOLOGY & COMMUNICATIONS

The Kingdom is keen to harness the benefits that technological innovation can bring to the economy, and Saudi Vision 2030 identifies technology and innovation as one of the most important areas for investment. The government is partnering with the private sector in order to help develop the telecommunications and information technology sectors and, ultimately, the digital economy.

Saudi Arabia's massive defence spend will be increasingly brought on-shore, resulting in an increase in technology transfers. This is expected to stimulate other sectors of the economy, such as general industrial manufacturing, and communications and information technology.

Additionally, the Kingdom aims to become a global leader in e-government by expanding online services, streamlining processes, diversifying communications channels, boosting transparency and reducing delays. E-commerce is another area where there are high expectations, with the government anticipating approximately 80% of retail transactions being by way of e-commerce by 2030.

The Badir Program, initiated under the auspices of the King Abdulaziz City for Science & Technology (**KACST**), is a nation-wide program aimed at accelerating the growth of emerging, technology-based businesses in the Kingdom. As a result of the Badir Program, at the time of writing, 250+ new companies have already become active in the fields of e-commerce, communications, software and smart device applications. With advanced technological centres (such as KACST), and plans for a five hundred billion US dollar technology-focused mega city, the potential for businesses operating in the areas of technology and innovation will continue to grow.

Recent cloud computing regulatory initiatives may have the effect of encouraging greater establishment of cloud services infrastructure in the Kingdom.

Some particular points to note:

- Saudi Arabia has legislation providing for electronic transactions and for addressing cyber crime.
- It does not currently have a modern data protection law, although this will likely be addressed in the near future. Despite no data protection law as such, there are local law privacy considerations that may be material to personal data processing.
- There are no generally applicable information security laws that require the adoption of prescribed standards or processes. There are, however, sector specific considerations, such as the SAMA Cyber Security Framework applicable to the financial services sector.
- Similarly, there are no generally applicable rules relating to outsourcing of IT services, although there are sector specific considerations, such as the SAMA Rules for Outsourcing Processes.
- The government has issued rules that apply when the government entities contract with private-sector establishments to fund and implement e-government and e-commerce projects based on the principle of shared expected revenue.
- The Communications and Information Technology Commission (**CITC**) is the regulator responsible for telecommunications and information technology sector, and is responsible for licensing and regulating various activities.
- CITC has issued a Cloud Computing Regulatory Framework that governs the provision of cloud services to cloud customers in Saudi Arabia.



**INTELLECTUAL
PROPERTY**

INTELLECTUAL PROPERTY

Saudi Arabia is a member or signatory of a number of key international treaties and conventions on intellectual property, including:

- Convention Establishing the World Intellectual Property Organization (22 May 1982)
- Berne Convention for the Protection of Literary and Artistic Works (11 March 2004)
- Paris Convention for the Protection of Industrial Property (11 March 2004)
- Agreement on Trade-Related Aspects of Intellectual Property Rights (**TRIPS**) (29 May 2012)
- Patent Cooperation Treaty (3 August 2013)
- Patent Law Treaty (3 August 2013)

Trade marks

In 2016, the Trademarks Law 2002 was supplanted by the GCC Trademarks Law of 2014. The GCC Trademarks Law is a unified law to create uniformity between the local trade mark laws of each of the GCC member states namely: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates.

The GCC Trademarks Law defines a trade mark as:

“anything having a distinctive form such as names, words, signatures, letters, figures, drawings, logos, titles, hallmarks, seals, pictures, engravings, packs or any other mark or group of marks if used or intended to be used either to distinguish goods, products or services of a facility from other facilities or to indicate the rendering of a service or the control of inspection of goods or services. The voice or odour can be considered as a trademark.”

Saudi Arabia does not accept multi-class trade mark applications, and it is not a member of the Madrid Protocol.

The basic filing requirements for a trade mark in Saudi Arabia are:

- Name and address of applicant (and copy of evidence of incorporation for corporate applicants);
- List of goods and services;
- Soft copy of the trade mark; and
- An attested Power of Attorney in favour of the authorized agent responsible for submitting the application.

At the time of writing, the registration process is handled by the Ministry of Commerce & Investment, but this will soon change, as the Saudi Intellectual Property Authority (**SIPA**), one of the Ministry's initiatives within the NTP, will assume responsibility as the official registry for all intellectual property rights in the Kingdom.

Infringement of trademarks may attract fines and imprisonment, as well as an award of damages and other remedies. Claims for compensation may be made by the trade mark owner or by anyone who has suffered loss as a result of the infringer's actions. There is also a 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 to enforce the owner's trade mark rights.

Copyright

The Copyright Law 2003 protects works created in the fields of literature, art and science, irrespective of their type, means of expression, importance or purpose of authorship. It also protects derivative works such as translations, compilations and databases. There is no requirement to register copyright under Saudi law.

The period of copyright protection is typically 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 Copyright Law 2003 prescribes the penalties applicable to infringement, which may include fines, confiscation of infringing materials, closure of the business establishment and imprisonment.

As well as the Berne Convention, Saudi Arabia is a member of the Universal Copyright Convention.

Patents

At the time of writing, KACST is responsible for administration of the Law of Patents, Layout Designs of Integrated Circuits, Plant Varieties, and Industrial Designs 2004. KACST's General Directorate of Patents operates as the Patent Office in Saudi Arabia. It has responsibility for processing applications for patents, as well as industrial designs, plant variety rights and layout designs for integrated circuits. This responsibility is due to be transferred to SIPA, which will ultimately become the official registry for all intellectual property rights in the Kingdom.

To be eligible for a Saudi patent, an invention must be new, involve an inventive step, and be industrially applicable. The description must disclose the invention in a manner sufficiently clear to enable the invention to be performed by a person having ordinary skill in the art, and the claims must be clear, concise and fully supported by the description. Novelty is absolute; and inventive step is assessed with regard to whether or not, having regard to what was known at the priority date, the claimed invention would have been obvious to a person having ordinary skill in the art to which the invention relates. If granted, and subject to on-going payment of annuities, a Saudi patent typically lasts for 20 years from the date of filing.

The following are not patentable inventions pursuant to Saudi law:

- Plant varieties, animal species, or biological methods of producing plants or animals (although some exceptions apply in respect of micro-organisms, non-organic and micro-biological processes);
- Diagnostic methods, treatments and surgical operations needed for humans and animals;
- Discoveries, scientific theories and mathematical methods;
- Schemes, rules or methods followed to conduct business or perform mental activities or play games;
- Inventions the commercial exploitation of which may lead to violation of the public order or morals; and
- Inventions whose commercial exploitation is harmful to life, to human, animal, plant health or environment.

Basic filing requirements required at the time of application for a Saudi patent are as follows:

- Names and addresses of applicant/s and inventor/s;

- Details of home/foreign applications;
- One copy of abstract, specification and claims in English, along with Arabic translation; and
- Two sets of drawings (one set without numbering) if any.

Up to one month after application, it is necessary to submit a Power of Attorney, as well as a Deed of Assignment from inventor to applicant (if applicable). Both these documents need to be legalized up to the Saudi Embassy in the relevant country. If convention priority is claimed, a certified copy of the priority document (no legalization required) needs to be submitted within 90 days of the application.

Saudi Arabia acceded to the Patent Cooperation Treaty (**PCT**) in 2013, so it is possible to obtain a Saudi patent by filing for National Phase Entry from a foreign PCT application.

Separate to the national patent process in Saudi Arabia, it is also possible to apply for a GCC Patent, via the GCC Patent Office. The GCC Patent system provides a convenient way for applicants to secure patent rights in each of the GCC member states. The GCC Patent Office was established in Riyadh in 1998, in furtherance of the GCC's objectives to foster scientific and technical progress, facilitate transfer of technology, and boost economic growth in the region. The GCC Patent system is not part of the PCT, nor is it a member of the Paris Convention. However, the GCC Patent Office honours the Paris Convention priority rules, and a GCC Patent application can claim priority from a prior convention application as if the GCC were a signatory to the Paris Convention.





**DISPUTE
RESOLUTION**

DISPUTE RESOLUTION

Saudi court system

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

- Ordinary Judiciary
- Administrative Judiciary
- Judicial Committees and Quasi-Judicial Committees

Ordinary Judiciary

The Ordinary Judiciary consists of the following courts:

Courts of First Instance

Courts of First Instance deal with a variety of claims and are divided into five types, as follows:

- General Courts are entrusted with all claims and final evidence that fall out of the jurisdiction of other courts, the Notary Public, or the Board of Grievances (Administrative Court).
- Criminal Courts deal with all criminal cases, and all matters upon which the judgement on a criminal case before the same court depends.
- Personal Status Courts deal with all family and personal status claims.
- Commercial Courts deal with all principal and sequential commercial disputes.
- Labour Courts deal with labour disputes of all types and forms.

Appeal Courts

In each region of Saudi Arabia, there is one or more Appeal Court. The Appeal Courts review judgments and decisions issued by the Courts of First Instance appealed in their respective jurisdictions.

High Court

There is only one High Court in Saudi Arabia. The High Court oversees the proper application of the provisions of Shari'ah, and the laws issued

by the competent authorities that are not inconsistent with Shari'ah, in cases within the jurisdiction of the Ordinary Judiciary.

Administrative Judiciary

The Board of Grievances (Administrative Court) is an independent government body reporting directly to the King. It has jurisdiction in relation to disputes in which a governmental organisation is a party. As is the case with the Ordinary Judiciary, the Board of Grievances has three levels: First Instance Administrative Courts, Appellate Administrative Courts, and the High Administrative Court.

Judicial Committees and Quasi-Judicial Committees

Quasi-Judicial Committees are specialised committees that have jurisdiction over particular types of disputes. Examples include the Banking Disputes Committee (which operates under the auspices of SAMA), the Committee for Resolution of Securities Disputes (which operates under the auspices of the CMA) and the Customs Committee for customs disputes (which operates under the auspices of the Ministry of Finance). Decisions of Judicial Committees are subject to challenge before upper appellate committee, however the decisions of Quasi-Judicial Committees is subject to challenge before the Board of Grievances.

Arbitration

The decision whether to arbitrate, or to litigate through the judicial system, will depend upon the circumstances of a particular case.

Where the dispute is set in an international context, for a variety of reasons, arbitration tends to be the formal dispute resolution mechanism of choice. Arbitration provides greater flexibility when it comes to the governing law, language, and the potential enforcement of the arbitral award. Having said that, arbitration is not permitted where one of the parties is a Saudi government entity, unless permitted by the Council of Ministers.

Saudi Arabia issued a new Arbitration Law in 2012. This law 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 through filing a nullification case before the competent Appeal Court. The Arbitration Law refers to particular reasons for the nullification case to be accepted,

and the Appeal Court has no right to inspect the facts and the subject matter of the dispute.

Execution of judgements and awards

In 2012, a new law relating to the execution of judgements and awards was issued, setting out the framework and procedures for the enforcement of domestic and foreign judgments and awards in Saudi Arabia.

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, is enforceable in Saudi Arabia, provided the judgment is not inconsistent with Shari'ah.

Saudi Arabia is a party to the New York Convention relating to the recognition and enforcement of foreign arbitral awards. However, Saudi Arabia maintained a public policy exception to the reciprocal enforcement of awards, and can decline to enforce a foreign award if reciprocal arrangements are not in place with the relevant country, or if the award or judgement is inconsistent with Shari'ah.



