MENA LEGAL

DOING BUSINESS IN SAUDI ARABIA

RIYADH 2020

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Introduction

The biggest "Arabian Economy" experienced major changes since the 23rd of January 2015 when Salman bin Abdulaziz Al Saud became the King of Saudi Arabia. The Crown Prince Mohammad bin Salman's massive development plan known as "Vision 2030" turned the heads towards the country. Indeed, the Crown Prince started with bold decisions – to the Saudi's at least – and allowed women to drive, to attend Sports stadium events and female singers to held public concerts. The Crown Prince encouraged the increasing presence of women in the workforce, approved special residency scheme for expatriates and recently opened its doors to tourists from all over the world by introducing a tourist visa.

A well-established social structure has grown over decades, the recent rapid reactions of the government concerning the social situation have clarified and appeased the social discontent and the oil wealth allows heavy investments in infrastructure, education, healthcare and economic growth programs.

The oil backed investments of the government in combination with massive population growth, the geographic position of Saudi Arabia and the incentives for investors make the country an extremely interesting choice for foreign investment and a potential market for different segments of Western industry. While Saudi-Arabia was in the past a challenge for western businessmen and companies due to the lack of information published, strict regulations and general difficulties to do business, the country is in change and is eager to facilitate doing business to attract foreign investment.

PART 1. IMPORTANT ECONOMIC AND POLITICAL DATA

A. Data Sheet on the Kingdom of Saudi Arabia

Name of Country	Kingdom of Saudi Arabia (KSA)
Area	2.15 million sq. km
Capital	Riyadh (population of approx. 8.4 million)
Population	34.5 million
Growth in population	1.64% p.a.
Business languages	Arabic, English
Currency	Saudi Riyal (SR)
Exchange Rate	1 SR = 3.75 USD

B. Saudi Arabia Economy

I. Economic development

Saudi Arabia is the biggest economy in the Middle East region with a GDP of approx. USD 782 billion. The Saudi economy has experienced an annual average growth rate of 4% over the past seven years. The oil sector generates approximately 67% of the countries budget revenue.

The Supreme Economic Council (SEC) is connected to all the public authorities and must accelerate the reform plans while the Saudi Arabian General Investment Authority (SAGIA) has been created for promoting investments and helping national and foreign investors with their projects. Furthermore, the Supreme Council for Petroleum and Minerals (SPMAC) has been specifically created to promote further integration of the multi-national oil and energy groups into the Saudi market. The Saudi Industrial Property Authority (MODON) and the Supreme Commission for Tourism (SCT) are also important components/mechanisms of the restructured Saudi economy.

II. Vision 2030

Vision 2030 was introduced in April 2016 by Crown Prince Mohammed bin Salman al Saud with the aim of diversifying and expanding the economy's competitiveness. This was followed by the launch of the National Transformation Program (NTP) and many more. The focus of the initiatives is to diversify Saudi Arabia's economy and strongly directed on private sector involvement and investment, privatization of several governmental activities and attracting foreign investment. The implementation results in major changes across all economical business sectors in Saudi Arabia.
Furthermore, the government issued the Privatization Program in April 2018, envisioned in Saudi Vision 2030, to be managed by the newly formed National Center for Privatization & Public Private Partnership.

For a sustainable development, one vital interest and inevitable goal of the Saudi leadership is to make the Saudi population beneficiary of the public revenues, to extend its economic base and to create jobs. In this regard, appropriate educational building systems, education methodologies, training systems, human resources managements and know-how are required from Western countries.

C. Political Structure and Political Situation

The Kingdom of Saudi Arabia is an absolute monarchy. A very conservative and literal interpretation of Islam forms the constitution and the law of the country. The so-called "basic laws" all dated 1992 define the most important features of the state and society. Since 1992, the Kingdom has a written constitution and a bill of rights.

The Head of State and government is King Salman bin Abdul-Aziz Al-Saud, who succeeded King Abdullah in compliance with the political system of hereditary monarchy. He also bears the title of Custodian of the two Holy Mosques, in Mecca (or Makkah) and Medina. On 29th January 2015, King Salman issued a Royal Decree establishing two committees: one to oversee political and security matters, chaired by Crown Prince Mohammed bin Naif; the other on economic and development affairs, chaired by Deputy Crown Prince Mohammed bin Salman.

Saudi Arabia is one of the leading powers of the Gulf Cooperation Council (GCC) with its headquarters located in the Saudi capital Riyadh. The Kingdom also plays an important role in OPEC and has the ability to influence the oil price, bullish or bearish.

D. Structure and System of Saudi Arabian Macro Economy

Several legal reforms have been passed to accomplish the target of the development plans. The numerous reforms implemented and several upcoming, already had a positive impact on Saudi Arabia's ranking in the latest World Bank Doing Business Report as the Kingdom improved from previously placed 92^{nd} (2019) to 62^{nd} rank in 2020.

The State monopolies have been opened up into competitive markets, partially or totally: energy, telecommunication, air traffic, rail, ports, postal service, mining, water supply and disposal, desalination of seawater and the education and health sectors.

As a member of the World Trade Organization (WTO), Saudi Arabia was forced to improve and adapt its trade and investment regulations to WTO standards. The previously achieved economic reforms process shows that Saudi Arabia is clearly willing to integrate further into the world economy. Saudi Arabia is also a member in economic and regional organizations such as the World Bank, the International Monetary Fund, the OPEC and the G20.

PART 2. BUSINESS OPPORTUNITIES IN SAUDI ARABIA ECONOMIC KEY SECTORS

A. Current Large-Scale Projects and Economic Cities

The recent History of Saudi Arabian economic development has been based on the idea that New Industrial towns connected by transport hubs to the Gulf of Arabia and the Red Sea would fulfill a basic pre-requisite for the long-term integration of the Kingdom into the Middle East and later into the world economy.

Around half of the industrial production of the Kingdom is produced in the two major cities Jubail (East) and Yanbu (West), with all the current transport and communication projects (rail essentially) planned to connect them to the other main cities. The Jubail infrastructure comprises a well-organized network of roads, an airport and a seaport that is fully equipped with modern handling equipment required for loading super tankers and handling mass goods and containers. Yanbu situated alongside the West Coast, has the largest port on the Red Sea and is also fully equipped. Both towns have separate industrial and residential areas, with modern social infrastructures and facilities.

Furthermore, the Royal Commission for Jubail and Yanbu (RCJY) is building the Jubail 2 Industrial City project. It should double the size of the existing industrial zone and create over 55 000 jobs directly and 330 000 indirectly at the end of 2023.

Today, the Saudi Arabian government is developing new cities aimed at stimulating the economy by encouraging a wide range of industries, providing employment, rebalancing the territorial development and creating territorial synergies. New economic cities have been announced by SAGIA, which is participating in their development, and are mainly financed by other Saudi national entities, private banks and investors.

Moving away from the state-led industrial zones, modeled by Jubail and Yanbu, towards special economic zones that would be privately owned, developed and managed, the new cities aim to develop the economy and the diversification, through private initiatives and based on market needs.

The Economic Cities are leveraging Saudi Arabia's main competitive advantages, which are cheap energy, plentiful capital, available mineral resources, excellent location, underdeveloped internal markets and population. All the projects need leading small and middle enterprises to supply, build, operate, consult, produce, sell, buy, broke, deal, distribute, refine, ship, to manufacture and benefit from the system created. Once the cities are built and in order to be alive and pleasant, they will need continuous support.

I. The King Abdullah Economic City (KAEC)

KAEC, bearing the king's name, represents the outline for all subsequent cities and the first challenge for the Saudi Arabian large scale projects.
The location of the city is 100km north of the commercial hub of Jeddah, in Rabigh, designed to capitalize on its Red Sea setting and links to the holy cities of Mecca and Medina. With investment of over USD 40 billion announced, the 168 km^2 project is expected to be completed by 2030.

II. The Knowledge Economic City (KEC)

KEC was developed to boost knowledge, educational and training services. KEC is located in Medina. A range of complementary zones would compose KEC: a technology zone, an advanced IT studies institute, an Islamic studies institute, an interactive museum, a business district, residential zones, shopping malls, a retail zone, an integrated medical services zone, and a mosque with space for 10.000 people. A monorail train would connect KEC with the Prophet's mosques in Medina, Mecca, Yanbu, KAEC and Jeddah.

III. "Prince Abdul Aziz Bin Mousaed Economic City" (PABMEC)

Situated in the northern Saudi city of Hail, center of the Kingdom and leading to the north countries, PABMEC plans to become the Middle East's most advanced and fully integrated logistics and transportation hub, with an international airport (3 million passengers per year and 130,000 tons of cargo), rail connections throughout Saudi Arabia, as well as to Jordan, Iraq and eventually the UAE (2 million passengers per year), a dry port (210.000 m^2) expected to support 1.5 million tons of cargo and a large supply chain center.

IV. Jazan Economic City (JEC)

JEC is located in the Southwest of Saudi Arabia will be spread over 117 km^2 with a focus on five main sectors connected to a port: heavy industries, secondary industries and human capital as well as a commercial business and cultural center. When finished it should be home to a population in excess of

300,000. JEC is different to the other expected cities as it will be based on important industries, namely a privately-owned oil refinery, a 500,000 tons per annum steel rebar, a Direct Reduced Iron (DRI) factory, an aluminum plant and a copper smelter. It has its own desalination and power plant generating 4,000 MW of electricity.

V. Ras Al Khair Industrial City (RIC)

The Ras Al Khair Industrial City (RIC) located approximately 60 km northwest of Jubail, will be a significant global and world-class “metals and minerals city”, with integrated industrial complexes, that leverage the key mineral resources of the Kingdom of Saudi Arabia, the existing low fuel/power competitive cost advantages, and the industrial city development and management expertise of the Royal Commission. RIC is being built on the accomplishments of the Royal Commission at Jubail Industrial City. RIC already has Ma'aden Phosphate Company and Ma'aden Aluminum Company industrial complexes and will provide a strong strategic link and synergies to existing industries in Jubail. RIC, as a city for metals and minerals industries, and Jubail, as a city for major petrochemical industries, are aimed to constitute one of the most significant integrated industrial regions in the world.

VI. NEOM

NEOM is Saudi Arabia’s futuristic mega-city project, set in North-Western of the country and comprising a total of 26,500 km^2, an area of land 35x larger than Singapore. This will be achieved through the commitment of USD 500 billion by the Public Investment Fund of Saudi Arabia and local and international investors.

In addition to the establishment of industries that curb economic leakage in the Kingdom and the region in general, the NEOM project aims to develop 16 key economic sectors for the future, which comprise Energy, Water, Mobility, Biotech, Food, Manufacturing, Media, Entertainment, Culture and Fashion, Technology and Digital, Tourism, Sport, Design and Construction, Services, Health and Well-Being, Education and Livability.

NEOM is expected to have a projected total GDP of USD 100 billion by 2030. NEOM will create new investment opportunities in new industries, as well as allowing investors to tap into natural resources, such as endless green wind and solar energies.

VII. QIDDIYA

Qiddiyah is one of the tourism megaprojects to be established under the framework of the Saudi Vision 2030. The master plan for Qiddiya composes of five primary projects. These projects include resorts, parks, and city centers. The main aim of the master plan is to create a project that overwhelms visitors with a variety of activities. By 2030 the project is expected to be the largest tourism destination worldwide, with a total area of 334 km^2.

VIII. The Red Sea Project

Red Sea Project is focused on tourism, hoping to attract tourists to visit and explore the Saudi western coast. The mega project is expected to increase the Saudi GDP by USD 5.9 billion per year upon completion, when it will cover 28,000 km² of islands, beaches, desert, mountains and volcanic areas. The first phase is expected to be completed by 2022 when 3,000 hotel rooms will be constructed along with an airport, marina and recreation centers. The project is led by the Red Sea Development Company (TRSDC). It is expected to attract one million people every year and create 70,000 new jobs upon completion.

B. Focus on key sectors

I. Oil & Gas

Saudi Arabia's most prominent sector is ready for unprecedented growth, diversification, and profitability. The high oil revenue environment has resulted in a boom in oil and also in non-oil development projects.

With regards to the **Oil sector**, the world oil market is highly influenced by Saudi Arabia because the Kingdom is the world's second largest producer and world's largest exporter of crude oil and has the second largest proven oil reserves: 264 billion barrels which equate to around 25% of the known world reserves.
The oil production is included in the Negative List of restricted businesses as the oil sector is controlled by the State company Saudi ARAMCO which owns the exclusive right to explore and produce crude oil. Nevertheless, several investment windows are open, notably in distribution or refining operations.

With regards to the **Gas sector**, it is spectacularly booming in Saudi Arabia. With reserves estimated at 288 trillion cubic meters (world's fifth largest). Concerning the refinery capacities, they are also increasing with the participation of foreign refiners and foreign small and medium enterprises.

Saudi Arabia is certainly also one of the best markets for the petrochemical industry because of its location and its extraordinary competitive advantages in this sector (costless energy, plentiful presence of hydrocarbons, low cost of employment, etc.).

II. Education

The Saudi education system is being reshaped in an effort to improve its quality and outcome. The focus is directed on developing early childhood education, refining national curriculum and training its teachers and educational leaders. Further, the country is reforming the regulations paving the way for investors and the private sectors. With 50% of Saudi Nationals being under the age of 25 years, the country is committed to improve its education system to generate a better basis for these young people.

Saudi Arabia's education sector is one of the most attractive investment opportunities in Saudi Arabia and the region beyond. In the first half of 2019, 9 new foreign education companies were awarded investor licenses, amounting to a total of USD 141 million of investment deals.

Education spending currently occupies the second largest portion in the annual national budget. In 2018, the government has allocated SAR 192 billion (USD 51 billion) for education. This represents 21% of fiscal spending or 7% of GDP on education, placing Saudi Arabia as 8th in the world in terms of educational expenditure. In 2019, education became the largest item in Saudi Arabia's fiscal budget.

III. Mining

The Mining and Metals processing sector has grown significantly over the last few years. There are enormous growth opportunities in line with Saudi Vision 2030's goal to have the mining sector contributing to the national economy at full potential. 48 different minerals have been identified in the Kingdom, out of which at least 15 minerals are commercially viable. The contribution to the GDP amounts to USD 17 billion. The Saudi Arabian Mining Company (Ma'aden) was established to explore, tap, refine and distribute mineral resources. This company, being 50% government-owned and 50% listed on Saudi stock exchange (Tadawul), also has the responsibility to attract private investment from the Kingdom and abroad to expand the mining industry.

IV. Infrastructure and Logistic

Saudi Arabia is planning to create new cities, extend old cities and make the link with the traditional quarters, renew damaged infrastructures and connect the country to neighborhoods by numerous land and sea routes to Eastern Europe, the Indian subcontinent, the Middle East, North Africa and East Asia. The aviation sector also is growing enormously with 5 new airports in the pipeline, as well as key extensions to Jeddah and Riyadh and 17 other airports that are already underway.

Therefore, the transport sector in Saudi Arabia is estimated to be growing, driven by aggressive construction of new roads, railways and integrated community development projects across the country.

V. Energy & Water

The Energy sector is considered one of the most important strategic sectors and a key objective in Vision 2030 with a focus on efficiency as an important element in sustainable growth. Saudi currently has the largest desalination market in the world, with aim of increasing the reuse and water treatment market.

Saudi Arabia is committed with the ongoing privatization and localization in both energy and water sectors. The constant sustainable growth in the industrial, residential and commercial sectors creates a growing demand for electricity and water.

VI. Information Technology (IT)

Saudi Arabia is the biggest IT market in the MENA Region, which was expected to have a spending per year at USD 45 billion by the end of 2019. Saudi Vision 2030 aims to transform Saudi Arabia into a globally competitive IT hub, with modern technologies and an empowered information society. The ambition envisages many investment themes, including the development of the digital content and media, the expansion of the telecommunication system, the digitization of the country, and the creation of new high-tech and smart industries. The Saudi government is working alongside the private sector to modernize the IT infrastructure, enhancing the regulatory framework to enable new innovative investments, and building the most suitable ecosystem to support entrepreneurs and digital talents.

VII. Healthcare

The Healthcare sector is one of the most significant sectors in the Saudi Vison 2030. Despite the increase in healthcare expenditure, Saudi Arabia is facing a set of challenges that includes increasing longevity and the continued rise in non-communicable diseases. 90% of the medical requirements in Saudi Arabia are imported and there is a desire to manufacture also locally to ensure adequate supply.

Foreigners are allowed to own and manage hospitals in Saudi Arabia but were not allowed in the past to own or manage other healthcare institutions. In March 2019, it was announced that foreign companies could own and manage private healthcare institutions and support healthcare service centers in Saudi Arabia with the exception of clinics and pharmacies.

PART 3. BUSINESS AND LEGAL APPROPRIATE STRATEGY

A. Invest in Saudi Arabia

I. Islam and Business in Saudi Arabia

With regards to the Islamic laws effecting businesses in Saudi Arabia, it is relevant to present issues which could lead to the voidance of a clause or a contract.

Under Islamic Law, contracts which involve speculation are not permissible and are considered void. However, Islamic Law does not prohibit general commercial speculation. Rather, the concern is to prohibit forms of speculation which are regarded as akin to gambling. The test is whether something has been gained by pure chance rather than by a “true” productive effort.
The other main issues concern the ban on Ribba (interest) and the Gharar (risky business dealing/uncertainty).

II. Foreign investment

In any kind of investment and before establishing a commercial presence within Saudi Arabia, it is a commitment for foreign investors to obtain a foreign capital investment license from Saudi Arabian General Investment Authority (SAGIA), notably to pre-qualify for government contracts awards or to provide services to customers or the agent.

The Foreign Investment Regulations, Royal Decree No. M/1 dated 11/4/2000, came into effect on 5th June 2000 alongside with the creation of the SAGIA. Any foreign company is considered as an "investor" and may benefit from the Investment law incentives.

Some business activities completely blocked for foreign investment. These activities are listed in a so-called "Negative List". This list is under constant review, however, currently it includes the following activities, which are only allowed to be conducted by Saudi-owned businesses:

- Oil exploration, drilling and production
- Catering to military sectors
- Security and detective services
- Real estate investment in Mecca and Medina
- Tourist orientation and guidance services related to Hajj and Umrah
- Recruitment offices
- Commission agents
- Services provided by midwives, nurses, physical therapy services and quasi-doctoral services
- Fisheries
- Poison Centers, Blood Banks and Quarantine.

Other activities not listed on the Negative List allow up to 100% of foreign ownership depending on the particular activity and compliance with SAGIA's requirements.

The government's established policy is not to impose any restrictions on the movement of capital in and out of the Kingdom and to always respect private ownership. In addition, foreign investment which fulfills the requirements of the Foreign Investment Laws enjoys all the privileges of national capital and is entitled to the same treatment, protection and incentives awarded to national capital.

The Foreign Direct Investment (FDI) increased by 1,141 Million USD in the third quarter of 2019.

a. SAGIA

SAGIA is the driving force behind Saudi's investment program. Its aim is to turn opportunity into success, promising rich returns for investors. Its mission is to create a highly competitive economic climate and modern infrastructure that will lead to greater social prosperity throughout the nation.

SAGIA and the Minister of Commerce and Industry (MOCI) are both involved for registration approval process. On the one hand, SAGIA regulates, supervises, monitors and decides on the foreign investment license issuing. On the other hand, MOCI is responsible for the registration of all companies irrespective of nationality.

SAGIA has issued 1,131 new licenses for foreign investors to operate in the Kingdom in 2019, marking an increase of 54% compared to previous year's numbers. This shows SAGIA's accelerated efforts to promote a competitive business environment in the Kingdom and that the country is undergoing a remarkable economic transformation.

b. The investment incentives

The Investment law and respective regulations offer numerous different investment incentives for any Investor falling under the Investment Law:

- No Personal Income Tax;
- Corporate Income Tax charged at 20% on the foreign shares of a resident company (the lowest among the G20);
- Ability to carry forward losses on balances sheets for an unrestricted period of time;
- The free transfer of capital and its revenue, e.g. generated by the sale of an investment or part of the capital, by liquidation or generated profits, is guaranteed;
- The licensed legal person is also the sponsor for the foreign investor and the foreign staff of the licensed project;
- 50% deduction from the expenses of annual training for Saudis;
- 50% deduction from the annual salaries paid to Saudis;
- More deductions are granted if investment capital for any project exceeds SR 1,000,000 and if more than five employees of Saudi nationality have jobs of a technical or administrative nature with contracts of at least one year;
- Exemptions from customs for the import of raw materials, machinery, tools and equipment and the respective spare parts;
- No restrictions on repatriation of capital;
- Access to generous regional and international financial programs;
- A soft loan by the Saudi Industrial Development Fund (SIDF).

B. Legal forms of Setup

The Saudi Company Laws allows various legal forms in order to permit Investors to find the appropriate investment vehicle.

I. The Limited Liability Company (LLC)

The limited company is the most chosen vehicle by foreign investors in Saudi Arabia due to its flexibility, its scope of allowed activities. The business activities are limited by the activities defined in the articles of association of the company and the foreign investment license issued by SAGIA.
An LLC consists of one to 50 shareholders. LLCs with a single shareholder may be owned or incorporated by natural or legal persons. If it is natural person, he/she may not own more than one single shareholder LLC. Further, any single shareholder LLC (whether owned by a natural or legal person) may not own another single shareholder LLC.

Depending on the industry, an LLC can be wholly owned by foreign investors, e.g. foreign investors can wholly own a services company, while foreign ownership in a trading company would be limited to 75% of the shares.

In case there are more than 20 shareholders, a supervisory board to oversee and advise the management needs to be implemented. An LLC may either have a general manager or a board of directors. The class of shares is restricted to only shares of equal value. Shares may not be offered to the public. Further, an LLC is not allowed to engage in banking, financing, saving or insurance activities, or investment of funds for third parties. Share transfers are permitted subject to regulatory approvals and statutory preemption rights.

The minimum capital required to establish the LLC will be determined by SAGIA and the Ministry of Commerce & Investment as part of the foreign investment license approval process and will depend on the LLC's proposed business activities and its projected expenditure for the first five years of operation. It shall not be less than SAR 500,000.

II. The Joint Stock Company (JSC)

A JSC may be "opened" (shares listed on the Saudi Arabian Stock Exchange Market, the Tadawul) or "closed" (shares not listed). Certain types of activities, such as bank and insurance activities, may only be carried out by a JSC. The minimum capital will be determined by SAGIA and the Ministry of Commerce & Investment as part of the foreign investment license and shall not be less than SAR 500,000 for a JSC consisting of minimum of two shareholders, while single shareholder JSC will be subject to a minimum capital requirement of SAR 5,000,000. The annual audited financial statements of a joint stock company need to be published in a Saudi daily newspaper.

The Capital Market Authority announced in June 2019 the removal of the 49% ownership limit for foreign strategic investors in companies listed on the Saudi Stock Exchange (Tadawul). This will allow foreign strategic investors to own controlling stakes in companies listed in the Tadawul. For a public offering of shares, there are onerous prospectus disclosure requirements which must be met by the company and approved by the Capital Market Authority.

Concerning the "closed" JSC, such companies looking to finance business may consider raising funds through the issuance of new shares to sophisticated investors. Such offerings must hereby consider the mandatory requirements of the Offers of Securities Regulations published by the Capital Market Authority, relating to the offering of shares.

III. Other forms

a. The Dependent Branch Office

In the event an Investor wants neither a local partner nor any kind of partner and wants a presence without setting up a subsidiary and consequently having a legal entity, the Dependent Branch Office might be the appropriate legal form.

Concerning the spectrum of direct business activities led by the Branch Office, it can carry out any kind of activities on behalf of the parent company without the need of any local intermediaries. Nevertheless, this scope is limited to that of the parent company.

Setting up a branch office represents a convenient and flexible vehicle for foreign companies that want to progress step by step in the Kingdom: to begin with, they carry out limited business, prospects or sales, and later, once finding a useful local partner, a strategy for penetrating another market or opportunity can be defined and implemented such as expanding the spectrum of activities.

b. The Technical and Scientific Office (TSO) and Liaison Office

The TSO is set up by the foreign company to provide technical support and information, market and technical research, and assistance to its locally established distributors, agents and/or consumers/customers. Differently from the branch, it cannot engage neither on its own name nor on behalf of the foreign company. The only legal means to engage direct business activities or enter into contracts with third parties is from the parent company through local intermediaries. A TSO may not engage in any commercial activities itself and its activities are limited to providing technical information, market and technical research.

The liaison office focuses on permitting foreign companies, which realize projects with Saudi public authorities from abroad, to maintain contact with the contracting authorities via a local legal presence.

For both, TSO and Liaison Office, there is no capital requirement and it resolves the issue of visas for foreign staff.

c. The Temporary Commercial Registration (TCR)

When foreign entities are subject, for a specific project, to contract with Saudi government entities and need a commercial presence but have no interest to set up a permanent presence in Saudi Arabia, establishing a TCR may be the best legal and commercial option. The issuance of a TCR requires a letter of support from the contracting government agency but it is a very quick process as there is no capital requirement.

The duration of a TCR is limited to the government contract(s) to which it automatically relates. It is possible, under the same government contract, to have one TCR to cover each phase of a multiple phase contract (vertically TCR), and one TCR to cover each kind of work conducted by branches or divisions within the same entity (horizontally TCR). However, if there are several contractors offering to assume distinct works under the same phase of the contract, it is mandatory for each of them to apply separately for a TCR.

d. Professional Services Company

The Saudi Council of Ministers has approved a new Professional Companies Law, which will come into effect on 26 March 2020. The Professional Services Company is the only type of entity allowed to conduct engineering, architectural, accounting, and other professional services. Under the old Professional Companies Law, the establishment of professional companies were limited to only one corporate form, which was considered as a general partnership under Saudi law, under which the partners were jointly liable for the debts and obligations of the company without the protection of the corporate veil. This restriction is now waived and a Professional Companies can be established as an LLC with at least two shareholders or as a single shareholder, provided that this shareholder is licensed to undertake the relevant profession, a JSC or general/limited partnerships.

Moreover, Professional Companies may, provided that the requirements under each sector are satisfied, entitled to engage in more than only one professional service class of activities. Provided a foreign applicant meets certain criteria, it may own up to 75% of a Professional Services Company. Conclusive, an arrangement with a Saudi individual or entity licensed to carry out the specific activity is required. The Ministry of Commerce and Investment is the competent government authority to license all Professional Companies.

IV. Commercial Agencies

Distribution and Commercial Agency Agreements are regulated under the Commercial Agencies Law enacted by Royal Decree No. M/5 dated 11/06/1389H (corresponding to 25/08/1969) and its Implementing Regulations ("Agency Law").

The definition of a commercial agent under the Agency Law is wide and covers agents, distributors and franchisees. Only a Saudi national or a wholly Saudi owned entity is entitled to act as a commercial agent in the Kingdom and the agreement must be registered with the Commercial Agencies Department at the Ministry of Commerce & Industry within 6 months of the commencement date of the agreement.

With regards to termination of such agreements, there is no fixed rule under the Agency Law a commercial agent is entitled to receive a compensation upon termination or non-renewal of a respective agreement. Any award given by the relevant forum for hearing this kind of disputes (Board of Grievances) generally covers only actual and direct damages incurred by the commercial agent. Generally, punitive damages will not be awarded or loss of anticipated profits considered. However, some other obligations could be maintained as enforceable despite the termination of the agreement such as the supply by the foreign supplier of spare parts and maintenance for one year after the contract terminates or until appointment of a new commercial agent. Further, as a result of the termination, the principal has to enquire about the cancellation of the registration of the agreement. Commercial agents may refuse or delay de-registering process in order to obtain a compensation from the principal.

On a business point of view, careful due diligence, consistent negotiation process and knowledge of the local distributor or agent are critical before entering into any definitive agreement and terminating any agreement.

C. Underlying legal conditions

I. Public Tender and Procurements Laws

The section described hereafter concerns only State Procurements and Public Works. It means that all other businesses or investments do not require respecting these laws and regulations. State procurements are governed by the Government Tenders and Procurement Law and its Implementing Regulations. A new Government Tenders and Procurement Law (GTPL) was approved by the Council of Ministers on 16 July 2019 and went into effect on 01 December 2019. In line with the new regulations, the Local Content and Government Procurement Agency (LCGPA) and the Unified Procurement

Competent Entity were established, which are two newly created government entities with defined roles in the procurement process. Further the new GTPL implements new local content requirements for all government contractors. Local content means “total spending in the Kingdom from the participation of Saudi elements in the workforce, goods, services, assets, technology, and so on”. The LCGPA is assigned to define precisely local content requirements. Moreover, several new procurement models were introduced, such as framework agreements, reverse bidding, two-stage competitions, limited bidding and direct purchase. Also, the new law outlines the inclusion of the knowledge transfer, which will help sharing knowledge and precedents.

Even if it is often more appropriate to be already represented in Saudi Arabia for submitting a tender for executing a project, it is actually neither necessary nor mandatory. If a foreign company is not licensed with SAGIA, it cannot submit a tender directly and alone but it may apply for delivery transactions and submit a tender to execute the project together with other Saudi or foreign companies/partners as a foreign/Saudi consortium or simply deliver as a sub-contractor without the involvement of any intermediary. A temporary license and commercial registration are often advisable but contractual arrangements are also possible with the local partners of the consortium (for employee and visa matters for instance).

The public tenders are always published in the Kingdom’s official gazette and in the local daily newspapers. In any case, it is mandatory for foreign and domestic companies which want to bid to pre-qualify. The contracting entity/authority is responsible for processing the tender. Generally, information from investors is required, such as details about the contract performance sector, the understanding or the references of the company in international markets and in the Saudi markets and information about the company’s form and structure.

For performing the project as a direct participant in Saudi Arabia’s tenders, the foreign company must be physically present in Saudi Arabia. This means that after the award, the foreign company must establish a legal presence in the country in compliance with the investment law (temporary license is possible).

II. Real Estate Law

Foreigners (being non-GCC nationals or companies who are not 100 percent owned by GCC nationals) have certain rights to own land and property in Saudi Arabia. However, there is an exception to this rule: foreigners cannot own properties in the holy cities of Mecca and Medina.

The Law of Real Estate Ownership and Investment by Non-Saudis (enacted by Royal Decree No. M/15 dated 17/04/1421H, corresponding to 19 July 2000) regulates the acquisition by foreign, non-GCC nationals, of real estate in Saudi Arabia. Under this regulation, the ownership and investment in real estate by a foreign investor is permitted, subject to obtaining a foreign investment license from the SAGIA.

A non-GCC development company may, subject to certain licensing conditions by SAGIA, own real estate in connection with a particular project for property development provided that the construction of buildings is for investment purposes (whether through sale or lease) and is carried out by a Saudi Arabia licensed contractor.

A non-GCC entity may own Saudi Arabian real estate that is reasonably required for (i) the conduct of its professional, technical or economic activities, including for its headquarters and warehouses, or (ii) private residences for housing employees of licensed projects, or (iii) residential use by individuals with normal legal residency status.

There are no specific taxes levied on real estate transactions. However, profits from those transactions will be taken into consideration in calculating a company's corporation tax.

III. Saudi Tax Law

a. Corporate Taxation

The Saudi taxation distinguishes between income tax and so-called Zakat. Income tax is levied on non-Saudi shares, while shares owned by a Saudi or GCC citizen and corporations traded on the Saudi stock exchange need to be paid with Zakat. While the corporate income tax is based on 20% of the profits, Zakat is based only at 2.5%.

A corporation is resident in Saudi Arabia if it is registered in accordance with Saudi company regulations or if it is headquartered in Saudi Arabia. A resident corporation is taxed on income arising in Saudi Arabia, while non-residents carrying out activities in Saudi through a permanent establishment (PE) is taxed on income arising from or related to the PE.

The Department for Zakat and Income Tax requires all persons residing in Saudi Arabia, who are subject to taxation, to apply for a tax number and to submit their tax declarations.

Companies generating income from but not being located in Saudi Arabia are subject to withholding tax. Therefore, the taxpayer is required to hold back withholding taxes from payments to foreign companies and to forward the withheld tax amounts to the central tax office.

Subject to withholding tax are:

- 5% on dividends paid to a non-resident,
- 5% on interest paid to a non-resident,
- 5% on the branch remittance of profits abroad,
- 5% on the technical service fees paid to a non-resident third party, 15% to related parties,
- 15% on royalties paid to a non-resident.

b. Personal Taxation

There is no personal income tax in Saudi Arabia, but non-residents conducting business in the Kingdom or deriving income from a PE in Saudi Arabia are taxed as corporation tax. Hence, foreign workers working in Saudi are exempted from income tax via the definition of place of work, while foreign self-employed individuals are not exempt. Individuals remaining in Saudi for more than 183 days per year are assumed to reside in Saudi Arabia.

IV. Labour Law

The Saudi labor Law is based on the Royal Decree number M/51 23 Sha'ban 1426 / 27 September 2005, with amendments announced in Royal Decree number M/46 of 05/05/1436H. Its scope extends to all individuals working in dependent positions for private companies or public organizations with however exceptions, e.g. family members of the employer, if these are the only members of a company; foreign workers that work on specific projects in Saudi Arabia for up to a period of two months.

There are two types of work contracts, term contracts, which consist of fixed-term contracts and an indefinite term contract, and project-based contracts. Foreign workers can only get a fixed-term contract. If there is no specification of the term in the employment contract, it automatically ends when the expatriates work permit expires.

Saudi Arabia faces a scarcity of skilled professionals and must look beyond Saudi nationals to find technical experts or managers that the economy needs. Nevertheless, given the unemployment situation and the dependence on foreign labour which have both to be reduced for Saudi Arabian sustainable development, the Saudi government created the Saudization requirements. Saudization is aimed to encourage the employment of Saudi-nationals in the private sector and provide more jobs to Saudi-nationals than expatriates. Saudization is therefore not gratifying for foreign workers.

KSA Ministry of Labour and concerned authorities classify the country's private firms into four categories: Premium, Green, Yellow and Red. Premium and Green categories include the companies with high Saudization rates, while Yellow include the ones with low rates, and Red is deemed as non-compliant. The calculation is based on the Saudization percentage (% of Saudi employees) and the total number of employees. The companies with less than 10 employees are exempt from the program, but still need to employ at least one Saudi citizen.

Total no. of employees	Saudization percentage			
	Red	Yellow	Green	Premium
10 – 49	0 – 4%	5 – 9%	10 – 39%	≥ 40%
50 – 499	0 – 5%	6 – 11%	12 – 39%	≥ 40%
500 – 2,999	0 – 6%	7 – 11%	12 – 39%	≥ 40%
3,000+	0 – 6%	7 – 11%	12 – 39%	≥ 40%

The companies receive incentives or penalties depending on the category they belong to:

1. Premium-category companies (excellent compliance):
   - Can recruit foreign workers using easier visa processing;
   - Recruit employees from the Red and Yellow category companies and transfer their visas without their employer's permission;
   - Get a one-year grace period when their licenses or registrations expire;
   - Transfer the visas of potential employees from other companies, even when the employee has not completed two years with the first employer.
2. Green-category companies (good compliance):

- Apply for new visas once every two months;
- Recruit employees from the Red- and Yellow-category companies and transfer their visas without their employer's permission;
- Change the professions of their foreign employees (except for positions restricted to the Saudi citizens);
- Get a six-month grace period when their certificates expire;
- Renew work permits of foreign employees, whose visas are valid for three months or more.

3. Yellow category companies (poor compliance):
   - Cannot get new visas, but can get one visa only when two foreign employees depart;
   - Cannot transfer visas;
   - Cannot stop Green- or Premium-category companies from transferring their employees' visas.
4. Red-category companies (non-compliance):
   - Cannot get new visas;
   - Cannot transfer visas;
   - Cannot stop Green- or Premium-category companies from transferring their employees' visas;
   - Cannot renew employees' work permits;
   - Cannot change employees' professions;
   - Cannot open new branches or facilities.

Due to the latest development and a more efficient monitoring of the Saudization rate in each company, being compliant with the Saudization requirements and ensuring good relationships with the Ministry of Labor is an essential issue which must be handled with a high level of care by foreign companies.

The KSA Ministry of Labour and Social Development recently launched an instant labour visa service for private firms with high Saudization rates who fully comply with the ministry's regulation. The service allows eligible employers to obtain work visas immediately, without having to go through the usual, lengthy government approval process.

V. Judicial system

a. Dispute Resolution

Saudi Arabia allows dispute resolution solutions such as "in court" (litigation) and "out of court" (arbitration or mediation). The opening of the Saudi Centre for Commercial Arbitration (SCCA) in Riyadh in 2016, along with the publication of the SCCA Arbitration Rules encouraged the use of arbitration as an alternative dispute resolution. On 9 June 2017, the Implementing Regulations of the new Arbitration Law were published in the Official Gazette, which clarified certain provisions that were previously vague in the new Arbitration Law. Since then, arbitration has proven to be a successful dispute resolution system.

Saudi Arabian court system is divided into different type of courts: Supreme Court, Courts of appeal and Courts of first instance.

The court procedures are allocated to various judicial panels depending on the matter. For civil proceedings, the Sharia Courts are responsible and subject to the Law of Procedure before Sharia Court (Royal Decree M/21 dated August 19th, 2000).

Commercial disputes are typically brought as claims in the commercial courts. The commercial court regulations set out which claims can be considered commercial claims and which are eligible to be brought before the court.

The Saudi Board of Grievances was established pursuant to Royal Decree No. M/51, 17 Rajab 1402 (10 May 1982) as an independent administrative judicial committee responsible directly to the King of Saudi Arabia. Originally it only had jurisdiction over claims against the Saudi government but over the years it has inherited substantially broader jurisdiction and dealt with most types of commercial disputes. Royal Decree No. M/78 dated 19/9/1428 H (01 October 2007) restructured the Board of Grievances, returning it to its roots as an administrative tribunal, with jurisdiction over commercial disputes to be transferred to a new Commercial Division of the General Sharia Court.

There is no mandatory obligation to hire a lawyer for representation in Saudi-Arabian Courts but the representative of a foreign company must have a power of attorney fully legalized and has to be a Saudi national.

There are no court charges in Saudi Arabia but the cost involved in the assertion of rights will not be reimbursed. For this reason, it is also advisable to first try hard to negotiate and analyze the cost before going to court.

b. Foreign Law & Judgements

Generally, it is possible to agree to choose foreign laws as the governing law of agreements when contracting with Saudi entities. However, it should be taken into consideration that when the case is brought before a Saudi Arabian Court, it might not be able to apply the chosen foreign laws, but apply Saudi Arabian law instead, in case it decides judging on the respective case.

Saudi Arabia is not signatory to the Hague Convention on the recognition and the enforcement of foreign judgments in civil and commercial matters. In Saudi Arabia, the authority competent to enforce foreign court judgments is the special circuit created by the enforcement regulations. A foreign court judgment is enforceable upon issuance of an enforcement order by the judge of the circuit. Such an order has the same status as a court judgment.

In relation to foreign judgments and awards an enforcement order will only be issued if:

- The foreign court/tribunal was competent to hear the case rather than a Saudi court;
- The defendant was properly notified so they were able to defend themselves;
- The judgment or award is final and cannot be appealed;
- The judgment or award is not inconsistent with any judgment or order of a Saudi court;
- The judgment or award is not inconsistent with Sharia Law;
- The foreign country handles claims on a reciprocal basis.

Regarding judgments issued by Arab countries courts, the situation is clarified and judgments issued by the latter are more easily recognized and enforced since Saudi Arabia is a member of Conventions, notably the Riyadh Convention (1983) or the Convention relating to the recognition of judgments of the members states of the Gulf Cooperation Council from 1995. These Conventions provide that court judgments of a signatory state may be enforced in any other signatory state, if the court rendering the judgment had proper jurisdiction and the dispute has been finally adjudged. These treaties also allow the court where enforcement is sought to refuse enforcement if, among other reasons, the judgment is contrary to shariah law or the Constitution, or the public order of the jurisdiction where enforcement is sought.

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