

Legal considerations for new investors in Saudi Arabia

February 2010

Introduction

The combination of Saudi Arabia's enormous wealth and King Abdullah bin Abdul Aziz Al Saud's commitment to a far-reaching programme of investment throughout the country means that Saudi Arabia offers excellent opportunities for overseas companies seeking to invest in the Middle East.

However, relatively little is known or understood about the Saudi Arabian legal system by non-Saudis. In this briefing we provide an introduction to Saudi Arabia's rapidly evolving legal and regulatory environment, including:

- The basis of Saudi law;
- Regulation – SAGIA licences;
- The MoCI and SAGIA
- Saudisation;
- Visas;
- Labour laws;
- Changes and improvements to the Court system;
- Contracts and Procurement.

The basis of Saudi law

The Saudi legal system relies on Islamic jurisprudence and Shari'a law underpins the system. In 1992 the Basic Law was introduced. The Basic Law states that the government draws its authority from the Qur'an and Sunnah of Prophet Muhammed (Peace Be Upon Him) and reaffirms that these two sources govern all administrative regulations. While Shari'a forms the basis of the legal system, Saudi Arabia has

introduced several secular codes including:

- the Companies Regulations,
- the Foreign Investment Regulations,
- the Investment Funds Regulations,
- the Insurance Regulations,
- the Capital Market Law,
- the Anti Money Laundering Regulations,
- the Tax Regulations.

It is the developments in these laws and their accompanying regulations which evidence the government's commitment to economic diversification and private sector growth.

It is also these regulations which have placed Saudi at no. 13 in the World Bank's "Doing Business" ranking in 2009. Saudi Arabia came 13th in the Ease of Doing Business category, above the UAE, Bahrain and Qatar.

Arabic is the official language of Saudi Arabia, and therefore, whenever a contract is written in both Arabic and English the Arabic version will prevail. Contracts and agreements are often drafted in dual-column format (half-Arabic, half-English) but discrepancies can still be present. Even when using reputable translators it is important that a lawyer reviews the translation.

Foreign Ownership of companies

In most cases Saudi Arabia allows 100% foreign ownership of companies, however there are three primary caveats to the rules:

- foreign investment is not permitted in areas that are on the Negative List maintained by SAGIA (see our *Saudi Arabia Investment Guide 2009/2010*, section 5, Restricted Sectors);
- the banking industry is regulated by SAMA which has imposed its own rules and restrictions on the licensing of foreign banks. Although there are a few foreign banks operating in Saudi Arabia, SAMA has declined to publish the criteria on which it will assess applications for banking licences by wholly-foreign owned banks. In most cases, the banks in Saudi Arabia are either 100% Saudi owned or are structured at a joint venture with 60% Saudi ownership and 40% foreign ownership, and;
- the professional services sectors (including engineering, architecture and law) are regulated by respective licensing bodies and in most cases foreign investors seeking to render professional services in Saudi Arabia must partner with a licenced Saudi practitioner.

Regulation – SAGIA licences

The Foreign Investment Regulations apply to all capital owned by a foreign individual or a corporation which has non-Saudi shareholders. The authority responsible for granting a foreign capital investment licence is the Saudi Arabian General Investment Authority (SAGIA).

The Foreign Investment Regulations permit foreign ownership of capital and shares in a Saudi company provided that a foreign capital investment licence is obtained.

The definition of “foreign capital” includes:

- money, instruments, securities,
- machinery,
- equipment,
- supplies, spare-parts,
- means of transportation and production requirements relevant to the investment,

- licences,
- intellectual property,
- technical know-how, and
- administrative skills and production techniques.

The Saudi government is currently reviewing the Foreign Investment Regulations to introduce more incentives to foreign investors.

Ministry of Commerce and Industry (MoCI)

The Ministry of Commerce and Industry (MoCI) and SAGIA are distinct government entities.

The MoCI plays a fundamental role in implementing the policies and plans devised to “advance, develop and promote the participation of the private sector in economic and social development”. It provides a number of services including commercial registrations and the issuing of licences.

Saudisation

Saudisation refers to the national policy to encourage the employment of Saudi nationals in the private sector. In essence Saudisation states that for a company with:

- 10 or less employees, then there must be 10% Saudis;
- between 10 and 50 employees, 20% Saudis
- more than 50 employees, 30% Saudis.

The law also states that there must be no overseas recruitment without the permission of the Ministry of Labour and when registering a new employee it has to be shown that the company advertised the job for two weeks and no suitably-qualified Saudi nationals came forward.

Visas

Visas are a key issue when considering employing non-Saudi nationals. There are several types of visas for Saudi Arabia depending on the nature of the visit, including Business, Employment, Family Visit, Residence, Transit and Pilgrim. Visas are issued according

to the applicant's status, purpose of visit and passport type. All visas require a sponsor, can take several months to process, and must be obtained prior to arrival.

Iqama

An iqama is an official identity card confirming that the holder is a resident of Saudi Arabia. Without it, a person will not be able to open a bank account, buy a car or a mobile phone or rent accommodation. The employer should take the initiative in ensuring that his or her foreign employee receives an iqama.

Expatriate employers need to be aware of specificity involved with iqamas as each employer has a certain quota of iqamas for designated employees. For example, a project will grant a company a certain number of visas. If however, the scope of the work changes and that company needs to sub-contract parts of the work, they cannot reallocate a portion of their visas, because they are specific to the company.

Labour law

Saudi Labour Law is based on the idea of direct control of employees and it is primarily protective of Saudi nationals. Separate, less protective provisions apply to non-Saudi workers.

An employee can move from job to job, however, a no-objection letter is required from the current employer. Without one, sponsorship of an individual will not be transferred by the Ministry of Labour.

Changes and improvements to the Court system

In brief, Saudi Arabia has a dual system of courts; the Shari'a Courts and the Board of Grievances.

The Board of Grievances was set up for cases involving the government or governmental entities and, in certain circumstances, commercial parties. The Board of Grievances also handles disputes involving administrative

decisions and, importantly for foreign investors, the execution of foreign judgments and arbitral awards. Disputes between private parties will be heard in the Shari'a Courts.

Since 2007 Saudi Arabia has spent nearly \$2bn on overhauling its judicial system and court facilities in an effort to streamline the legal process. Most of this money was spent on new and improved court facilities. The relevant Royal Decree was issued on 1 October 2007, and is still being implemented. The main difference is the introduction of an appellate level both in the Shar'ia Courts and at the Board of Grievances, so there are now three stages: Court of First Instance, Court of Appeal and High Court.

Arbitration may be considered in Saudi Arabia but it is not as effective as elsewhere. Domestic arbitration, conducted in accordance with the Saudi Arbitration Act, are time-consuming and heavily supervised by the local courts. International arbitral awards can face difficulties in enforcement.

Contracts and Procurement

The positive stimulus and level of public spending in Saudi Arabia makes it particularly attractive to infrastructure companies. Current projects in the Western Region alone cover the full spectrum: roads, railways, ports, hospitals, schools, residential housing, commercial property, water, sewage.

There is no central tenders board in Saudi Arabia and every government agency is empowered to enter into contracts. Tender regulations govern the entire bidding process, including advertisement, methods of procurement and performance, contracting authority, contract conditions, advance payments, delay fines, contract forms, bid submission and contract award.

The relevant Council of Ministers Resolution requires that not less than 30 percent of "public works contracts", such as construction, maintenance and operations contracts, won by a foreign contractor or any Saudi-foreign joint

venture prime contractor (with less than 51% Saudi capital), must be sub-contracted to contractors who are at least 51 percent Saudi owned and sponsor their own workers.

A further consideration is that any new projects based on a non-Saudi model should be Shari'a compliant.

The Ministry of Municipalities and Rural Affairs (MOMRA) is a well regulated, sophisticated organisation which in many instances is the procurer for a number of key projects in Saudi Arabia. They have a ratings agency, the Contractor's Classification Agency (CCA). In order to be able to bid for the most high profile projects, companies will need class 1 classification. To obtain this classification, a significant submission has to be made which must include a portfolio of previous projects, a list of personnel based in KSA and a list of machinery and equipment based in KSA. The CCA will contact previous project owners and will spot check premises. This means that companies have to make a significant investment in Saudi Arabia before they are even in the running for major projects.

Further Information:

- Saudi Arabia Investment Guide 2009/2010
- www.SAGIA.gov.sa
- www.SAMA.gov.sa
- www.commerce.gov.sa
- www.MOL.gov.sa (Ministry of Labour)
- www.MOFA.gov.sa (for visa information)
- www.MOMRA.gov.sa

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