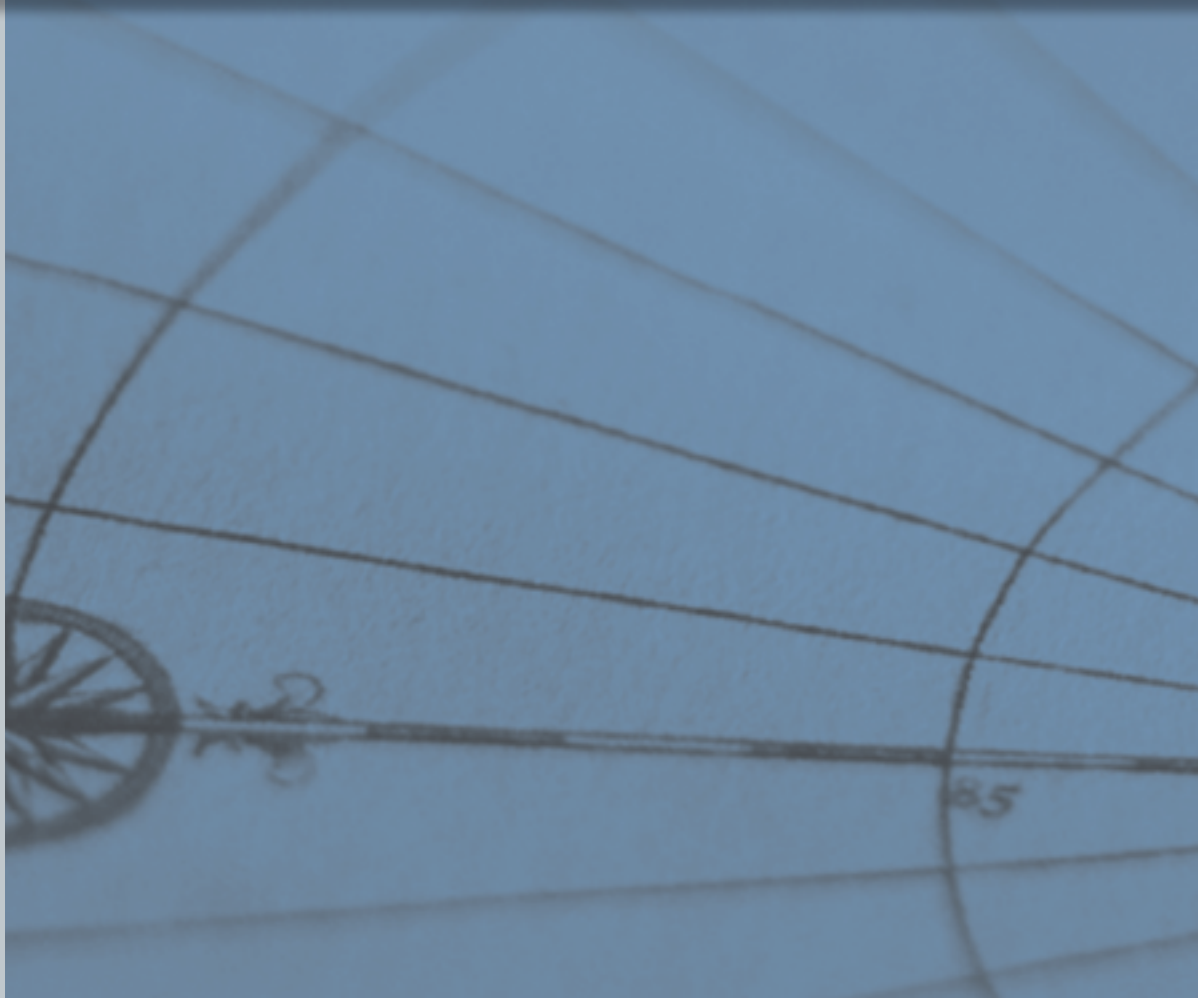


Doing Business in Saudi Arabia

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This guide provides an overview of the legal system in the Kingdom of Saudi Arabia and the principal legal factors to be considered when doing business in the Kingdom of Saudi Arabia.

Please note that this overview is for general guidance only and is not intended to be an exhaustive review of the laws of the Kingdom of Saudi Arabia. This guide does not contain definitive legal advice and specific legal advice should always be obtained. Latham & Watkins LLP and the Law Office of Mohammed A. Al-Sheikh in association with Latham & Watkins LLP do not accept any responsibility for any loss, howsoever caused, sustained by any person using this guide.

It should also be noted that the Kingdom of Saudi Arabia only permits certified public accountants to render advice on tax and tax-related issues. Therefore, any references to tax laws or tax matters referred to in this guide are merely meant to give a general overview of the tax regime in the Kingdom and are not a substitute for seeking proper advice from duly licensed accountants.

A. INTRODUCTION

(i) Overview of System of Government

After 30 years of intermittent warfare over much of the Arabian peninsula, the late King Abdul Aziz Ibn Abdul Rahman Al-Faisal Al-Saud completed his consolidation of the Kingdom of Hejaz and the Kingdom of Nejd into the Kingdom of Saudi Arabia in 1932.¹

The Kingdom of Saudi Arabia is an independent Islamic monarchy. His Majesty King Abdullah Ibn Abdul Aziz Al-Saud, Custodian of the Two Holy Mosques, has been the head of state since August 1, 2005. The King governs through a Council of Ministers,² on which he serves as President. The King is assisted by His Royal Highness Crown Prince Sultan Ibn Abdul Aziz Al-Saud, the First Deputy Premier; His Royal Highness Crown Prince Nayef Ibn Abdul Aziz Al-Saud, the Second Deputy Premier; and by his other Ministers.

The Basic Law of the Kingdom of Saudi Arabia³ reaffirmed the Kingdom's status as an Islamic monarchy and formalized its system of government. In 1993, the Consultative Council was constituted as an advisory body to the Council of Ministers, with responsibility for advising on the policies of the Kingdom, reviewing and commenting on laws, bylaws, contracts, international agreements and special rights; and providing suggestions in connection with annual reports prepared by the Ministries.

The Kingdom of Saudi Arabia is divided into 13 provinces, each of which is administered by a provincial governor appointed by the King. Provinces are subdivided into governorates, districts and centers. Each provincial governor is assisted by a vice governor. These, together with not less than 10 other members approved by the Minister of Interior and appointed by the King on the nomination of the provincial governor, constitute the provincial councils. The provincial councils are empowered to determine the development needs of their respective provinces, make recommendations for projects and improvements and request appropriations in the annual state budget. Any member of a provisional council is entitled to submit written proposals to the provincial governor and every proposal will be placed on the council's agenda for consideration.

(ii) Overview of Sources of Law and Judicial System

The paramount body of law in the Kingdom of Saudi Arabia is the *Shari'ah*. The *Shari'ah* is comprised of a collection of fundamental principles derived from a number of different sources, including the Holy Quran, the *Sunnah* (sayings of the Prophet Mohammed) and the works of *Shari'ah* scholars. In addition to the *Shari'ah*, Saudi Arabian law is also derived from enacted legislation. Legislation is enacted in various forms, the most common of which are Royal Orders, Royal Decrees, Council of Ministers Resolutions, Ministerial Resolutions and Ministerial Circulars. All such laws are ultimately subject to, and cannot conflict with, the *Shari'ah*.

The judicial system of the Kingdom of Saudi Arabia is comprised of a number of courts and adjudicatory bodies. These include the *Shari'ah* courts, the Board of Grievances and various specialized committees. The *Shari'ah* courts, generally, have jurisdiction over all civil claims, except for claims the jurisdiction for which has been reserved to one of the other adjudicatory bodies established in the Kingdom of Saudi Arabia (*i.e.* the Board of Grievances or another specialized committee). In particular, the *Shari'ah* courts generally have jurisdiction over all family law, real property matters and the majority of criminal matters. In addition to the *Shari'ah* courts and the Board of Grievances, specialized committees have been established under the authority of various Ministries and government agencies. The jurisdictions of these specialized committees are determined by their constitutive regulations. They include the Committee for the Settlement of Banking Disputes, the Negotiable Instruments Offices and the Committees for the Settlement of Labor Disputes. Such committees are independent of the *Shari'ah* courts and the Board of Grievances.

One of the major reforms initiated by the King, was the enactment of a new Law of Judiciary⁴ to restructure the judiciary and dispute resolution bodies in the Kingdom of Saudi Arabia. Pursuant to the new Law of Judiciary, among other things, specialized courts such as Criminal Courts, Commercial Courts and Labor Courts are to be established and the Board of Grievances will become an administrative court. While enacted in late 2007, the new Law of Judiciary is being implemented in phases and is yet to be fully implemented.

B. ESTABLISHMENT OF A PRESENCE IN THE KINGDOM OF SAUDI ARABIA

(i) Foreign Capital Investment

The Investment Law⁵ requires any company in the Kingdom of Saudi Arabia with foreign shareholders to obtain a foreign capital investment license. Foreign capital investment licenses are issued by the Saudi Arabian General Investment Authority (SAGIA). It should be noted that for the purpose of the Investment Law, corporate entities that are nationals of a Gulf Cooperation Council (GCC) member state are only considered GCC nationals if they are wholly owned by citizens or governments of GCC member states and enjoy the nationality of a member state of the GCC.

Except where stated otherwise in the Investment Law, there is no limit on the amount of foreign investment which can be invested in a company incorporated in the Kingdom of Saudi Arabia. The establishment of one hundred percent (100 percent) foreign owned companies is permitted in most cases. The Supreme Economic Council⁶ is responsible for issuing and periodically updating a list of activities, which list is generally referred to as the "Negative List", that are prohibited from being carried out by foreign investors in the Kingdom of Saudi Arabia. For the latest Negative List and minimum capital requirements please go to (<http://www.sagia.gov.sa>).

When licensed under the Investment Law, a company enjoys all privileges and incentives offered to wholly Saudi owned companies, such as ownership of freehold property that is necessary to carry out the licensed activity, privileges granted by the anti-double taxation treaties to which the Kingdom of Saudi Arabia is a party, law prohibiting against expropriation or confiscation of investments, rights to repatriate profits, etc.

(ii) Incorporating a Local Entity

The Regulations for Companies⁷ regulates the establishment and governance of Saudi Arabian corporate entities. The main forms of legal entities are *the limited liability company*, *the joint stock company* and *the branch of a foreign company*. Other notable forms of legal entities include *the sole proprietorship* and *the general partnership*. It should be noted that a new version of the Regulations for Companies is in the process of being developed and is expected to be enacted in the very near future. Schedule 1 contains a table outlining the main differences between a limited liability company and a joint stock company in the Kingdom of Saudi Arabia.

(a) Limited Liability Companies

The most common form of company in the Kingdom of Saudi Arabia is the limited liability company. It should be noted that a limited liability company is the most common corporate vehicle for equity participation by foreign investors. A limited liability company must have a minimum of two (2) shareholders and may not have more than fifty (50) shareholders. Natural persons and corporate entities may be shareholders. Shareholders are, generally, liable for the debts of the company only to the extent of their respective interests in the company's shares.

(b) Joint Stock Companies

A joint stock company must have a minimum of five (5) shareholders. There is no maximum. Natural persons and corporate entities may be shareholders. Shares in a joint stock company are typically evidenced by share certificates, although dematerialized shares are becoming more common. Shareholders are liable only to the extent of the value of their shares. The minimum share capital for a closed joint stock company (not offering shares for public subscription)⁸ is SR 2 million. Subject to the approval of the Ministry of Commerce and Industry, the share capital subscribed for in cash may be paid up in stages, provided that the amount payable per cash share upon subscription is not less than one quarter of its par value.

(c) Branches of Foreign Companies

Branches of foreign companies in the Kingdom of Saudi Arabia are subject to the provisions of the Regulations for Companies and to the laws and regulations applicable to their activities. A foreign company that opens a branch in the Kingdom of Saudi Arabia is required, as is the case with limited liability and joint stock companies, to deposit an amount equivalent to the capital required by SAGIA with a local bank and such amount is blocked until issuance of the certificate of registration for such branch by the Ministry of Commerce and Industry.

(iii) Exit from Investment

Subject to any statutory (e.g., the right of existing shareholders to purchase shares) or contractual preemption rights, the exit of a foreign shareholder is done by way of cancellation or transfer, as the case may be, of the SAGIA investment license. This regulatory restriction is designed to ensure that foreign shareholders are not unjustly removed from Saudi Arabian companies. Cancellation of a SAGIA investment license is generally more straightforward than the approval of the foreign capital investment itself, unless new foreign shareholders are coming in, in which case the procedure would be analogous to that of applying for a new license.

The liability of a selling shareholder in a limited liability company as between himself and other shareholders ceases from the date specified as the effective date of the sale and purchase agreement; however, as far as any statutory liability under the Regulations for Companies is concerned, the departing shareholder remains potentially liable until the amended articles of association reflecting the sale are re-registered by the Ministry of Commerce and Industry. This is not the case with joint stock companies as shares therein are transferred, after the lapse of the statutory lock-up period,⁹ by way of cancellation of the transferors share certificates and issuance of new ones to the transferee and reflecting such transfer in the company's register of shareholders.

Foreign shareholders may be liable for capital gains tax on their sold shares.

(iv) Commercial Agency Relationship

Due to restrictions on foreign investment (see, e.g. the "Negative List" described above) and pursuant to the Commercial Agencies Regulations,¹⁰ foreign manufacturers and principals have generally appointed Saudi agents or distributors to trade and distribute their products in the local Saudi market. A Saudi commercial agent or distributor must register with the Ministry of Commerce and Industry each time it enters into an agency or distributorship relationship. As part of such registration process, the Saudi agent or distributor must submit its agreement with its non-Saudi principal to the Ministry of Commerce and Industry for registration within three *Hijra* months from the effective date of such agreement. The Ministry of Commerce and Industry has published standard forms of agency and distributorship contracts; however, use of such forms is not mandatory. Failure of a Saudi agent or distributor to register with the Ministry of Commerce and Industry could result in fines and other penalties to such agent or distributor, but would not render the underlying agency or distributorship agreement invalid or otherwise subject the non-Saudi principal to any penalties except that, in certain circumstances, the principal may be barred from participating in public sector tenders.

In December 2005, the Kingdom of Saudi Arabia acceded to the World Trade Organization (WTO) and, consequently, the Supreme Economic Council opened certain economic sectors to foreign investment such as retail and wholesale trade. Nevertheless, foreign investment in wholesale and retail trade (including distribution activities) remains subject to, among other things, a minimum foreign investment of SR 20,000,000 and a maximum foreign equity participation of 75 percent. However, commission based commercial agency arrangements remains on the Negative List.

C. GENERAL LEGAL CONSIDERATIONS

(i) Doing Business with the Public Sector

Government tenders and procurement in the Kingdom of Saudi Arabia are governed by the Government Tender and Procurement Law.¹¹ In general, all governmental entities in the Kingdom of Saudi Arabia are required to deal, in their tenders and procurements, with companies that are duly licensed in the Kingdom. In addition, they grant products and services of national origin and foreign products that are treated as national products priority over foreign products and services and products of foreign origin.

The Kingdom of Saudi Arabia has also acceded to the Unified Rules of Granting Priority in Government Procurements to National Products and Products of National Origin in the GCC.¹²

(ii) Capital Markets Law

The Capital Markets Law¹³ established the Capital Markets Authority (CMA), which is the sole regulator and supervisor of capital markets in the Kingdom of Saudi Arabia. The CMA is a government organization with financial, legal and administrative independence and reports directly to the President of the Council of Ministers. The Saudi Stock Exchange (Tadawul) was also re-established pursuant to the Capital Markets Law as a joint stock company whose shares are wholly owned by the Saudi Arabian Government through its investment arm, the Public Investment Fund. The CMA's function is to regulate and develop the Saudi Arabian capital markets. It issues rules and regulations for implementation of provisions of the Capital Markets Law aimed at creating an appropriate investment environment, protecting investors and ensuring fairness and efficiency in the market. The CMA is governed by a board of full time members appointed by Royal Order. The Capital Markets Law is a generic legislative framework for capital markets in the Kingdom of Saudi Arabia and refers to specific implementing regulations that provide a detailed regulatory framework for various securities matters, including licensing of "authorized persons" and offering and marketing of securities in the Kingdom of Saudi Arabia. The CMA has already promulgated ten major implementing regulations, namely (1) Listing Rules, (2) Offers of Securities Regulations, (3) Authorized Persons Regulations, (4) Securities Business Regulations, (5) Market Conduct Regulations, (6) Corporate Governance Regulations, (7) Investment Funds Regulations, (8) Real Estate Investment Funds Regulations, (9) Merger and Acquisition Regulations and (10) Anti-Money Laundering and Counter-Terrorist Financing Rules.

(iii) Import and Export Regulations

The Kingdom of Saudi Arabia is a member of the World Trade Organization and a party to a number of free trade agreements, most notably within the GCC. The Kingdom of Saudi Arabia enacted the Unified GCC Customs Law¹⁴ in 2003 which unified customs procedures in all of the GCC member states. Although the Unified GCC Customs Law has allowed for a large number of import duty exemptions, customs duties are still imposed on importation of many goods. Most items are subject to a 5 percent tariff. However, imported goods that are identical or similar to those produced locally are charged a duty of up to 12 percent in order to protect local industries.

There are no duties or tariffs on exports.

(iv) Anti Cover-Up Law

The Anti-Cover Up Law¹⁵ prohibits non-Saudi persons from conducting or investing in any business in Saudi Arabia without a foreign capital investment license issued by SAGIA and prohibits any Saudi person from assisting in such activity. A person is considered to be engaged in a "cover-up" activity if he enables a non-Saudi to invest in or carry out any activity without the appropriate license, whether by the use of his name, license, commercial registration or any other means. A person found guilty of violating the Anti-Cover Up Law could face imprisonment of up to 2 years and fines of up to SR 1,000,000. In addition, the non-Saudi person involved in the "cover-up" arrangement could be deported from the Kingdom of Saudi Arabia and banned from doing any further business therein.

(v) Competition Law

Under the Competition Law,¹⁶ the Council for Competition Protection was created. The council approves any merger, acquisition or consolidation of management of two or more entities that will create a "dominant position". A "dominant position" is defined as a position where an entity is able to influence prices in a certain market through control of a specific percentage of supply of a certain product or service in an industry in

which it operates. Specific percentages will be determined through various implementing regulations, which have not yet been adopted. As such, it may be anticipated that enforcement of the Competition Law will likely be delayed until publication of such implementing regulations.

(vi) Foreign Exchange Controls and Money Laundering

At the present time, there are no exchange control regulations governing the repatriation of funds, profits or capital after corporate dissolution.

Banks and financial institutions in the Kingdom of Saudi Arabia are, pursuant to the Anti Money Laundering Law,¹⁷ required to develop and adopt internal systems, policies and measures to combat money laundering and to keep records of transactions for a minimum of ten years.

Individuals are required to declare any cash or valuables that exceed SR 60,000 in value in their possession when exiting the Kingdom.

(vii) Taxation

In general, the principal taxes in the Kingdom of Saudi Arabia are income tax, Islamic tax on wealth known as *Zakat* and withholding tax. A comprehensive Tax Law¹⁸ was enacted in the Kingdom of Saudi Arabia in 2004. Pursuant to such Tax Law, persons or entities subject to various forms of taxation, namely: (1) a resident capital company on its non-Saudi shares; (2) a resident non-Saudi natural person that conducts activities in the Kingdom of Saudi Arabia; (3) a nonresident person who conducts activities in the Kingdom of Saudi Arabia through a permanent establishment; (4) a nonresident person who has other income that is subject to tax from sources within the Kingdom of Saudi Arabia; (5) a person engaged in natural gas investment activities; and (6) a person engaged in oil and other hydrocarbon production.

(a) Income Tax

The income tax rate is 20 percent for all taxpayers, except for certain specific natural gas investment activities which are subject to a defined investment tax that provides a base 30 percent tax rate and additional rates of up to a maximum of 85 percent, and oil or other hydrocarbon activities which are subject to a tax rate of 85 percent. Income that is subject to tax includes all income, profits, gains of any type or payment resulting from carrying out of any “activity”, including capital gain or incidental income, that is not an “exempt” income. However, employee salaries and benefits are not taxable income.

(b) Zakat

Zakat is an Islamic tax on wealth and is levied on Saudi Arabian and GCC natural persons, wholly Saudi Arabian or GCC-owned entities, and Saudi Arabian or GCC shareholders of companies. While the calculation of *Zakat* is complex, the effective rate for natural persons is 2.5 percent of their net worth and for companies is 2.5 percent of their total capital resources. The tax base for calculation of *Zakat* for companies excludes fixed assets, long-term investments and deferred costs from total capital resources, but includes profits from foreign investments that do not consist of investment in real property. Profits of foreign non-real property investments are estimated by the Department of Zakat and Income Tax (DZIT) to be 15 percent of the revenues in cases where no specific information is made available.

(c) Withholding Tax

Any resident (whether or not considered a taxpayer under the Tax Law) who makes payment to a nonresident from a source in the Kingdom of Saudi Arabia must withhold a tax from such payment as follows: (1) Five percent for rents; (2) 15 percent for

royalties; (3) 20 percent for management fees; (4) Five percent for payments for air tickets, air-freight and maritime freight; (5) Five percent for payment of international telecommunications services; and (6) 15 percent for any other services. Generally, income is considered to be “derived from a source in the Kingdom” if it is derived from an activity in the Kingdom.

(viii) Immigration

Non-Saudi citizens (other than GCC nationals) must obtain a visa to enter, and must obtain a permit to reside in, the Kingdom of Saudi Arabia. Visas or permits are not granted upon arrival and must be obtained in advance.

Companies are required to register their employee’s contracts with the Ministry of Interior before a residency permit can be issued. Each company is permitted a certain quota of residency visas. Employees with residency visas who earn above a certain threshold salary may sponsor family members for residency visas. Residency visas are valid for up to two years. Employees cannot work for anyone other than their sponsor and sponsorship cannot be transferred until the employee has worked for their original sponsor for at least two years.

(ix) Employment Law

Employment matters in the Kingdom of Saudi Arabia are governed by the Labor Law.¹⁷ The Ministry of Labor regulates all labor related issues in the Kingdom through Labor Offices located in different regions of the Kingdom. The Labor Law imposes certain minimum standards on labor related matters such as working hours, vacations, safety standards and termination of employment. Upon termination of employment, an employee is entitled to an end of service award calculated on the basis of half a month’s salary for each year of the first five years of employment, and one month’s salary for each year following the first five years with the employee’s most recent wage being the basis for the end of service award calculation.

The Government has a strategic goal to increase the proportion of Saudi employees in both the public and private sectors. This policy is known as “Saudization” and is effected by requiring companies to employ a certain percentage of Saudi citizens. Such percentage ranges from 5-75 percent based on the nature of business, condition of work and availability of Saudi employees.

(x) Real Property

Ownership of real property is evidenced by title deeds. Although a central registry under the joint auspices of the Ministry of Justice and the Ministry of Municipalities and Rural Affairs where all real property rights are recorded, including mortgage, is provided for by law²⁰ it is yet to be set up. Currently, real property records are kept manually and administered by designated notaries public who also register ownership and record transfers of real property. A draft mortgage law is currently under review and is expected to become effective in the near future.

(a) Ownership of Real Property by Non-GCC Nationals

Ownership and investment in real property by non-GCC nationals is governed by the Ownership of and Investment in Property by Non-Saudis Regulations.²¹ A non-GCC investor in possession of a foreign investment license from SAGIA may own real property in the Kingdom of Saudi Arabia, excluding real property located within the limits of the two holy cities of Makkah and Al-Madinah, that is necessary to its investment project, including real property necessary to house the investment project’s employees. Non-GCC individuals residing in the Kingdom of Saudi Arabia may, subject to approval from the Ministry of Interior, acquire property as a private residence.

(b) Ownership of Real Property by GCC Nationals

Ownership and investment in real property by GCC nationals is governed by the Rules for Real-Estate Appropriation by Nationals of GCC States.²² It is permissible for GCC individuals to own up to three private residences in residential areas in the Kingdom of Saudi Arabia excluding the two holy cities of Makkah and Al-Madinah. It is permissible for GCC nationals, whether natural or corporate persons, to own real property in the Kingdom of Saudi Arabia provided such real property is exclusively used, and adequately sized, for conducting the business for which they are duly licensed.

(xi) Intellectual Property

(a) Trade Names

The Trade Names Law²³ protects registered trade names in the Kingdom of Saudi Arabia by requiring every business operating in the Kingdom to register its trade name with the Commercial Register at the Ministry of Commerce and Industry and proscribing any other business or individual from using registered trade names. Only Arabic or “Arabized” trade names may be registered, except for companies with foreign shareholders whose names are registered outside of the Kingdom of Saudi Arabia.

(b) Trademarks

The Trademarks Law²⁴ permits a person or company to register a unique combination of letters, numbers, symbols or signs that are applied to a certain category of goods or services in such a way as to distinguish such goods and services from similar ones in the marketplace. Trademark registrations are valid for ten *Hijra* years from date of application and are perpetually renewable for further periods of ten *Hijra* years. Two years of continuous, open and uncontested use of a registered trademark gives rise to an irrebuttable presumption of ownership.

In 2004, the Kingdom of Saudi Arabia acceded to the Paris Convention for Protection of Industrial Property.²⁵

(c) Copyright

Copyrights are protected by the Copyright Law.²⁶ The Copyright Law covers all scientific, literary or artistic works regardless of their type, importance, manner of expression or purpose. Works of foreign and Saudi Arabian authors are protected if they are published, acted or shown for the first time in the Kingdom of Saudi Arabia. Copyrights will in most cases be valid for the lifetime of the author plus fifty *Hijra* years from the date of his or her death. Protection of sound and audio visual works, photographic works and works in applied arts is limited to twenty-five *Hijra* years from the date of publication. Protection of computer software is for fifty *Hijra* years from the date of publication.

In 1994, the Kingdom of Saudi Arabia acceded to the Universal Copyright Convention.²⁷ In addition, in 2004 the Kingdom of Saudi Arabia acceded to the Berne Convention for Protection of Literary and Artistic Works.²⁸

(d) Patents

Patents are protected by the Patent Law.²⁹ The King Abdulaziz City for Science and Technology has authority to issue “protection documents” in the Kingdom of Saudi Arabia. Protection of patents (and plant patents) is for a period of twenty years from the date of filing an application. Protection of layout design certificates is for a period of ten years from the start of commercial exploitation anywhere in the world while protection of industrial design certifications is for a period of ten years from the date of filing the application.

The Kingdom of Saudi Arabia has acceded to the GCC Patent Law.³⁰ In addition, in 2004 the Kingdom of Saudi Arabia acceded to the Paris Convention for Protection of Industrial Property.³¹

(e) Trade Secrets

Trade secrets are protected by the Protection of Confidential Trade Secrets Regulations³² from being divulged by third parties or official authorities to whom such secrets are entrusted.

(xii) Environmental Law

The Meteorology and Environmental Protection Administration (MEPA)³³ is the entity responsible for regulating pollution control and related environmental matters. MEPA has issued Environmental Protection Standards (General Standards) covering, among other things, ambient air quality, air pollution sources, receiving water guidelines, direct discharge performance and discharge pretreatment guidelines. The General Environmental Law provides a specific legislative underpinning to the activities of MEPA and for the expansion of MEPA's role. The Kingdom of Saudi Arabia has also approved the General Environmental Regulation for the GCC and the Environmental Assessment Regulation for the GCC.³² The General Environmental Regulation prohibits any act or failure to act that may result in adverse environmental effects and, among other things, requires that precautionary and preemptive measures be implemented to ensure that such adverse effects do not occur as a result of construction of any project. The Environmental Assessment Regulation applies to a long list of projects that may have an environmental impact and requires that an environmental assessment be conducted with respect to such projects that fall under its coverage.

(xiii) Liquidation, Bankruptcy and Bankruptcy Avoidance Laws

(a) Liquidation and Dissolution

Liquidations and dissolutions of companies are governed by the Regulations for Companies and various circulars issued by, and the general practice of, the Ministry of Commerce and Industry. The Ministry of Commerce and Industry has adopted a policy that liquidation under the Regulations for Companies is not available for insolvent entities. As such, under the voluntary liquidation and dissolution scheme established in the Regulations for Companies, there is little judicial supervision of the process. In a solvent company liquidation, the shareholders in a general meeting appoint the liquidator. The liquidator must first pay off the debts of the company arising out of the liquidation and then pay off any other debts of the company (with a provision for debts which are payable at a later date or are contested). Any surplus must be distributed among the shareholders in accordance with the articles of association or bylaws of the company.

(b) Bankruptcy and Bankruptcy Avoidance

Insolvency, bankruptcy and creditors' rights are governed by the Commercial Court Law³⁶ and the Bankruptcy Avoidance Regulations.³⁷ Either the bankrupt entity or a creditor may apply to the Board of Grievances for a declaration of bankruptcy, based on a statement of the bankrupt entity's assets and liabilities and books of account. After examination of such material and the application for declaration of bankruptcy, the Board of Grievances may issue an order declaring bankruptcy and seizing the bankrupt entity's assets. With effect from the date of the order declaring bankruptcy, the bankrupt entity ceases to have legal capacity to contract. The Bankruptcy Avoidance Regulations provide a framework in which a debtor who fears it may be about to become unable to pay its debts, may seek "*amicable conciliation*" with creditors to avoid bankruptcy or apply to the Board of Grievances for an order to convene "*settlement procedures*" with creditors under the supervision of the Board of Grievances, to avoid the possible operation of the Commercial Court Law.

(xiv) Dispute Resolution and Enforcement of Foreign Judgments and Arbitral Awards

(a) Dispute Resolution

It is quite common for parties doing business in the Kingdom of Saudi Arabia to select binding arbitration in the Kingdom, in a preferred neutral foreign jurisdiction or in another GCC state as the method for dispute resolution. The Saudi Arbitration Law³⁸ confirms the right of parties to agree to settle their disputes through arbitration, provided the dispute is one in which conciliation would be permitted. The arbitration process under the Saudi Arbitration Law must be conducted with the approval of the court or other adjudicatory body which would have otherwise entertained the dispute had it not been referred to arbitration. As a result, it is common for parties to select other GCC states, Europe or North America as the arbitral seat.

(b) Enforcement of Foreign Judgments and Arbitral Awards

Generally, the Board of Grievances has jurisdiction with respect to the enforcement of foreign judgments and arbitral awards in the Kingdom of Saudi Arabia.

1) Enforcement of Foreign Judgements from Outside the Arab League and GCC

In order to enforce a foreign judgment from outside the Arab League and GCC, the party seeking enforcement must demonstrate, among other things, that such foreign judgment contains nothing that contravenes the *Shari'ah* or public policy of the Kingdom of Saudi Arabia and that, in the absence of a bilateral or multilateral agreement for the reciprocal enforcement of judgments, that the courts of such country would recognize and enforce a Saudi Arabian judgment in the same manner as a domestic judgment. In addition, the Board of Grievances may refuse to enforce a foreign judgment if a final judgment has been rendered by, or if an action was commenced before, a Saudi Arabian court in proceedings between the same litigants and involving the same subject matter.

2) Enforcement of Foreign Arbitral Awards

The Kingdom of Saudi Arabia acceded to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958.³⁹ As a result, any final and conclusive arbitral award rendered in any member state of the New York Convention will be enforceable in the Kingdom of Saudi Arabia by order of the Board of Grievances without re-litigation of the matters arbitrated upon, except, among other things, to ensure compliance with *Shari'ah* principles and public policy as noted above.

3) Enforcement of Foreign Judgements from Inside the Arab League and GCC

The Kingdom of Saudi Arabia acceded to the Arab League Convention for the Enforcement of Judgments of 14 September 1952 and the GCC Convention on Enforcement of Judgments and Judicial Representation and Notices Among Members of the GCC. As a result, any final and conclusive judgment rendered in any member state of the Arab League or GCC and any final and conclusive arbitral award rendered in a GCC member state will be enforceable in the Kingdom of Saudi Arabia by order of the Board of Grievances without re-examination of the merits of the case or re-litigation of the matters arbitrated upon, except, among other things, to ensure compliance with *Shari'ah* principles and public policy.

Differences between a Limited Liability Company and a Joint Stock Company

Subject	Joint Stock Companies (JSC)	Limited Liability Companies (LLC)
Constitutive Documents	<ul style="list-style-type: none"> Commercial registration certificate, articles of association and bylaws. 	<ul style="list-style-type: none"> Commercial registration certificate and articles of association.
Anticipated Timeframe for Incorporation	<ul style="list-style-type: none"> 3 months. 	<ul style="list-style-type: none"> 4 weeks.
Number of Shareholders	<ul style="list-style-type: none"> No maximum, minimum is five. 	<ul style="list-style-type: none"> Maximum is 50, minimum is two.
Share Capital	<ul style="list-style-type: none"> Minimum SR 2 million. Share capital can be partially paid-up with 1/4 of the value of the shares as the minimum paid-up capital requirement. 	<ul style="list-style-type: none"> Minimum SR 500,000. Share capital must be fully paid-up.
Preferred Shares	<ul style="list-style-type: none"> Permitted in theory but has not to date been approved. 	<ul style="list-style-type: none"> Not permitted.
Issuance of Bonds	<ul style="list-style-type: none"> Permitted. 	<ul style="list-style-type: none"> Not permitted.
Public Offering of Shares	<ul style="list-style-type: none"> Permitted, subject to Capital Market Authority (CMA) requirements. 	<ul style="list-style-type: none"> Must be converted to a joint stock company before being able to offer shares to public.
In-Kind Capital Contributions	<ul style="list-style-type: none"> Permitted. The Ministry of Commerce and Industry appoints expert to ascertain the accuracy of the appraisal of the in-kind contributions. The constituent general meeting of shareholders (excluding contributors) must agree by a two-thirds majority to the value of in-kind contributions. 	<ul style="list-style-type: none"> Permitted. Shareholders shall be jointly liable (for a period of three years from incorporation) for correct valuation of in-kind contributions to third parties. In such circumstances the shareholders who have caused such liability, as well as the first Board of Directors, shall be jointly responsible to the remaining shareholders for damages resulting from such liability.
Shareholders Liability	<ul style="list-style-type: none"> Only to the extent of value of shares. 	<ul style="list-style-type: none"> Only to the extent of value of shares, except to two exceptions: <ul style="list-style-type: none"> Unlimited joint liability for correct valuation of in-kind contributions. Joint liability for company debts when losses exceed 50 percent of capital and shareholders fail to dissolve or recapitalize company in violation of Article 180 of the Regulations for Companies.
Lock Up Period/ Restrictions on Sale of Shares	<ul style="list-style-type: none"> Founding shareholders are subject to a lock-up period of at least two years (<i>i.e.</i>, the publication of the financial statements of two complete financial years, each consisting of 12 months is required) before they can dispose of their shares. Exception to restriction listed above, transfer to other founders, or to a director as qualification shares, or by heirs of a deceased founder to third parties. 	<ul style="list-style-type: none"> No lock-up period.

Continued on following page

Differences between a Limited Liability Company and a Joint Stock Company

Subject	Joint Stock Companies (JSC)	Limited Liability Companies (LLC)
Shareholder Preemptive Rights	<ul style="list-style-type: none"> No preemptive rights for transfer or sale of existing shares. Preemptive rights for new cash shares unless bylaws provide otherwise. It is common to draft into the bylaws a provision to allow new cash shares to be offered to third parties. 	<ul style="list-style-type: none"> Automatic preemptive rights for transfer or sale of existing shares which cannot be waived. Effective automatic preemptive rights for increase of capital, because unanimity required to increase capital. Preemptive rights may be waived at the time of a new share issue.
Shareholders Meetings	<ul style="list-style-type: none"> Ordinary General Assembly meeting: quorum is set at 50 percent of the share capital of the company, unless the bylaws provide for a higher percentage. If no quorum at first meeting, a second meeting is convened and any number of share represented at the second meeting constitutes a quorum. Extraordinary General Assembly meeting: quorum is set at 50 percent of the share capital of the company, unless the bylaws provide for a higher percentage; if no quorum is attained at the first meeting, a second meeting is convened and at least 25 percent of the capital must be represented. 	<ul style="list-style-type: none"> Resolutions are adopted at general meetings, although if less than 20 shareholders, shareholders can vote on proposed resolutions in writing without meeting. Quorum: 50 percent of the share capital unless the articles of association provide for a higher percentage.
Majority, Supermajority and Unanimous Decisions	<ul style="list-style-type: none"> Ordinary Shareholders' Meeting: absolute majority of shares represented at meeting unless bylaws provide for a higher percentage. Extraordinary Shareholders' Meeting: two-thirds majority except for resolutions to: <ol style="list-style-type: none"> increase or decrease the capital, extend the term of the company, dissolve the company, or merge the company with another entity, in which case the approval of 75 percent of shares represented at meeting is required. 	<ul style="list-style-type: none"> Unanimous consent required to alter nationality of the company or increase the financial liabilities of shareholders. 75 percent shareholder approval required to amend the articles of association. Absolute majority required for all other decisions unless the articles of association provide for a higher percentage.
Board of Directors	<ul style="list-style-type: none"> Board of Directors with a minimum of three members. Directors must own (or one of the shareholders must pledge such shares on behalf of the Director) a minimum of SR 10,000 qualification shares to be deposited with a bank and held as a guarantee for director's statutory liability. Board appoints from among its members a chairman and managing director. Board of Directors is elected by the Ordinary General Assembly (with the exception of the first Board of the company which can be stated in the bylaws for a term of five years). Term not to exceed three years. Ordinary General Assembly may remove all or any Directors even if the bylaws provide otherwise. 	<ul style="list-style-type: none"> Board of directors is optional unless more than 20 shareholders. Where more than 20 shareholders, board of directors is mandatory to be comprised of at least three shareholders. In practice, the MoCI allows the shareholders to appoint the directors of the company in proportionate to their respective shareholdings.

Differences between a Limited Liability Company and a Joint Stock Company

Subject	Joint Stock Companies (JSC)	Limited Liability Companies (LLC)
Directors Duties and Liabilities	<ul style="list-style-type: none"> • A Director must be removed and held liable for damages if such Director discloses to the shareholders outside the General Assembly or to third parties secrets of the company as may have come to such Directors knowledge by reason of his directorship. • Directors shall be jointly responsible for damages sustained by the company, or the shareholders, or third parties as a result of their maladministration of the affairs of the company, or their violation of the provisions of the Regulations for Companies or the bylaws. The joint liability shall be assumed by all Directors if the wrongful act arises from a resolution adopted by unanimous vote. However, with respect to resolutions adopted by majority vote, the dissenting directors shall not be liable if they have expressly recorded their objection in the minutes of the meeting. • Director may resign, provided that such resignation is made at a proper time, otherwise, he shall be responsible to the company for damages. 	<ul style="list-style-type: none"> • Directors shall be jointly responsible for damages sustained by the company, or the shareholders, or third parties as a result of the Directors' violating the provisions of the Regulations for Companies or the articles of association, or of wrongful acts committed by them in their performance of their duties. Any stipulation to the contrary shall be considered nonexistent.
Directors Compensation	<ul style="list-style-type: none"> • Must not exceed 10 percent of the net profits of the company after deduction of expenses, depreciations, and statutory reserves and after distribution of dividends of not less than 5 percent to the shareholders. 	<ul style="list-style-type: none"> • Unregulated.
Statutory Reserves	<ul style="list-style-type: none"> • At least 10 percent of the net profits must be set aside each year to build up a statutory reserve fund. The shareholders may resolve to discontinue setting aside the net profits for the statutory reserve once the aggregate amount of the reserve equals at least 50% of the company's capital. 	<ul style="list-style-type: none"> • At least 10% of the net profits must be set aside each year to build up a statutory reserve fund. The shareholders may resolve to discontinue setting aside the net profits for the statutory reserve once the aggregate amount of the reserve equals at least 50% of the company's capital.
Dividends	<ul style="list-style-type: none"> • Dividends may only be distributed out of net profits. If unearned profits are distributed to shareholders by way of interim dividends and the company does not have sufficient profits or reserves at the end of the financial year to meet such interim dividend distributions, the company's creditors may request each shareholder to refund such dividends. • The Board recommends to the General Assembly the distribution of dividends. 	<ul style="list-style-type: none"> • Dividends may only be distributed out of net profits. If unearned profits are distributed to shareholders by way of interim dividends and the company does not have sufficient profits or reserves at the end of the financial year to meet such interim dividend distributions, the company's creditors may request each shareholder to refund such dividends. • Shareholders decide the distribution of dividends.
Reporting and Publishing Financial Statements	<ul style="list-style-type: none"> • To publish in a newspaper distributed in the locality of the head office of the company, the balance sheet, the profit and loss statement, a comprehensive summary of the board of directors report and the full text of the auditor's report, and to send a copy to the MOCI and register such documents with the Commercial Register office. 	<ul style="list-style-type: none"> • To submit every financial year, a balance sheet, a profit and loss statement, a report on the operations and financial position of the LLC and on proposals for the appropriation of net profit to the MOCI and to every shareholder along with a copy of the controller's and auditor's report.

ENDNOTES

- 1 The Kingdom of Saudi Arabia was established by enactment of Royal Decree No. 2716 dated 17/5/1351 H. (18 September 1932).
- 2 The Council of Ministers was established pursuant to Royal Order No. A/13 dated 3/3/1414 H. (20 August 1993).
- 3 The Basic Law was promulgated under Royal Order No. A/90 dated 27/8/1412 H. (1 March 1992).
- 4 The Law of Judiciary promulgated by Royal Decree No. M/78 dated 19/9/1428 H. (1 October 2007).
- 5 The Foreign Investment Regulations promulgated by Royal Decree No. M/1 dated 5/1/1421 H. (10 April 2000) and its Rules of Implementation published on 7/6/1423 H. (16 August 2002).
- 6 The Supreme Economic Council established pursuant to the Supreme Economic Council Regulation promulgated by Royal Order no. A/111 dated 17/5/1420 H. (28 August 1999).
- 7 The Regulations for Companies promulgated by Royal Decree No. M/6 dated 22/3/1385H. (20 July 1965).
- 8 Pursuant to Article 9 (b) of the Listing Rules, issued pursuant to resolution of the Board of the Capital Market Authority No. 3-11-2004 dated 20/8/1425 H. (4 October 2004) as amended, a joint stock company may not offer less than 30% of its shares for public subscription through an IPO and, pursuant to Articles 9 (f) of the Listing Rules, the expected value of such offered shares must not be less than SR 100,000,000.
- 9 Article 100 of the Regulations for Companies provides that cash shares subscribed for by the founders, as well as shares for contributions in kind, in a joint stock company may not be transferred to third parties before the lapse of two complete financial years each consisting of at least twelve months as from the date of incorporation of such joint stock company.
- 10 The Commercial Agencies Regulations promulgated by Royal Decree No. M/11 dated 20/2/1382 H. (22 July 1962).
- 11 The Government Tender and Procurement Regulation promulgated by Royal Decree No. M/58 dated 4/9/1427 H. (27 September 2006) and its Rules of Implementation issued by resolution of the Minister of Finance No. 362 dated 20/2/1428 H. (10 March 2007).
- 12 The Unified Rules of Granting Priority in Government Procurements to National Products and Products of National Origin in the GCC promulgated by Council of Ministers Resolution No. 139 dated 25/6/1407 H. (24 February 1987).
- 13 The capital Markets Law promulgated under Royal Decree No. M/30 dated 2/6/1424 H. (31 July 2003).
- 14 The Unified GCC Customs Law approved by Royal Decree No. M/41 dated 3/11/1423 H. (6 January 2003).
- 15 The Anti-Cover Up Regulation promulgated by Royal Decree No. M/22 dated 4/5/1425H. (22 June 2004) and its Rules of Implementation issued by Ministerial Resolution No. 7/M.W dated 13/5/1426 H. (20 June 2005).
- 16 Competition Regulation promulgated by Royal Decree No. M/25 dated 4/5/1425 H. (22 June 2004).
- 17 The Anti Money Laundering Regulation promulgated by Royal Decree No. M/39 dated 25/6/1424 H. (25 August 2003) and its Rules of Implementation published in Umm Al Qura 17/4/1428 H. (4 May 2007).
- 18 Income Tax Law promulgated by Royal Decree No. M/1 15/1/1425 H. (7 Mar 2004)
- 19 The Labor Regulation promulgated by Royal Decree No. M/51 dated 23/8/1423 H.(27 September 2005) and its Rules of Implementation issued pursuant to Ministerial Resolution No. 693 dated 29/2/1428 H. (19 March 2007).
- 20 Real Estate Registry Regulation promulgated by Royal Decree No. M/6 11/2/1423 H. () and its Implementing Rules published in Um Al-Qura on 1/9/1425 H. (15 October 2004).

- 21 The Ownership of and Investment in Property by Non-Saudis Regulations promulgated by Royal Decree No. M/15 dated 17/4/1421 H. (19 July 2000).
- 22 The Rules for Real-Estate Appropriation by Nationals of GCC States promulgated by Royal Decree No. M/55 dated 27/10/1405 H. (16 July 1985).
- 23 The Trade Name Regulation promulgated by Royal Decree No. M/15 dated 12/8/1420 H. (21 November 1999) and its Rules of Implementation issued by Ministerial Resolution No. 2015 date 20/12/1420 H. (27 March 2000).
- 24 The Trademarks Regulations promulgated by Royal Decree No. M/21 dated 28/5/1423 H. (8 August 2002) and its Rules for Implementation issued by Ministerial Resolution No. 1723 dated 28/7/1423 H. (6 October 2002).

- 25 The Paris Convention for Protection of Industrial Property dated 20 March 1883 as revised in Stockholm on 14 July 1967.
- 26 The Copyright Regulation promulgated by Royal Decree No. M/41 dated 2/7/1424 H. (30 August 2003) which came into effect on 22/1/1425 H. (14 March 2004) and its Rules of Implementation published on 16/4/1425 H. (4 June 2004).
- 27 The Universal Copyright Convention dated 6 September 1952 as revised in Paris on 24 July 1971.
- 28 The Berne Convention for Protection of Literary and Artistic Works of 1886 as revised in Paris on 24 July 1971.
- 29 The Regulations for Patents, Layout Designs of Integrated Circuits, Plant Varieties, and Industrial Models promulgated by Royal Decree No. M/27 dated 29/5/1425 H. (17 July 2004) and its Rules of Implementation issued by the General Directorate of Patents at King Abdulaziz City for Science and Technology No. 118828/M/10 dated 14/11/1425 H. (26 December 2004).
- 30 The GCC Patent Law approved by Royal Decree No. M/28 10/6/1422 H. (26 June 2007).
- 31 The Paris Convention for Protection of Industrial Property approved by Royal Decree No. M/48 dated 12/7/1424 H. (9 September 2003).
- 32 The Protection of Confidential Trade Secrets Regulations issued by Ministerial Resolution of the Ministry of Commerce & Industry No. 3318 dated 25/3/1426 H. (4 May 2005) and authorized by Council of Ministers Resolution No. 50 dated 25/2/1426 H. (5 April 2005).
- 33 The Meteorology and Environmental Protection Administration (MEPA) established pursuant to High Order No. 7/M/8903 dated 21/4/1401 H. (24 February 1981).
- 34 The General Environmental Regulation promulgated under Royal Decree No. M/34 dated 28/7/1422 H. (16 October 2001) and its Rules of Implementation published on 27/8/1424 H (24 October 2003).
- 35 Royal Decree No. M/3 dated 4/2/1421 H. (8 May 2000).
- 36 The Commercial Court Law promulgated by Royal Decree No. 32, dated 15/1/1350 H. (1 June 1931).
- 37 The Bankruptcy Avoidance Regulations promulgated under Royal Decree No. M/16, dated 4/9/1416 H. (24 January 1996).
- 38 The Saudi Arbitration Regulations promulgated by Royal Decree No. M/46 dated 12/7/1403 H. (24 April 1983) and its Implementing Rules promulgated by Council of ministers resolution No. 7/2021/M dated 8/9/1405 H. (28 May 1985).
- 39 The New York Convention promulgated by Royal Decree No. M/11 dated 16/7/1414H (29 December 1993).

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