كلايد اند كو
CLYDE&CO

Doing business in the Kingdom of Saudi Arabia

A Prosperous and Dynamic economy

Although globally recognized as one of the world's leading oil producing nations, the Kingdom of Saudi Arabia (**KSA**) is less known for being one of the top 20 destinations for foreign direct investment (**FDI**).

The private sector currently contributes an impressive 48% of the country's GDP, and with the country's Vision 2030 aiming on increasing this contribution to 65%, the sector is expected to grow. This opens up many opportunities for further FDI and the increase is expected to rise from 3.8% to the international level of 5.7%.

Being an active member of the World Trade Organization (WTO) since 2005, KSA has greater access to the global market, boosting job creation and further encouraging FDI.

The non-oil private sector is expected to be the key driver of growth in the next 12 months. Investment in large public infrastructure projects and a rapidly growing population are both factors that stimulate steady growth. This, together with the 2030 vision to raise the share of non-oil exports in non-oil GDP from 16% to 50%, provides a unique and exciting business environment full of opportunities.

Introduction

The Kingdom of Saudi Arabia was formed in 1932 following consolidation of the Kingdom of Hejaz and the Kingdom of Nejd by the late King Abdul Aziz Ibn Abdul Rahman Al-Faisal Al-Saud. KSA is an independent Islamic monarchy. The current King Salman Ibn Abdul Aziz Al-Saud has been head of state since 23 January 2015 and governs KSA as president of a Council of Ministers.

KSA is divided into 13 provinces, each with its own provincial governor appointed by the King. These provinces are then each subdivided into governants, districts and centres. The province governor is assisted by a vice governor. Provincial Councils are made up of province governors and not less than 10 other members approved by the Minister of Interior and appointed by the King following nomination of the relevant provincial governor.

Each Provincial Council has authority to govern the development needs of their province; including the ability to make recommendations for small as well as large development projects and request appropriations in the annual state budget. All provincial council members are eligible to submit written proposals to their respective governors and each proposal is normally placed on the council's agenda for review and consideration.

When considering entering into business dealings connected with KSA, it is highly recommended to obtain specialist legal advice at the outset in order to select the most appropriate business structure and to obtain confirmation as to how the local law applies to the particular investment or business activity.

This brochure sets out an overview of some of the matters a Foreign Investor should be familiar with before commencing and/or whilst conducting business operations in the KSA.

33 Million
Population of Saudi Arabia

2.15 Million
Square Kilometre Land Mass

Legal system

The KSA's legal system is based on Islamic principles (Shariah). Legislation is made up of Royal Orders, Royal Decrees, Council of Ministers' Resolutions, Ministerial Resolutions and Ministerial Circulars. However, these sources of law cannot conflict with Shariah, which takes precedence under the Constitution of Saudi Arabia.

Shariah is a collection of principles derived from different sources. The principal sources being the Holy Qur'an and the Sunnah (the witnessed sayings and actions of the Prophet Mohammed, peace be upon him).

In Islamic law there are four main schools of jurisprudence, namely, Hanbali, Hanafi, Shafai, and Maliki. The Saudi Arabian courts generally apply the Hanbali school as set out in a number of specified scholarly treaties derived from Authoritative Jurists, Schools of Law, State Regulations, Royal Decrees and (where these are relevant) custom and practice.

In the event of a conflict between Islamic principles and government rules and regulations, Islamic principles will prevail. Shariah principles are often expressed in general terms, which provides the KSA courts with considerable discretion as to how to apply those principles to circumstances brought before them for determination.

It should be noted that the KSA is a civil law jurisdiction meaning that every case is judged based on its own merits. The procedure for court reporting is not as developed as in many other jurisdictions and there is no concept of binding judicial precedent equivalent to the common law system.

A sample of some practical consequences of the application of Shariah can be considered in respect of the following:

- **The prohibition of interest payments** in the KSA may mean that Islamic financing is insisted upon although options for conventional financing may also exist.
- **The prohibition against uncertainty**, which may exclude the use of certain derivative contracts or the inclusion of a liquidated damages clause for potential economic losses.
- **The possible inability to provide a waiver** in respect of future rights. Powers of attorneys are revocable, regardless of any language to the contrary in the instrument.
- **There is no recognition of "self-help"** remedies and it is often not possible to obtain effective security over future assets.
- **The prohibition against speculation**, other than general business speculation, which includes gambling. This may exclude trading of futures and dealing with certain derivatives transactions.
- **The prohibition against unjust enrichment** may impact contracts where one party gains unjustly at the expense of another, or the enforcement of late fees.
- **The subject matter of a commercial transaction** must be Halal, so not forbidden under *Shariah*. For example: underlying products should not involve pork or alcohol.

The framework for the KSA Government is set out in The Basic Law of Governance, Royal Decree No. A/90 dated 27/8/1412 H (1 March 1992). This is commonly referred to as the Constitution of Saudi Arabia.

Establishment under the Foreign Investment Act

It is necessary for foreign investors to establish a legal presence in the KSA when conducting business, regardless of whether the purpose is operational or a legal requirement.

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) (the Foreign Investment Law) is the principal mechanism which enables foreign investors to own entities that are established and separately licensed to operate in the KSA. It is necessary to consider the Foreign Investment Law alongside 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) which contains a broad prohibition upon any entity that is doing business in the KSA permitting or facilitating any other investor, whether such investor is an entity or an individual (excluding those that are nationals of an Arabian Gulf Cooperation Council (AGCC)) member, from practicing activities in the KSA without first obtaining an appropriate license.

In general, 100% foreign ownership is permitted unless the proposed activity appears on the list specified by the Supreme Economic Council which reserves certain economic activities to KSA national participation (the Negative List) and restricts foreign ownership interests in certain sectors. Certain business activities which either do not appear on the Negative List or may expressly be open to foreign ownership could still fall into a sector where foreign ownership is restricted in amounts ranging from 25% to 70%.

Foreign investment is permitted in most manufacturing, specialised and non-specialised services (including trading activities, agriculture, contracting and engineering, procurement, construction and management consultancy). On 13 June 2016, the Saudi government announced that it will now issue licenses permitting 100% foreign ownership of companies in the wholesale and retail trade sectors. Furthermore, during the recent Council of Ministers' meeting on 7 August 2017, His Royal Highness Prince Mohammed bin Salman bin Abdulaziz Al Saud, the Crown Prince of the KSA, approved the decision of allowing Foreign Engineering Consultancy Companies to invest in the KSA with 100% foreign ownership . Such decisions can be seen as being part of the KSA's National Transformation Plan and the Vision 2030; the KSA's roadmap to diversify its economy and address the challenges brought by low global energy prices.

Once a legal presence is established, the entity is permitted to conduct its business activities in accordance with the license and permits it must obtain from the Saudi Arabian General Investment Authority (SAGIA), the Ministry of Commerce and Investment and, depending on the proposed business activities to be conducted in the KSA, other government departments.

Saudi Arabia's economy is
ranked 20 in the world
for its GDP and estimated to be
USD 689billion

Investment vehicles/ structures

Investments in the KSA may be conducted by direct entry in the market through commercial presence under the Foreign Investment Law (Direct Presence), or alternatively, through a commercial agency or franchise agreement (Indirect Presence).

Direct presence

Below are the main options typically available to a foreign-owned entity wishing to setup in the KSA market. However, it should be noted that a foreign-owned entity intending to enter the KSA market should seek specialist advice.

Various documents need to be submitted to the relevant public authorities in the KSA for the purposes of establishing a legal presence. Generally and practically, the timeframe for establishing a foreign-owned entity and for it to be fully operational is between 2 to 3 months. SAIGA has recently announced that it will grant a decision on establishment applications within 5 to 10 working days.

Licensing by SAGIA (Appropriate Vehicle)

- **Limited Liability Company (LLC):**

The LLC is widely considered the preferred option for any foreign-owned entities that intend to establish a subsidiary company in the KSA. The main reason for this is that the liability of each shareholder limited to their capital contributions.

Under the new Companies Law promulgated by Royal Decree No M3 dated 28/1/1437H which came into force on 2 May 2016 (the Companies Law), it is now possible to establish a LLC with a single shareholder.

The shares of an LLC should be of equal value and must be fully paid up in cash or kind. An LLC must not offer its shares to the public and it is not permitted to undertake business activities in commercial banking or insurance.

In general, there is no minimum capital requirement for foreign investors, although discussions with advisors should take place before a final decision is made. However, some activities require minimum share capital such as undertaking trading activities which is set at SAR 30 million.

According to Article 181 of the Companies Law, if the losses incurred by the LLC reach 50% or more of its share capital, the LLC must convene a shareholders' meeting within 90 days of the date on which the Company becomes aware of the extent of its losses and the shareholders must either resolve to continue the LLC or to wind-up its affairs, failure to convene such shareholders' meeting or the failure of the shareholders to pass a resolution to continue/dissolve the LLC will result in the automatic dissolution by force of law.

It should be noted that there are certain limitations on the ability of the LLC to distribute profits. For example, at least 10% of the LLC's annual net profits must be transferred into a reserve fund until the amount in such reserve fund is equal to and not less than 30% of the LLC's share capital.

- **Branch Offices:**

A foreign investment license will permit a foreign-owned entity to establish a branch office in the KSA (free from any local participation), with certain exceptions that apply to some activities. These are obtained from SAGIA and approval must also be obtained from the Ministry of Commerce and Investment. Generally, a branch office will be able to undertake most activities that can be undertaken by a LLC. A distinguishing feature of a branch office is that it has no separate and independent legal personality, and thus a foreign investor operating in the KSA through a branch office could be subject to suit in its home country in connection with a claim arising out of its activities in the KSA. Liability is not limited to the assets of the foreign investor that are held in the KSA through the branch office, but extends to all of the assets of the foreign investor, wherever they are situated.

- **Temporary Commercial Registration:**

A foreign-owned entity undertaking public sector contracts may obtain a "temporary commercial registration" license from the Saudi Ministry of Commerce and Investment. A temporary commercial registration is generally available for foreign investors who bid for, and as a pre-requisite get awarded, government tender projects. In most cases, it is not largely available to sub-contractors working on government contracts especially as one of the requirements is to have a contract directly with a government authority. A temporary commercial registration office may supervise and coordinate the entity's administrative activities within KSA (it is however prohibited from engaging in activities exceeding the scope of the contract that has been signed with a government authority). A temporary commercial registration office is similar in form to a branch office.

- **Scientific and Technical Office:**

A foreign-owned entity that has products in the KSA distributed by a registered Saudi commercial agent or distributor is permitted to establish a scientific and technical office in the KSA if its products are unique and require technical assistance for use. Any such office must be established to support the foreign-owned entity's registered agent(s) or distributor(s) and to assist the end users of the product. A scientific and technical office is similar in form to a branch office. However the scientific and technical office is not permitted to engage in activities that are not connected with supporting the foreign owned entity's registered agent(s) or distributor(s) and/or to assist the end users of the products. In particular it will not be licensed to practice any commercial activities in the KSA itself. As such the licensed activities of such a scientific and technical office are limited in scope and generally include:

(a) Providing technical and scientific support services to the registered Saudi commercial agent/distributor and its customers in the KSA in relation to the foreign-owned entity's products;

(b) Providing training;

(c) Preparing studies in relation to the market in the KSA; and

(d) Carrying out technical and scientific research.

100% Foreign Ownership

possible in certain industries

- **Joint Stock Company (JSC):**

A JSC is required to be used for specific activities (such as insurance or banking) or where a public share offering/ IPO is planned in the KSA. The intended activities of the JSC will dictate its capital requirements albeit the share capital should be sufficient at the time of its incorporation to achieve its objects and should not be less than SAR 500,000. Furthermore, upon incorporation, the JSC's paid up share capital must be no less than one quarter of its subscribed issued authorised capital. Shareholders are only liable up to the extent of their paid up share value.

The management board of a JSC must include at least three members and must not exceed 11 directors whom have been appointed by the shareholders.

Indirect Presence

Where a foreign entity is providing services or selling products from outside the KSA to customers in the KSA and those activities do not, as a matter of KSA law, require the foreign entity to have an onshore presence in the KSA, the foreign entity may be able to conduct its activities on an offshore basis. This may be by directly selling services or products to customers in the KSA from outside the KSA, or by appointing an agent or distributor in the KSA to sell the foreign entity's products to customers in the KSA.

Commercial Agency

All registered commercial agencies are regulated by the KSA Commercial Agencies Law and its implementing regulations (the Agency Law). The Agency Law does not include any set definition of "commercial agencies". However, commercial agencies are broadly considered to be anyone who enters into an agreement with a foreign entity or their representative in their own country to undertake commercial activities whether as an agent or distributor or in any form of dealership or distribution in exchange for profit, commission or facilities of whatever nature. The lack of clear definition of commercial agencies in the KSA means there are several difficulties, including, but not limited to, the problem in distinguishing between an "agent" and "distributor".

The following points provide a brief overview of the agency law in the KSA:

- Only a KSA national may act as an Agent.
- An agency agreement must be registered by the agent in the Register of Commercial Agents within 3 months of the date on which the arrangement becomes effective.
- The agency agreement must include certain provisions, for example, details of the parties, the subject matter of the agreement, territory and termination procedures.
- The KSA authorities have the right to impose penalties on foreign principals and their agents who breach the Agency Law, for example; deportation and restrictions on future commercial activities in KSA.
- Terminating the agency arrangements can at times be problematic although recently the KSA courts seem less likely to approve attempts by former agents to try to block the import of products by their former foreign principal and the courts seem less likely or to approve attempts by former agents to prevent the registration of new commercial agency agreements.

Franchise Arrangements

Franchising is an option for foreign companies to access the Saudi Arabian market. According to the Ministerial Resolution (number 1012) dated 17/09/1412 (H) Corresponding to 12/03/1992 (G) the Agency Law shall apply to franchise agreements; such agreements must be registered at the Commercial Agency Register like the agency agreements. A model franchise agreement has been prepared by the Ministry of Commerce and Investment as an example to be followed in drafting. However, the parties in the franchise agreement, are not required to follow the same agreement model provided that minimum requirements laid down by articles 10 and 11 of the Agency Law are met. A new draft franchise law has been published and is currently undergoing consultation. Implementation of the new franchise law is expected soon.

Construction

The Saudi construction market is the largest in the GCC region. The market has traditionally been driven by capital expenditure in the oil & gas and power & water sectors. In recent years, however, there has been huge spending in the infrastructure, real estate, health and education sectors and further diversification is being driven by the Vision 2030 strategy. As such, contractors and consultants in the market will come across a diverse range of legal and commercial terms, each with their attendant risks and opportunities.

Government Projects – traditional procurement

The majority of construction in Saudi Arabia is directly procured by government, using traditional procurement methods. In this regard, the Government Tenders & Procurement Law has significant impact on the way in which projects are tendered and contracted. Among other things, the Law requires government bodies to use prescribed standard forms (in particular, the Public Works Contract) and the Law prevails over contract terms to the extent of any inconsistency. Features such as limits on allowable variations and limited remedies for lack of payment may be unfamiliar to some international contractors.

That said, a number of government-owned corporations procure works in Saudi Arabia, with varying degrees of reliance on the Government Tenders & Procurement Law. Examples include Saudi Aramco, Saudi Electricity Company, National Water Company and Saudi Railway Company. Some of these corporations have developed their own bespoke standard forms, whereas others rely on international precedents, particularly the 1999 FIDIC suite.

Finally, a draft of the new Government Tenders & Procurement Law has been released for comment. When enacted, this law could bring significant change to government contracting in KSA.

Government projects – privatisation

The Vision 2030 strategy includes a major drive towards the privatisation of infrastructure. This is changing the Saudi construction industry, with many established players diversifying outside of traditional procurement and many new entrants coming into the market, such as investment banks and technology providers.

Within Vision 2030, there are aspirations to standardise PPP procurement across the various arms of government but this is in its early stages. That said, we are now seeing infrastructure projects across a range of sectors achieve financial close, which is a significant development in the market.

Private sector projects

Large private sector projects – particularly in real estate and healthcare – continue to gain momentum in KSA. The FIDIC suite is commonly used, both the 1987 and 1999 versions. Localised amendments (such as restrictions on the powers of the Owner's Representative / Engineer) are very common.

As for consultants, the FIDIC White Book is the most commonly used; however, again, on government projects, a prescribed standard form is more likely. There is a wide perception by government and private developers alike that consultants should take risk in relation to the outcomes of their work. As such, the consultants need to be aware of the potential for the "professional standard", pursuant to which they are used to operating, being eroded.

Legal context

Contractors and consultants need to be aware that any contract they sign will be interpreted in the context of Shariah. Fortunately, Shariah as applied in Saudi Arabia generally holds contracting parties to the terms they have agreed, save where such terms offend specific Shariah principles. Examples of this are usury (interest), uncertainty and speculation.

Careful consideration should also be given to the dispute resolution clause in the contract, in case a major problem arises. Many contracts concerning Saudi projects are signed without regard to these issues and would be extremely difficult to enforce if the need arose. Further commentary on this issue is set out below.

1.9% The KSA construction sector is set to **grow at 1.9%**

Employees

Residence visas and work permits for expatriate employees

Any non-KSA/GCC citizens are required to obtain a visa to enter and also permits to reside and work in the KSA. The visa must be obtained in advance of travel to the KSA while both residency and work permits should be obtained within 90 days of arrival.

Employers are required to register their expatriate employee's contracts with the General Organisation for Social Insurance and submit certain information via the Ministry of Labour e-service. A residency permit cannot be issued until this has been done. Companies are required to apply for a block visa quota in order to be eligible to employ foreign nationals. Only certain categories of employee can sponsor their dependants, there is usually no minimum salary requirement on foreign nationals, although unskilled employees cannot sponsor their dependants. Employees are not permitted to work for anyone other than their sponsor and sponsorship cannot be transferred unless under certain specific conditions.

Contract of employment

All contracts of employment for expatriate employees are fixed-term contracts and must be in writing and have two counterparts. If an employment contract with a non-Saudi fails to specify the duration, the contract's duration is equal to the duration of the employee's residency visa and work permit. Upon commencing employment, an employer may require an employee to complete a probationary period of up to 90 days; such period may be extended, subject to a written agreement between the parties, to a total of 180 days. During the probationary period, either party may terminate the contract of employment free from penalty unless the contract includes provisions reserving the right of termination to only one of the parties. Where the contract of employment is terminated by the employee during the probationary period, the employee may be requested to repay any visa costs paid by the employer.

Fixed-term contracts are contracts for a specified duration. Such contracts which include a clause providing for renewal of the contract for a similar or specified term can be renewed for the agreed period. If a fixed-term contract with a Saudi national has expired and the parties continue their employment relationship the contract is deemed to have been renewed for indefinite period. If a fixed-term contract with a Saudi national is renewed three consecutive times or the employee enters into a renewed fixed-term contract which brings his length of employment service to four years; the employee's contract will be converted to an unlimited term contract on the fruition of the earliest event

Key minimum standards under the Labour Law

The following are some of the entitlements of employees under the KSA Labour Law:

- Employees must not work longer than 8 hours per day and 48 hours per week. During Ramadan, Muslims are not permitted to work longer than 6 hours per day and 36 hours per week
- The hourly working restrictions do not apply to those employees in managerial employees
- All employees are to be afforded minimum 21 days of vacation each year and any salary is to be paid before the employee takes vacation. This vacation entitlement will increase to 30 days following 5 consecutive years of employment. Any vacation time not used by an employee during the working year is to be compensated to the employee upon his leaving the job
- Employees are afforded 3 day leave for childbirth, 5 days for marriage and 5 days for a bereavement of an immediate family member. Females are given minimum 15 days leave for the death of a spouse and if she is Muslim she is entitled for 4 months and 10 days leave and maternity leave for ten weeks, which are to be distributed as she wishes with a maximal four weeks preceding the expected date of delivery . Any employees enrolled in school are entitled to exam leave. Those employees who have at least 2 years tenure are entitled to 10 to 15 days leave to make the Hajj, or pilgrimage to Mecca
- Employees are entitled to sick leave at full pay for up to 30 days, followed by 60 days at 75% pay up to 90 days, at which stage the employee will be on unpaid leave
- An employee who has suffered injury at work will be entitled to medical care at the employer's expense
- Employees working in remote areas are entitled to housing, meals, transportation to work, shops selling food, clothing and necessary items, suitable recreational, cultural and sports facilities, suitable medical facilities, schools for dependents, training to eliminate illiteracy, mosques or prayer places at worksites

End of service gratuity

Under the KSA law, employees are entitled to an end of service benefit. End of service benefit is calculated on the basis of the last wage including regularly paid allowances, such as housing and transportation allowances. To the extent that the employee's remuneration includes elements that are variable (such as commission), it is permitted to provide in the employment contract for such elements to be excluded for the purpose of calculating the end of service gratuity.

An employee is entitled to half of his monthly salary per year of service for the first 5 years of service and to his full monthly salary per year of service thereafter (pro-rated for any partial years of service worked). If the employee terminates his employment voluntarily, the gratuity is reduced by two-thirds for periods of service of two to five years, and by one-third, for periods of service between five and ten years. Employees who resign with ten or more years of service are entitled to the full gratuity. Female workers who terminate their contract within six months of marriage or three months of giving birth and such workers terminating their employment due to force majeure are also entitled to the full gratuity.

Termination and redundancy

In January 2017 a resolution pertaining to collective dismissal of KSA nationals was issued limiting the ability of employers in the Kingdom to collectively terminate KSA national employees' employment by reason of redundancy. The resolution is far reaching and prohibits certain entities from making collective redundancies of KSA nationals for any reason without first consulting with the local labour office, therefore companies should proceed with caution.

Unlawful termination

Where an employee considers that they have not been terminated for a "valid reason", the employee may bring a claim in KSA through the Commission for the Settlement of Labour Disputes for arbitrary dismissal. If successful, the employee may be awarded compensation. This compensation is in addition to the payments referred to above. In the case of an unlimited contract, compensation will be 15 days' pay for each year of service and where the contract is for a fixed duration, the compensation could be equivalent to the salary that the employee would have received for the remaining duration of the fixed term. In both cases, the minimum amount that will be awarded will be two months' wages. Parties may expressly state in the employment contract the level of compensation which may be payable where either party terminates the contract without reason, provided that it must not be less than two months' wages.

Saudisation

'Saudisation' was created by the KSA government in order to encourage the employment of skilled KSA nationals in the private sector. Saudisation has taken various forms and included a number of initiatives since the mid-1990s. The latest of these, the Nitaqat (meaning 'points') programme, was launched in August 2011. Under Nitaqat, companies are colour coded into four colours according to their levels of Saudisation. Those with high Saudisation numbers will fall into platinum or green and those with low Saudisation numbers will fall into yellow or red (with red being the lowest category). Saudisation targets depend on the company's size and sector. Generally, an employer benefits from being in a higher category by enjoying greater flexibility in relation to recruiting and managing expatriate employees and will face increasing sanctions when placed in a lower category.

The Nitiqat program applies to all employers with six employees or more. Saudisation thresholds are updated from time to time by the Ministry of Labour and Social Development and will vary depending on the sector and the activity of the company as well as the number of employees the company employs. Companies with less than six employees are exempt from the program, but still need to employ at least one Saudi national. Companies can visit the ministry's website to understand their Saudisation position.

The government recently launched the 'Parallel Nationalization' program, which aims at helping employers who are unable to meet the requirements of the Nitaqat program by allowing them to pay fees in order to upgrade their classification within the Nitaqat program. The program helps employers that cannot find Saudi nationals, and which are in the Low Green Level or Yellow Nitaqat classification, to upgrade to the preferred level and thereby take advantage of the privileges.

The government has also introduced various other Saudisation initiatives which seek to encourage employers to increase the representation of Saudi nationals within their workforce. Certain reserved roles may only be undertaken by KSA nationals. These roles primarily relate to administrative functions; however the list is reviewed and amended regularly. In addition, all vacancies must be posted with the Human Resources Development Fund and advertised for a minimum period of 2 weeks to KSA nationals registered with it as unemployed and seeking employment prior to the role being offered to a non-KSA national.

Real estate

Real estate is one of the most significant sectors in the KSA economy, with significant interest from foreign investors in owning property. All real estate transactions are currently undertaken at the Notary Public and title deeds are issued to evidence ownership.

Subject to certain exceptions, ownership of real property is generally restricted to Saudi nationals.

Gulf Corporation Council (GCC) nationals and corporate entities wholly owned by GCC nationals may acquire real property rights over land and property for the purpose of conducting their business or for their residence subject to certain restrictions.

Non-GCC nationals are entitled to own land and property in Saudi Arabia. However, ownership is subject to the following restrictions:

- Non-GCC individuals or corporate entities licensed to operate a business in the KSA may acquire property for the purpose of such business or residential property for themselves and their employees, subject to obtaining a foreign investment licence from the Saudi Arabian General Investment Authority (SAGIA). They may also lease property.
- Foreign entities must establish a local KSA registered company.
- Foreign individuals must have a KSA residency and work permit.
- SAGIA licensed individuals or corporate entities licensed to operate a business in the KSA which includes property investment activities may own and invest in real estate for the purpose of developing the same subject to the total cost of the project (land and construction) being not less than SAR 30 million, the investment in the development occurring with five years of the acquisition and the investor securing SAGIA approval to the purchase.

In addition, restrictions apply to the acquisition of real property rights in the cities of Mecca and Medina by non-Saudi nationals.

1/5

of the Worlds Oil Reserves are in Saudi Arabia ranks as the largest exporter of petroleum

3 million

It is estimated that 3 million housing units need to be created by 2040 to meet the needs of the growing population in the KSA

Intellectual property

For many years, there has been a framework of laws and regulations in place in Saudi Arabia to protect and enforce intellectual property rights. Saudi Arabia has also been a longstanding signatory to many international treaties for the protection of intellectual property rights.

Trademarks

The law of trade marks in Saudi Arabia is governed by the GCC Trade Marks Law. Saudi Arabia is also a member of the Paris Convention for the Protection of Industrial Property, which allows applicants to claim priority from the filing date of overseas trade mark applications.

Individuals or companies may apply to register their trade mark at the Trade Mark Office, which is a division of the Ministry of Commerce and Investment.

Trade marks can consist of words, numbers, symbols and logos and are registered in relation to particular goods or services. In order to be capable of registration, the chosen trade mark must be capable of distinguishing the applicant's goods or services from those of others in the market place. The right to a trade mark in Saudi Arabia is generally acquired by being the first to file a trade mark application.

It currently takes between 6-12 months for a trade mark application in Saudi Arabia to secure registration. Once successfully registered, the trade mark will be valid for 10 Hijri years from the date of filing, and can be renewed indefinitely for periods of 10 Hijri years thereafter. Trade mark and brand owners may also be able to enforce their rights against third parties through the appropriate authorities in Saudi Arabia or through the competent Courts.

Trade marks can be licensed or assigned to third parties. IP licensing and franchising have been widespread and popular commercial strategies used in Saudi Arabia for decades. Historically this has been due to the huge consumer appetite for foreign retail brands, and particularly US brands, but the market is also starting to show signs of newly created Saudi brands emerging and being licensed or franchised outside of the Kingdom.

Copyrights

The Copyright Law deals with the protection of copyright works, covering all scientific, artistic and literary works. These include for example, written works, sound recordings, photographs, drawings and computer software. Automatic protection, without the need for further registration, is granted for any works of Saudi Arabian authors or foreign authors, provided the work in question is published, produced, performed or displayed for the first time in Saudi Arabia. Protection is also afforded to copyright works which are protected pursuant to international agreements or treaties, to which Saudi Arabia is a signatory, for example the Berne Convention.

Generally, copyright protection is valid for the lifetime of the author plus 50 years from the date of the author's death. A slight difference exists in the copyright protection for sound recordings, audio visual works, films, collective works and computer software; these are protected for 50 years from the date that the work is first published, performed or recorded.

Patents and industrial designs

It is possible to protect new and innovative technical inventions in Saudi Arabia by means of a direct national patent application or through a national phase application filed through the international Patent Cooperation Treaty (PCT).

The filing and prosecution of patent applications is handled by the King Abdulaziz City for Science and Technology (KACST). KACST is actively examining, publishing and granting patents in Saudi Arabia and the average time frame from filing to grant is approximately 2-3 years. The duration of protection is 20 Hijri years from the date of filing the patent and it is necessary to pay an annual maintenance fee in order to keep the application alive during the examination process.

It is also possible to obtain patent protection in Saudi Arabia by filing a GCC Patent Application, which is a single application covering all six GCC countries (UAE, Saudi Arabia, Oman, Bahrain, Kuwait and Qatar). This is currently a popular strategy for many applicants seeking to obtain protection across the GCC countries.

Industrial designs are also capable of protection in Saudi Arabia. An industrial design protects the aesthetic look of a product or industrial item. Industrial design applications are also handled by KACST and usually secure registration within 6-12 months of filing. The duration of protection for an industrial design is 10 Hijri years from the date of filing.

Domain names

Saudi Arabian domain names have a ".sa" or ".السعودية" country code extension and are registered on a first-to-file basis. The regulatory authority is the Saudi Network Information Centre (SaudiNIC) which is currently operated by the Communication and Information Technology Commission. In order to secure registration of a Saudi ccTLD, SaudiNIC requires evidence of the relationship between the proposed name and the business entity seeking registration of the domain name, this is usually in the form of a Saudi commercial registration or evidence of trade mark rights in Saudi Arabia.

Import and export

KSA is a member of the World Trade Organisation and a party to a number of free trade agreements, particularly within the GCC. All custom procedures have been unified across the GCC member states by virtue of the Unified Customs Law, enacted in 2003, which allows for a number of import duty exemptions.

However, there still remains a number of customs duties imposed on the importation of certain goods, generally being subject to a 5% tariff. An increased tariff of 12% is imposed on imported goods that are identical or similar to those produced locally. There are no duties or tariffs on exports as of yet.

> "
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Dispute resolution & enforcement

Court & Committees

The KSA court system includes the following fora:

- The Board of Grievances, which has jurisdiction hear claims against government;
- The Commercial Court, (part of the Shariah court system), which has jurisdiction to hear commercial disputes;
- The Sharia Courts, which have jurisdiction to hear (among other things) civil wrongs;
- Various specialist committees (such as the Banking Disputes Committee and the Insurance Disputes Committee).

Features of court procedure in KSA are as follows (excluding the committees, which have some variations to the below):

- All hearings and submissions are in Arabic.
- Parties may only be represented by Saudi nationals with legal qualifications.
- After a case is initiated by the claimant submitting a "Claim Form", the courts will arrange delivery of the "Claim Form" on the Respondent and schedule the first hearing thereafter.
- Powers of Attorney must be in place by the time of the first hearing in order for the party to be represented.
- Submissions are then exchanged at subsequent hearings until both parties confirm they have nothing more to say. Objections on the basis of an arbitration clause must be raised at the first submission.
- There are two levels of appeal available from the first instance judgment.

Practical Implications

When choosing a dispute forum and jurisdiction, the parties to a prospective contract should consider carefully the specific facts in relation to the contract where the contract involves KSA-based/registered parties, or is to take effect in the KSA together with the enforcement options and be aware that the process for execution of foreign judgments and awards against assets in the KSA can be difficult.

The choices a party can make in relation to the governing law, jurisdiction and enforcement in the KSA are ones which affects the risks, costs, time of a party in legal proceedings. Foreign investors must consider carefully the choice of governing law and jurisdiction in any agreement and seek specialist advice on those issues before entering into that agreement.

Saudi Arbitration

The Arbitration Law 2012 was a significant step forward in the development of the law in the KSA and has wide-ranging implications for businesses (both local and international) trading in the domestic market. In particular, the Law added numerous of the positive aspects of the previous Arbitration Law and is based on the UNCITRAL Model Law, albeit with some localised amendments. Implementing Regulations to the Arbitration Law have also recently been passed.

It has now become routine for the Saudi courts to decline to hear matters where there is an arbitration clause, provided that the relevant objection is raised early enough in the court proceedings.

In 2016, the Saudi Centre for Commercial Arbitration (SCCA) opened. This is the KSA's first institutional arbitration centre and the SCCA has also published its own set of Arbitration Rules. This is very positive for the development of arbitration in KSA because the rules have been very well drafted, on the basis of various international precedents, and comprise a robust and reliable procedure for arbitrations to be run. The Arbitration Rules fill many of the gaps inherent in the Arbitration Law and the SCCA has also taken a leading role in training the local legal and business community on best practice in dispute resolution.

Enforcement of Foreign Judgments and Arbitral Awards

Pursuant to the Enforcement Law 2013, the Execution Judge has jurisdiction to enforce all foreign judgments or awards that are issued in the form of an Execution Deed. Article 9 of the Enforcement Law lists the forms of Execution

Deeds which include (among other things) final judgments, decisions and orders issued by the courts, final arbitral awards, settlement agreements issued by authorised entities or authenticated by the relevant courts, commercial papers, authenticated contracts and instruments, judgments or judicial riders and authenticated instruments issued in a foreign country.

Article 11 of the Enforcement law states that the Enforcement Judge may enforce foreign judgment or arbitral awards only on the basis of principles of reciprocity and if the party seeking enforcement demonstrates that:

- The Saudi courts do not have jurisdiction with regard to the dispute;
- The award was rendered following proceedings in compliance with the requirements of due process;
- The award is in final form as per the law of the seat of the arbitration
- The award does not contradict a judgment or order issued on the same subject by a judicial authority of a competent jurisdiction in the KSA, and
- The award does not contain anything that contradicts Islamic Law or Saudi public policy.

The KSA is a party to a number of treaties in relation to the recognition and enforcement of foreign judgments and awards, the most important being:

- The AGCC convention: this requires the recognition and enforcement of court judgments and arbitral awards between members of the AGCC
- The Riyadh Convention: this requires the recognition and enforcement of court judgments and arbitral awards between many countries in the Middle East and North Africa
- The New York Convention: this requires the recognition and enforcement of foreign arbitral awards between the countries who are currently signatories of the Convention (more than 140 nations)

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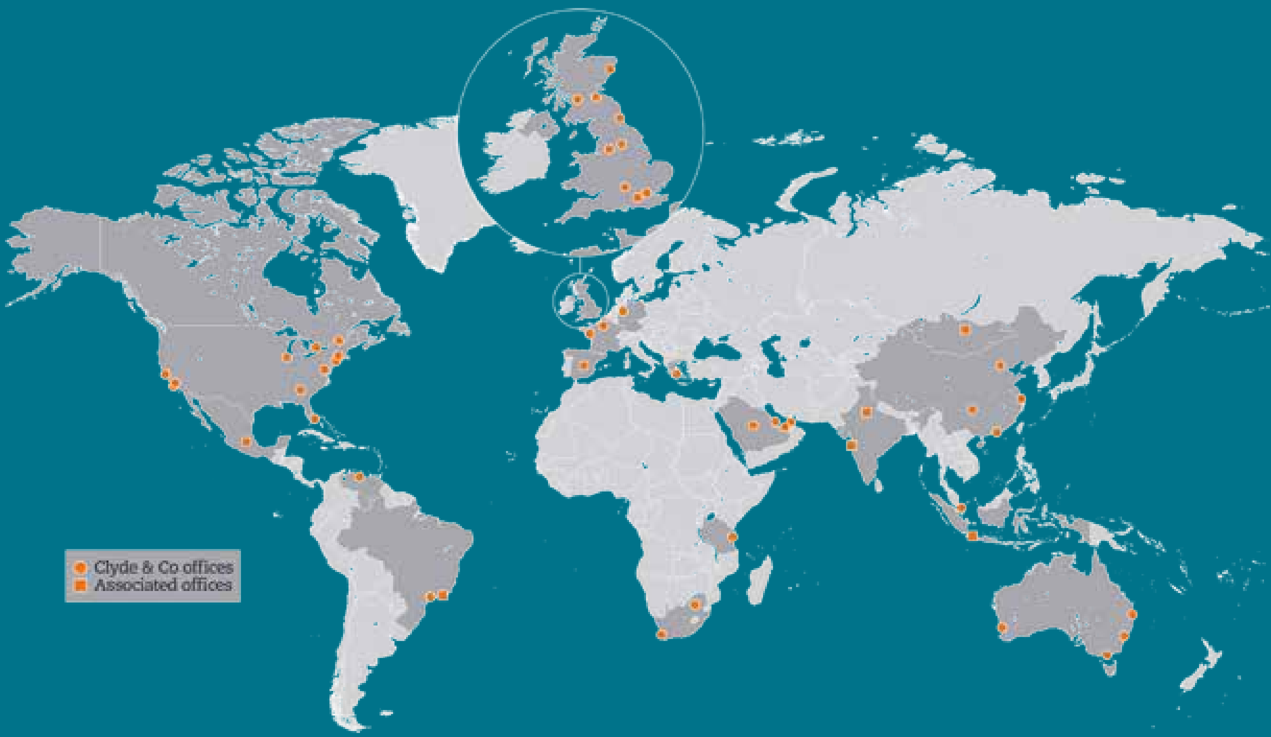

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