

Setting up a business in Saudi Arabia

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Forms of legal entities

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

Branch Office

If the foreign business does not want (or require) a Saudi partner, opening a Saudi Arabian branch office (Branch) maybe a suitable choice. A Branch is normally the quickest entity to establish, it can carry on a broad range of activities (as approved by SAGIA), and the minimum capital requirement is usually SAR 500,000 (about USD 135,000).

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

A Branch is not legally distinct from the foreign business itself, so the business activities of the Branch will be limited to those of the foreign business, and the foreign business will be liable for the debts and other liabilities of the Branch.

Limited Liability Company

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

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

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

An LLC can generally have between one and 50 shareholders. Only one class of shares is allowed, and

different voting rights are not permitted. An LLC may not offer its shares to the public, and is not allowed to engage in certain types of business activity (e.g. banking and insurance). Share transfers are permitted, subject to regulatory approvals and statutory preemption rights enjoyed by the other shareholders.

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

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

Joint Stock Company

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

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

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

Shareholders in a JSC are exempt from personal liability on the same basis as the shareholders in an LLC, and are also not personally liable for the debts of the JSC should such debts exceed 50% of the JSC's stated capital. Importantly, the annual audited financial statements of a joint stock company must be published in a Saudi Arabian daily newspaper.

Temporary Commercial Registration

An investor can apply for a Temporary Commercial Registration (TCR) if the intended business activity will be conducted in Saudi Arabia over a relatively short period of time, is related to the performance of a government contract, and no further business activities are contemplated. The registration process is similar to that for a Branch, although less documentation is required to support the foreign investment licence application, and there is no capital requirement.

The issuance of a TCR is restricted to companies that have contracts with government or semi-

government entities. The licence application must be supported by a letter of contract award, or a signed contract, from the relevant government agency. The principal disadvantage of a TCR is that it is limited to the scope and terms of the particular contract, and cannot be used to undertake general business activities.

Technical & Scientific Services Office

A foreign company may establish a Technical & Scientific Services Office (TSSO) to provide technical and scientific support to its registered Saudi agents, distributors and consumers. A TSSO may not engage in any commercial activities or earn revenue. Its activities are limited to providing technical information, market and technical research.

The registration process is similar to that for a Branch, although less documentation is required to support the foreign investment licence application, and there is no capital requirement.

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

Professional Services Company

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

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

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

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

