



Update on the New Saudi Arabian Companies Law and SAGIA Announcements

New Companies Law Update

The new Saudi Arabian Companies Law, discussed in our [November 2015 Commentary](#), came into effect on May 2, 2016.¹ In connection with the new law coming into force, the Ministry of Commerce and Investment (“MOCI”) has published model forms for the Articles of Association and By-Laws for all types of companies regulated by the new law, including, holding companies and single-shareholder companies (both new company types recognized in the new law).²

Although the new law provides for single shareholder companies, neither MOCI nor the Saudi Arabian General Investment Authority (“SAGIA”) has yet issued rules governing foreign (non-Saudi) participation in such companies. While we cannot predict the timing, it would be consistent with past practice, however, for such rules or policies to be announced. In any event, a natural person may own only one single-shareholder limited liability company (“LLC”) and, while companies may own more than one single-shareholder LLC, a single-shareholder LLC may not in turn establish or own another single-shareholder LLC.

The new law applies to all new companies established in Saudi Arabia after May 2, 2016. Companies already

in existence prior to that date have a one-year transition period to effect such changes as are required to bring themselves into compliance with the new law. Article 224 of the new law provides that MOCI and/or the Capital Markets Authority will issue specific guidance clarifying exactly which provisions of the new law will apply to existing companies during the transition period. It is not entirely clear whether this means that existing companies may not, in the meantime, take advantage of the more beneficial provisions which have been made available in the new law such as the reduction in the statutory reserve requirement from 50 percent to 30 percent of the capital for LLCs and joint stock companies (“JSC”s). That said, it would appear that MOCI is preparing to allow existing companies to avail themselves of the lower reserve requirement and to reduce the size of their statutory reserve to 30 percent of their capital, even prior to the end of the one-year transition period.

In any event, companies would do well to carefully consider the provisions of the new law with a view to assessing their impact during the one-year transition period. To the extent that any constitutional documents or ancillary agreements (including shareholders’

agreements) are inconsistent with the provisions of the new law, these should be amended in a timely manner.

SAGIA Update

Documentary Requirements. Significant changes are afoot at SAGIA, the Saudi government authority entrusted with licensing foreign investment into the Kingdom. All foreign (non-Gulf Cooperation Council) investors are required to obtain a Foreign Investment License (“FIL”) from SAGIA prior to establishing or operating any entity in the Kingdom.

Until recently, the requirements to obtain a FIL in the Kingdom included the preparation and submission of an extensive array of documentation, an exercise which was often intricate, time-consuming and expensive. Recently, however, SAGIA unveiled a greatly simplified scheme in which the only documents required to obtain a FIL are: (i) a board resolution to invest in Saudi Arabia, (ii) the investor’s commercial registration certificate, (iii) an investment plan, including its economic impact, (iv) documentary proof of the investor’s financial capacity to carry on operations in the Kingdom, and (v) a copy of the Saudi entity’s proposed general manager’s passport. In practice, additional documents will also be required to complete registration with all applicable Saudi government and other bodies and to begin operations, such as proof of opening an account with a Saudi bank. Several of these documents would be subject to overseas legalization and authentication requirements.

These changes evidence a trend over the past few years of easing the documentary requirements associated with setting up foreign entities in the Kingdom. By placing the emphasis on the substantive nature of the investment rather than on formal requirements, the authorities are stressing the point that approval of foreign investment will henceforth be predicated on the alignment of the proposed investment with the economic priorities and goals of Saudi Arabia (including, for example, Vision 2030, the government’s long-term blueprint for a post-oil future).

While it remains to be seen how these new policies will be implemented in practice, it is clear that the longer term trend within SAGIA is to ease the FIL application process for those investors which SAGIA views as likely to bring positive benefits to the Saudi economy. As a result of these developments, it will be more important than ever to prepare and present applications for foreign investment in a light that showcases them as consistent with, and indeed contributing to, the government’s realization of its policy ambitions.

On May 7, as part of a broader government reshuffle, the Minister of Commerce and Investment was given direct oversight of SAGIA. This change should facilitate greater alignment between SAGIA and MOCI regarding the company incorporation process for foreign investors.

Trading Companies and Engineering Consultancies. In a further recent development, the Saudi Council of Ministers has approved permitting foreign entities to set up wholly-owned “trading” companies in the Kingdom. Such trading companies may be in the form of an LLC or a branch, must have a capital of at least SAR 30 million, must commit to invest over SAR 200 million in Saudi Arabia within the first five years of operation, and must meet certain targets for the training of Saudi nationals and the localization of its activities. On June 16, The Dow Chemical Company announced it had become the first overseas company to receive a trading license.

In another significant development, SAGIA announced on June 2, that it was accepting proposals from international companies which wish to establish wholly owned engineering consultancies. At present, engineering consultancies, even those with foreign participation, are regulated and licensed by MOCI (as “professional companies”) rather than by SAGIA, and are required to have a Saudi engineer own at least 25 percent of the company’s capital. There is as yet no indication when or how the legal procedures to establish and operate wholly-owned engineering businesses will be implemented.

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Endnotes

- 1 Companies Law, issued under Royal Decree No. M/3, dated 28/01/1437 (November 10, 2015).
- 2 See Ministerial Decision No. 18379, dated 01/06/1437 (March 10, 2016).

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