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# Shifting (Regional HQ) Sands – to Saudi



On February 15<sup>th</sup>, the Saudi Press Agency issued a statement confirming that the Government of Saudi Arabia intends to stop contracting with entities whose regional headquarters are not located in the Kingdom by January 1<sup>st</sup> 2024.

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The objectives behind this policy are clear – to attract the world’s largest entities in stationing their physical Middle East presence in Riyadh, further bolstering the collaboration between the state and the private sector, boosting job creation and reviving businesses adversely affected by the COVID-19 pandemic. All of these themes are consistent with the overarching Vision 2030 of the Saudi Crown Prince, H.R.H. Prince Mohammed Bin Salman.

The statement of intent by the Kingdom under this announcement is bold. It will impact the strategic focus of multinational companies that do not currently have a significant “on-the-ground” presence in Saudi and cause them to reconsider their existing regional set-ups.

The period leading up to the January 1<sup>st</sup>, 2024 deadline will indicate how the legislation to enact this policy will look. According to a statement by the Minister of Finance, H.E. Mohammed Al-Jadaan, issued on February 16<sup>th</sup>, clarity on the legislation will be provided in Q4 2021.

Based on previous Saudi practice, it is expected that there will be a minimum financial threshold applicable to multinationals (for example, minimum annual sales of SAR 20million (US\$5.3m)).

It is expected that exemptions to the requirement will be applicable to sectors such as ad hoc military sales and diplomatic contracts.

In this note we examine some of the legal and practical considerations for a foreign business looking to establish, or move, its regional presence to the Kingdom.





## Let's get it started – basics of doing business in the Kingdom

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Since the introduction of the Saudi Foreign Investment Law in 2000, the Kingdom has been seeking to attract non-GCC investment.

As things currently stand, there is in Saudi no equivalent to the various UAE free-zones. The closest parallels to the UAE free-zones are the Economic Cities (e.g. King Abdullah Economic City), which fall within the purview of the Economic Cities and Special Zones Authority and which will likely influence the way in which a number of the Saudi giga-projects (for example, Al Ula and Amaala) will be regulated.

As a rule of thumb, and subject to limited exceptions, a foreign business wishing to establish commercial operations in Saudi Arabia must obtain a foreign investment licence from the Saudi Ministry of Investment (MISA).

The time period and costs associated with obtaining a foreign investment license vary depending on the type of business.

A key consideration for MISA is the ability of the foreign investor to demonstrate experience in its field of expertise by furnishing 3 years of annual audited financial statements. For large multinationals, this invariably means that the principal foreign office is the sponsor for establishing the Saudi set up, precluding the possibility of using a regional SPV as a conduit for entry into the Kingdom.

The business activities which are notably closed to foreign investment are summarised on the MISA “negative list”. These are activities which are exclusively reserved for Saudis. Vision 2030 has sought to narrow the scope of the negative list and a desire to open the economy up to a more diverse sector base.

It is essential for a foreign investor to obtain an up to date understanding of the implications of the prohibited activities – nuances in the way activities are proposed to MISA and the way in which MISA interprets the intended activities can ultimately determine whether those activities fall on the “permitted” side of the line. MISA has considerable discretion in this regard and it is important to obtain advice before the presentation of proposed activities to MISA. Clear cut examples of as yet prohibited activities on the negative list include oil exploration, drilling and production and manufacturing of military equipment.

For activities not subject to the negative list, there are a number of foreign investment vehicle options. Primary amongst those are:

Type of entity	Principal features
<b>Branch Office</b>	<ul style="list-style-type: none"> <li>• If the intention is to go it alone, without a Saudi partner, establishing a branch is a good option</li> <li>• MISA permits a broad range of activities that can be carried out by a branch – however, creation of a business entity with some Saudi participation may be required in certain circumstances (for example, government contracts) – see Limited Liability Company below</li> <li>• Has no independent articles of association</li> <li>• Allowed to sponsor foreign employees for residency</li> <li>• Liabilities of a foreign branch flow up to its parent company</li> <li>• Typically, a branch can be registered within 4 weeks to incorporate (subject to variations)</li> </ul>
<b>Limited Liability Company</b>	<ul style="list-style-type: none"> <li>• The most prevalent form of vehicle</li> <li>• Incorporated with or without a Saudi partner as a joint venture</li> <li>• As with a branch, MISA permits a broad range of activities</li> <li>• Acts in its own name in its business dealings</li> <li>• Allowed to sponsor foreign employees for residency</li> <li>• 1 to 50 shareholders are permitted</li> <li>• Limits the liability of shareholders</li> <li>• Typically, 4-6 weeks to incorporate (subject to variations)</li> <li>• Standard Articles of Association template issued by the Ministry of Commerce</li> <li>• Usually no minimum capitalisation requirement so long as the capital is sufficient for the company's objects – minimum capital for certain industrial services (subject to pre-approval by MISA)</li> <li>• Share capital must be fully paid</li> <li>• Shareholders who make in-kind contributions are jointly liable for correct valuation of in-kind contributions to third parties</li> <li>• Shareholders are liable to the limit of their contribution to the company. Nevertheless, shareholders will be jointly liable for prime debts such as payroll and events of shareholder's fraud</li> <li>• Can be managed by a single director – setting a board of directors is optional. It is only mandatory, if there are more than 20 shareholders in the company</li> <li>• A director is not required to be a partner</li> <li>• In practice, the director's duties and authorities are stipulated in the Articles of Association</li> <li>• A director must not participate in any business that might compete with the company's business, unless such participation is approved by the shareholders</li> <li>• A director may not hold an interest in any contract entered into by the company unless such interest is approved by shareholders</li> </ul>

Type of entity	Principal features
<b>Joint Stock Company</b>	<ul style="list-style-type: none"> <li>• A good option where there is an intention to take the company public</li> <li>• All companies listed on the Tadawul (Saudi stock exchange) are “open” joint stock companies</li> <li>• Certain types of activities (e.g. banking and insurance) may only be carried out by a joint stock company</li> <li>• Allowed to sponsor foreign employees for residency</li> <li>• Annual audited financial statements of a joint stock company must be published in a Saudi Arabian daily newspaper</li> <li>• Can only go public after two years of lock-up period from incorporation</li> <li>• Typically, 12-16 weeks to incorporate (subject to variations)</li> <li>• Minimum share capital is SR 500,000</li> <li>• Share capital can be partially paid-up with 1/4 of the value of the shares at incorporation as the minimum paid-up capital requirement, provided that the remaining capital is paid within 5 years from the date of issue</li> <li>• Capital amount should be monetary (cash) while in-kind capital is acceptable under certain circumstances</li> <li>• Shareholders are liable only to the limit of their shares – in principle, shares offer their holders equal rights</li> <li>• Board of directors shall consist of at least 3 directors and a maximum of 11</li> <li>• Regardless of the shareholders numbers, there is no supervisory board in addition to the board of directors</li> <li>• In addition to the directors’ fiduciary duty, the board has the authority to manage the company in line with its objects except for those matters reserved for the general assembly</li> <li>• Members of the board of directors may not appoint other members to act on their behalf by proxy in the board meetings, unless this is specifically authorized in the bylaws</li> </ul>
<b>Temporary Commercial Registration</b>	<ul style="list-style-type: none"> <li>• Intended for short-term contract performance, typically a Government contract</li> <li>• No capital requirement</li> </ul>
<b>Professional Services Company</b>	<ul style="list-style-type: none"> <li>• The only type of entity which can conduct engineering, architectural, accounting, law and other professional services</li> <li>• Generally requires a joint venture arrangement with a Saudi person licensed to carry out the particular profession</li> </ul>

**It is essential for a foreign investor to obtain an up to date understanding of the implications of the prohibited activities.**





## Your country needs you! – hiring in Saudi

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Increasing the proportion of Saudi nationals in the total workforce in Saudi is a key driver of Vision 2030. Foreign investors should take note – Saudi is making a conscious effort to move away from oil revenue dependency and knowledge transfer and the professional development of the Saudi workforce, particularly in the context of target industries such as advanced technology, tourism, health and education, is key to that policy.

The Government regulates the way in which employers comply with the requirement that they employ a minimum number of Saudis amongst their workforce through the *Nitaqat* Programme.

The percentage of Saudis employed to ensure compliance with the *Nitaqat* Programme depends on the type of industry, the type of company and the designation of the employee.

The Ministry of Labour and Social Development provides incentives for employers by classifying their compliance with the *Nitaqat* Programme: platinum, green, yellow, red.

Platinum and green allows an employer to hire more non-Saudis. Conversely, employers that fall into the yellow or red category risk having privileges curtailed in relation to foreign work permits.

Non-Saudis can work in the Kingdom, subject to their obtaining a residency visa (or *iqama*). The *iqama* is also linked to a number of practical facets of living in Saudi e.g. bank account, leasing accommodation, health insurance and vehicle ownership.

As a matter of practice, the process for obtaining an *iqama* can be time consuming including a medical examination in the employee's home country as well as a further medical examination

following entry into the Kingdom. As an interim measure, obtaining a business visit visa to enter Saudi is relatively quick. The Government recently announced that the *iqama* requirement will be lifted at some point, and expats will be free to work without a legal sponsor in Saudi.

All employees are subject to the Saudi Labour Law (2005) which sets out in detail provisions relating to the employer/employee relationship such as working hours, probationary periods and annual leave.

Key employment considerations unique to Saudi and relevant to companies considering setting up in Saudi are:

- General Organisation for Social Insurance (GOSI) contributions – these are mandatory contributions made by the employer on behalf of the employee, calculated as a percentage of an employee's wage
- Health insurance – the employer is required to meet the costs of insurance premia for the employee and their families
- End of service gratuity – employees are generally entitled to receive a lump sum amount from their employers on completion of their employment, primarily calculated on the basis of the length of service of the employee

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## Office space (can't WFH forever)

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### Riyadh has an abundance of commercial real estate.

Leases for office space are typically governed by the *Ejar* system under which a standard agreement with tenants needs to be entered into and then uploaded to a Governmental portal.

The *Ejar* template is straightforward and gives unilateral rights to the lessor, especially enforcing rights in the event of non-payment.

There is no minimum physical office space. However, the local municipality license may require certain space size for a company of over 30 employees.

The typical tenor for a lease is one year.

It is uncommon for Saudi leases to include any service charges or maintenance charges.

Safety requirements are set by the Civil Defence and usually a license is obtained by the landlord on behalf of the tenant – it is not something to worry about in leasing space in high-rise buildings.





# It's not all work, work, work

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## Accommodation

Historically, non-Saudis chose to reside on residential compounds with a lifestyle similar to that of their home countries – holiday type villas with extensive facilities such as tennis courts, gyms, swimming pools and restaurants (some even have their own golf course). This infrastructure allows non-Saudis to settle in to accommodation pretty much as soon as they land and friendships in this environment form quickly. Some of the larger companies often block book compounds, so it's not unusual for work colleagues to also double up as residential neighbours.

In more recent years, with the increasing development of community residential areas, non-Saudis have also ventured out to live off-compound. This is often more cost-effective than compound residences and avoids the need to go through the extensive security checks when entering and exiting a compound.

## Health

Healthcare is good in Saudi, comparable to leading facilities in the United States and Europe. Hospital staff are predominantly expatriate employees and doctors are generally fluent in English. Health insurance is mandatory for non-Saudi employees and the infrastructure for direct billing between health care facilities and insurance is generally advanced, especially in the larger cities of Riyadh, Jeddah and Dammam.

Basic medical insurance covers most emergencies. However, coverage depends on each individual policy. Accordingly, many expats in Saudi Arabia opt to take out private health insurance that provides extended, comprehensive cover.

## Education

Saudi offers a number of education options for children, primarily based in international schools which follow curricula specific to their country e.g. British International School, American International School. Learning Arabic is mandatory for all students, though English is the principal language for teaching.

American schools offer students Advanced Placement courses and exams, which can count as college credit in the US, and SAT preparation classes; some also offer US university application counselling within the school.

Beyond secondary education, foreign students typically go to overseas universities. However, Saudi is investing heavily in developing its education sector and boasts one of the region's leading academic institutions in the King Abdullah University of Science and Technology (KAUST).

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