



Middle East Legislative Insight: Saudi Arabia Foreign Investment Law

Type	E-journal
Date	24 août 2019
Jurisdiction	Saudi Arabia
Copyright	LexisNexis
Legal reference	Saudi Arabia Decision No. 1/20/1423, Saudi Arabia Royal Decree No. M1/1421, Saudi Arabia Cabinet Decision No. 405/1435, Saudi Arabia Cabinet Decision No. 308/1437
Relevant company	Nasreen Alissa Law Firm

Document link: https://www.lexismiddleeast.com/eJournal/2019-08-24_1



Table of contents

Analysis	3
Background	3
Implications of Saudi Arabia Royal Decree No. M1/1421	3
Main Provisions of Saudi Arabia Royal Decree No. M1/1421, its Implementing Regulations and the SAGIA Services Manual	3
The Foreign Investment Law	3
The Implementing Regulations	4
SAGIA Services Manual	4
Property ownership and sale	5
Restrictions for foreign investors	5
Corporate income tax, Withholding Tax, and Zakat	5
Vision 2030 and foreign investment	6
Conclusion	6
Author	6
Notes	7

Analysis

In 2000, Saudi Arabia implemented the Foreign Investment Law, Saudi Arabia Royal Decree No. M1/1421 dated 05/01/1421 H (corresponding to 10/04/2000 AD), which liberalised the foreign investment laws in the Kingdom. The Saudi Arabian General Investment Authority (SAGIA) was created under this law, which is responsible for licensing all new foreign investments in Saudi Arabia. Under Saudi Arabia Royal Decree No. M1/1421, foreign persons and entities are permitted to invest in all industries and services except for those which are specifically excluded from foreign investment. Under Article 2 of Saudi Arabia Royal Decree No. M1/1421, regarding taxation and tariffs, the Saudi authorities give preferential treatment to Foreign Direct Investment (FDI). The impact of these laws has been seen in the constant progress the country has shown in attracting foreign investments and the socio-economic changes that are taking place across the nation.

Background

The need for non-oil export-related growth led to the opening up Saudi Arabia's economy to foreign investors. Joining the World Trade Organization (WTO) Agreement in 2005 further enhanced the call for more foreign investments in Saudi. In 2016, the Saudi government launched Saudi Vision 2030 (Saudi Arabia Cabinet Decision No. 308/1437), an ambitious development program that foresees essential opportunities for foreign investors in the sectors of education, housing, health and energy, among others. The government is also trying to attract FDI in the sectors of renewable energy and entertainment. The Saudi government continuously shows the intent for creating an investor-friendly atmosphere. This commentary is hence focused on these laws and their impact on the Saudi economy.

Implications of Saudi Arabia Royal Decree No. M1/1421

1. Developing technical knowledge
2. Diversifying sources of income in Saudi Arabia.
3. Increasing exports.
4. Developing the Saudi manpower.
5. Enhancing the competitiveness of the economy and its products in the local and global markets.
6. Balancing development between the administrative regions of the Kingdom.

Main Provisions of Saudi Arabia Royal Decree No. M1/1421, its Implementing Regulations and the SAGIA Services Manual

The Foreign Investment Law

Article 2 of Saudi Arabia Decision No. 1/20/1423 (Implementing Regulations of the Foreign Investment Law) provides that the [Saudi Arabian General Investment Authority \(SAGIA\)](#)^[1 p.7] will determine the issuing of licenses for investment on a temporary or permanent basis. The license application, once submitted before SAGIA, will be decided on merits. If rejected, the parties have the right to appeal before the Board of Grievances against the orders of the Board of Directors within 60 days of rejection of the application as provided in the Article 15 of Saudi Arabia Decision No. 1/20/1423.

[The SAGIA Services Manual](#)^[2 p.7] has prescribed the license fee for different sectors.

Article 5 of Saudi Arabia Royal Decree No. M1/1421 allows for granting of licenses for two categories:

- a) companies owned by a national and a foreign investor, and
- b) companies that are wholly owned by foreign investors.

Foreign direct investment prevailing in Saudi Arabia has its focus around three main types of investment:

- a. greenfield investment,
- b. joint ventures, and
- c. investments associated with offset programs.

Foreign direct investment has created employment opportunities and increased domestic production in Saudi Arabia. Saudi Arabia has also welcomed the concept of foreign direct investment as an excellent benefit for the country's economy and GDP growth. Foreign direct investment has created new infrastructure and employment opportunities for Saudi citizens.

Benefits and security enjoyed by licensees

Article 6, 7, 8 and 9 of Saudi Arabia Royal Decree No. M1/1421 assures that the license will be provided with all the benefits of a national business. Article 5 of Saudi Arabia Decision No. 1/20/1423 provides the benefits available for investors. These benefits include:

- a. Incentives stipulated in the protection and promotion of foreign entities.
- b. Own real estate necessary for the conduct of the licensed activity.

- c. Advantages of agreements to avoid double taxation.
- d. Re-transferring of the foreign investor's share outside the Kingdom, of his share's sale or from liquidation surplus or profits made by the institution.
- e. Sponsorship of the foreign investor and his non-Saudis employees by the licensed entity.
- f. Avail industrial loans from the Saudi Industrial Development Fund.

These benefits offered to investors have attracted many new companies to Saudi. The availability of loans from the Development Fund is an attractive option, helping investors infuse fresh capital and expand their business.

Due process of in adjudicating disputes

Article 11 of Saudi Arabia Royal Decree No. M1/1421 specifically provides that no investments will be confiscated, wholly or partially, without a court judgment. It also provides that investments will not be subject to expropriation, wholly or partially, except for public interest. Judicial decisions on various issues are taken by nine kinds of courts having jurisdiction over various matters, not limited solely by pecuniary limits.

Article 12 of Saudi Arabia Royal Decree No. M1/1421 clearly prescribes that due notice will be given to the licensee in case a law is violated and any action against the same will be done without any prejudice. The punishments imposed on violators include:

- a. Cutting down of incentives and rights enjoyed by them.
- b. Imposition of fines less than 500,000 SAR.
- c. Revoking foreign investment license etc.

All the decisions here are taken by the board of directors and can be subject to appeals before the Board of Grievances.

Article 15 of Saudi Arabia Royal Decree No. M1/1421 provides that all investors are to comply with all laws, regulations and directives within the Kingdom, as well as all international agreements to which Saudi Arabia is a party.

The Implementing Regulations

Article 16 of Saudi Arabia Decision No. 1/20/1423 prescribes that enterprise need to begin their activity within one year of being granted the license. However, in special circumstances the SAGIA may grant exceptions on the matter after necessary evidence has been submitted to the SAGIA citing sufficient reasons for the delay. If the request is denied, then according to Article 17 of Saudi Arabia Decision No. 1/20/1423, the license will be revoked by the SAGIA.

Article 19 of Saudi Arabia Decision No. 1/20/1423 provides that owners of licensed entities should adopt an accredited accounting system and a budget for their entities approved by an authorised accounting office. It is the duty of the licensed entities to provide all statistics and information regarding their performance and accounts.

Article 20 to 25 of Saudi Arabia Decision No. 1/20/1423 are also crucial in this aspect, which prescribes that the Governor will designate officials to check for any rule violations, and the board of directors of the SAGIA will form a committee consisting of three members comprised of one legal counsellor, who will look into matters of infringement and makes the necessary decisions in this regard. Any objections against the decisions of the committee must be filed before the committee within 30 days. After hearing necessary arguments and taking into account the pieces of evidence the committee will give the final decision. Appeals against the decisions can be submitted before the Board of Grievances within 60 days of the judgement.

SAGIA Services Manual

The SAGIA offers many types of licenses, such as construction, administrative investment, information technology, tourism, training, health, insurance and re-insurance, education, advertising, media, logistic services, organising exhibitions, catering, food services, financial services, aviation, industrial, entrepreneur and many more. A license fee of 2,000 SAR is charged every year, plus 10,000 SAR every year for the business service centre. License fees shall be paid within 60 days from the date of issuing the bill.

Industrial license

It includes all industrial licenses, such as heavy and light industries and transformative industries. All the requirements and fees are similar to service license fees.

License for a Scientific and Technical Office

It is provided to foreign companies that have a Saudi agent distributing the company's products in the Kingdom, and such companies that wish to open an office to provide scientific and technical services to agents, distributors and consumers of their products.

Temporary Certificate to submit Proposals for Government Projects

Entities that need to bid for government projects are able to submit an application to the SAGIA by requesting a temporary certificate to bid for government projects in accordance with the decision of Saudi Arabia Cabinet Decision No. 405/1435 dated 22/10/1435 AH. The certificate is granted for a period of one year. However, it does not entitle the entity to issue a commercial registration. The rules prescribe that a company's total revenue, according to the financial statements for the three years prior to the certificate request, must be more than 500 million SAR and must have made a profit in the three financial statements for the last five years in order to request a temporary certificate.

Real estate license

It is provided to foreign companies in real-estate, for projects not less than 30 million SAR in land and construction.

Commercial license with Saudi shareholder

It is provided to foreign entities that are interested in the activity of wholesale and retail trade in Saudi Arabia with a Saudi shareholder. The existence of a Saudi shareholder in the investment license with a share of 25% or more of the company. Total minimum capital requirement for such an activity is 27 million SAR.

100% foreign commercial license

It is provided to 100% foreign entities that are interested in the activity of wholesale and retail trade in Saudi Arabia with a minimum presence of three years in an international market. The Service Rules specify certain targets to be met by companies such as:

- a. The company must comply to achieve the localisation rates and provide them with posts in senior management for five years and ensure their continuation.
- b. The company is complying with training (30%) of Saudi employees annually.

Investors also need to achieve one of the following options:

Invest an amount of 300 million SAR or more (including 30 million SAR as the cash capital of the company) over five years or invest an amount of 200 million SAR or more (including 30 million SAR as the cash capital of the company) over five years.

Service for issuing a license to practice land transport by metros within cities

It is provided for international companies that wish to provide public land transport services by metros in cities in Saudi Arabia.

Service for issuing a license to practice other transport

It is provided for international companies 100% that wish to provide public land transport services in Saudi Arabia through the following activities: taxi for school, tourism, transfer of pilgrims and visitors from inside and outside the Kingdom, carriage of passengers by buses outside the Kingdom etc.

Entrepreneur licenses

This service provided to entrepreneurs who wish to establish projects accredited by Saudi universities or business incubators. This type of licence has no minimum capital requirement and is exempted from the SAGIA business service centre licence fees of 10,000 SAR.

Property ownership and sale

Licensed entities are permitted to own property as per the need of the entity, as follows:

- Property ownership for private housing.
- Property ownership as a headquarter of the industrial entity.
- Property as administrative headquarter or residence for the employees.
- Property ownership for warehouses.

Sale of property can be done for entities with an issued resolution to own property and who want to sell it for liquidation purposes or expansion of activities. However, the purpose of such sales should not be commercial.

Restrictions for foreign investors

Article 3 of Saudi Arabia Royal Decree No. M1/1421 states that specific sectors may be avoided from granting the license as per the decision of the Saudi Supreme Council. These specific sectors have been provided as a 'Negative List; under the Service manual. These include oil exploration and services such as catering to military sectors, security services, tourist orientation and guidance services related to Hajj and Umrah, recruitment offices, and more.

Corporate income tax, Withholding Tax, and Zakat

The Saudi government charges corporate income tax at a rate of 20% on a non-Saudis investor in Saudi Arabia.

Saudi Arabian and GCC entities pay zakat at a rate of 2.5%, a form of religious wealth tax, based upon principles established in Islamic law.

Service payments made from a resident party or a permanent establishment ('PE') of a non-resident party to a non-resident are subject to withholding taxes ('WHT'). The rates vary between 5% (e.g., dividend, interest, etc.), 15% (e.g., royalty, related party payments, etc.) and 20% (e.g., management fees) based on the type of service and whether the beneficiary is a related party. The applicable WHT rate may be reduced where a relevant double tax treaty is in force. The withholding tax should be paid within the first 10 days of the month following the month during which the payment was made.

Vision 2030 and foreign investment

Vision 2030 is a comprehensive long-term plan for transforming the economy, culture, and social institutions of Saudi Arabia. Ultimately, Vision 2030 aspires to transform Saudi Arabia into a) 'a vibrant society,' b) 'a thriving economy,' and c) 'an ambitious nation.' Under each of these aspirational themes or 'pillars,' the plan puts forth detailed and specific objectives for cultural, economic, and governance reforms, respectively

The 'thriving economy' theme embraces a long list of economic reforms and quantitative targets; most of the latter are not new and have appeared repeatedly in previous five-year plans. There is a strong emphasis on privatisation, with the goal of expanding the private sector from the current 40% of the economy to 60 % by 2030. Other objectives include a sharp increase in non-oil fiscal revenues through tax reform, the creation of a business-friendly economic and legal environment, and an increase in foreign investment and foreign talent. This theme also includes educational reform to prepare Saudi students for skilled jobs and entrepreneurial activities in the private sector-so that a large number of foreign workers will be replaced by Saudi citizens-and the promotion of small- and medium-sized enterprises, with the aim of increasing their contribution to the country's GDP from 20% to 35% by 2030.

Conclusion

Foreign Direct Investment (FDI) inflows have produced a considerable impact on the economy of the Kingdom of Saudi Arabia, both directly and indirectly, by playing a significant role in stimulating the growth potentials and providing stability to the Kingdom's economy. Saudi Arabia Royal Decree No. M1/1421 has helped Saudi Arabia in attracting FDI inflows reaching \$35.5 billion in 2009 as compared to \$183 million in the year 2000. Even though the FDI inflows to the Saudi economy started to decrease after 2009, its stock continued to grow and standing at \$415 billion in 2018. The country has encompassed plans for new cities, the opening up of the tourism and leisure markets, and loosening the restrictions on foreign ownership of companies listed on the Saudi Stock Exchange (Tadawul). The Government has created industrial sites attracting foreign investors in Riyadh, Jeddah, Dammam, Qaseem, and Al-Ahsa. The government provides electricity, water, fuel, etc. at low prices when industrial plans are involved. A growth of 110% rise in foreign investment is being shown in the economy in 2018, attracting about 13 billion new investments in 2018. The government has set up six 'Economic Cities' in order to attract foreign investment. These cities focus on different industries. This ever-showing intent to bring in development through foreign investment is being implied by the upward trend shown in FDI scenarios.

Saudi's investment laws have been revolutionary in bringing foreign investments to the Kingdom's shores. Further initiatives from Saudi Arabia to bring in foreign investment through long term committed plans, such as Vision 2030, instils confidence among prospective investors and citizens.

Author

Nasreen Alissa - Owner - Nasreen Alissa Law Firm (Riyadh, Saudi Arabia)

nasreen@nasreenalissalaw.com^[3 p.7]

Nasreen Alissa is an attorney specialising in corporate law. Prior to opening her own law firm, Nasreen worked as an attorney at Freshfields Bruckhaus Deringer LLP in association with The Law Firm of Salah Al-Hejailan for five years. She is the founder of KnowYourRights, a legal mobile application aimed at empower Saudi women.

Notes

1. ^{^ [p.3]} <https://sagia.gov.sa/en/>
2. ^{^ [p.3]} <https://sagia.gov.sa/media/1011/sagia-investment-manual-6th-edition-dec-2017.pdf>
3. ^{^ [p.6]} <mailto:nasreen@nasreenalissalaw.com>