We are delighted to present this revised edition of our guide to investing in the Kingdom of Saudi Arabia. Al-Ghazzawi Professional Association and Herbert Smith LLP formed an exclusive association in April 2008. Since then our lawyers, based in Abu Dhabi, Dammam, Dubai, Jeddah and Riyadh, have been working together to provide clients with a seamless service on transactions throughout the Middle East. This guide has been put together by a team of our lawyers in those offices and we are grateful for the time and effort that they have put into producing it.

Despite the challenges facing the global economy in 2008 and 2009, Saudi Arabia continues to offer unparalleled opportunities for investment to non-Saudi companies. This is in large part due to the combination of Saudi Arabia’s enormous wealth and King Abdullah bin Abdul Aziz Al Saud’s commitment to continue the impressive and far-reaching programme of investment throughout the country.

We hope that this guide gives you a useful introduction to Saudi Arabia’s rapidly evolving legal and regulatory environment. Shari’ah law underpins the Saudi legal system and, as you will note in this guide, commercial and economic developments are impacting upon that system. We trust that you will find this guide to be a useful overview of the key legal issues affecting your planned or existing investments in Saudi Arabia. Naturally, quality legal advice in relation to each specific investment is essential.

Neil J. Brimson
Herbert Smith LLP

Dr Belal T. Al Ghazzawi
Al-Ghazzawi Professional Association
Al-Ghazzawi Professional Association

Al-Ghazzawi Professional Association (GPA) is a leading Saudi full service law firm with regional offices in Dammam, Riyadh and Jeddah. GPA enjoys an enviable reputation for commitment to providing quality legal advice to clients and delivering international standard service. GPA is highly experienced having acted on some of the largest transactions and projects in the region. GPA’s lawyers respect and understand the cultural nuances of doing business in the region and continue to provide clients with valuable assistance in navigating the local regulatory, legal and business processes. GPA represents and advises many of the largest domestic and multinational corporates operating in the region including a large number of Fortune 500 companies. With the fast-growing demand across the Middle East for international energy and projects expertise allied with GPA’s full-service law capability in corporate, finance and dispute resolution work, GPA is the first port of call for advice on all aspects of international law and Shari’ah compliance in the region.

<table>
<thead>
<tr>
<th>Jeddah</th>
<th>Riyadh</th>
<th>Dammam</th>
</tr>
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<tr>
<td>Jeddah Commercial Centre</td>
<td>King Faisal Foundation</td>
<td>Arabian Business Centre</td>
</tr>
<tr>
<td>Level 3</td>
<td>North Tower, Level 4</td>
<td>Prince Muhammad Street</td>
</tr>
<tr>
<td>Al Maady Street</td>
<td>P.O. Box 9029</td>
<td>P.O. Box 381</td>
</tr>
<tr>
<td>P.O. Box 7346</td>
<td>Riyadh 11413</td>
<td>Dammam 31411</td>
</tr>
<tr>
<td>Jeddah 21462 KSA</td>
<td>KSA</td>
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<tr>
<td>T:+966 2 653 1576</td>
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<table>
<thead>
<tr>
<th>Dubai</th>
<th>Abu Dhabi</th>
</tr>
</thead>
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<tr>
<td>Dubai International Financial Centre</td>
<td>Al Bateen Towers C2 Building</td>
</tr>
<tr>
<td>Gate Village 7, Level 4</td>
<td>Suite 302, Level 3</td>
</tr>
<tr>
<td>P.O. Box 506631</td>
<td>P.O. Box 106178</td>
</tr>
<tr>
<td>Dubai UAE</td>
<td>Abu Dhabi UAE</td>
</tr>
<tr>
<td>T: +971 4 428 6300</td>
<td>T: +971 2 412 1700</td>
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</tbody>
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In recent years Saudi Arabia has pursued a programme of economic diversification and reform. These reforms have enabled Saudi Arabia to rise to sixteenth position on the World Bank 2009 Ease of Doing Business Index and number one in the Middle East, ahead of Bahrain and the UAE.

The government has recognised that the following initiatives and reforms are required.

- **Reducing overreliance on oil and gas** – oil and gas currently accounts for roughly 75% of budget revenues and 90% of export earnings. The government anticipates that encouraging foreign investment through new initiatives and the opening up of previously restricted industries will stimulate activity in the private sector. It will also attract foreign investment into Saudi Arabia.

- **Increasing employment opportunities for the local population** – with an annual population growth rate estimated at nearly 2%, Saudi Arabia currently has to find 200,000 new jobs every year for its growing population. It is hoped that new developments such as the Economic Cities (see Section 8 “Where?”), will help to minimise unemployment.

- **Attracting local and foreign private investors across a wide variety of sectors** – the government is seeking to boost the private sector and encourage foreign investment by focusing on 10 key industries, ranging from downstream industries such as petrochemicals, water and electricity and energy intensive industries such as minerals, to heavy and secondary industries and financial services.

- **Protecting the environment and aquifer system** – Saudi Arabia is currently experiencing problems with environmental damage and depletion of its aquifer system resulting from overuse. It is hoped that these will be rectified or reduced by the implementation of a range of new measures, including the tightening of environmental laws and regulations and their stringent enforcement (see Section 33 “Environmental issues”).

**Geography**

With a land mass of 2,149,690 square kilometres, Saudi Arabia occupies most of the Arabian Peninsula. It contains the world’s largest continuous sand desert, the Rub Al Khali (or the Empty Quarter) and its oil region lies primarily along the Arabian Gulf.

Any business looking to establish a presence in or increase trade to Saudi Arabia needs to understand the commercial geography of the country. Unlike in many other countries, for historic and geographic reasons, industries in Saudi Arabia are grouped together in specific regions of the country.
The commercial capital of Saudi Arabia remains the port city of Jeddah, located on the Red Sea. It is considered to be one of the wealthiest cities in the Middle East and western Asia and a leading centre of commerce. Many leading companies such as National Commercial Bank, the Saudi Binladin Group and Saudi Arabian Airlines are based in the city. The main government bodies and many of the leading banks are based in the capital of Riyadh. The cities of Dammam, Al Khobar and Dhahran in the Eastern Province contain the country’s leading construction and energy related companies, including Saudi Aramco, the largest oil company in the world (see Section 8 “Where?”).

**The legal system**

The legal system in Saudi Arabia is based on Shari’ah (Islamic law). In 1992 the Basic Law was introduced. The Basic Law states that the government draws its authority from the Qur’an and Sunnah of Prophet Muhammed (Peace Be Upon Him) and reaffirms that these two sources govern all administrative regulations.

While Shari’ah forms the basis of the legal system, Saudi Arabia has introduced several secular codes including the Companies Regulations, the Foreign Investment Regulations, the Investment Funds Regulations, the Real Estate Investment Funds Regulations, the Insurance Regulations, the Patents Regulations, the Capital Market Law, the Anti Money Laundering Regulations and the Tax Regulations. It is the developments in these laws and their accompanying regulations which evidence the government’s commitment to economic diversification and private sector growth.

**Foreign Investment Regulations**

The Foreign Investment Regulations apply to all capital owned by a foreign individual or a corporation which has non-Saudi shareholders. The Foreign Investment Regulations permit foreign ownership of capital and shares in a Saudi company provided that a foreign capital investment licence is obtained. The definition of “foreign capital” includes money, instruments, securities and commercial instruments, foreign investment profits (if they are invested as capital to expand existing projects, or establish new projects), machinery, equipment, supplies, spare-parts, means of transportation and production requirements relevant to the investment, licences, intellectual property, technical know-how, administrative skills and production techniques. The Saudi government is currently reviewing the Foreign Investment Regulations to introduce more incentives to foreign investors.

The authority responsible for granting a foreign capital investment licence is the Saudi Arabian General Investment Authority (SAGIA).
**Investment programme**

The government is implementing a massive investment programme at an estimated cost of US$492 billion (130% of 2007 GDP) between 2008 and 2012. Its objective is to address critical infrastructure needs, including the development of new cities, ports, railways and the expansion of oil production and refining capacity.

The government intends to launch 10 independent water and power projects (IWPPs) by 2016, at a total cost of around US$16 billion and has set aside over US$60 billion to increase power capacity from 17,000MW to 67,000MW. These developments are part of a 25 year plan by the government.

**The industrial sector**

Saudi Arabia’s industrial sector comprises oil refining, large scale petrochemicals, steel industries, general manufacturing industries, small scale light industries and new technology projects.

Encouragement from the government and governmental bodies such as the Arriyadh Development Authority and the Royal Commission for Jubail and Yanbu, have dramatically increased inward foreign direct investment across various sectors from less than US$2 billion in 2004 to US$18 billion in 2007.

**Governmental bodies**

Some of the key governmental agencies and bodies of which you should be aware include:

- **The Saudi Industrial Development Fund (SIDF)** – established in 1974, it is the major government funding agency for existing and new manufacturing projects. It is a potential source of financing for foreign investors and it is able to provide financing for up to 50% of the costs of major projects through low interest loans.

- **Saudi Arabian Basic Industries Corporation (SABIC)** – established in 1976, it is the largest industrial entity in Saudi Arabia and seeks to promote and assist the private sector in developing basic industries. SABIC’s primary objective has been to establish downstream petrochemical industries using mainly associated gas as feedstock. SABIC has established a number of local industries, generally in the form of joint ventures with overseas interests. Its key areas of production include basic and intermediate chemicals, thermoplastic polymers, fertilizers and metals.

- **The Royal Commission for Jubail and Yanbu** – established in 1975 to create twin industrial cities in the eastern and western parts of the country, with the objective of developing Saudi Arabia’s hydrocarbon based and energy intensive industries, thereby reducing Saudi Arabia’s dependence on oil revenues and gaining entry to the world’s petrochemical markets.
• **The Saudi Arabian General Investment Authority (SAGIA)** – created in April 2000 with the objective of achieving rapid and sustainable economic growth by creating a pro-business environment, providing comprehensive services to investors and fostering investment opportunities in key sectors of the economy, including energy, transportation, information and communication technology (ICT) and knowledge based industries. SAGIA is responsible for the overall development of the Economic Cities (see Section 8 “Where?”), which are considered to be a means for the future diversification of the Saudi Arabian economy.

• **The Saudi Arabian Monetary Agency (SAMA)** – established in 1952, SAMA acts as the central bank for Saudi Arabia. SAMA is responsible for a range of functions from issuing the national currency through to supervising the commercial banking sector and managing foreign exchange reserves.

• **The Capital Market Authority (CMA)** – was established by Royal decree in 2003. The CMA is an independent government organisation. It is responsible for regulating the capital markets (including the Tadawul) and investment and securities businesses in Saudi Arabia.

In addition to the government bodies described above, private sector companies such as the National Industrialisation Company, the Saudi Venture Capital Group, and the Saudi Industrial Development Company have become increasingly active in project development and in seeking out foreign joint venture partners for developments. Therefore it is both governmental and private sector entities which are driving the opening up of the Saudi economy.

**WTO**

Saudi Arabia joined the World Trade Organisation (WTO) on 11 December 2005. Fulfilling the requirements for membership of the WTO provided the additional impetus needed for further liberalisation of trade and investment in the economy.
Saudi Arabia’s foreign investment regime recognises a variety of company forms and other business arrangements. The various alternatives are summarised below.

Establishing a presence

Investments in Saudi Arabia may be through the establishment of new operations or through the acquisition of equity interests in, or assets of, an existing company. Under the Foreign Investment Regulations, commercial enterprises may be established as:

- wholly owned subsidiaries;
- branches of foreign companies;
- representative offices; or
- joint ventures.

Regardless of the level of foreign ownership, foreign investors must obtain a foreign capital investment licence from SAGIA before establishing a commercial presence within Saudi Arabia (see Section 11 “Approvals and registrations”). Foreign investors will also need to take into account the “negative list” and the applicable business licensing requirements (if any) (see Section 5 “Restricted sectors”) which prohibit or restrict foreign investment in certain sectors.

The Companies Regulations is the principal body of legislation governing commercial enterprises in Saudi Arabia. Commercial enterprises operating within Saudi Arabia (regardless of the structure or level of foreign ownership if any) are regulated by the Ministry of Commerce and Industry (MoCI). In some cases commercial enterprises will also be subject to the regulations and guidelines of the Capital Market Authority (CMA), the Saudi Arabian stock exchange (Tadawul), the Saudi Arabian Monetary Agency (SAMA) and/or other regulatory bodies in Saudi Arabia.
Foreign investors have a number of options to consider when choosing the form of their commercial presence in Saudi Arabia. Choosing the appropriate form turns in large part on the scope of business you plan to engage in and your exit strategy. The commercial forms available to foreign investors are:

- **Limited Liability Company (LLC)** – this is the investment vehicle of choice for many foreign investors. LLCs may be wholly foreign owned and offer flexibility in management and business scope. However, LLCs cannot be listed (see Section 6 “Limited Liability Companies (LLC)”).

- **Joint Stock Company (JSC)** – these may also be wholly foreign owned. JSCs are typically set up for listing purposes (see Section 7 “Joint Stock Companies (JSCs)”).

- **Joint venture** – LLCs and JSCs may be wholly foreign owned or established with a local business partner. Establishing a joint venture with a Saudi partner can bring local expertise and introduce important relationships to your commercial enterprise, while also expanding the scope of commercial activities your Saudi company is eligible to engage in. However, a joint venture will also reduce your autonomy in management and disputes may arise. Proper due diligence is essential before entering into any agreements.

- **Branches of foreign companies** – these are set up to represent foreign companies within Saudi Arabia. Branch offices are permitted to engage in direct business activities, like LLCs and JSCs. However, the scope of business is limited to that of the parent company (see Section 34 “Branch offices”).

- **Technical and Scientific Offices (TSOs) of foreign companies** – these are similar in nature to branch offices but the scope of business is limited to providing technical assistance and support to local distributors, agents and consumers. TSOs are cheaper to establish than branch offices but they may not engage in any direct business activities. TSOs are typically established where a foreign company is entering into distribution or agency arrangements (see Section 35 “Technical and Scientific Offices (TSOs)”.


Various considerations relating to the establishment of these enterprises are addressed in Sections 6, 7, 34 and 35. There are also a number of additional company forms available under Shari’ah, these are not open to foreign investors.

Other arrangements

The following arrangements may also be suitable for foreign companies wishing to carry out activities and operations in Saudi Arabia:

• **Distribution arrangements** – wholly foreign owned companies may not engage in retail distribution or direct commercial marketing within Saudi Arabia. However, you may prefer to do so through a joint venture with a Saudi or GCC partner or appoint a local distributor or agent to undertake such activities on your behalf. In either case, protecting your intellectual property and careful due diligence are critical and should be addressed before entering into any definitive agreement (see Section 36 “Distribution and agency arrangements”).

• **Franchising** – franchising is a popular and growing approach for foreign companies seeking to establish consumer-oriented businesses in Saudi Arabia. Foreign franchise owners may become eligible to distribute locally produced, franchised products by entering into a joint venture with a Saudi partner. Protecting intellectual property is a key consideration in franchise arrangements (see Section 21 “Protecting your IP” and Section 37 “Franchise arrangements”).

• **Temporary commercial registration** – Foreign companies that have not already established a permanent presence in Saudi Arabia (for example in the form of a subsidiary LLC) and do not wish to do so, but are proposing to enter into contracts with Saudi government bodies for specific projects, may be entitled to obtain a Temporary Commercial Registration (TCR) rather than setting up an LLC, JSC or branch office. MoCI Resolution No.680 of 2008 permits a foreign company that has entered into a contract or contracts with the Saudi government for specific works to be undertaken, to apply for a licence to carry out the specific works under the contract. TCRs are therefore limited in scope and duration to the terms set out under the contract(s) (see Section 38 “Temporary commercial registration (TCRs)”).

Saudi Arabia investment guide 2010
Which investment vehicle?

3. Selecting your investment vehicle

Your preferred business model will largely drive your choice of investment vehicle.

A joint venture may be an obvious choice if you are a developer of major projects which frequently have local partners. On the other hand, a wholly foreign owned LLC or JSC may be preferred if you are a manufacturer with confidential processes and full control over operations in other parts of the world.

Having a Saudi joint venture partner who knows the market can be an advantage. However, Saudi and foreign parties may have different objectives and management styles. Disputes may therefore arise.

Before making your choice, you will first need to know which type of company is best suited for your strategic objectives.

Regulatory environment

Recent changes to Saudi Arabia’s foreign investment regulatory regime mean that Saudi Arabia has become significantly more open and amenable to foreign capital investment. However, certain segments of Saudi Arabia’s economy remain closed to foreigners. Restrictions on available areas of investment are set out in Saudi Arabia’s Foreign Investment Regulations, more commonly known as the “negative list” (see Section 5 “Restricted sectors”). In addition, licences to undertake certain business activities may be restricted to Saudi nationals only or require the presence of a Saudi national with appropriate experience or qualifications. For example a licence to undertake a money changing business may only be held by Saudi nationals, while an engineering licence will require you to have at least one Saudi national licensed engineer as a business partner.

While Saudi Arabia’s regulatory environment does not restrict the investment vehicles available to foreign investors, restrictions on the types of business foreign owned companies may engage in can require changes to your business model. Licensing requirements and restrictions may prevent foreign companies from offering the full spectrum of goods and services that they may otherwise offer in other jurisdictions.

Saudi Arabia is rapidly opening up to an increasingly broad spectrum of foreign investors. Many business sectors closed to foreign investment when this guide went to press could, and almost certainly will, open up before the end of 2009. Therefore, you should not be discouraged from investigating any foreign investment opportunities in Saudi Arabia.

Key features

Understanding the key features of the main foreign investment vehicles may also help determine which one is appropriate. The main differences are summarised in the following table:
<table>
<thead>
<tr>
<th>Ownership</th>
<th>LLC</th>
<th>JSC</th>
<th>Branch</th>
<th>TSO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ownership</td>
<td>Joint venture or wholly foreign-owned</td>
<td>Joint venture or wholly foreign-owned</td>
<td>Wholly foreign-owned</td>
<td>Wholly foreign-owned</td>
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<tr>
<td>Separate legal entity?</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Limited liability?</td>
<td>Yes</td>
<td>Yes</td>
<td>No. Not a separate entity</td>
<td>No. Not a separate entity</td>
</tr>
<tr>
<td>Management control</td>
<td>Subject to proportion of ownership; supervisory board required if more than 20 members</td>
<td>Complete managerial and operational control</td>
<td>Complete managerial and operational control</td>
<td>Complete managerial and operational control</td>
</tr>
<tr>
<td>Profit-sharing</td>
<td>In proportion to equity contributions</td>
<td>As set out in articles of association or shareholders’ agreement</td>
<td>Repatriation to parent company</td>
<td>Set up to support the parent company technically, therefore not profit-making</td>
</tr>
<tr>
<td>Capital recovery</td>
<td>Yes, upon dissolution or the sale of shares</td>
<td>Yes, unless company is considered a founder shareholder, whereupon it must wait a minimum of 2 years before it can recover its capital</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Ease of establishment</td>
<td>Moderately easy. Negotiations and approvals can take some time</td>
<td>Difficult. Relatively easy to get approvals</td>
<td>Easy</td>
<td>Easy</td>
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<tr>
<td>Minimum capital investment</td>
<td>From SR500,000 (under the Foreign Investment Regulations)*</td>
<td>From SR2,000,000</td>
<td>SR500,000</td>
<td>None</td>
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</table>
There is no prescribed minimum capital requirement under the Companies Regulations for an LLC established with GCC shareholders. A minimum capital requirement may however, be set by the MoCI at its discretion.

Investment incentives

A foreign owned commercial enterprise is granted a number of investment incentives and enjoys all of the benefits, incentives and guarantees extended to national entities, including the following:

- the ability to repatriate profits and transfer amounts required to settle any contractual obligations of the enterprise;
- the ability to acquire and hold real estate necessary for operating the business and for housing staff;
- the ability to sponsor non-Saudi staff;
- entitlement to lease premises; and
- the ability to obtain low interest industrial loans.

GCC holding companies

Use of a holding company established in one of the Arab States which comprise the GCC can qualify your Saudi enterprise for certain rights and benefits reserved to GCC nationals and make a future sale of the enterprise more straightforward (see Section 26 “Offshore transactions”). Bahrain continues to be a popular jurisdiction in which to incorporate the vehicle for holding foreign investors’ interests in Saudi enterprises. Foreign investors intending to use a GCC holding company as a vehicle for investment should be aware that the Saudi regulators will look at the shareholding structure of the holding company closely and will seek to confirm that the shareholder(s) are GCC nationals (see Section 4 “Setting up an offshore GCC fund company”).

<table>
<thead>
<tr>
<th>Business scope</th>
<th>LLC</th>
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<th>Branch</th>
<th>TSO</th>
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<tbody>
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<td></td>
<td>Unlimited subject to “negative list”</td>
<td>Unlimited subject to “negative list”</td>
<td>Limited to scope of parent company’s business operations and subject to “negative list”</td>
<td>Limited to providing technical support and assistance to local agents</td>
</tr>
<tr>
<td>Corporate income tax</td>
<td>20%</td>
<td>20%</td>
<td>20%</td>
<td>None</td>
</tr>
<tr>
<td>Investment incentives</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

*There is no prescribed minimum capital requirement under the Companies Regulations for an LLC established with GCC shareholders. A minimum capital requirement may however, be set by the MoCI at its discretion.*

Table continued from page 9
A favoured investment structure for GCC investors seeking to invest into Saudi Arabia has been through the establishment of an offshore GCC fund company typically incorporated as a wholly GCC owned company in Bahrain. The attractiveness of this structure (for GCC foreign investors) lies in the flexibility afforded: (i) by qualifying as a wholly GCC owned entity; and (ii) by avoiding the complex and time consuming governmental approval process involved when seeking to establish directly in Saudi Arabia. To the extent that investments are made by the fund company via a special purpose vehicle incorporated in Bahrain, a “no objection” letter from the Central Bank of Bahrain is required.

This structure is not available to foreign non-GCC investors.
Regardless of the level of foreign ownership, foreign investors will need a foreign capital investment licence from SAGIA. Prior to obtaining a foreign capital investment licence, foreign investors will need to take into account:

(i) the “negative list” which sets out the sectors in which foreign investment is prohibited; and

(ii) restrictions on licensing to foreigners (if any) for the proposed business activity.

The “negative list”

SAGIA was established in April 2000 with the objective of encouraging foreign direct investment into Saudi Arabia, by simplifying the process of doing business in the country. Despite these reforms, Saudi Arabia continues to maintain a “negative list” of sectors in which foreign investment is prohibited. Restricted business activities include:

**Industrial sector**
- oil exploration, drilling and production, except for certain services related to the mining sector
- manufacturing of military equipment, devices and uniforms

**Service sector**
- catering to military personnel
- security and detective services
- real estate investment in Mecca and Medina
- tourist orientation and guidance services related to Hajj and Umrah
- recruitment and employment services, including local recruitment offices
- real estate brokerage
- printing and publishing, other than the following activities:
  - pre-printing services (as specified)
  - printing presses (as specified)
  - drawing and calligraphy (as specified)
  - photography (as specified)
  - radio and television broadcasting studios (as specified)
• foreign media offices and correspondents (as specified)
• promotion and advertising (as specified)
• public relations (as specified)
• publication (as specified)
• press services (as specified)
• production, selling and renting of computer software (as specified)
• media consultancies and studies (as specified)
• typing and copying internationally (as specified)
• motion picture and video tape distribution services (as specified)
• commission agents (as specified)

• audiovisual and media services
• land transportation services, excluding inter-city passenger transport by trains
• services provided by midwives, nurses, physical therapy services and quasi-doctoral services (as specified)
• fisheries
• blood banks, poison centres and quarantines

Although entities undertaking investment in these sectors are prohibited from being wholly foreign owned, minority ownership by foreign investors through joint ventures with Saudi partners may be permitted in certain sectors.

You should also be aware that SAGIA periodically reviews the “negative list” and it is anticipated that, due to further liberalisation, this list may change.

**Licensing restrictions**

Licences to undertake certain business activities may be restricted to Saudi nationals only or require the presence of a Saudi national with appropriate experience or qualifications. For example a licence to undertake a money changing business must be held by a Saudi national(s), while a company seeking to obtain an engineering licence will require at least one Saudi national with a Saudi engineering licence. It is therefore important that you consider whether you will be able to obtain the relevant licence or licences to carry out the proposed business activity or activities before undertaking steps to establish a presence in Saudi Arabia.
Key features of a LLC

- **100% foreign ownership** – Saudi law does not require a minimum level of Saudi participation in an LLC, but the absence of Saudi participation could (in practice) restrict its business scope (see Section 5 “Restricted sectors”).

- **Board** – LLCs may have either a manager or a board of managers.

- **Limited investors** – LLCs must have at least two but not more than 50 members. LLCs are automatically dissolved if the number of members falls below two. Accordingly, having at least three members is preferable.

- **100% foreign management** – there is no requirement that any manager be a Saudi national or a member of the LLC where the LLC has a foreign capital investment licence from SAGIA.

- **Supervisory board** – LLCs with more than 20 members must have a supervisory board to oversee and advise the management.

- **Limited liability** – in general, the personal liability of investors is limited to the individual member’s contribution to the company’s share capital. The shareholders will also be personally liable where the company’s losses amount to 50% of the company’s capital and no action has been taken by the shareholders to rectify the company’s losses or to dissolve it.

- **No shares** – investors hold a proportion of the uniform nominal value rather than shares.

- **Equity transfers** – equity transfers are permitted subject to the pre-emptive rights of other LLC members.

  Authorisation for the transfer is obtained:

  (i) from the MoCI upon their approval of the amendments to the Articles of Association and Commercial Registration; and

  (ii) from SAGIA upon its approval of the amendments to the foreign capital investment licence.

**Minimum capital requirement**

The minimum capital requirement for a LLC with foreign (non-GCC) participation is ordinarily SR500,000. There is no prescribed minimum capital requirement for a wholly GCC owned LLC. However, the MoCI may (in its discretion) impose a specific minimum capital requirement. This amount is increased to SR1 million for industrial projects and SR25 million for agricultural projects. SAGIA may reduce these minimum capital requirements for certain types of projects, such as those requiring considerable technical expertise. The minimum capital must be fully paid when the LLC is established and is frozen until the establishment formalities have been completed.
Not a listing vehicle

LLCs do not issue shares and, therefore, cannot be listed. You may, however, be able to convert into a JSC to prepare for a listing (see Section 7 “Joint Stock Companies (JSCs)” and Section 24 “Public listings”).

Setting up

The establishment of an LLC is subject to government approval (see Section 10 “Documentation” and Section 11 “Approvals and registration”).
Key features of a JSC

- **Foreign ownership** – 100% foreign ownership.

- **Shareholders** – minimum of five shareholders.

- **Board** – minimum of three directors on the board of directors, including a chairman and managing director. No supervisory board is required.

- **Directors shareholdings** – directors must own shares in the JSC having a nominal value of at least SR10,000. Their holdings must be deposited in a Saudi bank as a guarantee against their individual liability.

- **Managing director** – the managing director is responsible for the day-to-day operations, unless the board of directors vests such responsibility in an employee.

- **Shareholder meetings** – shareholder meetings are required.

- **Transfers of shares** – the shares are freely transferable.

- **Rights of pre-emption** – must be expressly provided for in the organisational documents.

JSCs are typically set up for listing purposes.

**Minimum capital**

JSCs, regardless of the level of foreign ownership, must have a minimum capital of at least SR2 million. In certain instances the Foreign Investment Regulations may require a higher amount. JSCs that will be issuing publicly traded shares have a minimum capital requirement of SR10 million. At least 25% of the minimum capital must be paid when the company is established, and at least 50% must be paid at the time of incorporation. Minimum capital funds must be paid into an account with a local Saudi bank and are frozen until the formation formalities have been completed.

**Shares and listings**

Shares in JSCs are freely transferable, with the exception of founders’ shares which may not be traded until after publication of the balance sheets for two complete financial years. Subject to approval (see Section 11 “Approvals and registration”), JSCs can issue shares to the public. They may also list on the Tadawul (see Section 24 “Public listings”). While, the CMA may permit (at their discretion) a JSC to list its shares on an overseas stock exchange, there are no specific regulations and to date we are unaware of any Saudi JSCs that are dual listed on the Tadawul and an overseas stock exchange.

**Setting up**

The establishment of a JSC is subject to government approval (see Section 10 “Documentation” and Section 11 “Approvals and registration”).
Setting-up: 8. Where?

Your business

One of your most important considerations when establishing a business in Saudi Arabia is determining where to establish. Relevant factors may include:

- the availability of required infrastructure;
- the proximity to suppliers and customers;
- the real estate costs;
- the availability of appropriately qualified staff;
- the location of your joint venture partner (if any); and
- the attitude of relevant governmental authorities.

The three main cities or regions in Saudi Arabia are Jeddah, Riyadh and Dammam. In addition, SAGIA is creating a number of “Economic Cities” which will provide alternative commercial centres for businesses looking to establish a presence in Saudi Arabia. However, unlike other GCC countries the Economic Cities are not free zones and therefore Saudi Arabian laws and regulations will be applicable.

The Western Region – Jeddah

Jeddah is located on the coast of the Red Sea and has a population of 3.4 million. It is considered to be the commercial capital of Saudi Arabia. Many multinational organisations and international businesses are located in Jeddah.

The Central Region – Riyadh

Riyadh is the capital city of Saudi Arabia. It has a population of over 4.2 million. Most government institutions and national organisations are based in Riyadh. Riyadh is considered to be the key banking centre in Saudi Arabia. Due to its central location, Riyadh is a key aviation hub for the region with connections throughout the Middle East.

The Eastern Province – Dammam

The city of Dammam has a population of over two million and is located in the Eastern Province. It has merged with the cities of Al Khobar and Dhahran to become the focal point for Saudi Arabia’s oil, gas and construction industries. Saudi Arabian Oil Company (Saudi Aramco), the largest oil company in the world, is based in Dammam. The close proximity of Dammam to Bahrain (less than two hours drive via the King Fahd Causeway) provides easy access for businesses to and from Bahrain.
Economic cities

The Saudi Arabian government is developing new cities aimed at stimulating the economy by encouraging a wide range of industries and providing employment opportunities for the rapidly expanding population. Six new economic cities have been announced by SAGIA, which is investing a total of US$60 billion in their development.

The new economic cities have been strategically located in formerly underdeveloped parts of the country. SAGIA expects that, in total, they will add US$150 billion to the country’s annual GDP by 2020, create over one million new jobs and be home to as many as five million people.

A brief description of each of the economic cities is provided below.

The King Abdullah Economic City (KAEC)

The KAEC will be situated on the Red Sea coast near the existing city of Rabigh and the commercial hub of Jeddah. When completed (expected to be by 2030) KAEC should have a population of between 1.5 and two million people and should generate in excess of 1 million jobs. KAEC’s economy will be based around a major port facility (accommodating 20 million containers), which will be complemented by a range of energy intensive industries. Aside from the seaport and industrial park, KAEC will contain a central business district, an education zone, residential districts and resort areas.

The development of the city is being led by the private developer Emaar Properties PJSC and is expected to cost in excess of US$27 billion.

The Knowledge Economic City (KEC)

KEC is focused on encouraging educational and knowledge based industries. This city will be situated in Medina, one of the holiest cities in Islam and is expected to have a population of 200,000. The city will cost in excess of US$7 billion to develop and is hoped to create over 20,000 new jobs. KEC will have a range of complementary zones: a technology zone, an advanced IT studies institute, an integrated medical services zone, a retail zone, a business district, residential zones, shopping malls and a mosque with space for 10,000 worshippers. KEC is to have a monorail connecting it to the Prophet’s Mosque in Medina, Mecca, Yanbu, KAEC and Jeddah.
Prince Abdul Aziz bin Mousaed Economic City (PABMEC)

PABMEC will be located in the northern Saudi city of Hail. It will cost US$8 billion and is expected to be complete by 2016. Given its central location it is intended that PABMEC will become the Middle East’s largest logistics and transportation hub, with an airport nearby and rail connections throughout Saudi Arabia, as well as to Jordan, Iraq and eventually the UAE. The city will have distinct areas for trade and services in sectors such as agriculture and food processing, mining, education, housing and entertainment. When completed, it will be the largest fully-integrated economic city in the Middle East providing transportation and logistics services.

PABMEC will be developed by an investment consortium supervised by SAGIA and headed by RAKISA Holding Company.

Jazan Economic City (JEC)

JEC will be located 725 kilometres south of Jeddah in the south-west of Saudi Arabia. This city is one of the most ambitious planned, as its development will require in excess of US$27 billion from the private sector. JEC will focus on four key sectors: heavy industries, secondary industries, human capital and lifestyle. It is projected to have a population in excess of 300,000. Unlike the other economic cities JEC will have a strong industrial base. Plans for JEC include a privately owned oil refinery, a steel rebar and DRI factory, a copper smelter and an aluminium plant.

The master developers behind the JEC are MMC International and the Saudi Binladin Group.

Two further cities are being planned, one in Haqal and another in Ras Azzor.

Other planned developments

The Royal Commission for Jubail and Yanbu is finalising the development of the Jubail 2 Industrial City, which will double the size of the existing industrial zone and create over 55,000 new jobs.

Other major developments include upgrading Jeddah’s King Abdul Aziz International Airport, Medina International Airport and Tabuk airport at a total cost of US$1.3 billion and the construction of over 3,000 kilometres of railways throughout the country to connect the key cities and industrial areas.
9. Negotiations

Negotiations in Saudi Arabia can be more time consuming than in other jurisdictions. This, in part, can be caused by cultural and language barriers.

**Things to keep in mind**

Here are a few points that are worth keeping in mind when negotiating in Saudi Arabia. Please note, however, that this is not an exhaustive list.

- It is common for the Saudi party to require foreign business partners to make commitments relating to training, technical support, management expertise etc.

- You should seek legal advice as to the interpretation of laws and policies and associated risks.

- It is common for negotiations to break for prayer times and to break the fast (iftar) during the holy month of Ramadan.

- You should require your local Saudi partner to obtain your consent before any relevant registrations are made. Difficulties may arise if, for example, the Saudi party unilaterally reserves an unwanted business name or if the Saudi party reserves your business name and negotiations subsequently break down.

- It is usually best if your legal counsel takes control of document preparation (see “Language issues” below).

**Where to negotiate?**

The informal opinion of an approval authority may be needed during negotiations. Accordingly, choosing a location with access to the relevant governmental authority can be beneficial.

**Language issues**

Frequently foreign investors only understand English.

In Saudi Arabia it is common for the contract to provide or require that the Arabic text of the document will prevail in the event of a dispute over interpretation. Where parties are drafting a document in dual text they should agree and specify which language will prevail in the event of a conflict.

Moreover, even if the English text takes precedence in theory, governmental authorities in Saudi Arabia are likely only to read the Arabic text. In this context, it is very important to ensure that both language texts say the same thing.

Compared to the Saudi party, you may well have better access to bilingual professionals. Accordingly final documentation is likely to be of a higher quality if you (or your legal counsel) take control of document preparation.
10. Documentation

Certain documents are required for the setting up of both LLCs and JSCs in Saudi Arabia.

The table below sets out various documents that are typically needed to set up a LLC or a JSC. Approval authorities also have the right to ask for any material that they think may be relevant to an application. Differences exist between different localities, so advice will nonetheless be required.

<table>
<thead>
<tr>
<th>Document</th>
<th>LLC</th>
<th>JSC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power of attorney – in favour of and authorising the local law firm undertaking the incorporation process and making the SAGIA application.</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Feasibility study – prepared by a certified accountant or auditor to prove the economic benefit of the company that is to be incorporated.</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Letter of acknowledgement – to accompany the Feasibility Study. This letter must be signed by a partner of the accounting or auditing firm preparing the feasibility study. This letter must confirm that the study was prepared in accordance with generally accepted criteria.</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Name reservation – a corporate name must be reserved by an application to the MoCI before the application is submitted. The business name may include the names of a partner and/or its business activities. After reserving the name, it must be published in the Official Gazette.</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Application – signed by at least five parties/founders or their legal representatives. This is submitted to the MoCI together with the feasibility study and accompanying letter of acknowledgement (signed by the partner of the accounting/auditing firm responsible), the memorandum of association and by-laws, the power of attorney and the civil registration cards, articles of association and commercial registration certificate of the shareholders if they are companies.</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Identification documents – comprising the following: Saudi nationals – civil registration card; GCC nationals – a passport copy; Foreign companies – legalised and notarised commercial registration certification and articles of association; or Foreign nationals – passports (including all blank pages).</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Bank certificate of deposit – submitted in the event that the MoCI approves the study. A bank certificate of capital deposit is required at the stage of issuing the commercial registration certificate by the MoCI. The bank will only issue the bank deposit certificate once they have received a notarised copy of the articles of association and an undertaking that the entity will not withdraw any money from its account until it has received its commercial registration.</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Document</td>
<td>LLC*</td>
<td>JSC</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>------</td>
<td>-----</td>
</tr>
<tr>
<td>Memorandum and By-laws (Articles of association) – the constitutional documents of the Company.</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Shareholder’s resolution (from any foreign shareholders) – authorising the formation of a Saudi Arabian LLC. The resolution must be signed by all shareholders. The resolution must also state: the identity of any other foreign shareholder(s) in the LLC; the share capital of the LLC; the percentage of shares to be held by each shareholder and outline the objects and name of the LLC, the manager(s) of the LLC and its place of business.</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Certificate of incorporation</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Financial statements – for the past two years (this requirement may be waived at SAGIA’s discretion).</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Constitutive general assembly meeting resolution – to be convened no less than 15 days from the date of publishing in the Official Gazette of the MoCI ministerial decree licensing the incorporation of the company. The meeting will certify the capital has been subscribed for by the founders either in full or for the minimum permitted; authenticate the by-laws, appoint the board of directors and secretary (for a period of five years or less), appoint the auditor; and approve the founder’s report on the actions and expenses incurred during the incorporation process. The minutes of this meeting must be submitted to the MoCI within 15 days, with a notarised memorandum of association and authenticated by-laws.</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Lease agreement – for the premises to be used.</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

*Documents for establishing an LLC or a JSC must be in Arabic. There is no requirement for them to also be in English.
11. Approvals and registration

Foreign investment in Saudi Arabia is subject to governmental approval and registration.

Which approval authority?

SAGIA and the MoCI are the two main approval authorities. SAGIA supervises and controls the licensing of foreign investment activities within Saudi Arabia. MoCI, on the other hand, administers and executes the registration of all companies doing business in Saudi Arabia. A foreign capital investment licence and commercial registration are required for commercial enterprises irrespective of the level of foreign ownership.

Industry specific approvals are also required in various business sectors, including healthcare, security, education, telecommunications, data technology and transportation.

Investment licence

You must obtain a foreign capital investment licence from SAGIA before establishing a commercial presence in Saudi Arabia. SAGIA has 30 days to notify you of its decision to grant (or deny) your application. The approval time limit runs from the receipt of all application materials. Requests for additional documents and properly formatted documents may delay the time period for the application.

If your application is approved, SAGIA will issue a licence allowing you to establish your project in accordance with the timetable which you submitted together with the application.

Commercial registration

Every company and commercial enterprise operating in Saudi Arabia must be registered in the Commercial Register maintained by MoCI. The MoCI has established a number of Commercial Registration offices throughout Saudi Arabia. Each office is responsible for a specified region of Saudi Arabia and maintains the Commercial Register for that region.

Applications to register in the Commercial Register must be submitted within 30 days of the date on which the commercial enterprise is established. Separate applications are submitted to the Commercial Register office for the region where the commercial enterprise is located. MoCI has 30 days to notify you of its decision to grant (or deny) your application(s).

If your application(s) is/are approved, you will be required to pay registration fees and the MoCI will issue a commercial register number for the enterprise.

Information in the Commercial Register is publicly available. For a fee of SR100, basic information about any company or entity in the Commercial Register can be obtained.
12. Financial services regulation

**Banking and insurance business**

Persons or entities conducting or seeking to conduct banking activities and insurance activities in Saudi Arabia are regulated by SAMA. SAMA has primary responsibility for the following areas:

- to issue national currency, the Saudi Riyal (SR);
- to act as banker to the government;
- to supervise commercial banks, money changing businesses and insurance companies;
- to manage Saudi Arabia’s foreign exchange reserves; and
- to conduct monetary policy for promoting price and exchange rate stability.

Supervision of insurance companies (including disputes) is currently undertaken by special committees set up by SAMA.

**Securities and investment business**

The CMA is an independent government organisation responsible for regulating the capital markets and investment and securities businesses in Saudi Arabia. Investment and securities businesses include the provision of advisory services, asset management services, brokerage services, custodial services and the offer of securities by public offer (including takeovers) or private placement. The CMA also has the authority to perform a number of other important functions under the Capital Market Law, including:

- regulating the Tadawul and the listing, cancellation and/or suspension of any security traded on it;
- regulating the disclosure of information of listed companies;
- approving the establishment, merger and liquidation of investment funds;
- approving regulations relating to the securities depositary centre for the Saudi stock exchange;
- protecting investors and the general public from unfair practices that involve fraud, manipulation, insider trading and deceit; and
- developing measures to reduce the risks that pertain to securities transactions.
In order to fulfil its statutory mandate under the Capital Market Law, the CMA has passed a number of implementing rules and regulations, including:

- Offer of Securities Regulations
- Listing Rules
- Corporate Governance Regulations
- Securities Business Regulations
- Authorised Person Regulations
- Market Conduct Regulations
- Mergers and Acquisition Regulations
- Depositary Regulations
- Investment Fund Regulations
- Real Estate Investment Fund Regulations

Under the provisions of the Capital Market Law, any person who carries out an activity regulated by the CMA without the necessary approval and/or licence may be subject to a number of sanctions by the CMA, including the imposition of fines and possible imprisonment. (See also Section 24 “Public listings” and Section 27 “Takeovers, buying Saudi listed companies”).

**Other relevant authorities**

SAGIA overseas investment affairs in Saudi Arabia, including foreign investment. As part of its mandate, SAGIA is specifically charged with a number of responsibilities, including proposing policies designed to promote local and foreign investment and maintaining the “negative list” (see Section 5 “Restricted sectors”). Persons or entities proposing to undertake certain business activities in Saudi Arabia may also (in addition to any regulatory approval from SAMA or the CMA) require the approval of SAGIA prior to doing so. See also Section 11 “Approvals and registration”.
13. Equity funding

A company established as a JSC looking to finance its business may consider raising funds through the issuance of additional shares to the public, whether by way of a public offer or a private placement to sophisticated investors.

**Issuances of shares**

Shares of a JSC must be nominal shares and may not be issued at a value less than their nominal value. However, shares may be issued at a value higher than their nominal value (where this is provided for in the company’s by-laws or where the company’s shareholders have approved this at a general assembly), in which case the difference in value shall be added to the statutory reserve of the company.

**Increasing authorised share capital**

The minimum capital of a JSC must be at least SR2 million, and if the shares of the JSC are to be publicly traded, a JSC must have a minimum capital of SR10 million. The nominal share capital of a JSC can be increased by a resolution of an extraordinary general assembly of shareholders authorising the board of directors to do so.

**Pre-emption rights**

Under the Companies Regulations, there is no statutory obligation for a JSC to offer new shares to existing shareholders before these shares are offered to new shareholders. However, one way to ensure that the interests of existing shareholders in the company are not diluted (without having the opportunity to subscribe for new shares) is to provide for this right in the constitutional documents of the company (eg, the memorandum and articles of association) so that no new shares can be issued to outside investors.

**Public offer or private placement**

There are a number of factors that will influence whether a public offering is a viable means of raising capital for a JSC, including the general condition of the stock markets, the health and prospects of the particular industry in which the company operates and internal factors relating to the company (such as financial performance and the strength of its management team). However, equity financing by a JSC through a private placement to sophisticated investors may be an attractive option for a JSC that wants to attract more institutional investors such as pension funds or investment banks as shareholders.
In considering an issuance of shares, a JSC must consider the requirements of the Offers of Securities Regulations published by the CMA, relating to the offering of shares. In particular, there are specific requirements under these regulations relating to the number of investors who can be offered shares through a private placement and the financial status of such investors. For a public offering of shares, there are onerous prospectus disclosure requirements which must be met by a JSC and approved by the CMA.

**Listing rules**

In addition to the requirements under the Offers of Securities Regulations, a JSC with shares listed on the Tadawul must ensure that it complies with the continuing obligations under the Listing Rules published by the CMA in relation to communicating to its shareholders about any issuances of shares and any requisite shareholder approvals (see Section 7 “Joint Stock Companies (JSCs)” and Section 24 “Public listings”).
Project finance

Project finance is an ever increasingly popular way of funding the development of long-term infrastructure and industrial projects in Saudi Arabia. It usually involves a combination of project debt and equity to finance the initial construction of the project. Typically, a special purpose company (the project company) is created by a number of shareholders (referred to in Saudi Arabia as “the founders”) who each invest a certain amount of equity in the project company. The project company may then borrow funds from banks, often on a limited recourse basis, the loans being secured against the assets of the project itself. Depending on the nature of the project it is not uncommon for the funds to be provided by a combination of local, regional and international banks.

A combination of the Islamic and conventional finance structures outlined in Section 16 “Islamic finance” and Section 17 “Conventional finance” have been successfully used in financing projects in the oil, gas and petrochemicals sectors. Saudi Arabia is expected to invest over US$400 billion in development and infrastructure projects over the course of the next five years.

With a growing number of Islamic investors and experts in the banking industry this has had a positive impact in the growth of Shari’ah compliant project financings. In 2006 the financing for the upgrade of the US$9.8 billion Rabigh refining and petrochemicals project in Saudi Arabia, a joint venture between Saudi Aramco and Sumitomo Chemical Co Ltd of Japan, included a US$600 million Islamic finance tranche provided by leading Saudi Arabian, regional and international banks. This was one of the largest Islamic financing tranches in a multi-sourced project financing in Saudi Arabia.

Security

Putting together a robust security package is a key priority for lenders in project finance. Banks lending money will want to be able to enforce their rights to security over the assets in the project to protect their interests in the event of default by the borrower. In most jurisdictions common forms of security would be over plant and machinery, the concession agreement, performance bonds, the bank accounts used by the project company and assignment of the benefits of insurance policies and step-in rights. In Saudi Arabia, a number of legal issues need to be considered when taking security (see Section 30 “Security”).

Supply agreements

Long-term feedstock and offtake agreements are at the very heart of a project, as they are crucial in allowing the project to operate.
Feedstock agreements – the founders need to ensure that crude oil, ethane, butane, naphtha and any other feedstocks which will be used will be available in sufficient quantities to ensure that the project will be viable. Therefore, a firm commitment from the Saudi Arabian government to allocate the necessary feedstock should be an early priority.

Offtake agreements – these are long-term agreements which create obligations on the purchasers to purchase an agreed amount of products from the project company each year or pay for the balance not taken below the agreed quantity. They are essential agreements as they provide the long-term cashflow for the project. The revenue under the offtake agreements will need to provide sufficient long-term income to repay the lenders.

Project IPOs

The Saudi Arabian government is increasingly asking founders to allow the public to participate in successful projects through initial public offerings. The petrochemicals sector is one such sector where the government has pushed for public participation by forcing producers to list at least 30% of their shares on the Tadawul, in order to fund such extensive projects. The Rabigh project, which Herbert Smith advised on, has already concluded a successful IPO.

Islamic financing of projects

The financing of projects in Saudi Arabia has increasingly involved the participation of some form of Islamic finance. For example, several recent financings have seen the combined use of the istisna’a structure (which caters for the financing of a project during the construction phase) and the ijara structure (which caters for the post-completion phase).

The Al Waha Petrochemical Company’s construction of Saudi Arabia’s largest petrochemical complex and support facilities in Jubail Industrial City comprised a Shari’ah compliant facility supplemented by funding from Saudi Arabian specialised credit institutions, the Public Investment Fund and the SIDF. The project is structured using a co-ownership arrangement under which the banks and the project company jointly own the identifiable physical assets. The facility in the Al Waha deal is based upon a combination of the musharaka and ijara structures (see Section 16 “Islamic finance”) and was also noted for being the first project finance deal in Saudi Arabia where all of the commercial debt was raised in a Shari’ah compliant manner.

For the year ended December 2008 Saudi Arabia witnessed the third largest number of sukuk issuances in the world. With the growth of the sukuk market there is now significant interest in the utilisation of sukuk instruments in project financings in Saudi Arabia. This is because sukuk instruments may, among other things, open up a potentially wider investor pool, enable a rating of the issuance itself and possibly reduce financing costs (see Section 16 “Islamic finance”).
Environmental issues

Saudi Arabia is developing an increasingly sophisticated legal regime for the management of environmental considerations in projects. Under Saudi Arabia’s Eighth Development Plan (running from 2005 to 2010), those companies proposing developments need to consider a range of environmental, economic and social issues.

Under Saudi Arabian environmental law, the Presidency of Meteorology and Environment (PME) is the central agency responsible for approving projects and ensuring that they will comply with applicable environmental laws. An Environmental Impact Assessment (EIA) must be prepared by applicants during the planning of projects that may have an adverse impact on the environment. The EIA must be submitted to the PME. The EIA will need to address issues such as:

- the use of renewable natural resources;
- protection of human health;
- use of dangerous substances;
- major hazards;
- occupational health and safety;
- fire prevention;
- consideration of feasible environmentally and socially preferable alternatives;
- efficient production, delivery and use of energy;
- pollution prevention and waste minimisation;
- pollution controls (liquid effluents and air emissions); and
- solid and chemical waste management.

The PME will use the EIA to decide whether to consent to the project and whether to set any conditions to consent in order to address any concerns that it has. Banks typically require compliance with local laws but may set their own standards. Generally the more vigorous requirements will be applied (see Section 33 “Environmental issues”).

Technology agreements

Technology agreements are a key part of the project documentation as they provide the technology rights upon which the project is built. The lenders should ensure that the licensee is able to assign them if security is enforced and the project is taken over by lenders and ultimately sold.
Insurance

The importance of insurance coverage for a project cannot be underestimated. Aside from the normal range of insurances required, there has been an increase in demand in recent years for sabotage insurance, the cost of which may be prohibitively high.

Intellectual property

Ensuring that intellectual property (IP) rights are correctly licensed is crucial to a project as they are an integral part of project documentation. The lenders will need to ensure that the IP rights can be assigned and novated and that the lenders will be able to step-in and enforce the security if necessary (see Section 21 “Protecting your IP”).

Completion support

Unfortunately given the size of many projects in Saudi Arabia, the damages received for delay (commonly known as liquidated damages) and performance by a contractor may not be able to cover actual revenue loss. This has led to some projects requiring that the founders guarantee debt during the construction period. Any such debt guarantee is often referred to as “completion support”.

The following types of completion support may be requested by lenders:

• **Completion guarantee** – an undertaking from the founders that a defined project will be completed by a given date.

• **Debt guarantee** – this is the strongest level of support as the founders provide an undertaking to repay the project finance debt if the project is not completed by a given date.

• **Interest guarantees** – this is similar to a debt guarantee but the founders will need to pay off the principal in order to avoid a perpetual call on the guarantee.

• **Shortfall guarantees** – the founders agree to pay any outstanding amounts after the banks have enforced all other security.

• **Cashflow undertakings** – the founders agree to make a top-up payment being the difference between actual cashflows and projected cashflows if there is a shortfall due to plant underperformance or non-completion.

• **Buy-down undertakings** – the founders undertake to pre-pay some of the project finance loans in order to meet specified financial ratios if the project is failing to perform at anticipated levels due, for example, to problems in construction or the operation of technology.
Saudi Industrial Development Fund (SIDF)

SIDF can provide up to 50% of a project’s capital expenditure cost, including the initial working capital and pre-operating expenses, to private sector industries and public utility companies.

As part of the terms of each loan SIDF is able to register mortgages on land, leasehold interests and buildings and fixtures on the mortgaged land as security. SIDF has in the past agreed to share its mortgage over land and other assets with the banks which are making the funds available for the same project. This is a useful source of security for the lenders as it provides them with an interest in a share over a project company’s land, buildings and fixtures. However, the banks’ rights in relation to any land mortgaged will be subordinated to the rights of SIDF.
15. Finance

The banking sector in Saudi Arabia broadly comprises domestic banks and the branches of foreign banks. A number of international banks, such as HSBC, have entered the market via partnership arrangements with domestic banks. Banks in Saudi Arabia can offer conventional and/or Islamic financing products.

Financing to corporates accounted for approximately 70% of the total debt in Saudi Arabia in 2007. The growth in corporate lending in Saudi Arabia can be attributed to its burgeoning economy, the push towards economic diversification and the development of its infrastructure. Foreign financial institutions are increasingly identifying the corporate market for potential opportunities, due in particular to the fact that the retail banking sector is fairly well covered by the existing domestic banks.

In general terms, there are two distinct forms of financing available in Saudi Arabia:

- Islamic financing, financing structured to be compliant with Islamic principles and law (Shari’ah); and
- non-Shari’ah compliant financing or “conventional financing” as it is often referred to.

In Saudi Arabia both forms of financing come under the remit of SAMA, even though the Saudi Arabian courts have ultimate jurisdiction (see Section 40 “Litigation” and Section 41 “Arbitration” for more information on the Saudi Arabian courts system).

A significant proportion of the Saudi corporate finance market is currently focused on real estate, construction and trade. Increasingly Islamic finance techniques are also being used in the mining, transportation and manufacturing sectors as an attractive method of funding transactions.

Section 16 “Islamic finance” and Section 17 “Conventional finance” below focus on the corporate, rather than retail market, and offers a general overview on certain aspects of conventional and Islamic finance in Saudi Arabia which may be available to companies.
16. Islamic finance

Islamic finance will often seek to reflect certain economic aspects that are seen in conventional forms of financing in a way that complies with the requirements of Shari’ah.

Shari’ah

Shari’ah is the keystone of Islamic finance. The two principal sources of Shari’ah are:

(A) The Qur’an – the holy book that records the word of God as revealed to the Prophet Muhammed (Peace Be Upon Him); and

(B) The Hadith – the body of documents that records the Sunnah (the practices) of the Prophet Muhammed (Peace Be Upon Him).

Some key principles of Shari’ah relevant to conducting Islamic finance transactions in Saudi Arabia are:

- **Interest (riba)** – the payment and receipt of interest under Shari’ah is prohibited (haram). Accordingly, any obligation to pay interest is considered void. Money may however, be used to make a return on an investment, if that return is based on an exchange or ownership of assets (provided that it is invested in productive enterprises involving a sharing of commercial risk).

- **Speculation (maisir)** – contracts that rely on chance or speculation to produce a return are not permissible and are considered void. However, this prohibition does not preclude genuine commercial risk-taking or investment in business enterprises. A primary concern is to prohibit forms of speculation that are tantamount to gambling.

- **Uncertainty (gharar)** – contracts which are considered to be uncertain are treated as void under the principles of Shari’ah. As such, the fundamental terms of a contract, such as subject matter, price and time for delivery, must be certain from the very outset of the contract.

- **Unjust enrichment/unfair exploitation** – contracts where one party is perceived unfairly to exploit another or gains unjustly at its expense are also considered void. For example, it is not possible for a financier to gain financially by charging and retaining late payment fees when companies are in default. It is permissible (and accepted by several Shari’ah scholars) that financiers may impose late payment charges as an incentive for receiving prompt payment. However, the financier is only entitled to deduct the amount of the actual costs incurred due to the late payment and any amount in excess of the actual costs must be donated to charity.

- **Unethical purpose** – the purpose of the financing must be permitted by Shari’ah. Accordingly, there is a prohibition on any financial involvement in activities such as gambling, pornography, alcohol or pork.
**Shari’ah boards**

Typically, Islamic banks operating in Saudi Arabia will have a board or committee of religious scholars, a Shari’ah board, who will examine and assess the financial products made available by such Islamic banks, as well as their overall activities, in order to ensure that they are complying with Shari’ah. The Shari’ah board will typically comprise of a number of appropriately qualified Islamic scholars. The board will issue its religious order or opinion (fatwa) upon completing its review of a financial product, transaction or other activity. The fatwa is usually a condition precedent to providing Islamic finance. There are a number of esteemed Islamic scholars who are well known in the Islamic finance industry and sit on a number of different boards. As a consequence they have assisted in harmonising the development of Islamic finance and transactional structures (some of which are outlined below).

Conventional banks operating in Saudi Arabia that offer Islamic financial products will typically also use a Shari’ah board to examine and assess Shari’ah compliance of such Islamic financial products. This may be a board set up by that bank itself or, more likely, a board offering Shari’ah advisory services, which has been independently appointed by that bank and/or their customer.

**Basic transaction techniques**

The differing forms of Islamic finance that have been developed in the Saudi Arabian corporate finance market are generally based on either asset-based or risk-sharing structures. Asset-based structures will often involve a transfer of underlying physical assets between the financier and the company. A risk-sharing structure will typically mean that certain key commercial risks will be shared between the financier and the company. Some examples of both types of financings are outlined below:

- **Murabaha** – this cost-plus financing technique can be used in a broad spectrum of transactions, including project finance, leveraged buyouts and trade financing arrangements. Typically the financier buys the relevant asset from a supplier, directly or via an agent, and then sells the asset to the company at an agreed marked-up sale price on deferred payment terms. The financier may hold title to the asset, momentarily. The profit generated by the financier on the marked-up sale price has different characteristics to, for example interest charged on a loan as the former constitutes a profit generated from a sale of an asset. The payment of the marked-up sale price can be deferred to a later date (bay’ mu’ajal) or made immediately depending on the commercial requirements of the parties.

- **Tawarruq (commodity murabaha)** – this technique can be used to provide funding for companies who require a cash sum advanced to them (rather than a requirement to finance the purchase of a particular asset). In its simplest form, the financier buys an asset, directly or indirectly, and sells the same asset to the company on a deferred payment basis at a mark-up. The company then realises the value of the asset by immediately selling that asset at market value to a third party.

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party for a cash sum. Typically a broker will be used as an interface with the market and part of its role will be to arrange the netting off of certain payment obligations of the various parties involved in this structure, such that the payment and repayment obligations end up vesting with the financier and the company. The underlying asset will be a freely tradable commodity such as certain types of metals (gold or silver cannot be used as Shari’ah treats these commodities as akin to currency, and therefore is prohibited).

- **Mudaraba** – this technique can be used to syndicate other Shari’ah compliant financing arrangements, such as a murabaha and the principles of mudaraba are also commonly used to establish investment funds. In a mudaraba arrangement the investors (rab al maal) place funds with a fund manager (mudareb) who provides the expertise and manages the funds in return for a fee. The funds can be invested in Shari’ah compliant business ventures and any profit generated will be divided and distributed between the investors at pre-agreed proportions.

- **Ijara** – this is a Shari’ah compliant form of leasing and can be used to provide asset finance in respect of assets such as equipment, land, aircraft and ships, as well as longer term or project financing. As with murabaha financings, the financier buys an asset from a supplier, but rather than selling it to the company, the financier leases it to the company for prescribed rental payments which reflect the agreed amount of the profit. The ijara can also be used to facilitate a sale and leaseback financing with the customer with rental payments being structured on an amortising basis. An ijara structure can be used either by itself or combined with one or more other products to provide, for example, forward leasing structures such as the istisna’a (described below). Forward leasing structures may be used where at the outset there are very little or no existing assets that may be used for lease based financing. These forward leasing structures can for example, in project finance contemplate a construction period during which the financiers may earn a return notwithstanding the fact that there may be no such assets in existence during this time.

- **Istisna’a** – this technique can be used for the advance funding of construction and development projects or large assets. The financier directly funds the supplier and takes title to the asset on completion. Typically the financier then immediately sells the asset to the company seeking the finance or leases it back to the developer under an ijara (as discussed above). The combination of the istisna’a and ijara can enable financial institutions to provide construction period financing, with the payment of “advance rentals” during the construction period.
• **Musharaka** – this technique may be used in long term investment projects. It is similar to conventional partnership or joint venture arrangements. Generally, the financier and investor contribute (whether in cash or in kind) and share proportionately in the profit or loss of the project or enterprise, depending on their respective original contribution. A variation of the musharaka is the diminishing musharaka, where the financier’s investment participation, being its initial contribution to the musharaka, diminishes gradually over time as its ownership interest in the musharaka assets is transferred to the company and its initial investment is repaid along with its return.

• **Sukuk** – these instruments can provide companies seeking Islamic finance access to the debt capital markets and are often described as the Shari’ah compliant equivalent of a conventional bond issue. Sukuk instruments are commonly constituted as trust certificates representing a proportionate interest in tangible underlying assets. These instruments are structured to be tradable instruments. In practice, they are used in conjunction with other Shari’ah compliant financing arrangements, (such as ijara, musharaka or istisna’a) in order to create a Shari’ah compliant return on the underlying assets which are being financed.

**Governing law of Islamic finance documents**

Typically Islamic finance documents will be governed by an appropriate law of a specific jurisdiction, for example, English law. It is not necessary for Islamic finance documents to state that they are governed by Shari’ah (as typically the financier will refer to a Shari’ah board (as discussed above) to procure an opinion on the compliance of the transaction as to matters of Shari’ah).

**The future of Islamic finance in Saudi Arabia**

Islamic finance is growing at a rapid pace and is a prominent vehicle in the financing market. It has assisted in enabling companies and financiers alike to tap into the liquidity pool in Saudi Arabia and beyond. The Islamic finance industry has a strong reputation as a viable alternative to conventional financing in many sectors of the Saudi corporate finance market and will undoubtedly continue to grow and play a key role in the Saudi Arabian financial services market.
17. Conventional finance

Loan facilities

Conventional financing to companies in Saudi Arabia operates in a manner similar to that in most western jurisdictions. The two key types of loan facility used by companies are the term loan and the revolving loan facility, though there are many other forms of financing. The loan facilities may either be bilateral or syndicated and secured or unsecured. Guarantees are often given and the guarantor may also be required to give security over its own assets to support its potential liability under the guarantee. The interest on commercial loans payable by the company may be a floating or a fixed rate. Typically the financier will charge various fees for providing the loan facility. This will depend on the type of loan facility as well as prevailing market conditions.

Enforcement

Generally, SAMA will enforce conventional finance documents. It has established various special committees in order to settle finance-related disputes in accordance with international finance principles and practice.

A secured financier may enforce security when there is a payment default relating to a payment of principal. Under Shari’ah, security cannot be enforced because of a company’s failure to pay interest (riba). However, the relevant SAMA committees may be more open in their interpretation of the provisions of conventional finance documents provided that they do not contravene principles of Shari’ah. It is uncertain in Saudi Arabia if a secured financier can enforce security in respect of any default other than a failure to pay principal due in accordance with the finance documents.

Debt capital markets instruments

A company may wish to issue debt capital market instruments to raise capital rather than enter into a loan facility, for example because:

- a company may have access to a larger number and greater range of investors by issuing such instruments;
- the cost of the capital may be less expensive (because of the liquidity of the markets);
- the size and maturity of the debt may be more varied (because the market is more extensive and investors can invest in small participations); and/or
- the terms of a debt capital market instrument will, in general be less onerous and restrictive than those of a typical commercial loan facility.

However, the ability to raise capital by this method (and the terms on which it can be raised) is of course very dependent on market conditions.

Debt securities can be sold by the original investor, and the issuer will then pay interest (and eventually repay the capital) to the current owner of the debt security.

In Saudi Arabia, the CMA regulates the capital markets, including Islamic capital market products and equity linked products (see Section 13 “Equity funding”).
Directors and officers liability

Director, supervisor and officer liabilities are not as well developed in Saudi Arabia as in many western jurisdictions. Nevertheless, foreign investors should be aware of various specific provisions.

Civil liability

Managers of Saudi companies are jointly responsible for civil damages and losses sustained by the company, its shareholders and third parties as a result of their violation of the Companies Regulations or the articles of association of the company. Managers will be liable for any wrongful acts committed by them in the course of discharging their duties.

Criminal responsibility

Managers are personally responsible for bribes, fraud, forgery, criminal breach of trust, criminal misappropriation, money laundering, etc, arising from their own actions.

Directors and officers liability insurance

Directors and officers liability insurance is currently not well developed in Saudi Arabia.
19. Saudi national employees

Saudi Arabia’s Labour Law requires all firms in all fields to attract and employ Saudi nationals. “Saudisation” was introduced as a policy to reduce both unemployment and dependence on foreign labour. As a general rule, 75% of all employees employed by an entity should comprise Saudi nationals.

Certain jobs may only be undertaken by Saudi nationals. The Ministry of Labour has the power to specify those occupations, trades, professions, activities and ventures which are restricted to Saudi nationals. In practice, administering compliance with Saudisation requirements can be challenging for the regulators.

There are exceptions to the Saudisation requirements. Most notably, the Minister of Labour may reduce the Saudisation percentage where:

- there are no adequate technically or academically qualified workers to fill the position; or

- it is not possible to fill the vacant job with Saudi nationals.

The above exclusions mean that Saudisation has done little to stem the flow of foreign workers into Saudi Arabia. Saudi Arabia has a shortage of skilled professionals and often has to look outside its own population to find people with the technical expertise that the economy needs. Additionally, it is frequently difficult to find Saudi nationals who are willing to be employed as manual labourers, despite a relatively high unemployment rate in Saudi Arabia.

While the inability to source suitable candidates locally means that many firms in Saudi Arabia often operate with less than 75% of workers being Saudi nationals, it is important that you continue to monitor your employee situation to determine compliance with Saudisation requirements. When applying to renew the work permits of foreign workers, the government may request evidence that there are no Saudi nationals who are willing and able to perform the job of the foreign worker.

Saudisation can be an important factor in the award of government contracts.
20. Technology transfers and licensing

Foreign investors commonly license technology and IP (including know-how, trademarks, patents and copyright material) to companies that they establish in Saudi Arabia. Technology may also be licensed to unaffiliated Saudi companies, and this is often the case in manufacturing or management arrangements. There is no requirement that such agreements be governed by Saudi law. However, in the absence of agreement by the parties, the Saudi courts could assume jurisdiction and apply Saudi law.

Licences facilitate control over the technology and (subject to registration) allow the payment of royalties. Sensitive technology, however, is rarely licensed to an entity over which the foreign company does not have control.

Technology transfers are less common than licences, and are mainly limited to the contribution of technology as registered capital.

Prohibited and restricted technology

We are unaware of any technology being specifically prohibited from importation into Saudi Arabia. However, any technology that would infringe Saudi laws would be so prohibited such as, for example, technology for the processing of alcoholic beverages.

It is acceptable in Saudi Arabia for the joint venture partners to contribute technology in lieu of cash for the purchase of shares. It is therefore essential that the technology can be valued.
21. Protecting your IP

Protecting your IP in Saudi Arabia requires a multi-faceted approach including registrations, the inclusion of relevant provisions in employee contracts and commercial contracts and the use of appropriate enforcement measures.

Registrations

Saudi Arabia’s various IP registration regimes are generally consistent with international standards.

- **Trademarks** – trademarks are protected on a first-to-file basis. An exception exists for well-known trademarks, though demonstrating that a particular trademark is “well-known” can be difficult. Rights to priority may also arise from international treaties. If a trademark uses any words, the Arabic language equivalent should be provided to the MoCI to enable it to understand the trade mark being registered.

- **Patents and designs** – the General Directorate of Patents at King Abdul Aziz City of Science and Technology is responsible for the registration of patents and designs. Patents and designs are protected on a first to file basis providing the applicant is the inventor or has the right to the invention. Paris Convention priority applies. The General Directorate of Patents may grant a compulsory licence of a patent where the patent has not been used for at least three years from registration and the owner of the patent has failed to grant a licence to the applicant despite reasonable requests.

- **Copyright material** – copyright material must be registered with the MoI.

- **Software** – software must be registered with the MoI. A copy of the software must be lodged but source code is not required.

- **Business names** – to register a business name, an application must be submitted to the MoCI. The name must be in the Arabic language unless it is to be used for a foreign company already registered in another jurisdiction, a company with a famous name or a company comprising of both foreign and local shareholders. Registration gives the applicant the right to object to any use of the name by a third party.

- **Domain names** – domain names are registered on a first-to-file basis. Saudi Arabian domain names have a “.sa” extension. In practice the regulators usually require evidence showing a relationship between the name sought and the business entity seeking the domain name.
Employees

Employee contracts should be prepared with a view to protecting IP. In particular, you should consider including the following in all relevant employment contracts:

- **Confidentiality obligations** – a wide range of workplace information can be contractually protected as confidential information.

- **Non-compete clauses** – post-termination non-compete clauses may only be entered into with senior management personnel, senior technical personnel and other personnel in positions of trust.

- **IP assignments** – the ownership of IP created in the course of employment should be clearly assigned.

Without such provisions, it can be difficult (if not impossible) to enforce IP rights against an uncooperative employee.

Commercial contracts

Sourcing materials and components can involve the exchange of IP, as can many other commercial arrangements. Adequate IP protections should therefore be included in the contractual documentation.

IP infringement

There is no publicly available data on the levels of IP infringement in Saudi Arabia.

Administrative enforcement action

Various government authorities have the power to take administrative action against infringers. Administrative action is typically more efficient and less costly than litigation. The standards of proof are also lower. However, as details of administrative action are not generally disclosed to the public, it is not possible to gauge the frequency with which such action occurs, the types of measures taken or how effective such action is to prevent further infringement.

Litigation

Redress through the courts is an option for all IP infringement cases. The court has power to provide a range of remedies including injunctions and damages.
Saudi Arabia’s M&A legal environment is characterised by increasing certainty and predictability. The following sections outline the key types of transactions contemplated under Saudi Arabia’s M&A legal environment.

**M&A and foreign direct investment**

Foreign investors are generally not permitted to operate or acquire businesses in Saudi Arabia without first obtaining a foreign capital investment licence from SAGIA. As a result, a M&A transaction will typically involve the establishment of a new Saudi company regardless of whether you are buying assets, equity or both. In addition, as long as a foreign company holds a foreign capital investment licence from SAGIA it can directly acquire a Saudi operating company. Accordingly, many of the considerations discussed in the preceding sections of this guide are applicable to M&A activity in Saudi Arabia (see Section 11 “Approvals and registrations”).

**Restrictions apply**

Foreign investors cannot circumvent restrictions on foreign investment through M&A transactions. In particular, the acquisition of a domestic enterprise, or even assets, in a restricted sector will be prohibited (see Section 5 “Restricted sectors”). The Competition Regulations must also be considered (see Section 23 “Competition Regulations”).

**Slow transactions**

The complexity of Saudi Arabia’s legal environment often slows the pace of cross-border M&A transactions involving assets or issues in Saudi Arabia. Not only are government approvals required at multiple stages of transactions, but funds may need to be paid before title is acquired. In short, Saudi Arabia’s legal environment does not allow for transactions to be carried out as efficiently as in many developed jurisdictions.

**Certainty and predictability**

Various legal reforms have resulted in a legal environment that provides a degree of certainty and predictability. This trend is expected to continue.
23. Competition Regulations

Saudi Arabia’s Competition Regulations prohibit a broad spectrum of anti-competitive business activities and a correspondingly wide array of commercial enterprises. However, Saudi Arabia’s Competition Regulations do not apply to government controlled corporations.

Among other things, the Competition Regulations prohibit all agreements and contracts between competing (or potentially competing) enterprises where the consequence of such arrangements is to restrict trade or competition between enterprises. The Competition Regulations further prohibit current market participants from leveraging their market share for anti-competitive ends such as:

- fixing prices;
- erecting barriers to entry; and/or
- manipulating the supply of goods and/or services.

Lastly, whenever a merger of competing enterprises or an acquisition of the assets or shares of a Saudi company will result in the establishment of a “Dominant Enterprise”, the parties to the transaction must notify the MoCI’s Council of Competition Protection of the proposed transaction at least 60 days prior to completion.

The Council of Competition Protection has broad discretion to impose penalties, including fines, to protect competition and may review the proposed transaction to ensure that it will not restrict competition and free trade. It may also block or require parties to modify transactions that it deems anti-competitive.
24. Public listings

Listings in Saudi Arabia

Listing qualifications have meant that listings in Saudi Arabia have been reserved to domestic companies. Saudi companies owned through GCC holding companies may be eligible for listing. However, Saudi authorities will look through subsidiary levels for non-GCC ownership.

Recent Saudi IPOs have been some of the largest in the world. For example, through the first half of 2008, there were 16 Saudi IPOs with an average gross value of US$10 billion. Saudi Arabia has an emerging investor culture and market participation is expanding. However, Saudi Arabia’s capital markets are still closed to direct foreign participation. Despite this, in the second half of 2008, the CMA decided to allow authorised persons to enter into swap agreements with non-resident foreign investors, whether institutions or individuals, to transfer the economic benefits of the Saudi companies’ shares listed on the Tadawul. Under this proposal, financial institutions licensed as authorised persons with the CMA retain the legal ownership of the shares in accordance with certain conditions and requirements as set out by the CMA.

The Tadawul

The Tadawul is regulated by the CMA. Under the Capital Market Law, the CMA is the competent authority admitting securities to the Official List of Securities (Official List) and for approving a prospectus published in connection with an IPO listing on the Tadawul. The listing process takes approximately six to 12 months. This allows for the time required for an entity to be converted into a JSC (see Section 7 “Joint Stock Companies (JSCs)”).

The manner in which IPOs are priced depends on the issuer’s history and the CMA. While the CMA does not have any published regulations relating to the pricing of IPOs, IPOs of green field operations are generally priced based on the par value of the shares being offered and in such circumstances the par value would normally be determined in consultation with the CMA.

Whilst book building is permitted for companies with sufficient financial history, the CMA retains the discretion to prevent book building. Approximately one third of listings since 2007 have been priced at a premium to the company’s book value.

Listing requirements

In order to be eligible for admission to the Official List of the Tadawul, a company must meet the following requirements:

- **Joint stock company** – for a Saudi company to list on the Tadawul it must first become a JSC and meet all the applicable requirements (see Section 7 “Joint Stock Companies (JSCs)”)
• **Audited financial statements** – the company must have a minimum of three years of published audited accounts prepared in accordance with the accounting standards set by the Saudi Organisation for Certified Public Accounts. The period covered by the most recent audited accounts must have ended no more than six months prior to the date of approval of the prospectus.

• **Three year track record** – the company must have been conducting its main activity as an independent business for a period of no less than three financial years under substantially the same management. The CMA has the discretion to waive this requirement if they determine that approving the listing of the company would be in the best interests of both the company and investors.

• **Management expertise** – the senior management of the company must have appropriate expertise and experience for the management of its business.

• **Market capitalisation** – the minimum market capitalisation of the company must be SR100 million.

• **Working capital** – the company must have sufficient working capital for the 12 months following the date of the publication of its prospectus.

• **Public shareholders and public float** – the company must have at least 200 public shareholders and at least 30% of the issued shares must be owned by the public.

• **Underwriter** – a company, whose securities are not previously admitted to the Official List, must be fully underwritten by an underwriter authorised by the CMA.

• **Securities** – the securities to be listed must conform to the statutory conditions of Saudi Arabia and be duly authorised in accordance with the company’s by-laws or other constitutional documents. In addition, the securities must be transferable, tradeable and registered and settled centrally through the securities depositary centre of the Tadawul.

**Prospectus content requirements**

As part of an IPO on the Tadawul, a company will have to produce a prospectus. The review and approval process by the CMA generally takes six to 12 months.

A prospectus should not be published or made available to the public without the written approval of the CMA and, once approved by the CMA, the company must make it available to the public at least 14 days prior to the company’s admission to the Official List.
The prospectus must be in Arabic and contain all information necessary to enable an investor to make an assessment of the activities, assets and liabilities and financial position of a company. Under the CMA regulations, a prospectus must contain the following:

- information regarding the company, the company’s shares and its share capital;
- a declaration stating that the directors of the company accept responsibility for the accuracy of the information in the prospectus and disclaiming the Tadawul and the CMA from any responsibility for it;
- information regarding the advisers and experts involved in the issuance;
- information regarding the issuance to which the application relates;
- information regarding the company’s group and its business;
- financial information, including a comparative table of consolidated financial information, or in certain circumstances an independent certified auditor’s report, based on the company’s audited financial statements for the two financial years preceding the application and a report on the company’s borrowings and indebtedness at the time of application;
- information regarding the company’s directors and officers; and
- information regarding public inspection of the company’s audited financial statements and certain other documents.
25. Due diligence

Due diligence is key to identifying whether to proceed with the transaction or proposed acquisition and at what price, identifying issues or problems associated with the target and will generally assist you in better understanding your potential partner. Due diligence, however, can be challenging and time consuming where the local parties lack familiarity with due diligence and the due diligence process.

Financial due diligence

In practice, financial accounts presented by a Saudi Arabian target company are often not prepared by one of the international accounting firms. Adjustments may well be needed in order to align the accounts with the foreign purchaser’s standards.

Determining the value of a target based on its financial accounts can be challenging. Expert assistance should be sought.

Independent investigations

Some foreign investors carry out independent assessments of the business reputation and connections of a potential partner and its key employees. This may assist in making a determination regarding the suitability of the potential partner.

You should consider, for instance, whether the proposed general manager of your joint venture has competing businesses in Saudi Arabia or regionally. Foreign investors may wish to satisfy themselves that no issues arise for the purposes of the United States Foreign Corrupt Practices Act (or equivalent home country legislation) and may also want to know whether a potential Saudi partner has a reputation for corrupt dealings with government officials. Moreover, knowing whether your intellectual property rights will be respected will be fundamental to many foreign investors.

These and similar questions are very difficult to address through traditional financial and legal due diligence.

Legal due diligence

Legal due diligence focuses on a range of issues, including:

- corporate authority
- ownership of assets
- regulatory compliance
- contractual rights and liabilities
- claims against the target

Such issues can radically affect the value of a deal.
Some of the issues that are commonly found in legal due diligence include:

- trademarks (and other intellectual property) being owned by another company within the target’s group
- insufficient documentation to show who owns land and buildings or other assets
- land and buildings being owned by different entities
- security and debts being insufficiently documented
- buildings having been constructed without appropriate permits and approvals
- outstanding labour disputes

It is important to ensure that significant contracts are well documented and that arrangements are clear and unambiguous. Accordingly, you should always ensure that you consult with legal counsel early on in a transaction.

Some issues can be resolved. Others may be more problematic. Irrespective, most investors would prefer to know what the situation is before they commit capital to a project.

**Environmental due diligence**

One area of risk that can be overlooked by companies investing in Saudi Arabia is that relating to environmental matters. The financial, operational and reputational impact of environmental matters should be considered at the outset of any investment, particularly in the oil, gas and other high risk sectors. Environmental regulatory regimes in Saudi Arabia are generally more advanced and stricter than might be assumed.

Investors will often appoint environmental consultants to conduct a technical assessment of environmental matters, and many leading consultancies have offices located in Saudi Arabia or elsewhere in the Middle East. The level of assessment carried out will depend on many factors, including the quality of existing information. A proper analysis of the applicable legal framework must also be carried out in order to properly identify, evaluate and allocate the impact of environmental risks and liabilities. It is also important to look at the effect of anticipated environmental legislation, and changing priorities, attitudes or standards within regulatory bodies that may affect the proposed investment.

An important investment consideration is whether any financing from international financial institutions is dependent on compliance with the Equator Principles (or other similar voluntary standards). The Equator Principles are a set of environmental and social standards for project finance which require project sponsors to document and manage social and environmental risk. They have been adopted by over 60 financial institutions that together are responsible for around 85% of global project finance.
26. Offshore transactions

Offshore transactions may be undertaken by buying the offshore holding company of a Saudi LLC or JSC. Acquiring an offshore holding company where a GCC national is the purchaser of a Saudi enterprise may allow you greater flexibility as it avoids the requirement to obtain government approvals. Irrespective, you should seek advice from legal counsel as these transactions may restrict trade or competition in Saudi Arabia in contravention of the Competition Regulations (see Section 23 “Competition Regulations”).
The acquisition of a listed company in Saudi is governed by the Merger and Acquisition Regulations (Merger Regulations) issued by the CMA. These regulations were passed by the CMA in 2007 in order to codify the regulatory landscape relating to acquisitions of listed companies.

Application of the Merger Regulations

The Merger Regulations apply in circumstances where a certain percentage of the class voting shares of a listed company are acquired or are sought to be acquired. In this respect, many of the Merger Regulations also apply to those who are deemed to be acting “in concert” with either the offeree or the offeror. Under the CMA regulations, the term “in concert” refers to those persons who are actively co-operating, pursuant to an agreement or understanding (whether formal or informal) to take control of a company through the acquisition by any of them of shares in that company.

The Merger Regulations will apply when the following ownership thresholds have been reached.

• **30% threshold**
   - (A) where a person (or those acting in concert with them) acquires 30% or more of the class of voting shares of a listed company; or
   - (B) where a person (or those acting in concert with them) holds not more than 30% of the class of voting shares of a listed company and acquires additional shares which increase their holdings to more than 30%.

• **50% threshold**

Where a person (or those acting in concert with them) acquires 50% or more of the class of voting shares of a listed company.

• **50% reverse takeover threshold**

Refers to an arrangement where:

   - (A) a listed company makes an offer for an unlisted company on terms that involve the listed company issuing new shares in itself to the shareholders of the unlisted company in exchange for their shares; and
   - (B) the shareholder of the unlisted company acquire more than 50% of the shares of the listed company.

There are no specific regulations relating to partial offers (ie, making an offer to acquire a minority percentage of the class of voting shares of a listed company). Consultations with the CMA will be required where a party would like to make a partial offer.
The CMA and sanctions breach

The Merger Regulations are administered by the CMA which has the statutory power under the Capital Market Law to supervise and regulate takeovers. The CMA may in certain circumstances (eg, safety of the market, protection of investors, etc) waive the application of any provision of the Merger Regulations and should be consulted whenever there is any doubt as to its application.

The CMA has a range of sanctions within its power to apply when there is a breach of the Merger Regulations, including suspending the trading in the shares of a listed company, imposing fines, barring any person in violation from acting as a broker, issuing travel bans on those person(s) in violation, and barring any person(s) from working with listed companies in Saudi Arabia.

General Principles and the Merger Regulations

The Merger Regulations incorporate 15 principles for the conduct of takeovers of listed companies. These include:

(i) the equality of treatment of the shareholders of an offeree company;

(ii) an obligation on the board of directors of the offeree company and the offer or company and their advisers to act in the best interests of the shareholders of the offeror and offeree company;

(iii) the financial adviser to any party to the offer should be independent and authorised by the CMA;

(iv) any document or advertisement related to an offer or potential offer must be true, fair and not misleading and shareholders must be given sufficient information and advice from their board of directors to enable them to reach a properly informed decision.

The Merger Regulations also contain detailed rules in a number of areas including setting the timetable for a takeover, the content requirements in relation to the offer document produced by the offeror, what conditions can be imposed in connection with a takeover, specific restrictions relating to related party takeovers and break-up fees, restrictions on and the disclosure of an acquisition of shares, etc.

We are able to provide you with more information on these requirements if requested.
Types of offers

The Merger Regulations make a distinction between a mandatory offer and a permissive offer and incorporate a number of general requirements which are applicable to both of these types of offers.

- **Mandatory offer** – is when a person (or those acting in concert with them) acquires 50% or more of the class of voting shares of a listed company or as referred to above the “50% threshold”.

  In these circumstances, the CMA has the right within 60 days under the Capital Market Law to order such person(s) to purchase the remaining outstanding class of voting shares of a listed company that it does not own.

- **Permissive offer** – arises when a person (or those acting in concert with them) reaches the 30% threshold referred to above.

  An offeror is under no obligation to proceed with a permissive offer if they reach the 30% threshold, however, if they do elect to proceed with such an offer they will be required to consult with the CMA before doing so.

  If a person elects not to make a permissive offer, they are prohibited (unless they have received the consent of the CMA) for a period of two years from:

  (i) acquiring further shares in the listed company;

  (ii) disposing of any shares in the listed company; and

  (iii) co-operating with any other person in respect of a bid for the listed company.

- **Other offers** – refers to “other offers” that do not qualify as either a mandatory offer or a permissive offer. These “other offers” would be subject to the general requirements of the Merger Regulations other than those specific to a permissive offer and mandatory offer.

  These “other offers” must be conditional only upon the offeror having received acceptances in respect of shares which, together with shares acquired or agreed to be acquired before or during the offer, will result in the offeror (and any person acting in concert with them) holding shares carrying more than 50% of the voting rights.

Public announcement requirements

Under the Merger Regulations, the first announcement for a takeover or possible takeover is required in a number of circumstances, including the following:

- **Understanding** – the approach to the offeree company has been made and the parties have reached an understanding that an offer will be made.
• **Firm intention** – when a firm intention to make an offer (i.e., an offer which is not or has ceased to be subject to any pre-condition) is notified to the board of the offeree company from a credible source.

• **Acquisition of shares** – immediately upon an acquisition of shares which requires a mandatory offer or a permission to make an offer (see above “Mandatory and Permissive Offers”).

• **Price movement** – where following a bid approach, the price of the offeree’s shares are the subject of rumour and speculation, or where there is price movement of 20% or more above the lowest share price since the time of the approach or a price movement of 10% or more in a single day. Also, where before a bid approach has been made, the offeree company is the subject of rumour and speculation or where there is a price movement of 10% or more in a single day and there are reasonable grounds for concluding that it is the potential offeror’s actions which have led to the situation.

• **Negotiations and discussions** – where the negotiations or discussions are about to be extended beyond a restricted number of people (outside of those in companies concerned and their immediate advisers).

Under the Merger Regulations, the obligation to make the public announcement in respect of a takeover offer resides with the offeror before the board of directors of the offeree company are approached. Following an approach to the board of directors of the offeree company (which may or may not lead to an offer), the primary responsibility for making an announcement will normally rest with the board of directors of the offeree company.

**Timetable**

The Merger Regulations require an offeror to approach the CMA for the purpose of establishing the takeover timetable. Under the Merger Regulations, the CMA adopts a timetable based on the timing of a number of events including, without limitation, the delivery of the final offer document to the CMA for approval, the publication of the offer document approved by the CMA, the publication of the board circular by the offeree and whether any shareholder approval(s) are required in connection with the takeover.

Unlike the takeover legislation in other jurisdictions, the Merger Regulations do not prescribe when the offer document must be mailed to the shareholders of the offeree company subsequent to an offer being made. In addition, the Merger Regulations do not state a minimum period which the offer must remain open as provided for in other jurisdictions.

The offeror or the offeree company must notify the CMA if it is unable to comply with the established timetable. In such circumstances, the CMA has the ability to amend the timetable accordingly.
Choice of consideration for the offer

The Merger Regulations provides that all shareholders of a listed company must be treated equally in relation to the consideration offered. The offeror (and any person acting in concert with them), is therefore prohibited from offering more favourable terms to some but not all shareholders.

As a general principle the offer price paid for shares acquired by the offeror may not be lower than the highest price paid by the offeror during the 12 month period prior to the date of the offer period. However, the CMA has the discretion to grant dispensation from this requirement and adjust the offer price.

An offeror has the flexibility to structure its offer as a combination of cash and share consideration to the shareholders of the offeree. In addition, an offeror may make a non-cash offer entirely of shares issued to the shareholders of the offeree company, provided that the offeror can demonstrate that the shareholders who individually (or acting in concert) hold at least 5% of the voting rights in the offeree company have undertaken not to sell or otherwise dispose of their shareholdings in the offeror for at least 12 months following the day these shares are admitted to the official list of securities of the Tadawul.

Offer document and board circular

The Merger Regulations include detailed rules prescribing the content requirements for an offer document and the offeree board circular. Both documents must be reviewed and approved by the CMA prior to its publication and dissemination to shareholders. Where an offer involves the payment of securities and the offeror is a company whose shares are not listed on the Tadawul, the Merger Regulations impose more onerous disclosure for the offer document, including the incorporation of detailed financial information on the offeror.

Where the offer involves the payment of securities which are to be admitted for trading to the official list of securities of the Tadawul or includes securities issued by a company whose shares are listed on the Tadawul, a prospectus complying with the requirements of the CMA listing rules must be prepared in respect of the new securities.
28. Setting up investment funds

Legislation

In order to establish an investment fund in Saudi Arabia, the relevant legislation is the Investment Funds Regulations (IFRs) and, for real estate investment funds, the Real Estate Investment Funds Regulations (REIFRs). Both Regulations must be read alongside the Authorised Persons Regulations, the Securities Business Regulations and the Capital Market Law as published by the CMA.

The primary objectives of the IFRs are to regulate the establishment, offering and management of investment funds. The REIFRs seek to achieve the same objectives as the IFRs and in addition aim to ‘protect unit holders’ and impose rules relating to disclosure and transparency.

The regulations relating to a private placement fund are summarised below. The application process for a private placement investment fund is the same as that for a public investment fund.

Private placements

Article 4 of the IFRs provides that an offer of units in an investment fund is considered to be a private placement if:

(i) the amount payable by the offeree is at least SR1 million and the offer is made to any of the following persons:
   - the government;
   - SAMA;
   - any supranational authority recognised by the CMA;
   - the Tadawul and any other stock exchange recognised by the CMA;
   - the Depositary Centre;
   - authorised persons acting for their own account;
   - institutions acting for their own account; or
   - any other persons the CMA considers to be exempt.

(ii) the units are issues by the government or a supranational authority recognised by the CMA; or

(iii) the units are offered to no more than 200 offerees in Saudi Arabia and the minimum amount payable by each offeree is not less than SR1 million.

The offer of units through a private placement may only be made through or by a fund manager.
Exceptions
The CMA may in its discretion authorise any other category of offeree/investor, (Article 4(b)(1)(viii)), to purchase units in a private placement investment fund.

In addition, the CMA may in certain circumstances, deem a fund to be a private placement subject to compliance with any requirements or limitations that the CMA may impose.

Other regulatory issues

• **Notification to the CMA** – when making a private placement investment fund offer, the CMA must be notified at least 15 days prior to the proposed offer date. The notification should include both a copy of the offer and supporting documents, ie private placement memorandum.

• **Restrictions on fund manager** – a fund manager is not permitted to treat an offer of units in an investment fund it manages as a private placement more than once in a 12 month period after the date of approval of the offer.

• **Restrictions on transfers of units during application process** – it is not permissible for a unit holder to sell his or her units in an investment fund during the application process, unless the transfer price is at least SR1 million. Where the price of the units has declined (since the date that the units were originally issued pursuant to the private placement) such that a transfer price of SR1 million is unachievable, the transferor may offer to sell the units for a lesser amount provided that the original purchase price was not less than SR1 million.

If for any reason whatsoever the above cannot be carried out, a transferor may offer to sell his units provided that he sells his entire holding of such units to one transferee.

These restrictions apply to all subsequent transferees of such units until such time as approval for the fund has been given by the CMA.

Application process for a private placement
The application process for a private placement investment fund is the same as that for a public investment fund. We are able to provide you with more information on the application process should you require it.

Public offer
An offer of units in an investment fund is considered to be a public offer if it does not fulfil the conditions of a private placement as specified in Article 4 (described above). A public offer of units cannot be made prior to the CMA having received and approved the information relating to the fund and the fee payment.
There are no restrictions on the price of units in a public investment fund or on the number of offerees.

**Documents required for application**

The application should contain the following information:

- Fund manager’s organisational structure – which should include (i) a description of the fund manager (and any sub-fund manager(s)) decision making progress; and (ii) a list of the names and functions of any people registered eg, research analysts, portfolio managers and the members of the investment committee.

- Names of compliance officer(s) and/or members of the compliance committee.

- Procedural manuals – including the Fund Managers Code of Conduct which should contain a description of the administration system in place for operation of fund managers and include procedures specifically regarding investment funds.

For each fund there should be:

- terms and conditions which comply with the IFRs;

- subscription/redemption forms including all such particulars required by the IFRs;

- contracts for the benefit of the fund including those with affiliates and third parties;

- latest audited report (if applicable) or unaudited report which ever is most recent; and fees, as prescribed by the CMA.

**Application process for a public offer**

The application process for a private investment fund is the same as that for a public investment fund. We are able to provide you with more information on the application process should you require it.
Other considerations:
29. Corporate taxation and zakat

**Corporate tax**

The following persons are subject to income taxation in Saudi Arabia:

- non-Saudi natural persons conducting business in Saudi Arabia;
- non-residents conducting business in Saudi Arabia through a permanent establishment;
- non-residents with taxable income derived in Saudi Arabia; and
- resident capital companies with non-Saudi partners or owners.

For Saudi Arabian businesses with foreign partners, the business will be assessed on the foreign shareholder’s or partner’s share of the entity’s taxable income.

Taxation is levied differently for persons engaged in the field of natural gas investment and oil and hydrocarbon production.

The current corporate tax rate is a flat rate of 25%, comprising 20% corporate tax and 5% withholding tax on annual taxable income.

Taxpayers who fail to comply with income tax laws can be subject to the following penalties:

- **Failure to file a return** – up to SR20,000.
- **Delayed payment of tax** – 1% of the unpaid amount for each 30 days of delay in payment of unpaid tax.
- **Tax shortfall resulting from wilful avoidance or evasion** – 25% of the shortfall amount (in addition to full payment of the shortfall amount).
- **Other penalties** – can be applied in the case of deliberate tax avoidance. These include the shutting down of a taxpayer’s business operations, the seizure of a taxpayer’s property and prohibiting a taxpayer from leaving Saudi Arabia.
**Zakat**

Zakat is a payment of a percentage of surplus wealth to charity or to the poor. Zakat is one of the five pillars of Islam and is seen by most Muslims as more than a mere economic obligation. In Saudi Arabia, all companies and individuals are liable to pay Zakat on their income.

Zakat is administered by the Department of Zakat and Income Tax (DZIT). The DZIT collects Zakat on commercial goods from individuals or companies from Saudi Arabia and GCC states. It issues certificates to companies as proof of payment. This document may prove vital in tendering for projects or work as tender documents will generally require the Zakat certificate and it may be a pre-condition to operating in Saudi Arabia. Non-Saudi individuals and companies are subject to a different taxation regime (see above).

Zakat is charged at a flat rate of 2.5% of a firm’s Zakat base. Calculation of the Zakat base differs to the calculation of net income. The income year for Zakat is also based on the lunar calendar. This means that Zakat requires special consideration and should not be seen as simply a 2.5% flat tax on what would otherwise have been taxable income.

When looking to invest in Saudi Arabia, you should consider both Zakat and corporate income tax implications. Despite the low rate, the differing calculations used to determine the tax base could mean that your Zakat liability ends up being higher than your taxation liability would have been. With liability to Zakat being determined by a company’s legal structure and residency, it is important to consider the implications of Zakat before investing into Saudi Arabia. Engaging a qualified accounting firm to conduct a financial modelling exercise to estimate your investment’s potential tax liability under both Zakat and corporate income tax is advisable.
30. Security

Depending on the type and nature of the transaction as agreed by the financier and company, a lender may be able to take security over the assets of a company seeking finance in order to mitigate its exposure to such company pursuant to any financing it makes available. Subject to specific requirements under Saudi Arabian law, security may be granted over real estate, tangible movable property such as machinery, aircraft and ships, shares in joint stock companies, as well as debts and rights under contracts such as receivables. Currently Saudi Arabia is awaiting final ratification of fully fledged mortgage law regulations which are expected to facilitate the granting of security over real estate and assist in the development of Saudi Arabia’s finance sector.

The concept of trust is not recognised in Saudi Arabia. As such, security over assets is usually held by a security agent within Saudi Arabia where, for example in the context of a syndicated financing, the security agent may hold security on behalf of the other secured lenders.

 Guarantees play an important role in the structuring of bankable finance packages in the Saudi Arabian market. In contrast to financings in a number of western jurisdictions, personal guarantees from wealthy individuals in Saudi Arabian transactions are commonly used.
31. Insolvency

Insolvency in Saudi Arabia is governed by the Commercial Court Regulations, which was enacted in 1931. The Settlement to Avoid Insolvency Regulations of 1994 govern the procedure applicable to companies seeking to agree a recovery package with creditors in order to avoid insolvency. Section 103 of the Commercial Court Regulations defines insolvency as occurring where the debts of the company exceed the assets and property of that company and that company is unable to pay its debts. Indications of insolvency arise where a company’s liabilities exceed its assets or where it is unable to pay its debts when they fall due.

There are three categories of insolvency under Saudi law:

- **actual insolvency** – where a company becomes insolvent as a consequence of economic or market circumstances;
- **negligent insolvency** – where a company’s insolvency is caused by the failure of its management to perform its obligations diligently and that has caused the insolvency of that company; and
- **fraudulent insolvency** – where the insolvency is caused by the deliberate act of a company’s management or employee(s).

Insolvency proceedings may be commenced by a company or its creditors, by making an application to the Board of Grievances (see Section 40 “Litigation, Role of the Board of Grievances (Diwan al Mazalem)”), which will then examine the evidence submitted in support of that application.

Typically, the Board of Grievances will examine the company’s transactions from the date on which the company began trading until the date of the application for insolvency. Given the complexity of the task the Board of Grievances will appoint an auditor. Insolvency can be a slow process. An insolvency might take anything between three and six months from the date of the initial application to the date of any distribution to creditors. The Board of Grievances will require the company to produce a complete list of its creditors specifying the amounts owed to each. The Board of Grievances will then notify those creditors on the list who have not submitted an application for insolvency or, where the company has itself filed the application for insolvency, all of the company’s creditors.

Saudi law permits a company’s creditors to form a committee of creditors and to appoint legal counsel as a representative of the committee’s collective interests to appear before the Board of Grievances. The Board of Grievances has a discretionary power to replace an insolvent company’s management and to take steps to reorganise its debt.
The Commercial Court Regulations set out the order of priority in which creditors will receive distributions from the company. The list includes creditors holding mortgages over the company’s assets, creditors who are owed rent in arrears and creditors with claims for unpaid salary.

The cost of making an application for insolvency is borne by the applicant. However, the application itself (as with the vast majority of court applications in Saudi Arabia) is free of charge and so the costs principally comprise legal and, if applicable, expert fees.
Although the concepts of freehold and leasehold ownership are not strictly defined in Saudi law, they are nonetheless recognised by the courts.

Freehold interests must be registered with the notary public and the notary public is responsible for issuing a certificate to the owner evidencing his title. Leasehold interests are not subject to any registration requirement.

**Foreign ownership**

Non-Saudi investors who have obtained the necessary licence to practice a professional, vocational or economic activity within Saudi Arabia, are entitled to acquire the real estate necessary for practising that activity. This permission may extend to the acquisition of residential real estate for the use of the investor and/or its employees, provided that approval is obtained from the body issuing the original licence. Obtaining a business premises is a pre-condition to the issue of the company’s commercial registration certificate. It is not however a requirement that the premises be owned and it is sufficient for the premises to be leased.

**Property development by non-Saudi entities**

Where a non-Saudi entity is licensed to carry out real estate development activity within Saudi Arabia, the minimum value of any permitted project may not be less than SR30 million (including land acquisition and construction costs). Development must be completed within five years of the land being acquired.

**Mecca and Medina**

With limited exceptions, non-Saudi nationals are not entitled to acquire real estate within the boundaries of Mecca or Medina or acquire rights over such real estate.

**Easements**

Easements are recognised under Saudi law. The ability to create easements is likely to be of particular importance for infrastructure projects that involve the construction of pipelines or other networks requiring access to land which the project owner does not own.

**Leases**

There are no regulations specifically governing either residential or commercial leases in Saudi Arabia. A lease is treated as a normal contract and is subject to the general principles of Shari’ah.

Therefore, the parties are generally free to dictate their respective obligations in the lease. However, under Shari’ah, the landlord is subject to a basic obligation to allow the tenant quiet possession of the premises, while the basic obligation of the tenant is to pay the rent and preserve the premises in good condition (fair wear and tear excepted).
A tenant will not benefit from any automatic renewal rights at the end of the term of a lease (although the parties are free to include renewal rights in the lease should they wish).

Lease agreements in Saudi Arabia usually cover all of the issues commonly encountered in other jurisdictions. However, agreements tend to be more bespoke than in some other countries (for example, the UK) with less consensus on what terms are market standard.

Expropriation

Land may be expropriated by the government only where it is in the public interest to do so. Expropriation is usually followed by appropriate compensation.

Tax

There are no specific taxes levied on real estate transactions, however, profits from those transactions will be taken into account in calculating a company’s corporation tax.
Historically, Saudi Arabian environmental regulation has been developed on an ad-hoc basis, with new laws being contained in laws relating to other substantive areas or adopted by ratifying or signing international and regional environmental conventions. However, over recent years, there has been an increased focus at the national and local level on environmental issues and the development of regulation.

Environmental regulation

A general regulatory framework for environmental matters was established in 2001. The Presidency of Meteorology and Environment (PME) is the main governmental body charged with responsibility for environmental matters. For environmental matters relating to the oil and gas industry, the Ministry of Petroleum and Natural Resources (MPNR) is the responsible governmental body.

The PME is required to prepare and publish environmental criteria and standards. Where these criteria and standards have been violated, action may be taken requiring the violator to eliminate any negative effects and to carry out clean-up works where necessary. Other potential penalties for breaches of environmental law include compensation, fines, imprisonment, suspension of business, and confiscation of machinery. Some penalties may be imposed directly by the PME, and other (generally more severe) penalties are imposed by the Board of Grievances (see Section 40 “Litigation, Role of the Board of Grievances (Diwan Al Mazalem”)). The PME may also request the appropriate licensing authority to withdraw the facility licence.

Environmental Impact Assessment (EIA)

Regulations have been made that require an EIA for any project that may have a negative impact on the environment. There are three levels of EIA based on the level of expected impacts, with oil and gas projects usually falling into the upper category requiring a full EIA.

A local consultant must be appointed to conduct the technical assessment work for the EIA. An international consultant can be appointed in parallel to review the work and prepare the EIA itself (and we would generally advise doing so). The PME is responsible for approval of EIAs and the issue of an Environmental Approval Certificate. In the case of the oil and gas industry, the MPNR approves the EIA and issues the certificate.
Local regulation

Local environmental regulations may also apply and will need to be considered in the context of any proposed investment. For example, the Royal Commission for Jubail and Yanbu has made the protection of the environment one of its major priorities and has adopted a stringent regulatory regime on the basis of European and US standards. Local regulations have been put in place by the Commission covering environmental operating permits, air, water, hazardous materials, waste management, dredging and noise and requiring best available techniques to be adopted for environmental control.
Branch offices are often set up by foreign companies that want a presence in Saudi Arabia without setting up a subsidiary. Branch offices can carry out a broad spectrum of direct business activities on behalf of the parent company; however the scope of business is limited to that of the parent company. A branch of a foreign company is similar in nature to a TSO (see Section 35 “Technical and Scientific Offices (TSOs)”). However, unlike a TSO, a branch of a foreign company is permitted to engage in direct business activities without the need for any local intermediaries. The scope of business of a branch office can be expanded with an increase in capital and a simple Commercial Register amendment. However, the expansion must fall within its parent company’s objects and must not be prohibited by the “negative list” (see Section 5 “Restricted sectors”). Establishment of a branch office represents a convenient and flexible vehicle for foreign companies that initially want to carry out limited business in Saudi Arabia and later expand the scope of their commercial activities.

Key features of a branch office include:

- **Minimum capital requirement** – opening a branch office requires a minimum capital investment of SR500,000. In certain instances the Saudi authorities may require a higher amount. Minimum capital funds must be paid into an account with a local Saudi bank and are frozen until the formation formalities have been completed.

- **Unlimited employees** – there is no statutory limit on the number of employees that a branch office may hire or sponsor. Branch offices are managed by a director. There is no requirement that the director or any of the employees are Saudi nationals. Employment, however, remains subject to Saudisation requirements (see Section 19 “Saudi national employees”) and certain jobs, such as secretaries and security guards are reserved to Saudi nationals only.

- **Broad scope** – branch offices can contract directly with third parties and engage in an array of other business activities without the need for an intermediary.

**Setting up**

A foreign company may set up one or more branch offices in Saudi Arabia.

The establishment of a branch office is subject to government approval (see Section 10 “Documentation” and Section 11 “Approvals and registration”).

**Tax**

Branch offices are subject to income tax calculated on a net profit basis. The corporate income tax applicable to a branch office is 25%. Income tax exemptions and/or deductions are available in limited circumstances. For example, losses incurred by the branch office may be carried forward. You are recommended to seek expert tax advice if you are contemplating setting up a branch office in Saudi Arabia (see Section 29 “Corporate taxation and zakat”).
TSOs are set up by foreign companies to provide technical support and assistance to their local distributors, agents and consumers. TSOs are not independent legal entities and therefore they cannot engage in direct business activities or enter into contracts with third parties, except through local intermediaries.

Key features of a TSO include:

- **No minimum capital requirement.**

- **Limited employees** – TSOs are limited to a maximum of 5 employees of the parent company. There is no requirement that the director or any of the employees be Saudi nationals. TSOs cannot sponsor employees, therefore the employees of a TSO are typically sponsored by the parent company’s local agent or distributor in Saudi Arabia.

- **Limited scope** – the activities of a TSO are restricted to providing technical support and assistance to local agents and distributors. All contracts and other activities of the TSO and parent company must be executed through a Saudi intermediary (eg, agents, distributors, etc.).

- **No investment incentives** – TSOs are not granted investment incentives under the Foreign Investment Regulations and do not enjoy any other benefits extended to national entities.

**Setting up**

A foreign company may set up one or more TSOs throughout Saudi Arabia.

The establishment of a TSO is subject to SAGIA approval (see Section 10 “Documentation” and Section 11 “Approvals and registration”).

**Tax**

TSOs are not subject to taxation in Saudi Arabia.
Selling consumer goods in Saudi Arabia is one of the business activities that remains closed to foreign investors. Those wanting to undertake such activities within Saudi Arabia have two alternatives: appoint a local Saudi distributor or agent to sell on your behalf or establish a joint venture with a Saudi partner.

This restriction does not apply to foreign exporters selling their goods directly to Saudi companies. Wholly foreign owned commercial enterprises in Saudi Arabia may not engage in wholesale or retail distribution activities without the assistance or engagement of a local Saudi distributor or agent.

**Appointing local distributor or agent**

Only Saudi nationals may operate as an agency in Saudi Arabia. While in general foreign nationals may not operate as a distributorship (whether wholesale or retail) in Saudi Arabia, there are limited exceptions, including where the foreign company manufactures its goods in Saudi Arabia. In certain circumstances it is possible that the regulators will be amenable to allowing foreign nationals to operate as a distributorship where the company in question is structured as a joint venture with a Saudi partner.

Foreign companies that do not wish to establish their own operations in Saudi Arabia may appoint a local distributor or agent to engage in retail distribution activities on their behalf. However, terminating such arrangements may be difficult, even though Saudi policy has changed to permit registration of a new agreement over the objections of the existing distributor or agent. Careful due diligence and knowledge of your local distributor or agent is critical before entering into any definitive agreement.
Establishing a joint venture

Saudi foreign joint ventures may be eligible to engage in resale and direct commercial marketing within Saudi Arabia, provided that the non-Saudi joint venture partners do not own more than 25% of the equity in the joint venture.

Key issues

Various key issues should be considered in each of the above arrangements. These include:

- **Intellectual property** – intellectual property shared with the Saudi party should be appropriately safeguarded through registrations, contractual arrangements and other precautions (see Section 21 “Protecting your IP”).

- **Warehouse quality and security** – foreign manufacturers will typically want to ensure that their intellectual property and products are going to be maintained in secure and adequate facilities. For example, where your goods or products are sensitive to excessive heat, you will need to ensure that they are kept in facilities with appropriate air conditioning. Among other things, you should ensure that you have contractual rights to periodically inspect the local facilities.

- **Choice of law and dispute resolutions** – see Section 39 “Resolving commercial disputes”, Section 40 “Litigation” and Section 41 “Arbitration”
Franchising is an increasingly popular option for foreign companies looking to access Saudi Arabia’s consumer markets. More than 300 foreign companies have established franchise arrangements in Saudi Arabia. Although it is still relatively small by European and US standards, the Saudi franchise market is expanding rapidly as Saudi Arabians recognise that franchising is an effective, efficient and responsible way to encourage small-business development, entrepreneurship and job creation. Saudi investors tend to have a strong interest in bringing new franchises to Saudi Arabia and the capital necessary to launch the concept.

**Permitted activities**

Foreign franchisors should carefully consider how local customs and foreign investment restrictions may affect their franchises in Saudi Arabia. Local customs, such as abstinence from pork and alcohol consumption and the preference of Saudi men and women for their national attire, has required some franchises to modify their product lines and trademarks in Saudi Arabia (see Section 21 “Protecting your IP”). Franchises with foreign ownership are further subject to local investment restrictions (see Section 5 “Restricted sectors”).

**Distribution of franchised goods**

Saudi Arabian law does not distinguish between master franchisees and sub-franchisees. Both will be considered a local agent/distributor of a foreign franchisor (see Section 36 “Distribution and agency arrangements”).

**Setting-up**

Franchise arrangements are subject to government approval (see Section 11 “Approvals and registration”).
38. Temporary commercial registration

Applying for a Temporary Commercial Registration (TCR) may be an alternative for foreign companies or entities that do not have nor want to establish a permanent presence in Saudi Arabia (such as a JSC, LLC or branch office) and that are proposing to enter into a contract or contracts with Saudi government bodies for a specific project.

Scope

The scope of a TCR is limited to the duration and scope of the government contract to which it relates.

Multiple phases and contracts

Where work under a government contract is undertaken in phases each covered by separate government contracts, it is possible to obtain one TCR to cover each phase and its applicable contract, provided that all the relevant work is undertaken by the entity to which the TCR has been issued and government contract has been awarded. It is permissible for branches or divisions within the same entity to conduct work under the same TCR issued in respect of that government contract.

Multiple contractors

Multiple contractors proposing to undertake separate works under the same phase and government contract will each need to apply for their own TCR.

Setting up

A foreign company may apply for a TCR from the Directorate of Companies at the MoCI. Upon approval of the TCR the licensee must also apply to be registered on the commercial register of the Commercial Registration Office.

Any new government contracts (which may be entered into for a particular phase) or amendments to an existing government contract for which a TCR has been issued must be approved by the Directorate of Companies. If approved any new contract or amendments to the existing contract must again be notified to the Commercial Registration Office.
In Saudi Arabia, as elsewhere, commercial disputes are a fact of life.

The formal processes for resolving disputes within Saudi Arabia are complex, particularly with regard to enforcement.

**Agree early**

Agreeing how to resolve disputes is best done in writing at the initial investment stage. If disputes do then arise, you can focus on resolving the dispute itself, rather than belatedly agreeing the appropriate process for doing so.

**Choices**

The most basic choice is between litigation and arbitration. Given the length of time which it may take to resolve a dispute within the courts of Saudi Arabia (described in detail below), it is strongly recommended that arbitration be the stated method of dispute resolution in commercial contracts. However, enforcing an arbitral award against assets in Saudi Arabia is far from straightforward.

The role of negotiation is also important. Many disputes are resolved by negotiation between the parties.
Commercial disputes that are the subject of litigation should be divided into two categories:

- those involving private parties, which are within the Courts system; and
- those involving the government and in certain circumstances commercial parties, which are referred to the Board of Grievances.

The Decree

On 1 October 2007 King Abdullah bin Abdul Aziz issued a Royal Decree (“The Decree”) approving a new body of laws to regulate the judiciary and the Board of Grievances. The Decree was partly designed to introduce safeguards into the legal system including the introduction of an appellate level in the form of the Courts of Appeal.

The description below is in accordance with The Decree the provisions of which have not been fully enacted.

In summary the composition of the courts in Saudi Arabia will be as follows:

**First Degree Courts**

<table>
<thead>
<tr>
<th>High Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>Courts of Appeal</td>
</tr>
<tr>
<td>(Labour, Commercial, Criminal, Personal Status and Civil Circuit)</td>
</tr>
<tr>
<td>First Degree Courts</td>
</tr>
<tr>
<td>(Labour, Commercial, Criminal, Personal Status and General)</td>
</tr>
</tbody>
</table>

The Decree provides for the establishment of First Degree Courts in each of the thirteen Provinces, counties and districts if necessary. In view of the novelty of the Decree and the responsive nature of this limb of the legal system, we have yet to see the extent to which First Degree Courts will be established throughout Saudi Arabia. However, we expect that all areas will have Commercial Courts in due course. Cases will be dealt with by a panel of either one or three judges. Every case is allocated to a judge who will issue the preliminary judgment and the final judgment. The final judgment can be appealed (to the Courts of Appeal) but those Courts do not hear evidence and will only scrutinise the judgment itself.
If the judgment is found to be deficient, it is referred back to the same court that issued it and that court is at liberty to agree or disagree with the decision reached on appeal.

**Courts of Appeal**

The Decree allows for the Court of Appeal to overturn the decisions of the First Degree Courts, on questions of law and procedure. In provinces where the Courts of Appeal are set up, the Courts of Appeal shall include three three-judge panels on a specialised commercial circuit, presided over by an appellate judge, who shall be appointed by the Chief of the Appellate Court. The appeals allow for the litigants to argue their case in accordance with the Law of Procedure before the Shari’ah Courts.

**The High Court**

The High Court is based in Riyadh and is composed of the President (holding the rank of Chief Appellate Judge and appointed by Royal Order) plus an undetermined but sufficient number of judges of the rank of Chief Appellate Judge. They sit in three-judge panels on specialised circuits (as required).

The function of the High Court is not limited to the review of judgments made by the Courts of Appeal on questions of law and procedure. It can also hear an appeal based on:

- a violation of Shari’ah principles and regulations issued by the King;
- judgment from a lower court which has not been properly constituted; or
- judgment from a court which did not have jurisdiction to hear the matter (an “incompetent court”).

**The role of the Board of Grievances (Diwan al-Mazalem)**

The Board of Grievances was established in 1954 by King Abdul Aziz, originally as a means of adjudicating disputes between government agencies and private contractors, and as such is analogous to the Conseil d’Etat in France. The Board of Grievances has, since 1982, been outside the control of the Ministry of Justice: it is directly affiliated to the King and operates in parallel to the Shari’ah Court system. The Board of Grievances’ jurisdiction includes:

- where the government is a party to the dispute in question;
- requests for the enforcement of foreign judgments and foreign arbitral awards;
- disciplinary actions against a civil servant; and
- where the dispute involves a violation of the statutory business provisions.
The Decree reformed not only the Courts System but also the Board of Grievances system. In summary the structure of the Board of Grievances is now:

<table>
<thead>
<tr>
<th>High Administrative Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative Courts of Appeal</td>
</tr>
<tr>
<td>(Disciplinary, Administrative, Subsidiary and other Specialised Circuits)</td>
</tr>
<tr>
<td>Administrative Courts</td>
</tr>
<tr>
<td>(Disciplinary, Administrative, Subsidiary and other Specialised Circuits)</td>
</tr>
</tbody>
</table>

The Board of Grievances is headquartered in Riyadh and has branches in Jeddah, Dammam and Abha.

**Administrative Courts**

Cases in the Administrative Court are presided over by either one judge or three judges on the specialised circuits listed above.

**Administrative Courts of Appeal**

The Administrative Courts of Appeal (composed of three-judge panels operating on specialised circuits) can hear appeals on law and procedure in accordance with the Law of Procedure before Shari’ah Courts.

**High Administrative Court**

The High Administrative Court is presided over by a President holding the rank of minister appointed by Royal Order, who is assisted by a number of Appellate Court judges. The High Administrative Court, sitting in three-judge panels, hears appeals from the Administrative Courts of Appeal where the appeal is based on:

- a violation of Shari’ah provisions and regulations issued by the King;
- judgment from a lower court which has not been properly constituted in accordance with the Boards of Grievances Law;
- judgment from an incompetent court; or
- jurisdictional conflict between the courts of the Board of Grievances.

Decisions are taken by a majority vote.
Enforcement of domestic judgments

The execution of judgments in Saudi Arabia can be very difficult. Historically this function was carried out by the Civil Rights Authority, a wing of the Police, which are able to deal with the judgment by sending the defendant to jail. Enforcement by this means can take one to two years in Saudi Arabia. However a specialist “circuit” for the execution of judgments has recently been introduced to speed up the process of enforcement. A judge on this circuit is empowered to enforce judgments and this is a more effective way of enforcing a judgment. At the moment a litigant has a choice between the two systems but eventually the role of the Civil Rights Authority will cease.

Enforcement of foreign judgments

Saudi Arabia is not a signatory to the Hague Convention providing for the mutual enforcement of commercial judgments rendered under an exclusive jurisdiction clause.

The Supreme Judicial Council

The Supreme Judicial Council is comprised of a president and 10 members including the Deputy Minister of Justice, the Chief of the Bureau of Investigation and Prosecution and judges holding the qualifications of Appellate Judges. Its function is to supervise the Shari’ah judiciary as well as administering the promotion, transfer and training of judges. Every year it produces a report for the King.

In addition, the Supreme Judicial Council has jurisdiction to resolve any conflict arising between the final judgments of the Court System and the Board of Grievances. For example where a case is transferred from the Board of Grievances to another court and they reach different judgments.
Traditionally arbitration centres in the Middle East have developed from local chambers of commerce. However, at the moment there is no arbitration centre within Saudi Arabia. In 1995, the chambers of commerce in each of the GCC countries jointly established the GCC Commercial Arbitration Centre, which is based in Bahrain. The panel of 370 arbitrators has been nominated by all Chambers of Commerce & Industry in the GCC States.

Arbitrations conducted in accordance with Saudi Arabian law (“Domestic Arbitrations”) are supervised by the competent court. For a commercial dispute, this would be the commercial court. The party seeking arbitration would file an arbitration application (which would include a summary of the claim and would exhibit or attach the arbitration agreement/clause). The court would then summon the other party to appear. The arbitral tribunal is then appointed by the parties. Each party appoints an arbitrator and the two chosen appoint the chairman. The court then asks both parties to prepare the Terms of Reference, which is stamped and approved by the court. The court has to approve the appointment of the arbitrators as the arbitrators are listed in the Terms of Reference. When this is done, the court passes an order for the arbitral tribunal to look into the case. As such the courts are relatively heavily involved in arbitration conducted in accordance with Saudi law.

The parties to a Domestic Arbitration are free to agree on procedure (including time for the arbitration and issuance of the award). The tribunal and the parties then hold a procedural meeting to agree on how to move or progress the arbitration and to specify a timeframe for the claimant to submit a detailed memorandum about the claim.

It should be noted that arbitration clauses are prohibited in government contracts without the consent of the Saudi Council of Ministers.

The only requirements for acceptability of an arbitrator, is that he must be male and Muslim. Foreigners can and are appointed as arbitrators. A list of arbitrators is maintained by the chamber of commerce (which includes non-Saudis).

Enforcement of domestic arbitrations

The enforcement of Domestic Arbitration awards can, like the enforcement of domestic judgments, be carried out by the Civil Rights Authority or a Specialist Judge for the enforcement of Judgments. Therefore, Saudi law provides that where a judgment is rendered in a country where a Saudi judgment would be recognised and enforced, that judgment may be recognised and enforced in the Courts of Saudi Arabia.

International arbitrations

Many foreign investors prefer to conduct dispute resolution proceedings outside Saudi Arabia with common options including ICC and LCIA arbitrations conducted overseas. Where an arbitration is not conducted under Saudi law (“a Foreign
Arbitration") but one of the parties may ultimately want to enforce the award in Saudi Arabia, the parties are strongly advised to appoint an all-male, Muslim panel. If not, enforcement may be prevented on the basis that the award does not comply with the principles of Shari’ah.

**Enforcement of foreign arbitration awards**

Since 1994 Saudi Arabia has been a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the “New York Convention”). Like many signatories, Saudi Arabia will apply the New York Convention only to recognition and enforcement of awards made in the territory of another contracting State.

In the past the enforcement in Saudi Arabia has been problematic. The Board of Grievances, which has jurisdiction to enforce foreign judgments (including judgments on arbitral awards), has refused to enforce awards on public policy grounds for not complying with the principles of Shari’ah. However, in theory, their role is to check that the award is compliant with the principles of Shari’ah, strike out those elements that are not and approve it so that, like a domestic judgment or domestic award, it may be enforceable by the Civil Rights Authority or a Specialist Judge for the enforcement of judgments.

**Representation**

Non-Saudi nationals are not permitted to appear before Saudi courts or arbitral tribunals within Saudi Arabia. Consequently, there are two types of legal adviser: legal consultants, who are basically responsible for the day to day conduct of the matters, and Saudi lawyers who are licensed to appear, submit written memoranda and answer any questions the judge may have on the written submissions before the courts, arbitral tribunals and government departments.

**Mediation**

Mediation, in the form of a sponsored amicable settlement, exists in Saudi Arabia, but it is not common. The court usually gives the parties a chance to settle their disputes amicably before giving judgment and many do so because the courts are slow in passing judgment: in some cases it can take five to six years to obtain final judgment, and a further one to two years to enforce that judgment.

**Bilateral Investment Treaties ("BITs")**

Potentially more significant for foreign investors are those protections provided for under BITs, which are also known as Investment Promotion and Protection Agreements (IPPAs).

Saudi Arabia currently has BITs with seven other nations (Austria, Belgium, France, Malaysia, Germany, Italy and the Republic of Korea).

The over-arching purpose of these treaties is to create favourable conditions for investors from each country within the other. They do this by providing certain
protections for investors from the relevant countries in respect of matters such as discriminatory treatment, expropriation and return of capital. Additionally BITs give investors from the relevant countries the opportunity to choose between pursuing dispute resolution proceedings in the court of the contracting states or via arbitration in the event that the investor has a dispute with a contracting government.

In view of the length of time litigation in the Saudi courts can take, this may be a useful tool for investors from those countries.

**WTO**

Since 11 November 2005, Saudi Arabia has been a member of the WTO. The accession of Saudi Arabia to the WTO creates scope for international adjudication of investment disputes between states through the WTO dispute resolution machinery.

In brief, the WTO dispute resolution machinery involves the appointment of a panel of experts agreed by the relevant states or, if they cannot agree, by the WTO’s Director General. The system includes a conciliation and appeal process.

To date Saudi Arabia has not been involved in a complaint at the WTO, as a complainant, respondent or third party.
Saudi Arabia Investment Guide 2010

Glossary: 42. Common abbreviations

Saudi’s legal environment has given rise to many abbreviations. Some of the more common abbreviations, together with abbreviations of various institutions, are set out below:

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>BITs</td>
<td>Bilateral Investment Treaties</td>
</tr>
<tr>
<td>CMA</td>
<td>Capital Market Authority</td>
</tr>
<tr>
<td>EIA</td>
<td>environmental impact assessment</td>
</tr>
<tr>
<td>GCC</td>
<td>the Gulf Cooperation Council (also known as the Cooperation Council for the Arab States of the Gulf) and comprises Saudi Arabia, Bahrain, Kuwait, Oman, Qatar and the UAE.</td>
</tr>
<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
</tr>
<tr>
<td>IP</td>
<td>Intellectual property</td>
</tr>
<tr>
<td>IPPAs</td>
<td>Investment Promotion and Protection Agreements</td>
</tr>
<tr>
<td>IPO</td>
<td>Initial public offering</td>
</tr>
<tr>
<td>IWPPs</td>
<td>independent water and power projects</td>
</tr>
<tr>
<td>JEC</td>
<td>Jazan Economic City</td>
</tr>
<tr>
<td>JSC</td>
<td>Joint Stock Company</td>
</tr>
<tr>
<td>KAEC</td>
<td>King Abdullah Economic City</td>
</tr>
<tr>
<td>KEC</td>
<td>Knowledge Economic City</td>
</tr>
<tr>
<td>LLC</td>
<td>Limited Liability Company</td>
</tr>
<tr>
<td>M&amp;A</td>
<td>Merger and acquisition</td>
</tr>
<tr>
<td>MoI</td>
<td>Ministry of Information</td>
</tr>
<tr>
<td>MIE</td>
<td>Ministry of Industry and Electricity</td>
</tr>
<tr>
<td>MoCI</td>
<td>Ministry of Commerce and Industry</td>
</tr>
<tr>
<td>PABMEC</td>
<td>Prince Abdul Aziz bin Mousaed Economic City</td>
</tr>
<tr>
<td>Paris Convention</td>
<td>Paris Convention for the Protection of Industrial Property</td>
</tr>
<tr>
<td>PIF</td>
<td>Public Investment Fund</td>
</tr>
<tr>
<td><strong>PME</strong></td>
<td>the presidency of Meterology and Environment. The PME was established in 1951 and was previously known as the Meteorology and Environmental Protection Administration</td>
</tr>
<tr>
<td><strong>Regulations</strong></td>
<td>in Saudi Arabia all laws (apart from the Capital Market Law and the Labour Law) and acts are referred to as “regulations”. This term encompasses all accompanying rules and regulations.</td>
</tr>
<tr>
<td><strong>SIDF</strong></td>
<td>Saudi Industrial Development Fund</td>
</tr>
<tr>
<td><strong>SABIC</strong></td>
<td>Saudi Arabian Basic Industries Corporation</td>
</tr>
<tr>
<td><strong>SAGIA</strong></td>
<td>Saudi Arabian General Investment Authority</td>
</tr>
<tr>
<td><strong>SAMA</strong></td>
<td>Saudi Arabian Monetary Agency, established in 1952 it is the central bank of Saudi Arabia.</td>
</tr>
<tr>
<td><strong>Tadawul</strong></td>
<td>the Saudi Arabian stock exchange (Tadawul) was formed in March 2007 and is regulated by the CMA</td>
</tr>
<tr>
<td><strong>TSO</strong></td>
<td>Technical and Scientific Office</td>
</tr>
<tr>
<td><strong>UAE</strong></td>
<td>United Arab Emirates</td>
</tr>
<tr>
<td><strong>WTO</strong></td>
<td>World Trade Organisation</td>
</tr>
<tr>
<td><strong>US$</strong></td>
<td>US dollars</td>
</tr>
<tr>
<td><strong>SR</strong></td>
<td>Saudi riyals</td>
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</tbody>
</table>