

100% foreign ownership in retail and wholesale operations in KSA

July 2016

In brief

Historically the Kingdom Of Saudi Arabia (KSA) has required at least partial KSA ownership of businesses. For retail and wholesaling operations the Saudi Arabian General Investment Authority ("SAGIA") announced (in a "Decree") on 6 September 2015 that non-KSA nationals would be permitted to hold 100% ownership. The restrictions had previously capped ownership by non-KSA nationals at 75%, requiring KSA national ownership of 25%.

The Council of Ministers of KSA has since ratified the decision made in September 2015, and on 13 June 2016 SAGIA announced conditions relating to the granting of licenses for 100% ownership of retail and wholesale operations by non-KSA nationals – which are considered below.

In detail

Publication of legislation

The actual legislation and regulations relating to the Decree have not yet been formally published. That said, we do know that applications for licenses are being received and processed on a case by case basis by SAGIA.

So far SAGIA has issued three such licenses, to large multinational groups. The market standing of these companies is indicative of the type of businesses that SAGIA looks to attract investment from, and grant licenses to.

License conditions

In June 2016 SAGIA laid down certain conditions to the grant of a license for 100% non-KSA national ownership of a company engaged in retail and wholesale.

The conditions and our comments are as under:

Conditions	Comments
The licensed company must have a minimum cash capital of SAR 30m (c. USD8m).	We understand that, as a matter of practice, capital is not required to be frozen in the bank account, and may be withdrawn after the proof of deposit is shown to the authorities.
The non-KSA national must have operations in at least three international markets.	The definition of 'operations' is not clear at present, though we expect it will entail direct trade and legal presence in more than three jurisdictions (with the USA likely to count as one market).
The non-KSA national must commit to invest not less than SAR 200m (c. USD53.3m), to include initial cash capital SAR 30m, over the first five years of operation, beginning with the date the license is obtained from SAGIA.	It is not clear at present as to what will be considered an 'investment' for purposes of the Decree - whether this will include, in addition to capital, operating expenses, a loan or quasi-capital. The initial capital requirement earlier was SAR 20m.

Conditions	Comments
The company may be incorporated as a limited liability company or a branch of the foreign company.	<p>Earlier, a branch of a non-KSA company was not permitted. A branch, being an extension of a company, may be a desired option for a non-KSA company to operate in KSA.</p> <p>While a limited liability company may be incorporated with one KSA national shareholder, it is still unclear whether a non-KSA national is permitted, in practice, to singly own a company.</p>
The non-KSA national must commit to achieve the Saudization percentage stipulated by Ministry of Labour and Social Development, develop and deliver a plan to enable KSA nationals to take up key positions within the first five years of operation, and guarantee their continued employment.	<p>The Ministry of Labour and Social Development has prescribed Saudization percentages for various industries.</p> <p>For instance, the telecommunication sector must have 100% KSA national employees by the 3rd of September. To our knowledge, a foreign telecommunication retail company is yet to be granted a license for 100% ownership under the Decree and as such it is to be seen whether an application for 100% non-KSA national ownership is adversely affected by the extensive Nitaqat ('Saudization') program of the telecommunication industry.</p>
A minimum of 30% KSA national employees must be trained each year.	<p>Earlier, the requirement was for a minimum of 15% of Saudi employees to be trained each year.</p> <p>Where the Nitaqat ('Saudization') program requires 100% KSA national employees, such as in the telecommunications retail sector, this provision may have the effect of training 30% of the entire retail workforce, which could be a significant cost.</p>
<p>The non-KSA national must commit to fulfil one or more of the following conditions within the first five years:</p> <ul style="list-style-type: none"> (a) 30% of products to be distributed must be made in the KSA; (b) Invest 5% of gross sale revenue in research and development within KSA; and (c) Establish logistics and an after sales support centre in KSA. 	<p>It is unclear at present if satisfaction of any one condition will suffice.</p> <p>With respect to condition (a), what constitutes 'made in KSA', or a percentage thereof, is unclear. Clarity is required on matters such as whether the threshold applies to ensuring a certain percentage of raw materials is procured from KSA, or whether some degree of value addition must take place in the KSA.</p> <p>With respect to condition (b), what constitutes 'research and development' is unclear, and remains to be seen how it will vary per industry.</p> <p>With respect to condition (c), it is unclear whether the requirement to 'establish logistics' means that the non-KSA national must establish its own distribution channels, and if so, is the non-KSA national then prevented from engaging other distributors in KSA. Consideration must be given to any existing distributorship arrangements, and their possible termination.</p> <p>It is pertinent to add that if the company invests SAR300 (USD80m) within the first five years, then the preceding conditions may not apply.</p>

The takeaway

The Decree, and the recently introduced conditions, is a significant development and has the potential to increase the

attractiveness of retail and wholesale operations in KSA.

Clearly however there are a number of conditions that need to be met to take advantage of these changes,

which will require careful consideration by businesses.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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