

Kingdom of Saudi Arabia to permit 100% foreign ownership of 'engineering' entities

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In brief

In 2016 the Saudi Arabia General Investment Authority ("SAGIA") announced that they would accept applications for 100% foreign ownership of entities engaged in engineering activities in the Kingdom of Saudi Arabia ("KSA").

On 7 August 2017, SAGIA confirmed that this new ruling would be implemented in the coming weeks, with the implementing regulations expected during the week of 13 August 2017.

This is a further step in KSA's efforts to open up the Saudi market to foreign players as part of Saudi's Vision 2030 initiative which is looking to diversify the KSA economy with a move away from an over reliance on oil production and its related industries.

In detail

Since 2015, KSA has continued to liberalise its market by relaxing requirements to have partial Saudi ownership in businesses. Historically, depending on the activity and industry, foreigners were restricted to a cap of 75% ownership in a company with a requirement to have at least 25% ownership by a Saudi national (or a company wholly owned by Saudi nationals).

In 2016, SAGIA announced that they would permit 100% foreign ownership in the 'retail and wholesale' sector, subject to a number of obligations and requirements, including a minimum share capital requirement of SAR 20 million. In addition, entities with 100% foreign ownership are obliged to invest at least SAR 200 million over the five years after their license is granted.

On 7 August 2017, SAGIA confirmed their 2016 announcement that they will allow 100% foreign owned engineering entities. The implementing regulations are still awaited, however, at a minimum we know that 100% foreign ownership will only be available to engineering entities which: (i) have been in existence for 10 years or more, and (ii) operate in four different countries.

These requirements are quite general and their meaning is not entirely clear at present. For instance, would an entity be deemed to operate in another jurisdiction if business is carried out through a joint venture (corporate or contractual), and is the foreign owner required to have a minimum ownership percentage or control of such joint venture.

Further, does a foreign entity with over 10 years of operating history have to be the direct shareholder of the KSA entity, or could this experience be cumulative and drawn from other entities within a corporate group.

The position adopted by foreign owners looking to increase their shareholding in existing engineering companies will be interesting to see. Whilst the law and contractual arrangements in place between the shareholders of the KSA entity will govern their legal relationship, factors such as enforceability of contractual provisions (particularly in relation to share transfers and restrictions on competition) and

ownership of intellectual property rights of the business, will play an important role in the outcome of such discussions.

The takeaway

Whilst with conditions, the continued liberalisation of different sectors by permitting 100% foreign ownership is a welcomed change, which will both invite new foreign players and allow existing foreign businesses to increase ownership, in the engineering sector. In order to avoid practical uncertainties, we look forward to clear implementing regulations being promulgated.

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