

Guide to corporate forms for British companies wishing to conduct business in Saudi Arabia

A key consideration for any British businesses considering setting up operations in the Kingdom of Saudi Arabia is to understand the types of corporate forms available and whether the available corporate forms are indeed effective for the intended business activities. Below is a very brief narrative of the options available to British businesses.

Saudi Arabian Companies Law recognises 8 forms of corporate structures, namely the following:¹

- General Partnerships
- Joint Liability Partnership Company;
- Limited Partnership;
- Partnership Limited by Shares Company;
- Variable Capital Company;
- Cooperative Company;
- LLC; and
- JSC

However the most common form utilised by local businesses as well as foreign investors are the limited liability companies ("LLC") and the joint stock company ("JSC"), when considering corporate structures. For ease of reference we have provided a feature and comparison table for both an LCC and a JSC opposite.

In addition to the corporate forms available under the Companies Law, there are also the possibility of setting up a branch office of a foreign company ("Branch Office"), technical and scientific branch office (the "TSO"), professional companies ("Professional Companies"), and agency arrangements ("Agency Arrangements"), these are detailed and discussed in brief detail alongside.

Branch Office

It is also possible to register a branch office of a foreign company. The liability of the branch office may be limited to a degree in so far as the branch office's net liability does not exceed 50% of the capital of the branch office, the minimum of which is currently set at SAR500,000. The usual process of obtaining a SAGIA licence is required. It is possible for the branch office to sponsor its own employees.

TSO

Some foreign companies decide to establish TSO, these are set up to assist the local partner, as opposed to a fully functional trading operation. TSO are allowed upto 5 employees, however these employees are sponsored by the organisation that is to be supported. The TSO is not able sponsor it's own employees. Other than providing permanent residency to a number of it's employees, the main value appears to be in the marketing of a permanent presence in the Kingdom of Saudi Arabia.

Commercial Agency Arrangements²

According to the Commercial Agency Laws, foreign companies often enter into agency agreement with Saudi individuals or Saudi wholly owned businesses; the agency arrangement covers all forms of agency arrangements but also includes distributor arrangements and franchise arrangements. It is essential to ensure that a proper agency agreement is entered into, as the current laws very much favour the local entities as opposed to the principal. It is not uncommon to see principal / agents disputes on a regular basis.

Professional Companies³

At present it is not possible to carry out engineering elements of a contract other than through a Professional Company. As a result foreign engineering companies may consider entering into an arrangement with a Saudi national or a Saudi Professional Company to provide engineering services in the Kingdom of Saudi Arabia. At least 25% of the professional company must be Saudi.

¹ Companies Law, issued by Royal Decree No. M/6, dated 22/3/1385H (corresponding to 22/7/1965).

This law is under review and expected to be superseded by a new Companies Law in the near future.

² Commercial Agencies Law, issued by Royal Decree No. M/11, dated 20/2/1382 (corresponding to 22/7/1962).

³ Professional Companies Law, issued by Royal Decree No. 4, dated 18/2/1412 H (corresponding to 26th August 1991).

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Feature	JSC	LLC
Number of Shareholders	Minimum 5, There is no maximum.	The minimum is two and the maximum is fifty.
Minimum Share Capital	2,000,000 Saudi Arabian riyals.	None.
Paid Up Capital at Time of Incorporation	The greater of (i) 25% of the stated capital of the JSC or (ii) 1,000,000 Saudi Arabian riyals	Fully paid up.
Par Value of Shares	10 Saudi Arabian riyals	None specified .
Share Certificates	Ownership is represented by share certificates.	Ownership is recorded in the share registry, which serves as evidence of the ownership interest
Transferability of Issued Shares	Issued shares are freely transferable except for shares of the founding shareholders, which are subject to a two-year statutory lock-up period.	The transferability of issued shares is subject to a statutory right of first refusal to the benefit of other shareholders.
Restrictions on the Issuance of Additional Shares to Third Parties	Newly issued shares must first be offered to existing shareholders.	There are no statutory restrictions on the issuance of new shares to third parties.
Restrictions on Sale of Shares to the Public	Securities of a JSC (shares and debt instruments) may be sold by public subscription.	Securities of an LLC (shares or debt instruments) may not be sold by public subscription.
Liability of the Shareholders	In principle, the liability of the parent companies for the debts and obligations of the Saudi JSC will be limited to their respective contributions in the JSC's share capital.	The same principle applies as with JSC under the Companies Law, with certain specific exemptions. The most notable exemption is in Article 180 of the Companies Law. Where the losses of an LLC exceed 50% of the share capital of the LLC, the shareholders shall convene a meeting to determine whether to dissolve the LLC or not. If the shareholders determine to continue the LLC, they shall become jointly, severally and fully responsible for the LLC's debts.
Constitutional Documents	<ul style="list-style-type: none"> articles of association ("AoA") by-laws <p>These documents tend to be standard form documents.</p>	<ul style="list-style-type: none"> AoA <p>The MOCI provides more latitude in the drafting of the articles of the LLC than a JSC.</p>
Management of the Entity	Board of directors of at least three directors.	A sole general manager or a board of managers.
Director/ Manager Ownership Requirements	Each Director must hold shares with a minimal aggregate value of 10,000 Saudi Arabian riyals. A Director who represents a corporate seat on the board need not comply with this requirement, but the corporate entity must hold the aforementioned requisite number of shares.	None.
Authority of Management to Operate Entity	The power and authority of a Director is principally derived from the Companies Law (and supplemented by the JSC's own by-laws).	The power and authority of a Manager is typically provided for in the company's Articles of Association. Accordingly, LLCs provide for more latitude in this regard.
Residency of Directors/ Managers	Current published regulations do not expressly regulate the residency or citizenship of Directors. Under current practice, MOCI generally appears to require the same proportion of Saudi nationals serving as directors as Saudi ownership of the JSC.	Current published regulations do not expressly regulate the residency or citizenship of Managers. MOCI typically requires that at least half of the managers be GCC nationals and/or foreign nationals with residency (i.e., Iqama holders). Where the LLC is managed by a sole manager, that manager must be a GCC National or a foreign national with an Iqama.