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Saudi-Arabia: Judicial Reforms and Regional Headquarter Requirements Announced

LEGAL BRIEFING (17 February 2021)

The Kingdom of Saudi Arabia (KSA) has recently undergone major changes in order to achieve the goals set for the Saudi Vision 2030 and in an effort to attract and increase the confidence of foreign investors in the Kingdom. Following this path of economic and legal reforms, a judicial reform has recently been announced through which KSA has announced four new laws. Furthermore, KSA plans to revamp its requirements for government tenders, requiring foreign companies dealing with government entities to have their regional headquarters in the Kingdom. In this legal briefing, we take a first look at the planned legal reforms.

1. *Introduction*

KSA's legal system is largely based on sharia law, meaning that certain areas of law are not codified. Consequently, judges have wide discretionary powers which can result in unpredictable outcomes of court cases. In the past, this has been a factor discouraging some foreign investors from setting up in the Kingdom.

In recent years, however, KSA has embarked on fast-paced and far-reaching legal reforms, impacting private and commercial life in the country. For instance, judicial reforms in 2017/2018 included the creation of new commercial courts, the introduction of time limits to judge a case, the publication of judgments and the use of electronic tools (such as emails) as legal notifications. Other important reforms include the introduction of the law of Guarantee on Rights in Movable Property.[1]

2. *Judicial Reform*

With the press announcement from 8 February 2020, KSA has reinforced its commitment to a more investor-friendly legal environment by introducing the following laws:

- Personal Status Law
- Civil Transactions Law
- Penal Code of Discretionary Sanctions
- Law of Evidence

Cabinet approval for these new laws is expected for some time in 2021. The announced new laws likely cover a wide variety of areas, such as family matters (marriage, divorce etc.), criminal and civil matters and principles related litigation procedures. Nevertheless, it is still too early to know what subject matter these laws will address precisely as they are still being elaborated.

3. *New Requirement to Access Government Tenders / Regional HQ*

In an announcement from 15 February 2021, a new requirement has been outlined, whereby, in order to access government tenders, foreign companies will have to have their regional headquarters (HQ) in KSA. As per the press announcement this reform is to be implemented from 1 January 2024, which

[1] https://www.schlueter-graf.com/fileadmin/publications/_processed_/200514_LEGAL_BRIEFING_Securing_Saudi.pdf

leaves a certain amount of time for interested businesses to adapt to the new requirements.

In line with Saudi ARAMCO's IKTIVA and other Saudi localization and Saudization initiatives, this most recent change incentivizes foreign businesses operating in the Middle East and in particular multinational enterprises to move the regional HQ to KSA, a position traditionally held by Dubai in the United Arab Emirates.

From 2024 onwards, companies which regularly engage in public tenders in KSA but have their regional HQ in Dubai or elsewhere would likely be affected by this reform. However, it is not clear how this regional HQ requirement will be implemented exactly. A key consideration could be the question, what a regional HQ set-up in the Kingdom would entail – or in other words: ***What makes a headquarter a headquarter?***

Will certain minimum staffing, share capital and other requirements be implemented as part of this reform? Until these details are known, a comprehensive assessment is not possible.

As it appears now, with the limited information available, businesses that do not engage in public tenders would not be directly impacted by this reform.

4. Conclusion

Over the course of the last few years, KSA has accelerated its economic and legal reforms. These latest steps are in line with previous localization efforts and other legal reforms in the Kingdom.

Companies will have to consider opportunities in KSA (in particular in terms of government contracts) in relation to the rest of their business in the region. Furthermore, tax, localization and Saudization/Emiratization implications in connection with changes in the regional structure of organizations should be assessed.

While many details of the announced laws are still unknown, companies should carefully monitor upcoming developments and adjust their business strategies for the region, accordingly.

SCHLÜTER GRAF has been advising on all aspects of Saudi law for close to two decades. Please contact the authors of this article or your usual contact at SCHLÜTER GRAF for any inquiries on Saudi-related legal, tax and compliance matters.

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