

An overview of recent developments at the Saudi Arabian General Investment Authority

The Saudi Arabian General Investment Authority (SAGIA) has introduced a number of changes that will have an impact on all foreign investors.

Introduction of fast track service

In recent months, the Governor of SAGIA announced that a fast track service for certain companies will be introduced. According to SAGIA, applications from qualifying investors will be reviewed within five working days from the date SAGIA notifies the investor that it has received all the required documents to process the application.

The fast track service will be open to the following companies:

- multinational companies
- publicly listed companies on an international stock exchange
- companies manufacturing products that are classified and approved by independent agencies and employ certified process technology
- small and medium-sized companies which will be operating using their registered intellectual property or which are classified as innovative enterprises
- international companies with regional centers in Saudi Arabia
- construction companies classified under the first class in their countries, or which have implemented a project with a value of not less than SR500

million and have manpower of not fewer than 2,000 employees and total assets of not less than SR50 million

- companies entering into partnership with other companies qualified by a government agency, or by a state-owned entity or an entity in which the government has a shareholding, or with a company listed on the Saudi Stock Exchange.

Some of the categories of companies listed above are not very clearly defined by SAGIA and consequently, SAGIA has a certain amount of discretion to determine if a company can qualify for the fast track service or not.

What documents are needed?

As for all applications to SAGIA, companies qualifying for the fast track service will need to submit the following documents with their application (in addition to any other document SAGIA may request):

- a shareholders' resolution to invest in Saudi Arabia, listing the names of the shareholders, the capital share of each shareholder, the company's headquarters, the type of activity, the name of the general manager and the authorised representative, duly legalised by the competent

authorities and the Saudi embassy in the home country

- copies of the company's constitutional documents (Articles of Association and commercial registration or equivalent), authenticated by the competent authorities and the Saudi embassy in the home country
- the autobiography form provided by SAGIA and the company's profile, duly stamped with the company's seal.

The licence application should be sent by the applicant by email to fasttrack@sagia.gov.sa. This email address is temporary and will be replaced by a more comprehensive SAGIA website where applications will be submitted online.

Companies obtaining a license under this procedure should make sure that they are complying with SAGIA's requirements and actively pursuing their business plan immediately after the license has been issued.

New requirements for some sectors

SAGIA has introduced new requirements which means that some companies applying for a new foreign investment licence, or amending or renewing an existing licence, must meet a number of prescribed conditions.

These include specific Saudisation requirements and the need to provide certain financial information, data or reports.

These currently apply to three sectors:

- contracting
- light manufacturing
- restaurants.

Contracting, light manufacturing and restaurants

These three sectors have not been precisely defined by SAGIA and consequently, SAGIA's representatives have the discretion to interpret and decide at the time of the issuance of the licence (or its amendment or renewal) which activities fall under one of these sectors. The light manufacturing and the contracting classifications are problematic. It is often uncertain if the proposed activities, or the existing activities in the case of renewals, will be considered by SAGIA as light manufacturing (as opposed to the general "industrial" classification) or as contracting (as opposed to the general "services" classification).

In short, an entity with a contracting licence will need to execute an undertaking to apply contracting standards and an entity with a restaurant licence will need to submit an undertaking to apply restaurant standards and so forth.

SAGIA is now requesting that these entities (which fall within the specified sectors) enter into these undertakings as soon as they interact with SAGIA for licence renewals, amendments and even other, more general, matters.

SAGIA now also requires the submission of a bank guarantee for the benefit of SAGIA, which shall be renewed annually, for an applicant falling under the contracting classification. The value of the bank guarantee should be 2% of the financial limits for the third class classification adopted by the Ministry of Municipal and Rural Affairs, or its equivalent for the same activity that the applicant contemplates conducting. The bank guarantee shall be unconditional and irrevocable and must be valid until the expiration of the commercial registration. A template letter of credit is available from SAGIA. We note, however, that, in practice, such bank guarantee may not always be required by SAGIA.

A commitment letter to apply the specific new conditions needs to be submitted with the application to SAGIA and must be printed on the official letterhead of the entity, completed, signed and attested by the Chamber of Commerce in Saudi Arabia.

Penalties

Failure to comply with these new conditions could result in penalties under the Saudi Foreign Investment Law and in the non-renewal or cancellation of the foreign investment licence by SAGIA.

We note that non-renewal of the foreign investment licence means that an entity will not be able to renew its commercial registration either. If this happens, the entity cannot continue its operations, banking operations may be restricted or suspended and severe business disruption may occur.

Renewal Considerations

SAGIA is becoming more selective and is imposing new requirements on foreign investors, including those who are already established in Saudi Arabia.

A company operating in Saudi Arabia, wholly-owned by a foreign investor or in which a foreign investor is a shareholder, could be obliged to stop its operations and be liquidated if it cannot meet SAGIA's requirements, including the new conditions described above for restaurants, light manufacturing and contracting.

The new requirements and SAGIA's more selective approach have already affected many foreign investors. On 17 June 2014, it was reported in the press that SAGIA had cancelled 374 foreign investor licences last year for failing to meet new regulations and conditions.¹ SAGIA's new attitude towards foreign investors has apparently reduced the number of foreign investment licences from 9,265 to 6,000 this year. SAGIA manifestly wishes to focus on large multinational companies that will make a contribution to the Saudi economy, ensure the transfer of advanced technology and create more job opportunities for Saudi nationals. Hence, many foreign investors may find it more difficult to satisfy SAGIA's requirements and operate in Saudi Arabia.

Questionnaire and follow-up on undertakings

In addition to new requirements, conditions and undertakings, SAGIA

¹ http://www.zawya.com/story/Investors_in_Saudi_Arabia_upset_as_SAGIA_cancels_374_licenses-ZAWYA20140618040703/

has started to send a questionnaire to companies which are in the process of renewing their foreign investment license. The questionnaire normally has ten fairly broad questions addressing the conditions that the company has undertaken to comply with and enquiring in detail on the nature of the business conducted in Saudi Arabia and its prospects.

The most important question is the following: "*What is the additional value that the company brings to the Saudi economy?*" SAGIA will review the answers provided by the company and will presumably only renew the foreign investment licence when it is satisfied with the answers provided and all requested documents have been submitted.

Electronic renewal

SAGIA also has a strong preference for requests for first-time applications and the renewals of licences to be made online. SAGIA's website contains the following statement: "*SAGIA accepts Electronic Renewal Requests only, please do not send the documents hard copies by Wasel*".²

Renewal before transfer of shares

Finally, we note that, in recent months, SAGIA has required that the foreign investment licence of a company in which a shareholder wishes to sell its shares be renewed in advance where it is due to expire in a few months before the transfer of shares can occur and the license be updated accordingly.

Tips for investors

These latest developments mean that investors should plan ahead of the date of expiration of their foreign investment licence and start the renewal process well in advance. SAGIA requires renewal applications to be made at least three months before the licence is due to expire. Prospective investors should also make sure they will be able to meet SAGIA's requirements on an ongoing basis once they establish their presence in Saudi Arabia and they are able to commence business and deliver their business plans on the timeline shared with SAGIA.

² <http://www.sagia.gov.sa/en/Investor-tools/Remote-Services/>
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