FOREIGN CAPITAL INVESTMENT IN MEMBER STATES OF THE GULF COOPERATION COUNCIL
CONSIDERATIONS, ISSUES AND CONCERNS FOR INVESTORS

Part 3

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Saudi Arabia

The Law and Jurisprudence

The legal basis for venture capital investment and commercial activity in Saudi Arabia is the Shari'a supplemented by a mixture of laws. Unlike Kuwait, Bahrain, Qatar and the UAE, Saudi Arabia does not have a written constitution but the system of law is based upon the King and Council directed strongly by the Shari'a.

The administrative structure was established by the Organic Instructions of the Hijazi Kingdom of 1926, as amended or supplemented by the Statute of the Council of Deputies of 1932 and the Constitution of the Council of Ministers of 1958. The latter is not in any sense a "constitution" but rather a series of regulations outlining and circumscribing the machinery of Government.

The parallel body of secular regulations in Saudi Arabia would likely be void, if they contravened any express provisions of the Shari'a. The Shari'a court are centrally important to the system of justice in the Kingdom but commercial matters are more likely to be dealt with by a "commercial court" which is more like a commercial council, set up by Order 32/1350 (1931) which also contains a rudimentary commercial code, Procedure Code, Court Law and Court Fees Regulation. It is staffed by seven commercial experts.

Foreign Investment Legislation

Foreign capital investment in Saudi Arabia is subject to the Foreign Capital Investment Regulation, which does not, however, apply to oil and minerals. Prior to trading the foreign venture entity must receive a licence from the Ministry of Industry and Electricity and this can take a very considerable period of time during which no contract may be acted upon. Whilst temporary licences may be obtained, these are not always readily obtainable.

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In practice, a preference is given in respect of receiving Government contracts to those entities where there is not less than 50 per cent local participation and as of 1989, a company's eligibility for being considered for Government projects required a 35 per cent Saudi shareholding. The actual capitalisation requirement is set by the Ministry at its discretion.

All of the usual forms of companies and partnerships discussed earlier and commonly used by foreign capital investors to conduct business in the Gulf, are provided for in the Saudi Company Regulation of 1965. In addition there are provisions for the use of companies with "variable capital" and what is referred to as the "cooperative company".

It is interesting to note that in the Saudi Company Regulation of 1965 there is no prescribed proportion of capital which must be held by Saudi nationals. As discussed above, however, local preference and favour certainly compels consideration of establishing the highest feasible Saudi participation.

Banking and Foreign Exchange

Banking and finance in the kingdom is controlled by the Saudi Arabian Monetary Agency (SAMA) established by Order 103/1377 in 1957 which functions under the Banking Control Law of 1386 (1966) as amended by Decree 2/1391. A bank must be a Saudi share company (Sharika Musahama—Société Anonyme) and licences are issued or denied by the Minister of Finance and National Economy through SAMA.

Free movement of currency into and out of the Kingdom is usual for foreign investment entities for there are no exchange control regulations or restrictions on the entry or repatriation of funds, all types of profits and foreign workers' salaries.

The involvement of Saudi banks with project development and other industrial share companies is tightly restricted by law. A bank, for example, may not purchase shares of other such joint stock companies to the value of more than ten per cent of their capital and it may never make unsecured loans to directors, with secured loans limited to a percentage of their salary.

In addition to the commercial banks there are five finance companies or credit institutions which disburse loans to Saudi individuals and companies. They are:

(1) SIDF;
(2) Saudi Arabian Agricultural Bank;
(3) Real Estate Development Fund;
(4) Public Investment Fund;
(5) Saudi Credit Bank.

The first two institutions on this list have particular relevance for joint ventures. The SIDF, which is attached to the Ministry of Industry and Electricity, provides low-cost medium and long term capital to industrial joint venture projects, especially projects under economic offset programmes. An SIDF loan has the following characteristics:

(1) It is available to licensed projects that have a minimum Saudi participation of 25 per cent;
(2) It grants up to 50 per cent of the financing needs of a project;
(3) It is interest free, but has an initial service fee of 2.5 per cent of the project costs;