

The licensing landscape for contractors and consultants in the UAE, Qatar and Saudi Arabia

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In recent years the construction sector has seen a return to growth in the Middle East and this has led to renewed interest in the licensing regime in the region for contractors and consultants/engineers. As explained below these activities tend to attract higher levels of regulation – this can impact everything from the initial set-up process, on-going operational matters as well as any joint venture or M&A transactions.

Country	Are there foreign (non-GCC) ownership restrictions?	Requirement for contractors classification regime/special approvals?	Set up/approval process
UAE	<p>Contracting: an onshore company (LLC) will often be used in which case foreign ownership will be limited to 49%. A branch may also be used in certain circumstances (in which case there is a requirement to appoint a UAE national service agent).</p> <p>Consultants/engineers: depending on the Emirate/activities a civil company sole establishment, LLC or a branch may be used.</p>	<p>The Emirate in which the activity is to be undertaken needs to be considered:</p> <p>Abu Dhabi: operates a contractors’ classification regime (required for government projects).</p> <p>Dubai: approval of Dubai Municipality is required in order to carry out contracting and engineering/consultancy activities.</p>	<p>Both Abu Dhabi and Dubai typically examine current/completed projects and the number/qualifications of technical staff.</p> <p>With regards to consultants/engineers the foreign applicant must demonstrate experience in the field and the general manager must be a qualified engineer with considerable experience.</p>
KSA	<p>Contracting: a KSA LLC will often be used in which case 100% foreign ownership is possible. A branch may also be used in certain circumstances</p> <p>Consultants/engineers: a professional company will often be required (in which foreign ownership is limited to 75%).</p>	<p>The Ministry of Municipal and Rural Affairs (MMRA) operates a contractors’ classification regime (required for government projects).</p> <p>Consultants/engineers require approval from the Ministry of Commerce and Industry (MOCI) and the Saudi Council of Engineers.</p>	<p>MMRA typically examine current/completed projects, the qualifications of technical staff and the financial viability of the applicant.</p> <p>With regards to consultants/engineers the foreign applicant must demonstrate experience in the field and have a qualified engineer resident with 10 years’ experience.</p>

Country	Are there foreign (non-GCC) ownership restrictions?	Requirement for contractors classification regime/special approvals?	Set up/approval process
Qatar	<p>Contracting and consultants/engineers: in both cases, Qatari LLCs will often be used and hence foreign ownership will be limited to 49%. A consulting/engineering LLC is referred to as a Local Engineering Office (LEO).</p> <p>A branch can only be used in limited circumstances (e.g. to carry out a specific contract with a government body).</p> <p>Consultants/engineers may have the option of establishing an International Engineering Office (IEO) (subject to certain special approvals).</p>	There is no contractors' classification/special approval regime per se.	Registering an IEO requires more onerous evidential requirements than an application to set up a LEO (e.g. evidence confirming that the foreign company registering an IEO has practised engineering activities for at least 10 consecutive years must be provided by the relevant authorities in the foreign company's place of incorporation).

UAE – Some practical insights

– Popular set-up options

LLCs are commonly used for contracting activities in the UAE. Given the limits on foreign ownership, foreign investors often try to put in place arrangements that seek to retain control over the management and profits of an LLC. Such arrangements need to be carefully drafted in order to comply with local laws. Free zones in the UAE do not commonly issue licences for contracting or engineering activities.

Given the requirements to demonstrate experience/track record it can be difficult for the foreign applicant to use a newly incorporated SPV.

LLC's are permitted to carry on consultancy/engineering activities in Abu Dhabi, whilst such activities in Dubai are restricted to civil companies, sole establishments and branches. Branches of foreign entities can only carry out such activities in Dubai following specific consent having been obtained from Dubai Municipality.

– Licensing in Dubai

In respect of a fresh application for contracting, often a G+1 licence is issued in the first instance. This licence will contain certain conditions which will be required to be fulfilled and after one year an application to upgrade the licence can be made. There are different categories of

licences which depend upon the experience of the persons to whom the licences are issued (with the highest being G unlimited). The minimum capital requirements may also depend on the level of classification.

Engineering/consultancy activities in Dubai are governed by a local order and a licence with this activity is often only granted for 'specialised projects'.

– How do these differ in Abu Dhabi?

In Abu Dhabi, the Abu Dhabi Department of Municipal Affairs operates a 'contractors classification regime' whereby contractors (who wish to carry out a project with a government or quasi government body) are classified under a number of different categories. Currently a "special grade" classification is the highest category allowing the contractor to perform projects with a value in excess of AED 100,000,000 (and in the case of consultants, projects with a value in excess of AED 70,000,000). A contractor or consultant may obtain different levels of classification for its different specialisations.

Each level of classification requires proof of compliance with particular thresholds pertaining to the above criteria and in order to obtain the desired certification level, a contractor/consultant must demonstrate that it meets the criteria for the level at which it wishes to be classified.

– **What will be the impact of any new UAE Companies Law?**

In the last publicly available draft, the foreign ownership restrictions were not specifically addressed. Instead, the draft law stated that Resolutions of the Council of Ministers may be passed to determine the category of activities that are restricted to UAE nationals and what types of company or activities may have greater foreign ownership. It is anticipated that the foreign ownership restrictions will therefore be dealt with in a specific law on foreign investment.

KSA– Some practical insights

– **Popular set-up options**

Even though 100% foreign ownership is permitted for contracting activities, in our experience, a sizeable number of foreign entities still choose to joint venture with a KSA partner.

Given the requirements to demonstrate experience/track record it is generally not possible for the foreign applicant to use a newly incorporated SPV.

– **Licensing in KSA**

As with most set ups in KSA, the foreign applicant will need to provide clear reasons for investing in KSA, the value to be added to the KSA market, the job vacancies to be created, the time line of the project and a feasibility study. SAGIA have recently announced a fast track service to process applications from certain foreign investors. Although still in its infancy its interesting to note that this service may be available to construction companies classified as “first class” in their home country or which have implemented projects with a value in excess of SR 500 million.

In order to tender for contracts with KSA government bodies, a foreign entity must be classified by MMRA. Under this “contractors’ classification regime” contractors are classified under a number of different categories, with a “grade” classification ranging from first (being the highest category allowing the contractor to perform projects with a value generally in excess of SAR 420,000,000) to fifth (being the lowest category allowing the contractor to perform projects with a value of up to approximately SAR 420,000). An application for classification will involve an examination of the

applicant’s financial, technical, administrative and execution ability (in one or more fields). Recently SAGIA have also started to request certain bank guarantees (renewed annually) from an applicant with contractors’ classification.

– **Consultants/engineers**

Engineering consultancy licences are obtained from and regulated by MOCI and the pre-approval of the Saudi Council of Engineers is also required (as the authority in charge of regulating the engineering profession in KSA).

A foreign company can be licensed to conduct engineering consultancy activities in KSA if amongst other things: it is licensed to practice the same business in its country of origin; it has experience of at least 10 years during which time it has exercised, without interruption, engineering consultancy work; a KSA financial institution certifies its financial viability, reputation and commercial dealings; and performance certificates are provided in respect of works it has completed either inside or outside KSA.

Foreign ownership is limited to 75% and the experience of the foreign investor’s representative in KSA and the KSA national partner (holding the remaining share capital) will be examined. The partners are jointly and fully liable in respect of its operation and their liability is not limited to their shares in the professional company.

In 2010, the Saudi Council of Ministers instructed MOCI and the MMRA to issue regulations to implement an engineering classification regime, however, no such regulations have been issued to date.

Qatar – Some practical insights

– **Popular set-up options**

LLCs are commonly used for contracting activities in Qatar. The set up process is relatively straightforward (given the absence of a contractors’ classification regime/special approvals).

Entities that carry out engineering activities in Qatar, which include, amongst other things, architecture, project management and quantity surveying, must comply with the specific engineering law and regime in place from time to time.

– Licensing in Qatar

An entity cannot carry out both a contracting activity and an engineering activity. It is also not permissible for a Qatari shareholder who is a sponsor of a contracting company to also be a sponsor of a LEO despite the fact that both may be separate legal entities. Therefore, it is not possible for one group of companies to have two affiliated LLCs operating in Qatar, if one LLC is licensed to carry on contracting activities and the other is licensed to carry on engineering.

Most entities that are licensed to carry on contracting activities sub-contract the engineering aspects of the project to a LEO or IEO and in some cases contracting and engineering entities tender for projects together in the forms of an unincorporated joint venture.

– Branches and local/international engineering offices

A foreign company can apply to set up an LLC as a LEO. A Qatari national must hold at least a 51 % share in the LLC. A foreign company can also apply to register an IEO, which is essentially a non-contract specific branch. The application to register an IEO is more onerous than an application to set up a LEO, and requires, amongst other things, the foreign company to produce evidence confirming that it has practised engineering consultancy for at least 10 consecutive years, to be issued by the relevant authorities in the foreign company's place of incorporation.

It is also possible for a foreign company to apply to register a contract specific branch to carry out a contract with a government or a quasi-governmental body in Qatar which is deemed to be for the public benefit. The registration of the Branch may, however, in certain circumstances be extended.

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