

**SABA**  
INTELLECTUAL  
PROPERTY

**BULLETIN**

June 2020

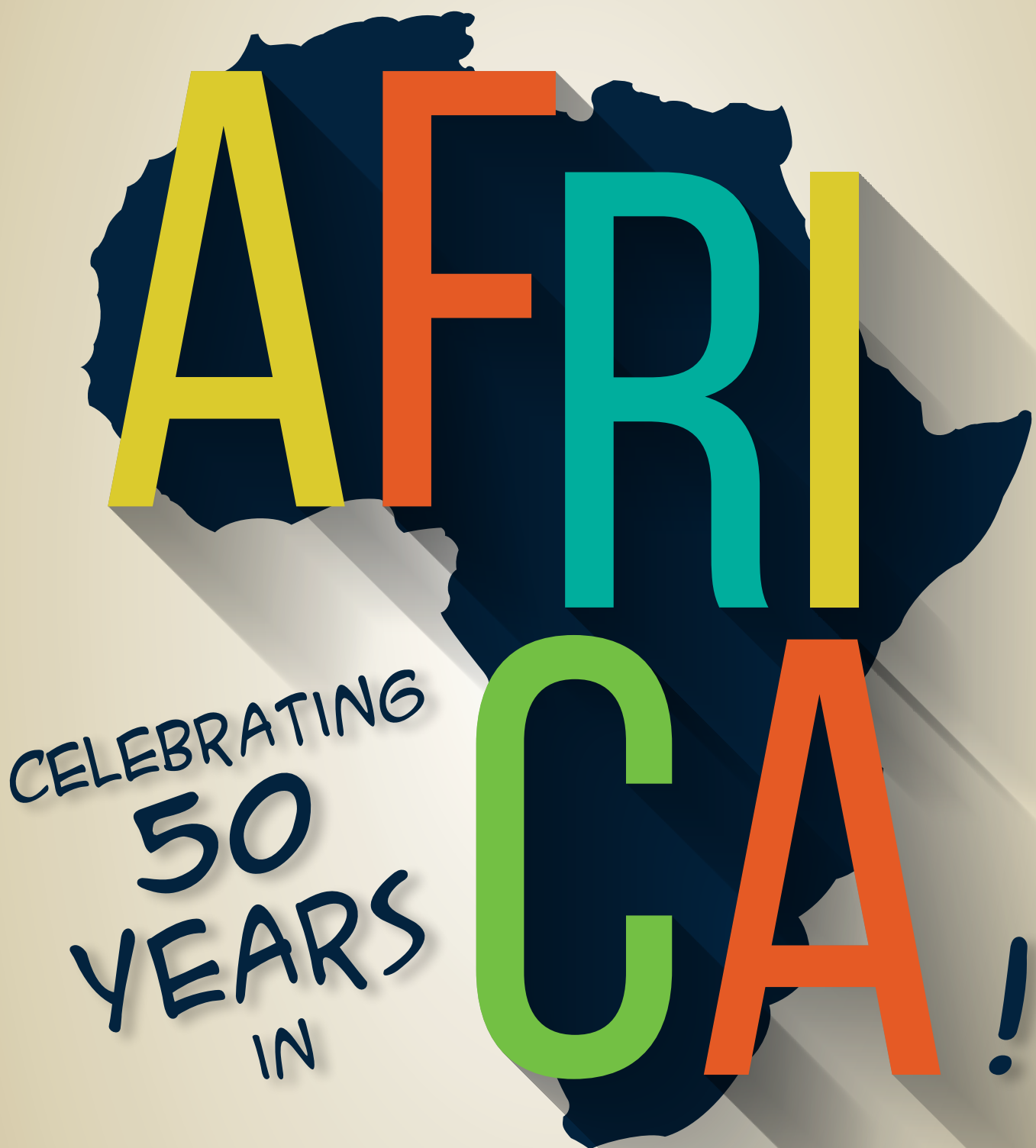
**SAUDI ARABIA**  
Increase in VAT Rate

**Franchisers Rejoice, the Law  
is in Force**

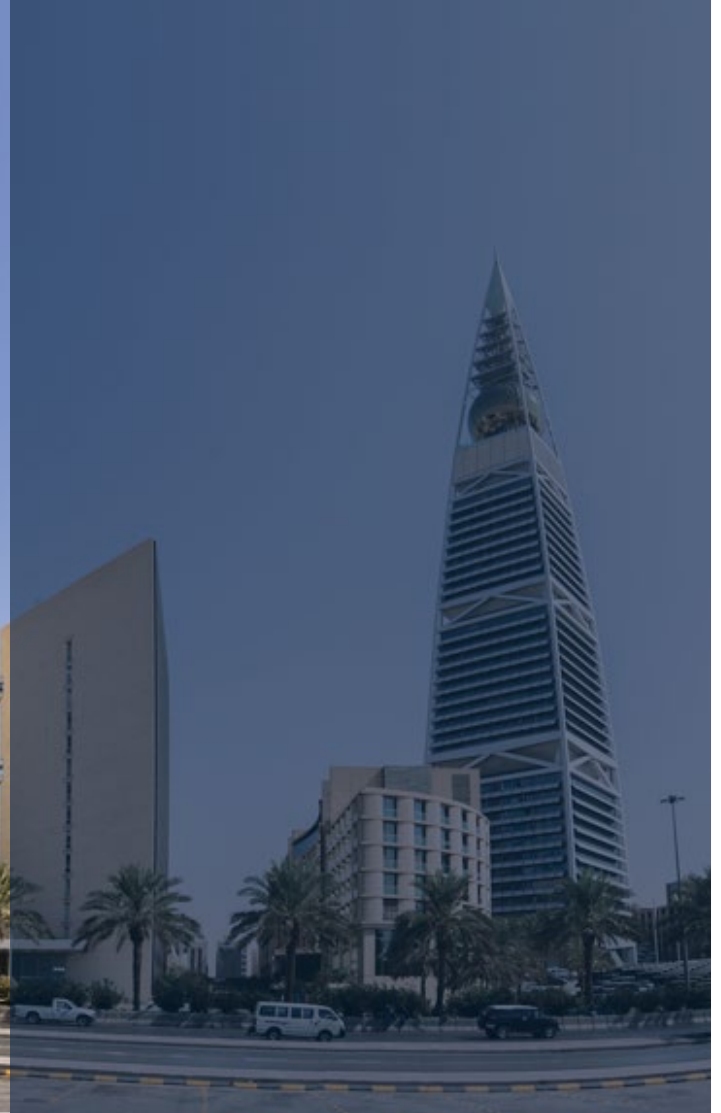
**The Ball is in your Court  
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## SAUDI ARABIA | INCREASE IN VAT RATE



**Saudi Arabia announced that the value added tax (VAT) rate will be increased to 15 percent from the current rate of 5 percent effective July 1, 2020.**

By way of background, VAT was introduced in Saudi Arabia in January 2018 and applied to goods and services, with some limited exceptions on basic food items, healthcare, and education.



## SAUDI ARABIA | FRANCHISERS REJOICE, THE LAW IS IN FORCE IN SAUDI ARABIA



**In an effort to facilitate and promote investment in the country, the Implementing Regulations of the Franchising Law were published in the Official Gazette by the Ministry of Commerce on May 22, 2020. By way of background, the Law was approved by the Council of Ministers in October 2019 and entered into force in April 2020.**

Under the old practice, franchising arrangements were treated as a commercial agency and were governed by the Commercial Agencies Law of 1992 and franchising agreements between the franchisor and franchisee were considered under the principal and agent relationship. Article 4 of the new Law clarifies that agreements or contracts subject to the outgoing Commercial Agency Law are no longer considered as franchise agreements.

With the new Law in effect, the relationship between the franchisor and franchisee is now clearer and transparent, as outlined in Article 3. Franchisors are expected to provide prospective franchisees with a disclosure document at least 14 days before both parties sign a franchising agreement. Once the agreement is signed by both parties it must be registered at the Ministry of Commerce within 90 days from the signing date. It is worth noting that Article 11 stipulates that the agreement must be submitted in Arabic.

Seeing that the use of Arabic is not a matter of choice but is a statutory requirement governed by local regulations, it becomes advisable to register the transliteration in the trademark in Arabic. While the transliteration of the mark is protected, likelihood of confusion is easier to prove when comparing marks in the same language, i.e. Arabic in the case of Saudi Arabia. Having said that, registering trademark in the transliterated Arabic script, in addition to their original Latin format, is advisable considering that Saudi Arabia is governed by Civil Law - that is, the first-to-file policy carries considerable weight.



## SAUDI ARABIA | FRANCHISERS REJOICE, THE LAW IS IN FORCE IN SAUDI ARABIA



If the franchisor plans to conclude another franchise agreement in the coming year, then the franchisor must submit a statement of any changes in the information or documents to the Ministry of Commerce within 6 months of the end of the franchisor's financial year.

Should the franchise agreement end, the parties concerned should submit an application to the Ministry of Commerce to cancel the franchise registration and the franchisor should notify the Saudi Authority for Intellectual Property (SAIP) that the franchisee's license to use the franchisor's trademarks have ceased. It is worth noting that failure to do so may result in penalties.

This news comes in light of Vision 2030, with Saudi Arabia actively encouraging foreign direct investment and promoting the growth of small and medium enterprises. The Franchising Law, which is in line with international standards, reflects Saudi Arabia's high aspirations as a country that welcomes foreign investments.

A healthy balance between the latter and local development is bound to be beneficial for the country's own growth.

**The proper application and enforcement of IP laws should help Saudi Arabia become more of an innovative hub in the Middle East and lead to this required healthy financial balance.**

## SAUDI ARABIA | THE BALL IS IN YOUR COURT: SETTling INTELLECTUAL PROPERTY DISPUTES IN SAUDI ARABIA



**With the establishment of the Saudi Authority for Intellectual Property (SAIP), Saudi Arabia consolidated all intellectual property (IP) departments under one umbrella.**

The purpose of this newly-minted local entity is to lead the national strategy for the promotion of IP, revising and issuing regulations, providing services in a timely and high-quality manner, increasing IP awareness and providing education and training for all stakeholders, and coordinating IP enforcement efforts with other local Ministries and Departments.

In December 2019, SAIP issued the Implementing Regulations for Optional Registration of Copyright Works, authorizing the voluntary registration of architectural designs and computer software and applications through SAIP's online platform. Although Saudi Arabia is a member of the

Berne Convention for the Protection of Literary and Artistic Works, it is worth noting that voluntary registration may prove useful for evidential and enforcement purposes, by providing prima facie evidence of the existence, date, and author/owner of the relevant copyright work in Saudi Arabia.

While SAIP claims dominion over all IP matters, issues pertaining to dispute resolution and enforcement are delegated to other branches of government. With the aforementioned brief overview of SAIP and its most recent developments in mind, the subsequent discussion will address IP disputes in Saudi Arabia.

### ***Copyright and Patent Disputes***

In January 2020, the Supreme Judicial Council announced that the Commercial Courts, along with the Commercial Departments of General Courts, will be handling all copyright and patent-related disputes.

## SAUDI ARABIA | THE BALL IS IN YOUR COURT: SETTling INTELLECTUAL PROPERTY DISPUTES IN SAUDI ARABIA



Following this update, the Ministry of Justice backed the Supreme Judicial Council's decision by training judges on copyright systems and how to handle patent disputes. "We want to provide the best judicial principles and training on IP system based on research and study," the Ministry announced in a statement to the media. "We are collecting the previous work done by related committees that looked into those cases to prepare for the shift."

The Commercial Courts, which will be comprised of three judges, will hear infringement and invalidation cases. By resorting to the legal system, cases, where one of the parties is a national entity, can be brought in front of Saudi Courts. This update indicates a decentralization of the outgoing process to raise grievances, which for patent matters used to be under the jurisdiction of a committee housed at the King Abdul Aziz City of Science and Technology - which meant that all related cases were heard and processed in one location.

### ***Trademark Disputes***

Criminal prosecutions against trademark infringers is the exclusive responsibility of the public prosecutor in Saudi Arabia. Brand owners and rights holders cannot initiate or follow up on criminal actions, but are entitled to file a civil action against infringers before the competent Commercial Court in order to claim compensation.

Accordingly, in order to enforce trademark rights against infringers, brand owners can file complaints with the Anti-Commercial Fraud Department (ACFD) at the Ministry of Commerce or at the Commercial Court. Filing an administrative action before the ACFD must be done in writing, and must include all evidence of infringement and registered rights over the trademark.

## SAUDI ARABIA | THE BALL IS IN YOUR COURT: SETTLING INTELLECTUAL PROPERTY DISPUTES IN SAUDI ARABIA



It is worth noting that SAIP plans to absorb the responsibilities of ACFD in the near future to offer a streamlined and centralized service. If pursuing the legal route, a statement of claims must be filed before the Commercial Court in writing. There are no pre-trial procedures in Saudi Arabia.

In theory, there are no restrictions or preconditions under the Gulf Cooperation Council Trademark Law for filing a civil action against trademark infringers. However, recent Court practice indicates that a civil action will not be admitted if the applicant does not prove they have previously filed a complaint against the defendant before ACFD, and all prescribed administrative measures have been exhausted.

### ***Preemptive Strikes through Customs Recordal***

According to the old adage, the best defense is an offense - something which might be particularly salient in the field of IP when considering Customs recordal. Trademark owners can formally request the Saudi Custom Authority (SCA) to safeguard their rights against counterfeiting and infringement. Filing a request requires recordal of trademarks with Customs. The application must be accompanied by a copy of the certificate of registration and a legalized power of attorney. The application must be made through a local agent signing a memorandum of understanding with the SCA, which will then issue a recordation notice that is valid for one year and is renewable for like periods.

Upon recordation, the SCA would stop shipments of suspected counterfeit products from entering into Saudi Arabia and issue notifications to the attorney on file so that the latter can verify the authenticity of the suspected products. If confirmed to be fakes, the goods would be confiscated and destroyed by the SCA.



## SAUDI ARABIA | THE BALL IS IN YOUR COURT: SETTLING INTELLECTUAL PROPERTY DISPUTES IN SAUDI ARABIA



### *The Best of Both Worlds*

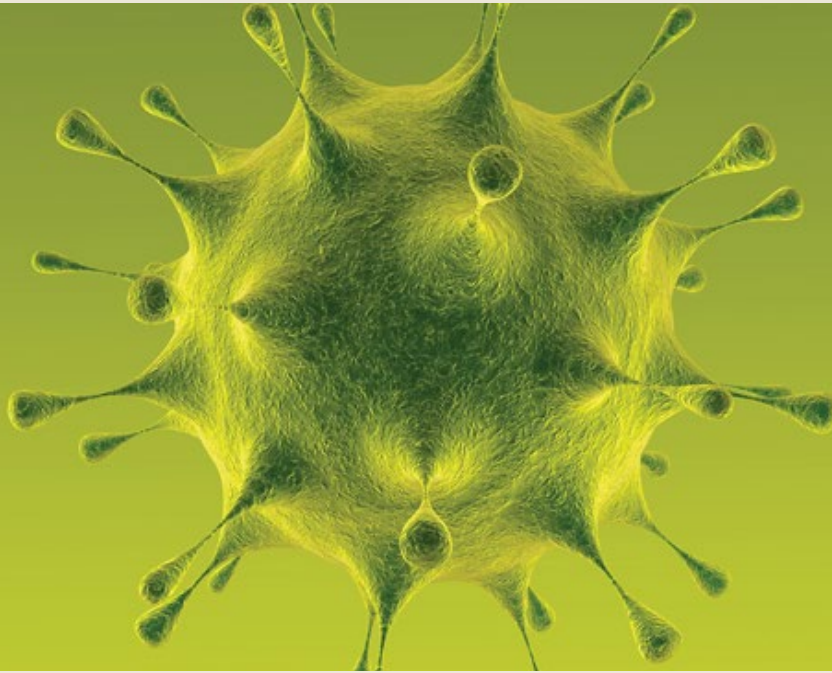
It is worth noting that these updates in procedures by SAIP, and Saudi Arabia at large, follow a broader international trend that is heading towards specialization, aimed at having trained judges resolving IP disputes in a timely and consistent manner, while taking into consideration previous decisions, and increasing Saudi experience and knowledge of ongoing developments in the IP and technology field locally, regionally, and internationally. This would suggest that as more time progresses, Saudi Courts will be more competent to address and resolve IP disputes.

On the other hand, one fundamental advantage of the recordation system is that it permits SCA officials to adopt an ex-officio border system, which allows for prompt and proactive action and avoids delays inherently involved in seeking judicial action - thus supporting the idea of an "offensive" defensive enforcement strategy outside the Court.

The current status of the laws and regulations provide innovators with all the rights to be able to protect their IP rights and encourage further investment in developing innovative products and processes in Saudi Arabia.

Nurturing the right protection and enforcement environment is crucial to these developments and rights holders must be ready and willing to adopt a model that incorporates both legal and regulatory approaches in order to arrive at a well-established IP protection strategy.

## MENA | OPERATIONAL CONTINUITY IN THE WAKE OF COVID-19 PANDEMIC IN THE MENA



As governments begin easing travel restrictions in the wake of the novel coronavirus (COVID-19), we are witnessing the reopening of several Intellectual Property Offices in the Middle East and North Africa region. With this update, we want to assure you that our main priority remains to ensure the safety and well-being of our people, families, clients, and the communities in which we live and work.

We are continuing to maintain the measures in place that help ensure safety for our people and business continuity for our valued clients.

In order to ensure an uninterrupted service, you may send all your instructions, queries, and documents directly to your account managers and the people you are corresponding with at the offices concerned.

We will docket all the instructions we receive from you, prepare all the required forms, and diarize all approaching deadlines in order to ensure proper follow-up and organization.

**Should you have any questions** or require any additional information, contact us at **support@sabaip.com** or visit **www.sabaip.com** for the latest updates and developments as they occur.

## MENA | USTR SPECIAL 301 REPORT



MENA

The Office of the United States Trade Representative published the Special 301 Report in April 2020, reviewing global developments on trade and intellectual property. Countries in the Middle East and North Africa on the Priority Watch List are Algeria and Saudi Arabia. The Watch List includes Egypt, Kuwait, Lebanon, and the United Arab Emirates.

It is worth noting that Kuwait was moved down from the Priority Watch list to the Watch List after passing the 2019 Copyright and Related Rights Law and the Implementing Regulations, signifying its commitment to reform its copyright regime, including in the area of enforcement. Such initiatives imply that there is a profound commitment to IP, which will undoubtedly increase and foster the global incentives for research and investment in these countries, and the region as a whole.

The Special 301 Report is prepared annually by the Office of the United States Trade Representative under Section 301 as amended of the Trade Act of 1974.



IT'S NOT ABOUT  
BEING THERE.  
IT'S ABOUT  
BEING AWARE.



"THE OTHER  
FIELD"  
EDWARD HOPPER 1966

**90<sup>+</sup>**

YEARS OF EXPERIENCE

**18**

OFFICES

**1**

STOP SHOP IP FIRM

COUNSELING | PROSECUTION | ENFORCEMENT | ANTI-COUNTERFEITING



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