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THE ROLE OF THE LEGAL FRAMEWORKS IN ATTRACTING FOREIGN INVESTMENTS: THE CASE OF SAUDI ARABIA

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ABSTRACT

Background: *Given the lack of regulatory studies on investment in Saudi Arabia and the recent adoption of the National Investment Strategy, the paper provides a comprehensive high-level assessment of the legal framewor¬¬k governing foreign investment in Saudi Arabia and its effectiveness in achieving its policy goals as a competitive regime. The purpose of the paper is to identify the legal framework that governs foreign investments in Saudi Arabia, under both a comparative lens and a policy-oriented one, while highlighting some of the most essential challenges facing foreign investors.*

Methods: *The approach adopted describes and analyses the legal framework governing foreign investment in Saudi Arabia under the general policies and goals of Vision 2030. Additionally, where appropriate, a brief comparison to the legal framework governing foreign investment in other jurisdictions is presented to provide an alternative approach to how similar issues are handled under a reputable regime.*

Results and Conclusions: *The National Investment Strategy issued in October 2022, the Investment Principles and Policies, and recent legislative reforms represent a major accomplishment and advancement for the Kingdom's investment regime. More importantly, the legal framework for foreign investment needs to be looked into to see if it is in line with Saudi Arabia's policies and goals and if it follows the structure of a modern investment framework by giving investors a regime that is effective, predictable, and reliable.*

1 INTRODUCTION

Foreign investments play an important role in improving the economic and social development of countries as well as in increasing the flow of capital. For these reasons, many countries have adopted legal frameworks to encourage foreign investment, including the Kingdom of Saudi Arabia, which is considered a major economic and investment center in the region. Despite the legal frameworks that support foreign investment, these investments still face many challenges. This research aims to identify the legal framework that governs foreign investments in Saudi Arabia and to study the role of legal frameworks in the Kingdom of Saudi Arabia in promoting foreign investments under both a comparative lens and a policy-oriented one, while highlighting some of the most essential challenges facing foreign investors.

Today's globalisation and the processes of state integration into the global economy depend directly on the variables of attracting investment into the economy and creating an attractive investment climate. To achieve this, it is vital to secure the stability of investment processes through the development of a legal framework governing foreign investment interactions. Worldwide flows of foreign direct investment have decreased significantly as a result of the COVID-19 pandemic. According to analysis,[1] these resources, which are vital to the economies of countries, dropped by $1.5 trillion compared to 2019. This is a blow to emerging economies as it significantly impacts investment projects in vital economic areas. The issues of maintaining an effective legal framework in Saudi Arabia, increasing

1 United Nations Conference on Trade and Development, 'World Investment Report 2020: International Production beyond the Pandemic: Key Messages and Overview' (*UNCTAD*, 16 June 2020) <https://unctad.org/publication/world-investment-report-2020> accessed 12 February 2023.

the proportion of private and direct investments, and attracting more private capital to investment and infrastructure projects are recognised as crucial aspects of Saudi Arabia Vision 2030 and the National Investment Strategy.[2] It is important to note that the growth of investment relations is directly related to the legal framework governing investment climate, as this is the prevalent factor for any investment decision.[3] Therefore, an analysis of the legal framework in relation to foreign investment is crucial for mitigating the negative effects of the pandemic, protecting the legitimate interests and rights of investors, and attracting investment in both large and small sectors of the economy to achieve Vision 2030 and NIS objectives. The research seeks to answer the question: how effective are the legal frameworks in the Kingdom of Saudi Arabia in securing a suitable environment for foreign investments, and what are the most main obstacles in this regard?

To answer this question, the research is divided into three parts. The first part provides an overview on the modern legal framework governing investments, including what is to be considered an ideal and effective legal framework for foreign investors, and whether such an ideal legal framework is a determining factor in attracting foreign investment. This is followed by an overview of the structure of the legal framework governing foreign investment in Saudi Arabia, as well as a discussion of the express policy goals stated in the legislation. After which, a discussion is provided of preliminary matters regarding investment law, entry mechanism and screening procedures, foreign ownership, screening or notification procedures, the GATS framework, foreign direct investment impact, and Special Economic Cities under the general policies of Saudi Arabia and a competitive investment legal framework. The choice of which matters are highlighted in the analysis is based on those most relevant from the perspective of an international lawyer representing a foreign investor in Saudi Arabia as a host country, as well as those that address certain features that are essential to an effective investment legal framework.

2 MODERN INVESTMENT LEGAL FRAMEWORK

Over the past few decades, governments around the world have increasingly come to recognise the importance of foreign direct investment (FDI) in attracting the capital, technological innovation, and to understand how it may be essential to economic growth. Commentators and development agencies suggest or imply that FDI flows are determined, at least in part, by the adequacy of the legal framework in the host state of the foreign investment. That is, it has been speculated that the way in which the laws of a state are carried out can either discourage or allure prospective foreign investors in that state. In this part, a discussion on the ideal legal framework for attracting foreign direct investment is provided, as is an answer to the question of whether or not the efficiency of a state's legal framework should be a factor in determining whether or not a state will be a destination for FDI.

2 Kingdom of Saudi Arabia, 'Vision 2030' (*Arab National Development Planning Portal (ANDP)*, January 2016) <https://andp.unescwa.org/plans/1244> accessed 12 February 2023; Kingdom of Saudi Arabia, 'Saudi Arabia's National Investment Strategy' (NIS) (*National Investment Strategy*, October 2021) <https://nis.investsaudi.sa> accessed 12 February 2023.
More clarification is provided on the following pages.

3 Baxtiyor Qizi and Zaynobiddinova Farang, 'Modern Investment Legislation and Judicial Practice Are the Legal Guarantee of Effective Reforms' (2021) 3 (9) The American Journal of Political Science Law and Criminology 30, doi: 10.37547/tajpslc/Volume03Issue09-06.

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2.1 The ideal legal regime for attracting foreign direct investment

In order to receive FDI, many states now ask for help from development agencies to reevaluate their legal framework.[4] This help is based on the idea that investors are drawn to states with an adequate legal framework, and that an adequate legal framework is one that adopts legislation in an efficient and predictable sense, and that a state legal framework that doesn't function in this way will likely not attract FDI. The World Bank is one of the most well-known development organisations. It has helped bring back interest in the link between law and development. Regional development banks, like the Asian Development Bank, and bilateral and multilateral aid organisations, like the Organisation for Economic Cooperation and Development (OECD) and the U.K. Department for International Development (DFID), are committed, at least on a policy level, to providing funding and technical assistance for legal reform initiatives.

Due to its size and power, the World Bank continues to be the most important source of funding, development, policy, and law. Over the years, the World Bank has helped in setting the research and development agenda for discussing the role of law in economic development and has provided encouragement for states in their transition to develop their economies and attract foreign investment.

It is generally accepted that the effectiveness of economic policies is significantly impacted by governance, or the way in which economic policies are executed. From the standpoint of the state, it is stated that what the rules signify in practice is just as essential as what they say they signify. Sober investment legislation that is unknown, unadministered and unenforced is ineffective. The needs of the private sector should determine the form and behavior of the government. In the context of FDI, it is argued that foreign investors should generally get what they want, as their investment will ultimately benefit the entire economy. However, what is the foreign investor seeking? According to the prevailing notion, foreign investors seek two fundamental elements: efficiency and certainty.

Efficiency - An efficient legal system framework is thought to be advantageous for attracting FDI. A legal framework that is ineffective results in increases in business costs and expensive procedures for enforcing legal rights and responsibilities. When a host state's laws are modern and of excellent quality, and its courts and bureaucracies are equipped with enough infrastructure and adequately qualified and compensated workers, low transaction costs are ensured.

Certainty - Further, there is strong worldwide consensus that flaws in developing economies, the legislative process, public administration and law enforcement, and judicial interpretation of laws can all lead to uncertainty. Legal frameworks that fail to provide reliable information on the status of legal rights and responsibilities must be improved to strengthen the confidence of foreign investors.

The World Development Report is based on a survey of foreign and domestic investors that indicates connections between perceived credibility and investment levels; nations with high perceived credibility had high investment rates, and vice versa. The report concludes that the government's credibility, the certainty of its rules and policies, and the consistency with which they are enforced could be just as crucial in attracting FDI as the content of the legislation. To obtain certainty, according to the prevailing theory, a legal framework is most likely to be predictable when the legislation is stable, clear, and accessible; the discretionary powers of the state (including its bureaucrats) are restrained; corruption is minimal; and

4 OECD, *Middle East and North Africa Investment Policy Perspectives* (OECD Publishing 2021) doi: 10.1787/6d84ee94-en.

powers are separated among governmental entities, especially through the establishment of an independent judiciary. This type of legal regime is known as the «ideal legal framework».

2.2 Whether the effectiveness of the legal system should be a determent factor in Foreign Direct Investment

Foreign investors seek lower transaction costs and high predictability, which are best achieved in the context of an ideal legal framework but is this the signal for reforms? The answer is dependent on what foreign investors want. Commentators argue that even if the legal framework isn't appealing to foreign investors, that doesn't mean it won't keep them from investing; however, it still needs to be reformed. The reform of the legal framework must be done in a way that supports the state's economy rather than focusing on attracting FDI, as this will contribute to the bigger picture and ecosystem of the state, which will then attract FDI. This opinion is based on the fact that the investors who evaluate the legal framework of a state are mostly investors in that state, and although their assessment of the legal framework governing the state does not suggest that they view it as an ideal legal framework for foreign investment, this did not prevent them from investing in it. Neither did it prevent them from reinvesting in it or expanding their investments.

The question, then, is why is there this focus on the ideal legal framework for attracting foreign investment if it has a limited or even ineffective effect on attracting foreign investment. It can be answered that many development agencies and international organisations usually encourage legal improvements, governmental development programs, and initiatives in general and note that they provide them for the purposes of attracting more foreign capital inflows. This does not mean that such measures are ineffective, but it also does not mean that they guarantee the attraction of foreign investment. It can also be said that a foreign investor is more inclined to invest in a country interested in attracting foreign investment, and this interest appears through the adoption of ideal legal frameworks for foreign investment. The basic idea is that the process of attracting foreign investment is caused by the investor's decision and the degree of satisfaction with the legal risks, along with other risks, involved in the decision to invest in a state. Accordingly, the decision to choose a country as a host state for foreign investment varies from one investor to another. We find that many states whose legal frameworks are ideal for investment are, in fact, states that adopt open and continuous consultation processes with various foreign investors. Some of these states even have specialised government bodies to communicate with foreign investors and provide them with various types of assistance to facilitate the process of making a decision to host their investments. The literature has proved that the legal framework has a significant role in enhancing the mechanisms of attracting foreign investments in strategic areas such as the oil sector.[5]

In particular, this illustrates that if the objective of legal reform is to cater to the foreign investor, then the first step must be to determine what the foreign investor wants in order to create the ideal legal framework for FDI. In order to get a complete picture of the adequacy of Saudi legislation in attracting foreign investment it might be recommended to proceed based on the perceptions of the ideal legal system with the incidence of investor concern relating to each hypothetical characteristic of the legal system. It may be concluded that the highest priority should be given to improving the predictability of legal change, court delays, and bureaucratic independence; and the lowest priority should be given to resolving defects in the accessibility, clarity, and the verification of laws. Beside this, it should be noted that the ideal framework is predicated on the premise that legal reform should be directed

5 Ouarda Belkacem Layachi, 'The Role of the Legal System in Strengthening Mechanisms for Attracting Foreign Oil Investments: A Case Study of Algeria' (2021) 18 (1) Palarch's Journal of Palaeontology and Egyptology 55.

by the private sector, particularly foreign investors. As a result, it might fail to consider the influence of such legal reform on the broader goals of the state and the community. Some scholars link the importance of the judicial reforms and its independence in attracting foreign investments.[6] Other studies raised the impacts of education and Financial Market Development in attracting foreign investment in a short term.[7]

There are two main takeaways from this. First, the role of the legal framework as a determinant of FDI is neither clear, proven, nor standard. Importantly, before undertaking legal reform, states must identify: the types of investors they hope to attract; the extent to which those investors actually take the legal framework into account; the types of legal framework, if any, that those investors are attracted to or deterred by; and the financial and social implications of reforming the legal system to attract those investors.

3 AN OVERVIEW OF KSA LEGAL FRAMEWORK GOVERNING FOREIGN INVESTMENTS

This section aims to clarify the legal framework governing foreign investments in Saudi Arabia, by clarifying Saudi public policies towards FDI and to identify the legislation that governs direct and indirect foreign investments in the Kingdom of Saudi Arabia, in addition to addressing some of the capabilities and guarantees provided by the Saudi legal system.

3.1 Policy objectives of KSA

The Seven Principles and Policies of Foreign Investment and the National Investment Strategy are the two key documents that guide Saudi Arabia's approach to FDIs.

The Seven Principles and Policies of Foreign Investment — Saudi Arabia has unveiled seven investment principles, issued by royal decree and based on international best practices, with the aim of supporting the development of a competitive investment environment in Saudi Arabia. The rapid pace of economic transformation in recent years is opening exciting investment opportunities, both in Saudi Arabia — a G20 economy opening up to international businesses — and in the broader Middle East.

The seven principles are: ensuring equality between Saudi and foreign investors; ensuring protection of investments; enabling sustainability of investments; providing access to equal investment incentives; implementing social and environmental standards; ensuring investor compliance with Saudi health, safety, and environmental regulations; facilitating access procedures for foreign workers and their families; and ensuring a solid transfer of knowledge, technology, and enhancement of local human capital. In light of the issuance of the royal order approving the investment policy principles in the Kingdom, it is expected that these principles and rules will be the infrastructure for re-drafting the investment law and the implemention of regulations in Saudi Arabia.

As a result of the seven policy principles, it is clear that the legal framework will take on new characteristics and pathways, and current foreign investment law and the implementation of regulations need to be amended or enhanced in accordance with these principles to serve

6 Imen Khelil, Achraf Guidara and Hichem Khlif, 'Ethical Behavior of Firms and Foreign Direct Investments in African Settings: The Moderating Effect of Judicial Independence' (2022) Journal of African Business, doi: 10.1080/15228916.2022.2126591.

7 Haider Mahmood and Muhammad Tanveer, 'Role of Education and Financial Market Development in Attracting Foreign Direct Investment Inflows in Pakistan' (2021) 10 (3) TEM Journal - Technology, Education, Management, Informatics 1184, doi: 10.18421/TEM103-23.

Saudi Arabia's pressing interests in attracting strategic investments. As evidence, a royal decree was issued to convert the General Investment Authority into a ministry known as the Ministry of Investment (MISA). This implies that Saudi Arabia is focusing on attracting investments and has chosen an organised approach by establishing a specialised body with a high degree of representation in the Cabinet; thus, a cabinet resolution was made authorising the Ministry of Investment's charter. This makes MISA one of the few ministries with a statute charter defining its competencies, and it confirms the MISA's role as a regulator of the investment legal framework, without prejudice to the mandates of other economic activity regulators, as the second article of the MISA's charter states that the Ministry is the competent authority and the main reference on any matters concerning regulating domestic and foreign investment in Saudi Arabia. Furthermore, part of the ministry's responsibility for creating the best investment environment and increasing competitiveness is to issue investment regulations and propose legislative reforms.

A royal decree was issued to form a committee to unify and coordinate efforts to market and attract investments to supplement the MISA's systematic coordination to ensure alignment with other regulators of economic activities. The committee is chaired by the Minister of Investment and includes high-level representatives from more than 40 government agencies. Its primary objective is to orchestrate the government's efforts to attract foreign investments by unifying communication messages and advertising strategies to promote Saudi Arabia as a global destination for foreign investment. The Royal Decree also established the «Invest in Saudi» platform as a unified national investment identity to market and attract investments in Saudi Arabia. This will contribute to enhancing support and diversity in economic growth, especially in the targeted sectors.

Additionally, Saudi Arabia's Cabinet has announced the establishment of the Saudi Investment Promotion Authority (IPA). According to the IPA's charter, it aims to upgrade all businesses and services related to investment promotion and achieve cooperation between government entities, highlight investment opportunities in all sectors, strengthen and unify the efforts of the public and private sectors in this regard, and ensure the presence of the necessary pillars and supports, such as programs, projects, and incentives, to encourage and facilitate investment in a way that benefits the national economy, in light of the general policies, plans, and investment development programmes set by MISA in accordance with its terms of reference. The IPA will be a strong driver for the investment system, in accordance with the National Investment Strategy that aims to lure and develop national and foreign investments. It's important to increase the synergy needed to implement the ministry's initiatives and achieve the vision goals. The authority was needed to get other entities involved and (held) accountable."

The National Investment Strategy - Under its newly launched National Investment Strategy (NIS), Saudi Arabia aims to attract more investments from abroad as it seeks to diversify its economy away from the oil sector. The NIS is a manifestation of the direction of HRH Prince Mohammed bin Salman bin Abdulaziz, the Crown Prince, Chairman of the Council of Economic and Development Affairs, to make the Kingdom a world-class investment destination. Building on Saudi Arabia's existing strengths, the overall objective of the NIS is to increase the quality and magnitude of investment in the Kingdom and across priority sectors with a stronger domestic and international private sector role, which will help drive economic development in line with Vision 2030. The size of investments needed and the gap between current and targeted performance will be supported by targeted interventions from government entities combining policies, institutional capacity, and capital attraction programs. The strategy seeks to achieve this objective through three overarching themes: (i) the growing contribution of the private sector to the economy and the Saudi balance of payments, (ii) Supporting the development of strategic sectors, and (iii) upgrading the investment ecosystem to spur innovation and help develop local content. These targets

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directly contribute to Vision 2030 objectives. NIS designed a comprehensive reform package for the national investment ecosystem that requires participation from relevant entities and is founded on four strategic pillars: investment opportunities, investors (with an objective to grow the contribution and harmony of various investors in the investment ecosystem), funding (with an objective to diversify funding options for investors by deepening capital markets), and competitiveness and enablers (with an objective to enhance the Kingdom's competitiveness for domestic and international investors by adopting best-in-class regulations and regulatory processes around private sector engagement and transparency). Each pillar has an overarching objective and links to initiatives and programmes that help deliver on that objective.

Aside from these four pillars, significant efforts have been made to identify and develop ecosystem enablers that will serve as a foundation for better serving investors and other relevant stakeholders. Saudi Arabia has set a goal of increasing international and private domestic investment in the country — a goal of unprecedented scope and magnitude. Saudi Arabia has done so with the understanding that increasing investment is critical to achieving Vision 2030's broader and more diverse economic and social goals. While there are some challenges, the Saudi government is committed to making the necessary changes and reforms to achieve this ambitious endeavor.[8]

3.2 Legislative landscape

Although it is not possible to say with certainty the role of the legal framework in its contribution to the process of attracting foreign investments, it is undoubtedly an influencing factor, whether directly or indirectly, especially if work is done to find reforms to the legal framework in line with the needs of foreign investors who are being targeted. In light of the recent policy changes and new directions that Saudi Arabia has adopted in response to Vision 2030, it is more important than ever to examine the current investment legal framework to ensure that it is being used to its full potential to facilitate the achievement of Vision 2030, the NIS, and the seven principles and policies of foreign investment. This section covers the legal framework governing foreign investments in Saudi Arabia by diagnosing the foreign investment law, the law's implementing regulations, prohibited economic activities, and finally the restrictions imposed on foreign investment.

Foreign Investment Law and Its Executive Regulation - Saudi Arabia was concerned with attracting and encouraging foreign investments as it was one of the countries to adopt a special law for regulating foreign investment, in addition to being a member of the World Trade Organization and concluding several bilateral agreements to promote liberalisation of the trading and business environment and accelerate integration with the global economy. The foreign investment law regulates foreign investment hosted in Saudi Arabia, including conditions, procedures, and guarantees. The law has a number of guarantees that give foreign investors peace of mind. For example, Art. 4 says that foreign investment activities get the same benefits, incentives, and guarantees as national investment activities. This includes the free flow of funds into and out of Saudi Arabia. The law emphasises respect for private property, as it states that investments may not be confiscated except by a court ruling or expropriated except for the public interest in return for fair compensation. The law allows access to funds and ownership rights of real estate related to the foreigner investment establishment. Also, there are available customs exemptions. The sixth article of the law indicates the conditions

8 Some scholars shed light on the role of the current KSA foreign investments regulations in attaining the 2030 vision. See, Ghafoon Alyami, 'Compliance of Saudi Arabia foreign investment regulation in attaining vision 2030' (2017) 14 (20) International Journal of Economic Research 397.

and controls for granting a license to foreign investment, as well as the application of these conditions and controls to requests for license renewal. In addition, to increase efficiency, the royal order issued to transfer SAGIA to MISA also included the establishment of a «One-Stop Shop» at the Ministry, which would operate as a unified window to obtain all necessary licenses and permits for the foreign investor to start investment activities.

It is clear from this that the law provides the basics for the ideal legal framework for foreign investment, as it provides elements that ensure the provision of an effective and credible legal framework. However, the mere existence of a foreign investment law does not guarantee equality between national and foreign investors. It also does not necessarily imply that these guarantees are implemented on the ground, especially since it is impossible to separate the regulation of foreign investment from the regulation of the foreign investor's economic activities, which are governed by different laws, procedures, and regulatory bodies.

List of Activities Excluded from Foreign Investment - The list of business areas where foreign investment is not allowed has been regularly updated by the Saudi Cabinet. Although the reason why there is a list of prohibited businesses is not known, the researchers think the reason behind it is to protect national enterprises in these businesses. In the beginning, there were 16 activities on the list. However, it has been reduced in recent years, with Saudi Arabia aiming to open the country to foreign investment and encourage investor entry and economic activity expansion. The businesses that still remain on the list are exploration, prospecting, and production of petroleum materials (not including services related to the field of mining); food security services for the military sectors; investigations and security; real estate investment in Makkah and Madinah; civil employment services; commercial agents on commission; and fishing for living aquatic resources.

This may contradict the message that Saudi Arabia wishes to send, namely that the Saudi legal framework is friendly to foreign investors and guarantees the application of the principle of equality between foreign and local investors as stated in the Seven Principles of Investment, which may harm the consideration of the framework as ideal because it is no longer credible. It should be noted that some reservations about foreign investments are justified and logical in the event that they are based on national security concerns, and international treaties and bilateral/multilateral investment agreements usually include such an exception. Accordingly, any discrimination against foreign investment should be due to the protection of the national security of the state.

Restrictions on Foreign Investment - There are many economic sectors in Saudi Arabia, and the authorities supervising these sectors need regulatory frameworks that allow direct alignment with foreign investment mechanisms, with the aim of developing the legal framework related to foreign investment in general. The Kingdom's Vision 2030 requires a review of the frameworks regulating the business environment, especially those directly concerned with foreign investment, in order to comply with the new economic ambitions of the Kingdom and to contribute to achieving economic development. This requires identifying the restrictions that limit the role of the legal framework in contributing to attracting foreign investments on the grounds that they constitute legal or procedural obstacles.

There are several authorities that impose restrictions on foreign investors' ownership on investments. This sub-section addresses the economic sectors.

Regulatory bodies, and rules restricting investment, listed according to economic sector:

- Agriculture, forestry, and fishing sectors: The Ministry of Environment, Water, and Agriculture supervises the agriculture, forestry, and fishing sectors, and it restricts a number of sector activities. Fishing, for example, is restricted to national investors. Flour mill investors must obtain approval before purchasing 5% or more of the shares or securities of any other licensed milling company (or any ownership stake) or purchasing an even smaller share if it could lead to the establishment of a dominant position in any part of the milling business.

- Manufacturing sector: The Ministry of Industry and Mineral Resources and the Ministry of Interior supervise the manufacturing sector, and they impose restrictions on manufacturing activities, such as that to begin commercial explosives manufacturing, the Saudi partner(s) must own at least 51% of the authorised company.
- Wholesale and retail trade sector: The Ministry of Commerce mainly supervises the wholesale and retail trade sectors. However, it occasionally intersects with the Ministry of Interior's competencies, and it restricts a number of activities, including the import, sale, and purchase of individual firearms, air rifles, and hunting weapons - as defined in the law - as well as their supplies, spare parts, and ammunition, which are restricted to Saudis only, for commercial agency. It is not permissible for non-Saudis, whether in the capacity of natural or legal persons, to be commercial agents in Saudi Arabia, and Saudi companies that carry out commercial agency business must be comprised of entirely Saudi capital, and the members of their boards of directors and those who have the right to sign in their name must also be Saudis. The wholesale or retail sale of civil protection devices such as special heavy machinery and equipment to intervene in building collapses and earthquakes, as well as individual protective equipment and means, is restricted to Saudi or GCC citizens.
- Transportation and storage: The public authority for transport supervises the transportation and storage sectors, and it intersects in some activities with the communications and information technology commission — an organisation for the postal sector — and with the general aviation authority. It restricts some of the sector's activities, such as the activities of transporting goods on the roads for a fee or for one's own account and the work of freight brokers and renting trucks that are carried out within the territory of the kingdom after obtaining a license from the general authority for transport for establishments. Individuals are restricted to Saudis in the activity of transporting goods. It is not permissible to carry out ground services for aircraft in the civil airports of the Kingdom except after obtaining a license to do so from the authority. This license is not issued to foreign air transport institutions or companies except on the basis of reciprocity.
- Information and Communications: The Communications and Information Technology Commission and the Ministry of Communications and Information Technology supervise the regulation of the information and communications sector, and they restrict some activities. Mobile telecommunication services may not be provided except through joint stock companies offering their shares for public.
- Real estate activities: The Ministry of Municipal and Rural Affairs and Housing, the Ministry of Investment, and the General Real Estate Authority supervise the regulation of the real estate sector in the Kingdom, and some activities of the sector are restricted, such as Real estate investment by foreigners is prohibited in Makkah and Madinah. A non-Saudi investor, who is a natural or legal person who is licensed to practice any professional, craft, or economic activity, may own the property necessary to practice any activity, including the property necessary for his residence and the residence of his workers, after the approval of the authority that issued the license. It is also permissible to rent the aforementioned property. If the aforementioned license includes the purchase of buildings and lands for constructing buildings on them and investing them by selling and

> leasing them, the total cost must not be less than thirty million riyals. It is also required that the property be invested in within five years of being purchased. It is not permissible for a non-Saudi to acquire the right of ownership or the right of easement or usufruct on property located within the boundaries of the cities of Makkah and Madinah in any way other than inheritance, with the exception of the acquisition of the right of ownership if accompanied by the endowment of the property owned by Shariah rules on a specific non-Saudi entity. However, it is not permissible for non-Saudi Muslims to rent property within the boundaries of the cities of Makkah and Madinah for a period not exceeding two years, subject to renewal.

It is clear that the many restrictive impediments in the investment legal framework are inconsistent with Saudi Arabia's orientation towards openness to foreign investments and leveraging Saudi Arabia's potential as a competitive economy, not to mention it is difficult to prove that most of these restrictions protect national interests or security. The recent endeavors of Saudi Arabia came to focus on this aspect, as it established a permanent ministerial committee to review and regulate foreign investment limitations and restrictions based on the standard of protecting national security and the strategic and sensitive sectors of Saudi Arabia.

The Kingdom's Obligations Before the World Trade Organization - The World Trade Organization (WTO) puts legislative constraints on member countries, such as the adoption of specific laws to control intellectual property rights and other such matters. It also imposes a set of principles on members. First is the concept of non-discrimination in trade. This principle stresses the importance of establishing equality in rights and obligations among all member nations, as well as non-discrimination in international commercial transactions among members. There are, however, certain exceptions to this rule, namely exceptions based on national interests. The principle of national treatment means that the members must be obligated to give imported goods no less privileged treatment than that granted to goods of national origin, as once they cross the border, they must be treated the same as domestic products. Second is the principle of reciprocal customs obligations and reductions calls for freedom of trade and an increase in the degree of penetration in international markets. It is based on the principle of reciprocal reductions of customs duties between member states and the abolition of all non-tariff restrictions that impede trade between member states. Third, the principle of transparency is built on a basic rule, which is to know the schedules of commitments that belong to each member state of the agreement and what these schedules include in fixing the final customs tariffs that were explicitly agreed upon, so that it facilitates the process of following up on any procedure based on tariff restrictions, as opposed to procedures based on non-tariff restrictions, which are difficult to measure.

It is noted that the Kingdom is working to reform its legislation in compliance with the above-mentioned principles. The Kingdom, per its obligations before the organization, may not take restrictive measures related to foreign investment except based on protecting security and public order. This is consistent with the above-mentioned ministerial standing committee, as it is expected to redraw foreign investment restrictions to only be based on national security and security considerations, making it inconsistent with the international obligations before the WTO.

Bilateral Investment Treaties – The presence or absence of a bilateral investment treaty (BIT) will influence a foreign investor's decision to invest in the host country. As a result, countries update their BITs model to keep up with the latest developments and trends, as well as to reduce the legal risks associated with it, especially given the recent increase in BIT-based lawsuits filed against some countries.

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Saudi Arabia, through its current model of BITs, which it has been following since 2013, provides guarantees and assurances to investors from other contracted countries. The current model of the Saudi Arabian government provides a text that reduces legal risk, as the preamble in the Kingdom's agreement with Japan on the encouragement and mutual protection of investments includes that the Kingdom and the other contracting party desire to encourage and protect investment and strengthen economic ties and relations between the two countries in alignment with their economic priorities and their determination to create favorable conditions. That means greater opportunities for exchanging more investments between the investors of the two countries, and their belief in the increasing importance of encouraging and protecting investments to motivate investors to take more investment initiatives and achieve prosperity in both countries while acknowledging that each contracting party reserves the right to regulate foreign investment in its territory and to take the necessary measures to ensure that investment activities are in accordance with its national laws, policies, and development strategies.

The BITs fall within the ideal legal framework for attracting foreign investments, as they give targeted investors from one country an advantage over others, and therefore it can be said that they provide a detailed and directed framework for them, which makes it ideal for attracting foreign investment. However, BITs are usually accompanied by legal risks, as history testifies that many disputes between investors and the states take BITs' provisions as a basis. In addition, it depends on political and diplomatic relations between the states and the competence of negotiators, which makes it a cumbersome process and its results unpredictable. As for Saudi Arabia, it's not clear that there is a focus on BITs in relation to attracting foreign investments, and the number of BITs it has concluded is far less compared to the developed economies, which rely on such treaties to provide an ideal legal framework to attract foreign investments. It also, accordingly, does not have sufficient experience for negotiations and might lack expertise. The researchers believe there is much room for improvement to activate the role of BITs in attracting foreign investment.

4 PRELIMINARY MATTERS

As Saudi Arabia becomes more attractive to foreign investors, it is anticipated that FDI will boost the Saudi Arabian economy by creating jobs, advancing technological expertise, and funding new businesses. Foreign direct investment not only produces jobs directly, but it also typically supports further employment down the supply chain,[9] which will serve the kingdom's policy objectives stated in NIS. This part discusses some of the most important issues that are connected to the legal framework that governs foreign investment. These issues are considered major from the perspective of a legislator due to the magnitude of the effects they have and from the perspective of a practising international lawyer due to the significance they have for investment decision-making.

4.1 Investment Law

Presently, national FDI laws and policies are the most important sources to regulate the inflow of FDI.[10] Investment law is a piece of national legislation that determines key aspects

9 Andre van Heemstra, 'What Foreign Direct Investors Provide and What They Seek," in B. Herman, F. Pietracciand, and K. Shar (eds), Financing for Development: Proposals from Business and Civil Society (UN UP 2001), 55–6.

10 José E Alvarez, 'The Regulation of Foreign Direct Investment: Introduction' (2003) 42 (1) Columbia Journal of Transnational Law 2.

of the legal regime governing investment. Many states have adopted an investment law; others have adopted the BITs system; and in others, they rely on the legal framework of the ecosystem overall. States that have adopted investment laws follow a comprehensive approach rather than focus on foreign investment alone, as Saudi Arabia does, as nowadays many investment codes cover both foreign and domestic investments, and there is a trend towards reducing differences in the treatment applicable to the two. In addition to serving the principle of investor equality, this enables the investor to actually benefit from the existence of a comprehensive investment law, such as the Egyptian investment law. Examining the investment laws directed specifically at the foreign investor, such as the Jordanian, Emirati, Saudi, and Korean foreign investment laws, the researchers found that they primarily address the issue of the entry, licensure, and registration of the foreign investor (the pre-investment stage) and do not explicitly address the provisions associated with the foreign investor's investments in the host country (the investment establishment, investment initiation, expansion, or termination stage).

Accordingly, it is suggested to reconsider the approach of the current Saudi foreign investment law to provide more policy guidance in order to achieve certainty; in addition, it is recommended that the current law be revised in line with an agreed-upon national investment policy and best practices in investment law drafting. Revisions should aim to: (i) increase investor certainty by increasing transparency; (ii) eliminate or reduce the authority's discretion; and (iii) strengthen the dispute resolution regime.

4.2 Entry mechanism and Screening Procedures

Under customary international law, states have the sovereign right to regulate the admission of foreign investment within their territory. Therefore, countries have a free choice as to the degree of open admission of foreign investment: they can restrict entry or impose conditions, or they can liberalise it through unilateral measures. The admissions process is heavily influenced by national policy preferences. Restrictions are typically motivated by a variety of factors, including national security and the desire to protect local producers. Long ago, many states-imposed entry restrictions. Commonly employed controls included bans on foreign investment in particular sectors, screening processes that admitted foreign investment only with government authorisation, restrictions on foreign ownership of strategic businesses or assets, and performance requirements such as the requirement to source goods and services from local producers. Today, admission policies vary significantly in different countries.[11] This is a major restriction for foreign investors, especially since it does not suggest applying the principles of national and equal treatment. As mentioned earlier, the majority of countries that adopt investment laws specifically directed at foreign investors often include restrictions on the investor's entry. It has also been noted recently that the countries most open to foreign investment have begun to adopt special procedures to impose restrictions or checks on some categories of foreign investors, usually for geopolitical reasons or reasons related to national security.

In Saudi Arabia, the law governing foreign investment includes procedures that the foreign investor is required to comply with. This is in addition to complying with any other regulations issued by the Ministry of Investment. Further, the screening and registration procedures could become more or less complicated depending on the standing ministerial committee's decision in relation to screening foreign investment.

11 David Gaukrodger, 'The Balance Between Investor Protection and the Right to Regulate in Investment Treaties: A Scoping Paper' (OECD Working Papers on International Investment, 2017/2, OECD Publishing 2017) doi: 10.1787/82786801-en.

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Finally, entry policies are inherently political. Countries may adopt different approaches depending on their historical trajectory, socioeconomic conditions, and economic aspirations. Practical analysis can help make more informed decisions that consider not only economic factors but also social and environmental ones. It is important to consider the options for enforcing this policy. For example, stipulations requiring foreign investors to demonstrate economic benefits may raise the cost of entry and, as a result, discourage foreign capital inflows. Simple pre- or post-notification, on the other hand, is unlikely to have a significant impact.

4.3. The GATS Framework

The establishment of GATS was one of the most significant achievements of the 8th round of multilateral trade negotiations, the Uruguay Round - the results of which entered into force in January 1995. The GATS was inspired by the same goals as its merchandise trade counterpart, the General Agreement on Tariffs and Trade (GATT): establishing a credible and reliable system of international trade rules; ensuring fair and equitable treatment of all participants (principle of non-discrimination); stimulating economic activity through guaranteed policy bindings; and promoting trade and development through progressive liberalisation.

Saudi Arabia has generally followed the terms of the majority of its GATS commitments. Nonetheless, it has used its commitments to restrict certain service sectors to Saudi nationals. Certain domestic economic sectors may be shielded from competition, limiting their exposure to cutting-edge and transformational knowledge solutions. This approach will not allow the Kingdom to become a destination for efficiency-seeking investment, which requires not only capital and access to technology and intellectual property but also the competitiveness derived from a well-educated, highly skilled, motivated, and competitive (affordable) workforce. The GATS commitments of the Kingdom of Saudi Arabia provide ample policy space for increasing Saudization in this high-profile and prestigious sector. The GATS do not preclude the Kingdom from using incentives to promote education, such as training and internships, which are required for Saudis to enter this highly competitive market. Within the GATS commitments, the Kingdom retains significant discretion in using procurement to achieve its objectives. The Kingdom's procurement policies for the services sector must be more targeted, with the goal of incentivising Saudi service providers to improve their skill sets and competitiveness as well as their value proposition. As mentioned before, it should be emphasised that Saudi Arabia has been making persistent efforts over the last few years to develop a legal framework that is open to foreign investment.

4.4 Foreign Direct Investment Impact

The abundance of information and data is one of the country's most valuable assets. Indeed, in the context of attracting foreign investment, the regulatory agencies' most important function is to provide data and information and facilitate the foreign investor's access to them. The ideal legal framework for foreign investment is one that is easily accessible, and this includes not only laws and regulations but also technical information and investment statistics, given their significance in investment decision-making.

The current quality and utilisation of FDI data in Saudi Arabia are flawed. The thoroughness in data collection, investor response levels and capacity to analyse are deficient. The questionnaire being used also provides limited feedback – in particular in relation to investment climate issues and technology transfer objectives. A significant exercise in capacity building encompassing questionnaire(s) design, data collection, and analysis and reporting is essential. This should be an integral component of any monitoring and evaluation (M&E) system designed to provide robust quantitative information to assess overall FDI impact on key policy variables such as technology transfer and job creation, as well as the performance of key agencies such as MISA and IPA.[7]

4.5 Special Economic Cities

An alternative way to deal with problems in the base economy is to set up special economic zones (SEZ), which offer a wider range of exceptions and exemptions and are usually attractive to foreign investors. Many SEZ economies in places like the United Arab Emirates and China have become fronts for foreign investment.

Based on the Special Economic Cities and Zones Authority (ECZA), the regulations of the Integrated Logistics Bonded Zone (ILBZ), and the recent establishment of the Economic Zones Center in Riyadh, it is apparent that the evolution of the Economic Cities model has moved away from its original conception. Very little about the current model aligns with international best practices for SEZs, and as such, there are grounds for Saudi Arabia to revisit its value proposition relative to other competing programmes in operation in Saudi Arabia. This is with the aim of defining the goal of the SEZs for Saudi Arabia in light of the strategies and policies that have been adopted recently. Although ECZA is supposed to play a role in developing SEZ policies, the situation remains vague and unclear. The researchers believe that the regions represent a significant area for research and development in Saudi Arabia, and MISA, ECZA, and regional authorities may consider conducting such research.

On this basis, a strategy can be developed to reposition the initiative to more effectively attract foreign investors for its ongoing development. Future decisions regarding the expansion of economic cities should be based on a thorough assessment of investor needs. The diagnostic work should focus on issues of (i) zone autonomy, facilitation services, and a de jure and de facto streamlined legal and regulatory framework; (ii) the scope of a private sector-led role with active governance participation; and (iii) site selection based on economic fundamentals with minimum recourse to public financing. Also, a customs-bound area should be defined.

5 CONCLUSION

In order to attract FDI, many states are now seeking assistance from development organisations to reform their legal systems. This assistance is based on the argument that investors prefer states with an effective legal framework, that an effective legal system implements laws in an efficient and predictable manner, and that reforming an inefficient and unpredictable (i.e., ineffective) legal framework can assist a state in attracting FDI. This argument is based on the micro-level transaction cost analysis advocated by neo-institutional economics. The claim that a legal system's effectiveness influences FDI flows appears to be based on the assumption that economic actors should and do structure their activities to reduce transaction costs. Saudi Arabia has much to offer investors, as current efforts to improve the FDI environment are not focusing enough on key choke points that are currently impeding larger flows of the type of FDI best suited to addressing national priorities. Saudi Arabia's investment legal framework, including its investment vision and policy, laws, and implementing regulations, must be better aligned to ensure more open and predictable entry processes for investors and increased investor confidence. however, attracting foreign investments necessitates balancing the transparency and flexibility required to encourage foreign investment on the one hand with the control required to maintain the balance of the national economy and national security on the other.

The key findings of our study have been identified. Most of the ministries do not have a charter that defines their competencies. The lack of clarity of mechanisms to ensure effective homogeneity between the enactment and amendment of legislation related to foreign investment contributes to the lack of appropriate solutions in this regard. There is not enough focus on exploiting the opportunities provided by international agreements and BITs. There are no clear and explicit policies regarding special economic zones or legal frameworks for them. While the Saudi legal framework provides a minimum of basic elements to consider it an ideal legal framework for attracting foreign investment, there are overlapping jurisdictions between the regulatory authorities without an effective coordination mechanism between them. Regulatory agencies are aware of the importance of providing predictability to foreign investors, as they seek to provide periodic reports on foreign investments and establish a specialised body to communicate with investors. However, there are no statistics related to other non-economic components. The Foreign Investment Law and its executive regulations do not conform to modern policies and trends as hoped. There have been few studies that deal with the analysis of the Saudi investment legal framework and its role in attracting foreign investment.

This paper recommends: international agreements and BITs as components of the ideal investment legal framework, and instead of enacting investment laws and their implementing regulations for foreign direct investment in Saudi Arabia, enacting a comprehensive investment law or repealing the current law and its implementing regulations; focusing on the charter of the Ministry of Investment; and ensuring effective regulations for various economic activites. Further, we recommend an adoption of an investment legal framework that does not differentiate between foreign and domestic investors, except where required by national security considerations; creating a clear incentive scheme that considers transparency and equality; and conducting a performance measurement indicator issued by the Governmental Agencies Performance Measurement Center with an indicator related to improving regulations and developing investment opportunities.

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