

A Case Study of the Saudi Arabian Investment Regime

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Abstract : The low global oil price poses economic challenges for Saudi Arabia, as oil revenues still make up a great percentage of its Gross Domestic Product (GDP). At the end of 2014, the Consultative Assembly considered a report from the Committee on Economic Affairs and Energy which highlights that the economy had not been successfully diversified. There thus exist ample reasons for modernising the Foreign Direct Investment (FDI) regime, primarily to achieve and maintain prosperity and facilitate peace in the region. Therefore, this paper aims at identifying specific problems with the existing FDI regime in Saudi Arabia and subsequently some solutions to those problems. Saudi Arabia adopted its first specific legislation in 1956, which imposed significant restrictions on foreign ownership. Since then, Saudi Arabia has modernised its FDI framework with the passing of the Foreign Capital Investment Act 1979 and the Foreign Investment Law 2000 and the accompanying Executive Rules 2000 and the recently adopted Implementing Regulations 2014. Nonetheless, the legislative provisions contain various gaps and the failure to address these gaps creates risks and uncertainty for investors. For instance, the important topic of mergers and acquisitions has not been addressed in the Foreign Investment Law 2000. The circumstances in which expropriation can be considered to be in the public interest have not been defined. Moreover, Saudi Arabia has not entered into many bilateral investment treaties (BITs). This has an effect on the investment climate, as foreign investors are not afforded typical rights. An analysis of the BITs which have been entered into reveals that the national treatment standard and stabilisation, umbrella or renegotiation provisions have not been included. This is problematic since the 2000 Act does not spell out the applicable standard in accordance with which foreign investors should be treated. Moreover, the most-favoured-nation (MFN) or fair and equitable treatment (FET) standards have not been put on a statutory footing. Whilst the Arbitration Act 2012 permits that investment disputes can be internationalised, restrictions have been retained. The effectiveness of international arbitration is further undermined because Saudi Arabia does not enforce non-domestic arbitral awards which contravene public policy. Furthermore, the reservation to the Convention on the Settlement of Investment Disputes allows Saudi Arabia to exclude petroleum and sovereign disputes. Interviews with foreign investors, who operate in Saudi Arabia highlight additional issues. Saudi Arabia ought not to procrastinate far-reaching structural reforms.

Keywords : FDI, Saudi, BITs, law

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