

LEGAL TREATMENT OF FOREIGN DIRECT INVESTMENT IN SAUDI ARABIA

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ABSTRACT

The function of international law is no confined to regulation of affairs between states in the context of globalization and the World Trade Organization and its attendant appearances of global openness and trade liberalization, but rather encompasses intervention of the international movement of foreign capital and the establishment of legal rules and principles to reduce restrictions and barriers to trade. This is in addition to the obligations established by bilateral and collective treaties for the protection of foreign investments, as well as other procedural measures to encourage and protect investments. Accommodative treatment through regulations should be provided for foreign direct investment in Saudi Arabia in order to entice investors all over the world. More so, accommodative treatment of investors will bust Saudi Arabia economy and increase the country GDP. Hence, these papers will critically analyses treatment of foreign direct investment in Saudi Arabia in terms of the enjoyment of rights and obligations as set out in the foreign direct investment law and its executive regulations, and range of security provided by law in instance of dispute concerning foreign direct investments in Saudi Arabia.

Keywords: Investors, Foreign Direct Investment, Protection, Saudi Arabia

INTRODUCTION

Under traditional international customary rules, any State in the world, is fully free to regulate the treatment of foreign investment in its territory, it has to takes into account its social, economic and political interests (Al-Khathlan, 2013). However, it is bound at the same time in accordance with international custom and the principles of minimum respect for the foreign investors on its territory (Adel, 2016).

In the context of globalization and the World Trade Organization and its attendant displays international openness and trade freedom, the function of international law is no longer confined to regulation of affairs between states, but rather covers interference in the regulation of the international measure of external capital and establishment of legal principles and values to reduce constraints and barriers to trade (Al-Khathlan, 2013). This is in addition to the requirements established by bilateral and collective treaties for the protection of foreign investments, as well as other procedural measures to encourage and protect investments (Adel, 2016).

Hence, this paper will critically analyses the provisions of the management of foreign direct investment in Saudi Arabia in terms of obligations and rights enjoyment set out in the foreign direct investment law and its executive regulations. This paper also discusses the extent

of protection provided by the law in the event of a dispute concerning direct foreign investments in Saudi Arabia.

Foreign Investment and Investor

The Saudi foreign investment law 2000 defined foreign investment as “*the employment of foreign capital for licensed activity under this law*” (Adel, 2016). According to section 1(e) of Saudi Foreign Investment law 2000, foreign investor is “statutory body who does not hold Saudi Arabia citizenship or the individual which does not have entire partners in Saudi Arabia”. In reviewing the definitions of foreign investment and foreign investor under Saudi foreign investment law, there is no room to discuss investment without capital, which is normal, because capital is the main driver of the investment process, but capital is not necessarily only material money. Article 1 of Saudi foreign investment law 2000 provides examples of what foreign capital includes, such as money, securities and commercial paper, moral privileges, such as intellectual property rights, procedural knowledge, managerial talents and production methods, such moral rights can be regarded as foreign capital as plate to be horizontal or otherwise in the capital of any entity he intends to establish in Saudi Arabia (Sadiq, 2014).

It is noted that Saudi Arabia regulation has defined technical knowledge as a component of foreign capital, indicating the possibility of establishing companies of persons under the umbrella of the foreign capital system, because technical knowledge is only a share or a commitment to work, which is not allowed only in companies of persons (Hussain & Bruno, 2011). This trend is contrary to what is customary in practice because the user of foreign investment is the limited liability company (Al-Khathlan, 2013).

It is estimated that article 1 (e) of Saudi Arabia foreign investment law particularly in relation to the definition of a legal person because it contravenes the standard adopted by the Saudi regulator to grant Saudi nationality to the corporation as a legal person within article 14 of company’s law, it is decided that with the exclusion of a joint venture company, each company established in accordance with the provisions of foreign investment law shall take its principal position in Saudi Arabia. This company shall be deemed to be a Saudi citizen, but this nationality shall not follow the company necessarily has the exclusive rights of Saudis.

According to article 14 of Saudi Arabia companies law, the company, which is established according to the Saudi companies law, and whose headquarters are in Saudi Arabia, becomes a Saudi company regardless of the nationality of its partners, meaning that whether they were Saudis or foreigners or they were combined of Saudis and foreigners or wholly owned by foreign investors or mixed in capital, taking into account the foreign investment regime, in terms of license terms and conditions, investment opportunities, incentives, benefits, guarantees, etc (Ismail, 1994). The incorporation is administered by company law, which grants Saudi nationality to these companies. Therefore, the definition of article 1 (e) of foreign investment law for foreign investors is that “*a legal person in which all partners do not have Saudi Arabian nationality*” does not comply with the provisions of company law but rather contradicts article 5 of the same regulation, it gives image of the establishment owned by a national investor who has a Saudi nationality and a foreign investor who does not have a nationality. It is estimated that the legislator did not really need to define the term foreign investor since article 5 of Saudi foreign investment law had defined foreign investment by stating several ways of doing foreign

investment in Saudi Arabia and giving legal guideline on foreign investment. This is for the fact that the word foreigner is not new in Saudi law for the fact that several laws had mentioned it such as immigration law (Sadiq, 2014).

In any case, it is important to note that the foreign investment regime in Saudi Arabia is addressed to foreigners who come from abroad specifically for the purpose of investment. Therefore, the provisions of this regulation do not include foreigner residents residing in Saudi Arabia who do business for others; the foreigner investor who resides in Saudi Arabia are considered as employees and workers, they do not enter into the investor community, but rather their status will be determined by their contracts with employers, as well as the labor law (Ismail, 1994).

Treatment of Saudi Investors and Non Saudi Investors in Saudi Arabia

Regulations 3(f) of Saudi Arabian nationality regulations specify Saudi Arabia nationality. Under regulation 3(f) of Saudi Arabian nationality regulations, a Saudi citizen is: *“any person who lives within the territories of Saudi Arabia comprises the territories, territorial waters and the air space under the Saudi Arabian sovereignty, as well as vessels and airplanes, carrying the Saudi Arabian flag”*.

Indigene of Saudi Arabia has some privileges in term of investment in Saudi Arabia. A business possessed by Saudi citizens and joint ventures with at least twenty five per cent Saudi capital are immune from unwarranted competition by the ministry of industry and electricity, mainly assisting native market. This was demonstrated by amalgamation of ten electricity companies under the name ‘Saudi electricity corporation’ with the purpose of contesting with the private investors in electricity creation. This encouragement comprised a tax relinquishment on imported raw resources, technical information, and a definite market within the usage of a manufacture and import portion scheme. Although such support is given only to firms that manufacture extreme quality commodities that cover a huge sector of domestic market. The authority also cooperates diligently with such stakeholders to guarantee that their commodities are of extreme value, thereby procuring privileges over foreign investors. More so, Saudi stakeholders are permitted to trade their commodities at costs greater than those produced by foreign stakeholders.

Statistics analysis between 2004 and 2017 display that Saudis possessed only twenty per cent of entire economic impartiality of two thousand, two hundred and eighty registered joint ventures. Analysis revealed that Saudis have been sluggish to fascinate investment prospects in both manufacture and service sectors. Precisely, statistics displayed 928 registered schemes in manufacturing segment, the Saudis account for merely 25.4 % and a mere 6.4% of the 1, 347 registered schemes in the service sector (Anthony, 2017). Further more, out of six registered agronomic schemes, Saudis had only 22.2% (Anthony, 2017).

It is not astonishing that Saudi economy is significantly predisposed by foreign stakeholders. For example, based on experimental statistics analysis between 2004 and 2017, foreigners owned 80% total equity of two thousand, two hundred and eighty registered joint ventures focused in manufacturing and service segments (Anthony, 2017).

Foreign Investors in Saudi Arabia

Non-Saudi stakeholder is a cooperative word denote foreign stockholders all around the world. Article 1(e) of Saudi foreign investment law 2000 stipulates that foreign stockholders is: “*naturally existing individuals who are citizens of other countries*”. Under article 1(e) of the Saudi foreign investment law 2000, provides meaning of investors by concisely stipulating that foreign stockholder is:

“A natural individual who is not of Saudi citizen or a corporate body whose associates are not all Saudi”

Furthermore, under article 1(f) and 5 (1) (2) of Saudi foreign investment law 2000, foreign investment:

“As any kind of investment mutually or completely owned by foreigner within the provisions of the Saudi investment law 2000”.

Article 1(vi) of Saudi foreign investment law 2000 contemplates a foreign stakeholder as a non Saudi citizen or an investment in which associates or all proprietors are foreigners. Article 5 obliges business owner to be registered foreigner as stipulated by article 1(vi) of Saudi foreign investment law 2000. Essentially, the law is adaptable concerning the accurate level of such properties but does list little classifications of such properties. Those properties are enclosed in article 1(g) of foreign investment law, which specifies that:

“Foreign investment shall mean, for example, but not restricted to, the following properties and privileges so long as they are possessed by a foreign stakeholder. a) securities, cash, and negotiable instruments b) foreign asset profits, if spent to expand capital, increase current schemes, or create new ones c) equipment, machinery, furnishings, spare-parts, means of transport and production requirements related to the investment d) incorporeal rights i.e licenses, intellectual property rights, technical expertise, governmental skills, and production systems”.

Principally, excluding special circumstances, all foreign stakeholders are enjoying privileges under foreign investment law and numerous other Saudi business laws. Pursuant to article 2 of foreign investment law 2000, after satisfying the requirements stated in article 5, foreign investment business must meet all the inspection and registration requirements before starting operation. Feasibly, this is a precondition process intended to ensure they do not violate the set guidelines concerning forms of investment business permissible for non-citizen. Specifically, article 2 of foreign investment law specifies: “*authority shall issue a certificate for foreign capital in any investment business in Saudi Arabia, whether temporary or permanent. The authority shall act on the investment's application within thirty days of the submission of all the documents required by the regulations. If the stipulated period expired without the authority taking action on application, required license shall be issued to the investor. If the authority declines the application within the prescribed period, the decision must be reasonable, and the individual whose application has been declined shall have the right to appeal against declined decision*”.

In addition, before commencing investment setup, foreign stakeholders are predictable to

presume either of two comprehensive sets of production proprietorship in order to meet required conditions prearranged by the certifying authority. According to article 5 of foreign investment law 2000:

“Foreign investments licensed under the provisions of foreign investment law may be in either of the following forms: (1) firms jointly possessed by foreign and Saudi stakeholder, and; (2) firms wholly possessed by a foreign stakeholder”

Furthermore, in respect of taxation, companies may fall within one of subsequent business proprietorship categories they may be:

“A limited liability company, a joint stock company or a company limited by shares”

Furthermore, non-citizen stakeholders in Saudi can request for short-term business registering if business are temporary undertaken. Business involve franchising consumer-oriented capital business, supply engagements through reputable Saudi vents or starting up supply vents in Saudi Arabia, procedural and technical offices of foreign companies for machinery exhaustive business and create foreign companies divisions to symbolize extraterritorial possessed bodies in Saudi Arabia.

Foreign investors in Saudi Arabia established as joint stock corporations based on foreign investment law 2000, possess some enticements that comprise opportunities to dependable arithmetical statistics concerning Saudi Arabia progress strategies, contemporary infrastructural amenities in new modelled asset municipalities, indemnity from business duty for joint ventures with minimum twenty five per cent Saudi investment for ten years beginning from date of incorporation, preference for municipal obtaining, and sophisticated business loans with adaptable refund policies.

It appears that foreign investment law determines merely a broad separation between Saudi and foreign investors, without delineating distinctive classifications of foreign stakeholders. Nevertheless, based on huge amount of nations which Saudi Arabia cooperates with on asset substances, either through mutual or bilateral bargains, it is moderately clear that diverse sets of foreign stakeholders get diverse right absolutely under current Saudi investment laws. For example, stakeholders from Gulf Cooperation Council (GCC) states are given similar rights with Saudi Arabian investor, whereas investors from Arab League states are bestowed with privileged treatment specifically in the area of *“farming, manufacturing, and interior business”*. Henceforth, it is vital to stress that though *“foreign investor”* is a broad phrase denoting investors from other countries; there are unique requirements that control in what way stakeholders are being treated.

Arab Stakeholders

Saudi Arabia contemplates Arab investors for the purposes of investment to be citizens or investment bodies possessed by natives of the Arab League member states in accordance to unified agreement for the investment of Arab capital signed in 1980.

GCC stakeholders are citizens from GCC states, specifically, Qatar, Oman, United Arab Emirates, Saudi Arabia, Kuwait, and Bahrain operating business in Saudi Arabia. According to

economic agreement between GCC, endorsed in 2003, stakeholders from five GCC states are afforded similar advantages with Saudi citizens under article 2 of Economic Unity Agreement of Arab leagues. In substance, introduction of economic agreement 2003, stipulates necessity for GCC states to form robust and intently consistent financial, monetary, and economic relations efficient of driving the region into the global financial exclusive' league. The preamble provides as followed:

“Pursuant to the GCC agreement which calls for quicker bonds and greater ties among member states; and in the light of revising the financial successes achieved since the beginning of the assembly, comprising achievements achieved by the economic agreement signed in 1981 and trying to attain progressive phases of financial incorporation which would lead to a collective marketplace and an financial and monetary alliance and desiring to develop the economy of GCC member states in light of current international financial growths which need extra incorporation and retorting to the goals and expectancies of GCC citizens towards realizing gulf nationality, comprising equivalent rights of movement, work, health, investment, education, residence and social services”.

In upholding the provisions of the preamble of economic agreement, article 3 of the agreement specifies that:

“GCC member states must give citizens of other GCC states equivalent rights same to their own citizens, it indicate that such stakeholders are not governed by foreign investment law”.

Investment right should cover all financial sectors comprising taxes payment as well as possession of real estate adjacent to holy cities of Mecca and Medina in Saudi Arabia. For example, foreign investment law states that joint ventures with fifty-one per cent GCC investment must be afforded unrestricted duty export advantages while transferring to other GCC states. Though, only those mutual projects that have spent more than fifty-one per cent of foreign capital are to be afforded such privileged treatment. Remarkably, economic agreement specifies that such rights should be afforded without partiality. Article 3 further specifies that:

“In any member state, legal citizens GCC shall be given similar right given to its own residents, without discrimination, in all financial activities, particularly in term of movement and residence, engagement in all professions and crafts, engagement in all economic, investment and service activities”.

Article 31 of economic agreement also upholds citizenship views specifying concept of “Saudisation”, whereby Saudi citizens are predictable to relish bounties of financial progress more than foreigners. Laws do not precisely clarify what transpires when an investment comprises a GCC and non-GCC acquiescent colleague. Thus, privileged right becomes problematic even when two associates have imbalanced investment dividends (assumes, sixty per cent and forty per cent).

More precisely, in reference to the distinctiveness authorized for GCC citizens, article 31 specifies that:

“No member state may concede to a non-member state any distinct right beyond what conceded herein to member state or conclude any covenant that contravenes provisions of this agreement⁴⁴”.

More so, stakeholders from GCC member states can lawfully carry on business

undertakings in Saudi Arabia and still obtain regular right given to Saudi citizens such investment chances scheduled on negative list. For instance, stakeholders Qatar can invest in Saudi Arabia and have similar rights as Saudi citizens even if stakeholders from Qatar are residing in Saudi Arabia. This has been one of the greatest appealing approaches of creating business units in Saudi Arabia, where GCC stakeholders can start off-shore fund businesses in a GCC country, most especially Bahrain, as a method of avoiding difficult Saudi registration processes. Bahrain does not have strict registration procedures requesting investors to uncover burdensome, making it appropriate destination for GCC investors. The off-shore stock companies in Bahrain are used to develop other investment chances in Saudi Arabia if they are officially acknowledged by Bahrain central bank. Such system of corporate proprietorship in Bahrain is accessible only to GCC stakeholders doing business in Bahrain, not in Saudi Arabia (Smith, 2010).

Regarding matter related to taxation, stakeholders from GCC member states are given exemption from income tax but not obligatory zakat courteousness of their treatment as Saudi citizens in accordance with article 3(8) of economic agreement between GCC member states that specifies taxation treatment of GCC member states stakeholders akin to Saudi citizens. In that respect, as part of privileged afforded to GCC member states, citizens of GCC states, either operating joint stock business, limited liability business, or other forms of business, are exempt from income tax, but not zakat. Article 1 of ministerial resolution of zakat law specifies that:

“All Saudi companies and persons are subject to zakat after completion of one year under the provisions of Islamic jurisprudence starting from 1/1/1370 H (corresponding to 13/10/1950)”.

Arab league agreement does not differentiate between Muslims and non-Muslims. Therefore, the question, is either members of other states are given distinctive prestige when starting business in Saudi Arabia due to their religious position.

Advantages and Guarantees Enjoyed by Foreign Investor in Saudi Arabia

The foreign investment law referred to encouragements and advantages bestowed on foreign stakeholder in general, under article 6, which states that: *“the project licensed under this system shall enjoy all the benefits, incentives and guarantees enjoyed by the national project according to regulations and instructions”*. Article 5 of Saudi Arabia executive law provides some examples of the advantages, incentives and guarantees given to foreign investor similar to national enterprises. These advantages are as follows:

1. The incentives stipulated in the law of protection and promotion of national industries issued by Royal Decree No. 50 dated 23/12/1381.
2. Owning the real estate necessary to carry out the licensed activity, housing or accommodation of the employees in accordance with the provisions of the non-Saudi ownership and investment law issued by Royal Decree No. M / 15 dated April 17,1421H.
3. The benefits of double taxation avoidance agreements and agreements for the promotion and protection of investments concluded by Saudi Arabia.
4. It is not permissible to confiscate investments in whole or in part except by a judicial ruling or the expropriation thereof, in whole or in part, except for the public interest and in return for fair compensation.

5. Re transfer the share of the foreign investor from the sale of his share, surplus profits or profit earned by the foreign company, and to settle any other legitimate obligations. He may also transfer the necessary amounts to meet any contractual obligations of the project.
6. Freedom of transfer of shares between partners and others.
7. Guaranteeing the foreign investor and his non-Saudi employees authorized entity.
8. Obtaining industrial loans according to the provisions of the Industrial Development Fund.
9. The losses incurred by the establishment shall be carried forward to the following years and calculated at the tax settlement of the years in which the business is realized”.

By critically analyzing the advantages for the foreign investors above, it is obvious that the Saudi legislator, due to the significance of foreign investments, gave the registered ventures many advantages and facilities that contribute to providing the appropriate investment environment. This appears to be significant in the treatment of the foreign investor as a national investor, in respect of customs exemptions for production machinery, tools, and primary materials, as well as exempting commodities for export from export duties and all other taxes. In addition to the incentives and tax advantages of the bilateral agreements concluded by Saudi Arabia with some states.

Saudi investment law allows the foreign investor to transfer the net operating losses to the years following the year of loss. If losses accumulate, only 25% of the annual profit is recovered until the full accumulated loss has been recovered. These facilities have been confirmed by the provisions of the Income Tax Law which was subsequently issued to the foreign investment law.

If we move to real estate facilities, the investment law referred in this regard to the system of ownership and investment of non-Saudis to the real estate issued by Royal Decree No. M/15 and dated 17/4/1421 H. On the basis of that law, article 1 Saudi law of ownership permit foreign investor to own the real estate required to carry out his accredited investment business, including the property required for his residence and the housing of the workers.

It is noted that the system did not require reciprocity for the non-Saudi investor, as it did in article 3 for foreign accredited representatives in the Kingdom, which wishes to own the official residence and residence of its chairman and members, due to the fact that the real estate required for its activity is considered as an incentive for foreign investment.

In fact, the foreign investment law did not provide foreign investors with favorable incentives, but also provides many guarantees to settle non-commercial risks they may face. One of the most important risks that may be mentioned here is that the investor is not allowed to take out his money or profits earned abroad, confiscate his property because these risks pose a major concern to the foreign investor. International law concerned rights of the investor in this regard and deprived the national legislator of the right to be “*under the minimum treatment of foreigners*”. This is a limitation as mentioned earlier in this study is the recognition of a foreigner with a minimum of rights that no Member State of the international community can derogate from, otherwise, its international responsibilities will not be fulfilled (Ahmad, 1997).

However, the foreign investment law came with provisions guaranteeing the rights of the foreign investor in this regard. This is in addition to the provisions of article 7, which guarantees the investor the right to re-transfer his shares from the sale of his share or surplus profits and profits earned by his establishment abroad. In other words, under this provision, the public authority may not take any new measures restricting or affecting the investor's ability to transfer

its funds abroad, including the principal of its investments and income or any other amounts required to meet any predetermined agreements for investment scheme owned by it.

Any form of procedure takes may be in the form of a law, regulation, instructions, or just an administrative decision.

The second type of risk that the investor is exposed to is confiscation, which is set out under article 11 of foreign investment law, which states that “*investments of the foreign investor may not be confiscated in whole or in part except by a court order ...*” If the definition of confiscation is to be defined, it will imply “*a measure taken by the public authority of the State and under which the ownership of all or some of the funds or financial rights owned by a person, without paying any fees*” (Hisham, 2002). The jurisprudence refers to two types of confiscation: administrative and is carried out by the executive authority as a precautionary measure necessitated by specific considerations relating to security, safety and public health, and is penalized by the judiciary as complementary punishment, i.e. complementary to the original penalty. In the two circumstances, the judicial or executive authority shall have the right of confiscation in accordance with the limitation prescribed by law.

In respect of Saudi investment law, it is noted that it limited the confiscation to the judicial authority only. In the sense that it is not permissible to confiscate pursuant to this provision except by a court order. The researcher is of opinion that, the text of this formulation is in the interest of the foreign investor as the confiscation is not dangerous. It is known that judicial confiscation is of a criminal nature, meaning that it is only due to unlawful acts committed by those who have taken the confiscation action. Unless expropriation is effected under a court order issued by a special or exceptional jurisdiction in which it has not followed the usual procedures, it may constitute a risk to the foreign investor. However, the investment history in the Kingdom shows that foreign investors are not exposed to this type of non-commercial risk; there is no single record for such risk.

Regarding the third form of non-commercial risks to foreign investors, which is the expropriation of investments by foreign investors, the foreign investment law is also provided in part II of article 11, which states: “*as it may not be expropriated her ownership in whole or in part except for the public interest in return for fair compensation in accordance with regulations and instructions*”. The term expropriation is defined by the jurisprudence as “*the ownership of property by the State possessed by private individual, for the public interest, by executive decision broadcasted by authority*”.

The expropriation of the property entails depriving the owner of the property of his property for the public interest, in return for a reasonable compensation for damage caused by the administrative decision that deprived him of his property. The fact in jurisprudent and international customary law is that administrative decision issued for expropriation is considered sovereign procedure exercised by the public authority of the State within its territorial jurisdiction and therefore applies to all those who live in the territory of the State both national and foreign.

The controversy over the state's actions was aimed at the indirect expropriation of property by restricting foreign investors' control of their property and exploitation. It is estimated that international customary law has settled on a broad concept of expropriation to include all forms of infringement of the acquired rights of the foreign investor. At the local level, the text of article 11 referred to a reasonable guarantee to the foreign investor in the face of the administrative

decision to dispose of his own investment. On the other hand, it is required that the expropriation be for the public interest and that it be equivalent to a fair compensation of damages suffered by depriving him of his property, and on the other hand decides that the decision of displacement and compensation shall be as approved by regulations and instructions. The assumption here is that the mechanism established by the regulations and instructions is effective and fair in terms of the valuation of the compensation and the time it pays to the investor. It could be estimated that, the violation of the administrative decision, or failure to observe processes prescribed by law, violates this decision and allows investors to violate it in the presence of law.

It may be useful to note that some of the cases where some foreign investments were securitized have been recorded in an agreement based on long-term negotiations in which the interested investors have obtained their full rights. An example that can be mentioned in this regard is the security of foreign investors' capital shares and the performance of their rights in the petroleum sector, as well as the security of foreign banks that continued for a period of time and resulted in contracts of guarantee that the parties achieved their interests, either from the Saudi side or foreign investor (Ismail, 1994).

Restrictions Imposed on Foreign Investors

Foreign investment regulation in Saudi Arabia has some limitations on foreign investments, including the terms and conditions of granting licenses, including the control of these investments, their relevance and their relevance to the concept of public order. These are limits and determinants that reflect the state's policy and philosophy in this field. These restrictions are noted in the investment law, and its executive regulations, and some decisions and instructions issued by certain entities to regulate foreign investment in Saudi Arabia.

In respect of licensing controls, it is forbidden for an alien to engage in any investment activity in the list of events expelled from foreign investment issued by supreme economic council. This officer is a natural consequence of the state's authority and its right to restrict some of its commercial and investment activities to its citizens. And therefore not for the foreigner either for the investor to challenge him before the courts.

A person or a person was deemed to enter the Saudi market to engage in such activities in a direct or concealed manner. The Saudi regulator was keen to emphasize the principle of non-equality of the Saudi citizen with foreign nationals in this field on other occasions, as stipulated in article 14 of companies' law. After Saudi nationality was granted to the company established in the Kingdom, or with the participation of a mixture of foreigners and Saudis, decided that "but this nationality does not necessarily entail enjoyment Company limited rights to Saudis". One of the requirements of this type of regulation is to take the steps required by the prevailing regulations in Saudi Arabia related to investment activities, i.e registration in commercial register according to article 3 of Saudi commercial registration system. This is in addition to obtaining the necessary licenses to conduct some activities from some bodies related to these activities.

As for the restraints related to the control of foreign investments, it can be observed through the license application form, which requires determining the period during which the foreign investor can complete the licensed project implementation procedures from the date of receipt of license. This is a test of the investor's seriousness in implementing the investment project.

The provisions relating to the non-violation of foreign investments of the prevailing regulations in the Saudi Arabia can be represented by the provisions of paragraphs (4 and 5) of article 6 of implementing regulations of foreign investment regime. The paragraphs stipulate, respectively, that foreign stakeholder shall not be subject to final judgments substantive breaches of the provisions of this regulation and shall not be convicted of financial or commercial offenses both in Saudi Arabia and in other countries. The provision of paragraph (4) notes that it came in general and turbulent, although the article in paragraph (4) the terms and conditions of granting the licenses, indicating that their terms relate to the conditions precedent to the granting of licenses, the paragraph mentioned in the context of the discussion of a subsequent violation of the license issued by the foreign investor and constituted a fundamental violation of investment law.

In contrast to paragraph (5), which clearly states that investor behavior is good and that no previous judgments are made against it, it is clear that there is no definition or an officer through which it can determine what can be considered fundamental violations, whether in Saudi Arabia or abroad, is related to financial or commercial irregularities, as if his money was due to illegal activities, he was bankrupt or otherwise, and in my estimation this requirement must be provided by the investor conduct.

It is important to note that the conclusion on discussion of the advantages and limitations imposed on foreign investors that Saudi Arabia has been connected with many agreements in field of investments and economic development. The unified economic agreement between GCC member states signed in Riyadh 1981 and other bilateral and international agreements, all of which regulate the protection required for foreign investments in the host country through the use of many technical and procedural means.

Means of Settlement of Investment Disputes in Saudi Arabia

Mechanisms of disputes settlement on investment has to do with problem of foreign investment guarantees, and invites us from the beginning to confirm that foreign investors do not prefer to resort to the host country's jurisdiction to settle the differences arising from their investments, for reasons of fear of impartiality or effectiveness of national laws and justice to ensure that such investments are adequately protected.

The foreign investment law and its executive regulations has been in force for the disputes settlement relating to foreign investments in Saudi Arabia, as well as those between the foreign stakeholder and the Saudi government, or between the investor and his Saudi partners. Article 13 of Saudi foreign investment law stipulates that:

“Conflicts between authority and foreign investor shall be resolved in connection with his or her investments authorized under this law to the extent possible, if this is not possible, the dispute shall be resolved according to regulations. Conflicts occurring between foreign stakeholder and its associates shall be settled in respect of their investments certified under this system. If this is not possible, conflict shall be resolved according to the regulations”.

Article 26 of executive regulations of foreign investment regime provides as follows: board of directors shall form, in accordance with paragraph 2 of article 13 of foreign investment law, a committee composed of at least one chairman and two members, called the investment dispute

resolution committee, to consider disputes between the foreign investor and his Saudi partners regarding an investment licensed under this foreign investment law. If dispute is not resolved, the dispute shall be settled by final arbitration and in accordance with the arbitration law issued by royal decree No. 46 dated 12/7/1403 and its executive regulations.

Dispute Resolution Mechanisms on FDI in Saudi Arabia

Since about eighty per cent of overall investments in Saudi Arabia are possessed by foreigners, it has become duty of authority to guarantee that foreign stakeholders are secured by regulation in order to protected foreign investments (Nancy, 1988). Investment development in any nation is approximately continuously supported by consistent increase in investment interrelated conflicts. Thus, efficient investment conflict settlement is basic factor of a nation's capability to not only entice stakeholders but, more prominently, to maintain investors. This comprises foreign and local stakeholders.

Though, Saudi Arabia has offered moderately amiable commercial atmosphere for foreign stakeholders, there have been encounters concerning preservation elicited by the fact that some stakeholders involve straightforwardly with authority while others do their investment with private entrepreneurs. Due to equivalent investment setups that the business atmosphere in Saudi Arabia has drastically reformed, due to government facilities focused on both foreign and domestic investors. Thus, the efficiency of any dispute settlement instrument has become mainly rely on whether or not a foreign stakeholder dealing with authority or with individual businessmen (Nancy, 1988).

Dispute settlement in Saudi Arabia is primarily commenced by either lawsuit or alternative dispute resolution (ADR). Arbitration is common mechanism out of three ADR instruments. Foreign stakeholders, as stated earlier, are constantly intense to safeguard that investments are well safeguarded by the host country's legal agenda. Hence, description of noble investment environment in any country must involve explanation of its investment laws and guidelines. Saudi Arabia authority has conveyed its entire encouragement for investment conflict settlement within diverse means, however arbitration and conciliation are the most used one for settling investment dispute in Saudi Arabia. Saudi Arabia support for arbitration has been on circumstance that procedure commenced in parameters of the country's catalogue of analytical investment business that are open to arbitration; and that numerous investments which arbitration is implored as an instrument to settle conflicts are completely registered as stipulated in Saudi foreign investment law 2000.

Moreover, business transactions between authority and foreign stakeholders are protected under article 26 of foreign investment law applying procedures that states mode in which conflict between contested parties can be arbitrated in accordance with royal decree No. (46) dated 12.7.1403 H (April 26, 1983). One of the core purposes led to legislating appropriate law for investment conflict settlement in Saudi Arabia is that, governments throughout the world intense to expand investments in their country have progressed to guarantee current investors particularly those from foreign countries for the purpose of securing of their investments (Smith, 2010). More so, it is extensively acknowledged that standard of foreign investments in any nation is approximately straight purpose of that national's investment preservation laws comprehensiveness. Thus, Saudi Arabia can cogitate as stakeholder approachable country due to

the fact that it is categorized among most favorite investment destinations in MENA region. Most of this extreme inflow of foreign stakeholders to Saudi Arabia can be frankly credited to the fact that Saudi Arabia has legislated a very comprehensive legal frame for investment safety (Bakhashab, 2000).

Numerous measures and procedures have to be followed, remarkably the approval by Saudi Arabia of global investments covenants, that now safeguard all foreign stakeholders that Saudi regulation will certainly not only legitimate frame controlling administration of their investments in Saudi Arabia, however international conventions will also perform a very significant function in protecting foreign investment in Saudi Arabia, such as Netherlands tax agreement which binds the two regions. Since international conventions pursue to propose multipurpose and joined investments protection, foreign stakeholders around globe have been willingly drawn to Saudi Arabia as a consequence. Apart from consent to international conventions, Saudi Arabia authority has also implemented several bilateral and multilateral covenants intended to encourage investments between Saudi Arabia and other international alliances, thus improving its capability to cordially settle investment interrelated conflict. Maximum predominant global mandatory law is international investments covenants, that specifies rules on how Saudi Arabia stakeholders communicate with other foreign stakeholders. The following precedes discuss core methods used to determine investment conflict in Saudi Arabia.

Litigation on FDI in Saudi Arabia

Lawsuit is extremely vital method of resolving several investments disputes in Saudi Arabia, its function has been reduced by ADR due to conventional and historic restraints which connected to it (Nancy, 1988). Litigation is not completely suitable mechanism for determining disputes concerning foreign investors for the explanations examined below.

Lawsuit is very dreary procedure which necessitates that parties to conflict will not only comprehend each other well but also not able to comprehend court officials' language deciding the dispute in Saudi Arabia. Many foreign stakeholders are from the European Union (EU), they are basically not Arabic native speakers, which is the language of domestic court in Saudi Arabia. Foreign stakeholders in Saudi Arabia are worried from diverse countries across the globe, it is extremely doubtful that they all comprehend Arabic language which is core courts official legal language used in all in Saudi Arabia.

Each foreign stakeholder is always intense to have his business secure and feasible (Stephenson & Al-Enezee, 2010). Hence, whenever there is investment conflicts related issues, investors anticipate legal frames of the host countries to stipulate essential mechanisms to efficiently administer lawsuit process. One of the most significant features of law which must be contemplated is the capability of law court to implement decisions conceded to foreign investors in the similar approach as domestic investors (David, 1985). However, several law court in Saudi Arabia lack directive in their jurisdictions, although foreign stakeholders can seek justices in court, there is no assurance that decision conceded will be implemented. For example, Netherlands stakeholders in Saudi Arabia cannot enforce Saudi Arabia court judgment in their country.

Problematic circumstance is worsened when foreign investment cases are undecided in the

court. Partiality probabilities of foreign stakeholders not only in Saudi Arabia but also in several other jurisdictions have had characteristic propensity to sidestep lawsuit since local courts are presumed to be unfair to implement dual principles when deciding foreign business conflicts. For example, several investors are rarely pleased with final outcome in any investment litigation since domestic laws in Saudi Arabia are those generally construed by the courts. Several foreign stakeholders have uttered irritation at judgments delivered by local courts in Saudi Arabia, blaming them of using laws fitted to support Saudi Arabia government and local investors (Julian, 2003). Occasionally, diplomatic implications play a serious function in shaping courts judgments, certain purposely pushed by diplomatic interests, to determine conflicts in favor of locals investor so as to discipline an investor from a governmentally hostile country.

Courts in Saudi Arabia are very distinctive from judiciary system in other countries. In Saudi Arabia, usual certainty is that there are two wings to each narrative, there is continuously virtuous possibility that stakeholder will counter litigate. This dissimilarity turn out to be further obvious when one resides in western world and other regions where Arabic civilizations are barely recognized (Anthony, 1987). Therefore, foreign investors in Saudi Arabia are not familiar with judicial procedures based on Islamic law, (Otto, 2008) they will also frequently discover that lawsuit is not suitable for resolving investment disputes (Nancy, 1988).

CONCLUSION

There is conflict between article 1 (e) of foreign investor law 2000 and article 14 of Saudi Company law. According to article 14 of company law, the company, which is established according to the Saudi companies law, and whose headquarters are in Saudi Arabia, becomes a Saudi company regardless of the nationality of its partners, meaning that whether they were Saudis or foreigners or they were combined of Saudis and foreigners or wholly owned by foreign investors or mixed in capital, taking into account the foreign investment regime, in terms of license terms and conditions, investment opportunities, incentives, benefits, guarantees, etc. The incorporation is administered by the provisions of the company law, which grants Saudi nationality to company incorporated in Saudi Arabia.

Therefore, the definition of paragraph (e) of foreign investment law for foreign investors is that legal person in which all partners do not have Saudi Arabian nationality does not comply with the provisions of the company law but rather contradicts article 5 of the same regulation, it gives image of the establishment owned by a national investor who has a Saudi nationality and a foreign investor who does not have a nationality. In accordance to the literatures above, foreign investment law 2000 did not define the term foreign investor though article 5 of Saudi Foreign Investment law had defined foreign investment by stating several ways of doing foreign investment in Saudi Arabia and giving legal guideline on foreign investment.

The discussion in this article reveals that there are many inconsistency and ambiguity in current Saudi foreign investment law 2000 and there are important terms relating to foreign direct investment which are not defined in foreign investment law 2000 such as foreign investors. In conclusion, it is important to find an effective mechanism to settle disputes arising from foreign investments so that the investor can manage his investment project with greater security and reassurance.

REFERENCES

- Adel, K.Z. (2016). *The legal status of the foreign investor in the Kingdom of Saudi Arabia*.
- Ahmad, Q.A. (1997). *A brief in private international law*. Dar Al nahdah Al arabiyyah.
- Al-Khathlan, K. (2013). Foreign direct investment inflows and economic growth in Saudi Arabia: A co-integration analysis. *Review of Economics & Finance*, 4(1), 70-80.
- Anthony, H. (1987). *Western strategic interests in Saudi Arabia*. London: Croom Helm.
- Anthony, S. (2017). *Doing business with the Saudis*. GMB Publishing.
- Bakhashab. (2000). Legal concepts of Saudi law of arbitration for settling commercial disputes within national & international spheres.
- David, R. (1985). *Arbitration in international trade*.
- Hisham, S. (2002). *International protection for foreign money*. Dar Fikri Al jamiy.
- Hussain, A., & Bruno, Z. (2011). Foreign investments in Saudi Arabia. *International Trade and Business Law Review*, 15(1), 60-77.
- Ismail, M.H. (1994). *Foreign direct investment regulation in the Kingdom of Saudi Arabia*. Institute of Public Administration.
- Julian, L. (2003). *Comparative international commercial arbitration*.
- Nancy, T. (1988). *Disputes resolution in Saudi Arabia*.
- Otto, J.M. (2008). Sharia and National Law in Muslim Countries: Tensions and Opportunities for Dutch and EU Foreign Policy. Amsterdam University Press, 12.
- Sadiq, A. (2014). *Economic convergence in Saudi Arabia*. Think tank 20: Growth, convergence & income distribution: The road from the Brisbane g-20 summit, Brisbane.
- Smith, H. (2010). *Saudi Arabia investment guide 2010*. Al-Ghazzawi Professional Association in Association with Herbert Dmith, LLP.
- Stephenson, D.E., & Al-Enezee, K. (2010). *Enforcement of foreign arbitral awards in Saudi Arabia*. Financier Worldwide Magazine.