Insights

Saudi Arabia Encourages Foreign Investment with Updated Investment Law

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Key Takeaways

- On August 12, 2024, Saudi Arabia's Council of Ministers published an updated investment law, following the issuance of a draft for public consultation in April 2022 (see our previous analysis here). The new law replaces the Foreign Investment Law issued by Royal Decree No. (M/1) in August 2000 and will come into effect after 180 days (in February 2025).

- In line with broader economic diversification efforts, the law aims to create a more attractive and competitive investment environment by more clearly defining what constitutes an investment, strengthening the rights and protections for investors, and simplifying regulatory processes.

- Though the law as published closely resembles the draft version circulated in 2022, there are several key changes that have important implications for companies and investors seeking to do business in Saudi Arabia, including an enhanced framework for dispute resolution and reduced licensing requirements.

- Implementing regulations, which will outline the specific procedures and operational guidelines for enforcement, will be published before the law takes effect, and will likely be released for public consultation. Companies and investors should prepare to offer feedback and engage with sector regulators to discuss potential sector-specific incentive packages, as well as plan for longer-term engagement in the Kingdom.

- The updated investment law also opens the door for more active investment promotion by Saudi authorities, in turn creating additional opportunities for foreign companies in the Kingdom.

Key Changes

Broadly speaking, the updated investment law makes it easier for foreign investors to enter the Saudi market by increasing the availability of incentives and removing the need for an investment license. Although we anticipate further details with the implementing regulations, some of the key aspects of the law as it stands are:

- **The use of the word "incentives."** Whereas Article 6 of the draft law referred to incentives as "enablers" that could be granted (or canceled) based on several criteria, the updated law uses the word "incentives" and gives the "competent authority" the ability to "grant investment incentives to investors in accordance with objective and fair eligibility criteria." The use of the term "incentive" points to the Kingdom's increasingly sophisticated investment schemes and continued commitment to positioning Saudi Arabia as a preeminent investment destination. In line with those efforts, we expect the law will allow for incentives at the sector and Special Economic Zone (SEZ) level. Further details will be provided in the implementing regulations.

- **A new registration system.** Article 7 of the updated law eliminates the requirement for the Ministry of Investment (MISA) to issue licenses for investment activities, instead introducing a MISA-managed system on which foreign investors must register before engaging in any investment activity. Local investors are exempt from registration requirements, as are investments in securities subject to the provisions of the Capital Market Law. The removal of a foreign investment license requirement is significant, as obtaining such a license can be expensive and arduous, creating a high barrier to entry for investors. We expect the forthcoming implementing regulations to provide additional details, including whether there is a cost associated with registering on the platform.

- **An enhanced framework for dispute resolution.** Article 10 significantly enhances the framework for dispute resolution by not only continuing to allow investors to resort to court proceedings, but also formally incorporating alternative dispute resolution methods such as arbitration and mediation. Allowing foreign investors to resolve disputes outside of formal court proceedings addresses a longstanding concern for many foreign investors in the Kingdom who remain worried, despite the adoption of a new arbitration law and the establishment of the Saudi Center for Commercial Arbitration, about the independence and objectivity of the Saudi courts.

- **Additional roles for sector regulators.** Under the new law, sector regulators are granted additional roles and responsibilities including issuing and periodically updating a list of activities excluded from foreign investment. They are also empowered to suspend foreign investments if they pose a threat to national

security or conflict with international agreements to which the Kingdom is a party. Granting sector regulators these responsibilities (which were previously reserved for the Council of Ministers and later delegated to a ministerial committee) is in line with a Kingdom-wide trend towards less centralized regulatory power.

Broader Context

The new investment law should be viewed in the context of Saudi Arabia's broader investment landscape, specifically the National Investment Strategy and the Kingdom's Special Economic Zones.

- First introduced by the Crown Prince three years ago, the National Investment Strategy aims to make Saudi Arabia more attractive to foreign and domestic investors and has set ambitious 2030 targets for direct investment and private sector growth including increasing the private sector's contribution to GDP from roughly 40 to 65 percent, increasing the contribution of non-oil exports to GDP from 16 to 50 percent, and increasing the investment-to-GDP ratio from 22 to 30 percent. The Strategy is overseen by the National Incentives Committee (see our previous analysis here), which was created in June 2022 and is tasked with providing financial and non-financial incentives for investment projects both inside and outside of the Kingdom. The Committee is likely to be closely involved with the new incentive structures allowed under the investment law.

- The Kingdom remains committed to establishing world-class SEZs throughout the Kingdom as a means of attracting investments in high-priority sectors, including manufacturing, exports, and technology (see here for our previous analysis). SEZ authorities and sector regulators have the authority to develop a range of independent regulations and incentives that could potentially provide more favorable treatment to investors than currently available in the base economy, even with the new rights and protections afforded to investors under the new investment law.

Considerations for the foreign investors

The updated investment law alleviates several key concerns for foreign investors, particularly as they related to licensing and dispute resolution, and **opens the door for more active investment promotion by Saudi authorities**, in turn **creating additional opportunities for foreign companies in the Kingdom**. To that end, we expect MISA, the Saudi Investment Promotion Authority, and other sector-specific investment attraction entities to further expand efforts to develop customized incentive packages and target strategic investors.

Though the Saudi government is continuing its commitment to bringing foreign investors to the Kingdom, it is also instituting localization, reporting, and tax regulations, including increasingly stringent Saudization requirements and the Regional Headquarters (RHQ) Program (see our previous analysis here). Before investing in the Kingdom, **companies should understand the full context** of what it means to do business in the Kingdom, and **develop a long-term strategy** for navigating competing requirements, engaging with key government stakeholders, and securing incentives. Companies should also **expect continued changes to investment policies** in the Kingdom and **remain flexible** in the face of an evolving landscape.

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