مجلس الأعمال السعودي الأمريكي
U.S.-Saudi Arabian Business Council

Saudi Arabia's New Bankruptcy Law
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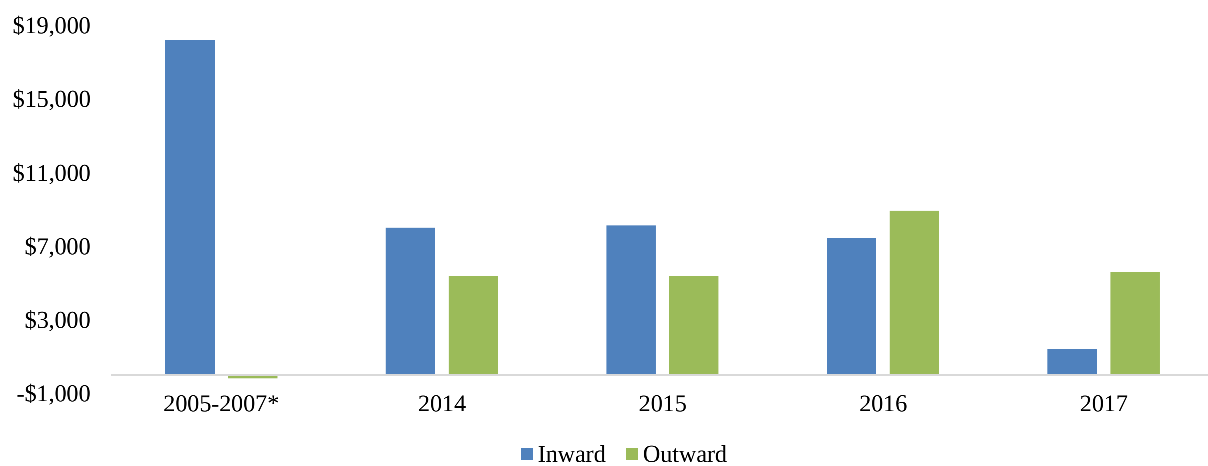
Saudi Arabia's Vision 2030 aims to diversify its economy away from oil revenues and to develop its non-oil sector into a world leader. While Vision 2030 encompasses many strategies to achieve Saudi Arabia's ambitious plans, chief among them is the role foreign direct investment (FDI) plays in helping these policies come to fruition. Moreover, a clear and executable legal framework is paramount in attracting FDI into the Kingdom. Saudi Arabia's recently ratified Bankruptcy Law now provides foreign investors with the legal backing they have been seeking to enter and expand their presence in the Kingdom.

Saudi Arabia's FDI has been on a downward trend over the last few years as inward FDI flows decreased from $8.1 billion in 2015 to $1.4 billion in 2017. These figures pale in comparison to the pre-financial crises period when inward flows averaged $18.2 billion between 2005-2007. Besides 2016's outward flow of $8.9 billion, outward flow has been relatively consistent at around $5 billion between 2014-2017.

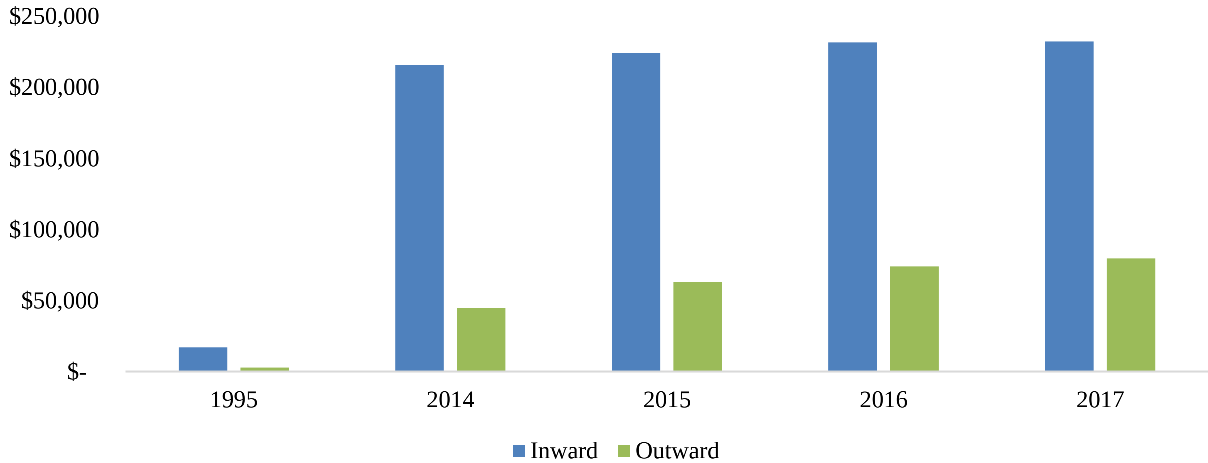
Saudi Arabian FDI Flows (USD millions)



*Pre-crises annual average
Source: UNCTAD, World Investment Report 2018

Saudi Arabia’s FDI stock has been marginally increasing between 2014-2017. Most notable is the level of inward FDI stock from 2016 to 2017 as it grew by only $700 million. However, the level of outward FDI stock remains at a healthy pace as it grew from $74 billion in 2016 to $79.6 billion in 2017.

Saudi Arabian FDI Stock (USD million)



Source: UNCTAD, World Investment Report 2018

For years the Saudi Arabian government instituted new plans and strategies to help prop up and engage the private sector as a driving force to expand its economy. However, significant oil revenues masked many of the challenges the government faced with private sector growth. Consequently, strong oil revenues fueled the economy as sizeable social and physical infrastructure projects began to take shape. A large majority of these projects were undertaken by the government in absence of a formidable private sector presence, which caused both government and quasi government entities to shoulder a majority of the burden to meet growing demand for enhanced services.

The roll-out of Vision 2030 clearly established the role the private sector will play in achieving the governments goals. More specifically, the private sector is expected to increase its contribution to GDP from its current 40 percent to 65 percent by 2030. Of the numerous facilities the government must introduce and harness to accomplish this goal, a clear and enforceable legal framework is mandatory. The recent ratification of the new Bankruptcy Law will play a significant role in attracting FDI and promoting private sector growth.

Prior to the introduction of the Bankruptcy Law, investors were faced with uncertainty as to what their rights and obligations were in the event their investments ran into financial difficulties. Some of the difficulties for businesses included:

- Unsystematic collection of debts resulting in uneven payments to creditors
- Less opportunities for arrangements that hinder both creditors and debtors
- Lower chances of recovery in the event a viable business experiences a setback
- Limited information on whether a proposed counterparty was insolvent
- Large number of lawsuits resulting from a range of legal claims (as has been the case with several large corporate insolvencies)
- Debtors attempting to dismiss creditors' dues such as camouflaging assets or disposing assets prior to insolvency at less than fair value.

The new law contains many aspects of a modern western styled insolvency regime reflecting an adequate benchmarking process. The Bankruptcy Law should create a clear route for companies whom are struggling to obtain relief from creditors while they undergo a restructure or are liquidated. This has the potential to free up billions of dollars that have been frozen in debt disputes. Highlights of the new law include:

- Protect companies from financial collapse
- Raise the Kingdom's rating as an attractive destination for investments
- Reassure investors about the validity of their creditors and stakeholders
- Take into consideration the size of the entity during bankruptcy proceedings
- Identify small-scale debtors and establish criteria to evaluate their size
- Set out new procedures for small and larger debtors
- Establish a Bankruptcy Committee in coordination with the general authority for SMEs
- Strengthen trust in the credit market and commercial transactions
- Enable a bankrupt entity to resume its activities, as opposed to ceasing them entirely.

The scope of the Bankruptcy Law will be applied on any:

- Natural person practicing commercial, professional and/or profitable activities in Saudi Arabia
- Saudi Arabian registered commercial and professional companies and any other businesses intending to generate profits on Saudi Arabian territory

- Natural and/or juristic foreign investors (Non-Saudi nationals) owning assets or practicing commercial, professional and/or profitable activities in Saudi Arabia through a licensed entity. The bankruptcy law will apply only to foreign investor's assets in Saudi Arabia only.

The Bankruptcy Law along with newly introduced and/or ratified laws such as the new Commercial Mortgage Law and Private-Public Partnership (PPP) Law that aim to provide a transparent regulatory framework will gradually attract and maintain fresh inward flows of FDI. This will help Saudi Arabia achieve one of its Vision 2030 goals of increasing FDI from 3.8 percent to the international level of 5.7 percent of GDP.