SAGIA's Restrictive Policies Hit the Marine Transport Sector[1]

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Over the past decade a wave of reforms profoundly transformed Saudi Arabia's legal landscape. Many of these reforms were related to the country's bid to accede to the WTO, which was finally achieved in December 2005 after more than twelve years of negotiations.

Economic liberalization

A cornerstone of the reforms was the adoption in April 2000 of a new foreign investment law under which a new government agency was established with the aim of facilitating foreign direct investment (FDI) in the Kingdom: the Saudi Arabian General Investment Authority (SAGIA). After a number of bureaucratic obstacles were removed and the agency was given the necessary powers to actively coordinate and bundle the work of various other public administrations, SAGIA delivered on its promise of being a 'one stop shop' for foreign investors. Abroad the agency was increasingly perceived as a progressive force and symbol of the economic liberalization of the Kingdom, which saw its FDI inflow climb to a staggering 9.7 percent of GDP in 2009. In parallel to increased investment promotion activities SAGIA continued pushing further reforms and to this end established a National Competitiveness Center. An ambitious program called '10X10' which aimed at catapulting the country amongst the top ten performers world-wide with regard to the investment-friendliness of regulations (as assessed by the World Bank), missed the target only slightly after Saudi Arabia achieved the 11th rank by the 2010 self-set deadline.

Following criticism SAGIA reviews its policies

Not all of the inflow of new investors was, however, to everyone's liking in the Saudi society and government. Following the wave of terrorist attacks from 2003 to 2005 the Ministry of Interior had already lobbied for an increased scrutiny on individual foreign investors, who SAGIA then banned from investing in the form of sole proprietorships and later even as shareholders in local companies. As of 2010 some local business communities, especially in the construction sector, started to voice criticism of SAGIA more loudly in the media highlighting the 'unnecessary competition created' with some columnists even proposing that SAGIA be shut down completely. Within the ranks of the government as well there was growing concern that a large number of investment applications, especially from non-GCC neighbouring countries, were in reality driven by immigration rather than genuine investment projects.

Probably as a consequence of these developments, starting in late 2011 a change of attitude was clearly perceivable at SAGIA which may be described as a switch of priorities from 'making things easy for the investor' to 'selecting the right investors'. This policy was then institutionalized in mid-2012 with the

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establishment of a committee at SAGIA's licensing department whose role is to filter out those investment projects that 'benefit the economic development of the Kingdom'. New application forms were introduced with much additional information to be provided by the applicant who must now also sign a long list of undertakings in order to validate his application.

Additional licensing requirements for sea cargo services

Ever since, SAGIA not only insists on all requirements to be scrupulously fulfilled before an investment license can be granted, but has also stopped licensing a number of activities (for example 'project management' and 'management consulting') and introduced additional licensing requirements in a number of sectors. One of the activities that are now considered by SAGIA to be 'specialized' i.e. subject to the approval of a specialized governmental regulator is 'sea cargo services'. Contrary to 'air cargo services' for which an additional approval of the General Authority of Civil Aviation (GACA) had always been compulsory, the activity of 'sea cargo services' was so far subject only to obtaining a SAGIA investment license. Under the new, more restrictive policies this has been changed now as SAGIA requires the investor (for example logistics companies) to obtain first the provisional approval of the Ministry of Transport (MOT) before the application for an investment license can be processed. Like GACA the MOT will later complete its own licensing proceedings after the new company has been formed.

Regrettably, however, the MOT licensing system has not yet been finalized yet. Upon inquiry the MOT points to the Saudi Ports Authority who has until now "failed to provide their legal opinion on the new licensing system" but at the end of the day the reality is that apparently in the field of 'sea cargo services', no SAGIA applications are being processed at this time.

Progress not fundamentally called into question

The new situation falls into the wider picture of higher restrictions being placed on foreign investment in Saudi Arabia. Much of the undeniable progress made in the past is thereby not fundamentally called into question but economically less powerful investors are more and more frequently reporting difficulties in having their projects approved by the authorities.

The developments are also reflected in the World Bank statistics: FDI inflow to the Kingdom was 2.8 percent in 2011 and Saudi's ranking in the 'Ease of Doing Business' report stands currently at 22 for the year 2013.