

**Protecting the Rights of Local Shareholders  
under the Saudi rules for Qualified Foreign  
Financial Institutions Investments in Listed  
Shares**

By

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## **Abstract**

Recently, the Saudi Capital Market Authority (CMA) opened the door for foreign investors to invest directly in the stock exchange market (Tadawul) to gain more welfare from their investments. Along with this step, the CMA released a set of Rules for Qualified Foreign Financial Institutions Investments (RQFFII) in Listed Shares 2015 that aimed to attract and protect the shareholders' rights.

In this research project, the RQFFII have been examined to discover the level of attraction that these Saudi rules offer to foreign investment. The project also aimed to highlight strengths and weaknesses in the rules with regard to the protection shareholders' rights. This thesis explored the possible influence of foreign investments in the Saudi stock exchange. The research project aimed to increase the CMA and shareholders' awareness and knowledge in regard to these rules which lead to more protection of the local stock exchange.

In order to achieve this goal, this thesis used a qualitative method by comparing these rules to the regulations of other countries that have a successful record, such as the Gulf Countries Council (GCC) and Australia. It has also analysed reports of international organization to support the findings.

The findings showed that on the one hand the current rules are not sufficiently attractive, and on the other hand are restricted and able to provide enough protection to the domestic market and shareholders. In addition, the results support the positive role of foreign investors on the local stock exchange market and its regulations. The findings implied a correlation between regulations and foreign investment flows in regard to attracting foreign investments and protecting the local economy.

Hence, the Saudi policymakers use gradual opening of foreign investors to its stock exchange, this project found that the amended rules in 2016 may lead more foreign investment in flow.

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To all of those people who helped me to complete this thesis, I dedicate this humble effort.

## **Declaration**

I, Abdullah Mushkus Almutairi, declare that the PhD thesis titled (Protecting the Rights of Local Shareholders under the Saudi rules for Qualified Foreign Financial Institutions Investments in Listed Shares) is no more than 100,000 words in length including quotes and exclusive of tables, figures, appendices, bibliography, references and footnotes.

This thesis contains no material that has been submitted previously, in whole or in part, for the award of any other academic degree or diploma. Except where otherwise indicated, this thesis is my own work.

Signature:

Date: 24/1/2017

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## **Abbreviations**

ADSM Abu Dhabi Securities Market

ASC Australian Securities Commission

ASIC Australian Securities and Investments Commission

ASX Australian Securities Exchange

BSE Bahrain Stock Exchange

CEO Chief Executive Officer

CRSD Committee for the Resolution of Securities Disputes

CMA Capital Market Authority

DFM Dubai Financial Market

ESCA Emirates Securities and Commodities Authority

FATA Foreign Acquisitions and Takeovers Act

FDI Foreign Direct Investment

FIRB Foreign Investment Review Board

GCC Gulf Cooperation Council

ICGN International Corporate Governance Network

KSA Kingdom of Saudi Arabia

KSE Kuwait Stock Exchange

MENA Middle East and North Africa

MSCI Morgan Stanley Capital International

MSM Muscat Securities Market

MOCI Ministry of Commerce and Investment in Saudi Arabia

OECD Organisation for Economic Co-operation and Development

QFI Qualified Foreign Investment

QFIC Qualified Foreign Investment Clients

QFMA Qatar Financial Markets Authority

QSE Qatar Stock Exchange

RQFFII Rules for Qualified Foreign Financial Institutions Investment

SAGIA Saudi Arabian General Investment Authority

SAMA Saudi Arabian Monetary Agency

SCL Saudi Company Law

SEATS Stock Exchange Automated Trading System

UAE United Arab Emirates

UNCTAD United Nations Conference on Trade and Development

# **Chapter one**

## **Introduction**

### **1.1 Overview**

This chapter address the importance of the study beside the importance of such rules or regulations to the host countries in terms of attracting foreign investment and protecting local stock exchange market. It also extends knowledge by providing historical background and brief explanation of the new rules of foreign investments in the Saudi Stock Exchange Market. The chapter outlines the research issues and the aims of the investigation of foreign investment rules. To narrow the gap with previous research, the academic and practical contribution will be addressed in this chapter.

The chapter is divided into nine sections. The importance of the study is outlined in section 1.2. Sections 1.3 and 1.4 address the historical background and provide a brief explanation of the new rules on foreign investment. Section 1.5 presents the aims and context of project, while section 1.6 focuses on the research questions. The contribution of this thesis is outlined in the section 1.7 and section 1.8 provides an overview of the structure of the research. Section 1.9 is the conclusion of the chapter.

### **1.2 The importance of this study**

In recent years governments have paid great attention to the development and security of their financial systems. This has been a concern since the Global Financial Crisis, which forced governments to focus more on the systematic risk and the possibility of future economic crises. The financial system can be fragile, especially when rapid expansion of credit is associated with agency problems and information asymmetries

(Barajas et al. 2013). Hence, developing a strong financial system that operates within certain bounds is critically important as it guarantees the stability of the overall national economy.

In many emerging countries the development of a robust financial system is a major factor contributing to economic growth and financial stability and reducing risks and minimising the possibility of financial crisis (Ngalande 2003). Thus, governments are constantly looking for approaches and methods to enhance their financial systems which in the end strengthen economic stability and development.

One of the effective approaches in strengthening the financial system is the Stock Exchange Market which has been an essential factor in this process. In fact, the stock exchange market is considered the heart and centre of the financial system and as it can improve and steady the economy. The stock exchange market is a complex institution where the economic long-term funds of the major sectors including, governments, firms and households are utilized and mobilized to be accessible by different sectors of the economy. The improvement of the stock exchange market offers many opportunities for effectively utilizing funds as well as efficiently allocating resources to increase economic growth (Petros 2012).

Stock exchange markets boost economic growth through mobilization of savings. With rapid expansion in the economy, governments and private sectors need long-term capital to finance new projects, exploit new business opportunities and expand existing businesses. The stock exchange market promotes effective utilization, formation and allocation of capital resources. Through the market economic sectors, especially industry, are provided with the required resources to increase production and productivity which can lead to the growth of the overall economy. These capital

recourses are offered as non-debt financial capitals, which can help government and private sectors to achieve more productivity and growth without the weight of debt on their shareholders (Osinubi 2004).

Along with the mobilization of capital, the stock exchange market contributes to economic development as it enhances liquidity of capital. Liquid equity markets help to allocate savings and resources to profitable investments that involve a long term commitment of capital. Investors in the stock exchange market are more willing to invest in long-term investments as they will always have the option of selling stocks and liquidating their savings. Investing in stock exchange market allows people to increase their wealth by investing their savings in long-term profitable investments without the fear of losing control over their finances (Levine & Zervos 1998).

Moreover, the stock exchange market increases economic growth as it can reduce the cost of information. An effective and efficient stock exchange market reduces the cost of information through the dissemination and generation of information that determines a firm's stock price. Such accurate information improves firms' performance and investment opportunity which by necessary facilitate the resources allocation. Any investor in this market can decide either to invest in a firm or sell its stocks based on the stock prices and other available information, thus reducing investors' risks and increasing their chance of making better investment decisions (Nowbutsing & Odit 2011). As a result, resources and savings are more efficiently allocated which increases the national economic growth rate (Petros 2012).

The stock exchange market provides many benefits as well as risks for shareholders. Either local or foreign investors who wish to invest in the stock exchange market need to have an understanding of the possible benefits and potential risks. Investing in the

stock exchange market provides investors with the opportunity of achieving capital growth. Usually, the reason behind people investing in the stock exchange market is raising their capitals and wealth as well as protecting their capitals from inflation. Moreover, investment in the stock exchange market allows investor to have financial control over their shares. This control is offered to shareholders as shares can be purchased and sold online with no ongoing expenses, conveyancing costs, or stamp duty (ASX 2011). On the other hand, there are many risks and disadvantages of the investment in the stock exchange market as it can be unpredictable and unstable as well as unaccountable. Investors can be at risk of losing their capital if there is a crash in the stock exchange market which causes a decline of shares prices. Most importantly, when a crisis occurs in a nation, shareholders may panic and withdraw their share which causes the stock exchange market to crash and investors to lose their capital. Investors can also under risk of making poor investments decisions based on poor recommendations which can lead to capital loss. Moreover, investing in shares in the stock exchange market is also susceptible to volatility. Investors need to accept the fact that their shares can fluctuate and in some cases may decline and never recover. Therefore, local and foreign investors are required to make smart and careful investment decisions as the ownership of stocks is a profitable market for long-term investment. However, it can also be an uncontrolled and unpredictable market (Pentheny 2009).

Stock exchange markets are deemed to be one of the essential institutions that strongly participates in the growth of emerging countries (Mañas 2005).The development of the stock exchange market contributes to increasing a nation's economic growth and stability. In fact, the benefits continue to affect investors as the stock exchange market increases shareholders' wealth and raises capitals. Thus, governments are continually developing this market in order to expand economic growth and guarantee financial

stability. One of the most important and effective approaches to enhancing the stock exchange market is attracting foreign investors. The reason behind the attraction of the foreign investments is resulted from the outstanding performance and returns that those investors have achieved in their own country. Opening the door for foreign investors to invest in the domestic market can contribute to a rapid increase in economic growth; however, it can also harm both the economy and local investors (Claessens 1995).

Foreign investments can finance local companies with either shares or bonds. These financial resources can assist local companies in long-term investments and thereby contribute to growth of the economy. Moreover, foreign investment can increase financial stock liquidity, where shares can be bought and sold quickly. As a result, the demands and value will increase while the cost of acquiring capital decreases which can stimulate the nation's financial market. In addition, foreign investments can develop accounting rules in the domestic market and improve systematic market reports which can enhance the level of corporate disclosure as well as transparency. More importantly, in many domestic firms a minority of local shareholders often do not practice their voting rights which give the board of directors and major shareholders the opportunities to impose rules and control decisions making. Foreign investments in local firms can limit the board of directors and major shareholders' power as foreign investors will regularly exercise voting rights, thereby overcoming corporate corruption and protecting firms and investors from the misuse of power. Furthermore, the flow of overseas capitals and the existence of foreign investment can develop and enhance the relationship between the domestic market and foreign institutions (Mohammed 2012).

Foreign investment on the other hand can harm economic growth and negatively affect a nation's financial stability. Foreign capital is invested in host countries for a specific period of time ranging from years to decades but will eventually be withdrawn from the

domestic local market. This withdrawal could be sudden which could lead to the collapse of the national currency and harm local investors as well as the nation's economic growth (Al-Ziyra 2009). Price fluctuation and short-term hot money are also issues that foreign investors bring to the domestic market and can lead to stock prices fluctuating when there is a strong withdrawal of capital and, in worst case scenario, the collapse of the market (Saha 2009; Sameera 2014).

This indicates to the importance of regulations to protect local and foreign investors in the stock market. Indeed, regulations and their effectiveness are considered a major attraction to foreign investments. Investors from either an emerging or developed market are looking for a stable nation in which to invest. Usually, foreign institutions search for investment opportunities in nations that are politically stable and enjoy economic growth. It could be said that one of the rationale of publishing such rules or regulations are to improve the efficiency of the local economy (Avgouleas 2005).

Political openness and the level of liberalization of a nation are attractions for foreign investors. These two factors guarantee the stability and safety of their investments, given that investing in the stock exchange market requires long-term commitment of capital (Faheem et al. 1991). There are also other factors that attract foreign capital such as market size, labour costs and productivity, infrastructure and more importantly regulatory frameworks (Demirhan & Masca 2008).

The liberalization of the stock exchange market helps in attracting foreign investors, especially when national regulations permit the direct foreign investments. The importance of the legal and regulatory frameworks is that they boots confidence for foreign investors and provide a sense of safety and protection. Moreover, they protect the local investors' rights and secure their investments from interventions and

manipulations of foreign investors (Aduda, Masila & Onsongo 2012). Thus, the strength of legal and regulatory frameworks and their level of effectiveness determine the degree of nation's economic growth. These frameworks in fact attract foreign investment, protect local investors and provide economic stability.

Therefore, in a step towards liberalizing the Saudi stock exchange market, the Saudi Arabia government allows foreign investors to invest directly in the stock exchange market. In 2015 it published the Rules for Qualified Foreign Financial Institutions Investment in Listed Shares as an attempt to regulate foreign investors' operations in the Saudi stock exchange market. This research investigates the effectiveness of the rules in attracting foreign investment as well as protecting local shareholders' rights. The research discusses a case study that compares the Gulf Cooperation Council countries and Australia.

There are several reasons for selecting the GCC countries to compare the regulations in the Saudi stock exchange market with regulations in these countries. The first is the nature of the relationship that the Kingdom of Saudi Arabia enjoys with the GCC countries. The GCC countries, including the Kingdom of Saudi Arabia, have reached an agreement that makes no distinction between local and foreign investors. Moreover, the GCC countries share the same religion, language and culture. In fact, they share very similar systems that are founded on Islamic law.

The reason for selecting Australia is its strong financial system and economic growth making it one of the most developed countries in the world. In addition, the country has strong regulations on foreign investment and effective implementation of regulations in the stock exchange market to provide protection for local and foreign investors (Saidi, Prasad & Naik 2012).

### **1.3 Historical Background**

On 21st of August, 2014, and based on The Council of Ministers' Resolution No (388), the CMA took the decision to permit the foreign financial institutions to invest and trade shares in the listed companies of the Saudi Stock Exchange market. The CMA published the draft of the Rules of Qualified Foreign Financial Institutions investment in Listed Shares for consultation on its website for 90 days to allow interested parties sufficient time to provide comments and observations. This feedback was then reviewed by the CMA board, as well as relevant government parties. Later on, on the 16th of April 2015 the CMA Board after receiving a confirmation of readiness from the Saudi Stock Exchange (Tadawul) developed a timeline for implementing the Council of Ministers' Resolution. The Draft Rules are a significant step towards improving the investment climate and opening up the capital market for foreign investment. The CMA further amended these regulations in 2016 to attract foreign investors.

The Saudi stock exchange market is considered the largest securities exchange in the GCC region by market capitalisation, which currently stands at more than US\$ 530 billion. The Tadawul is also the most important stock exchange market in terms of daily trading volumes and the most diversified in terms of issuers (Al-Sudairi Salman et al. 2014). Moreover, the Saudi stock exchange has a market cap greater than all other GCC countries combined together, which means logically the Saudi market will attract more than the total foreign investments in the GCC (Devassy 2015, cited in Al Rajhi Capital Report 2015). This will probably increase, especially after the possible inclusion of Saudi Arabia into the Morgan Stanley Capital International (MSCI) emerging markets index. However, previously the CMA limited direct investors to Saudi and other GCC investors, including foreign investor who is resident in the GCC. At the same time, they limited the investors from outside the region investing indirectly, such as back-to-back

swap arrangements and mutual funds. With the current reforms in regulations in Saudi Arabia, the restrictions on foreign investment have been included in the Rules of Qualified Foreign Financial Institutions Investments in Listed Shares. This further development of the rules clarifies and organizes the foreign investment environment.

#### **1.4 A brief explanation of the new Rules**

In the recent years, foreign investors have the opportunity to invest in the Saudi Stock Exchange (Tadawul) but only through the foreign investments institutions. The Saudi capital market provides foreign investors with property rights which will allow them to participate effectively in the market. Moreover, foreign investors can legally possess stocks and sit their representatives on corporate boards.

The Capital Market Authority has developed, published and implemented the Rules for Qualified Foreign Financial Institutions Investment in Listed Shares in 2015. These Rules indicate the requirements and conditions for qualified foreign investors to register with the CMA. These rules also determine the procedures for investing in the Saudi stock exchange market as well as specify the responsibilities of the authorized persons during the interaction with qualified foreign investors.

According to the Rules of Qualified Foreign Financial Institutions Investments 2015, Article 1:

- a. The purpose of these Rules is to set out the procedures, requirements and conditions for the registration of qualified foreign investors (“QFIs”) with the Authority of the local shareholders, and to specify their obligations and the obligations of authorised persons in this regard.
- b. These Rules shall be read in conjunction with and in addition to the Capital Market Law and its Implementing Regulations, including, the Listing Rules, the Market

Conduct Regulations, the Authorised Persons Regulations, the Merger and Acquisition Regulations and the Anti-Money Laundering and Counter-Terrorist Financing Rules.

c. These Rules shall not apply to Citizens of the Cooperation Council for the Arab States of the Gulf.

d. QFIs and approved QFI clients are entitled to exercise all rights related to listed shares owned by them, including trading in rights issues (p.2).

The Rules for Qualified Foreign Financial Institutions Investment in Listed Shares have covered the following:

- Registration conditions
- Registration procedures
- Determination of applications
- Further requirement
- Continuing obligations
- Authorized person obligations
- Power of the authority in relation to QFIs

The CMA Board of Commissioners in 2015 published the Frequently Asked Questions document No (3-42), with the aim of providing foreign investors with clarification of the Rules. The Frequently Asked Questions document has been published on the CMA's website as well as the Saudi Stock Exchange's Website (Tadawul).

## **1.5 Aims and context of project**

Rapid changes in the financial system and stock exchange market operations have raised many issues in regard to security and safety. The undeveloped legal frameworks and the weak enforcement of laws have weakened economic growth instead of developing it. The importance of the strong regulations has increased because recently local investors have increased investment in the stock market. The existence of foreign investment in

the Saudi stock exchange market has raised some concerns. One is that foreign investments may exacerbate swings in the market, which could cause an increase in price correction. There were also allegations that the liberation of the Saudi market gave foreign investors an opportunity to access huge government subsidies that are granted to certain sectors and companies in the Saudi Kingdom. In the worst case scenario, this could cause a foreign financial crisis similar to the one in financial markets in Europe as a result of the repercussions of the credit crunch in the United States of America. Moreover, financial crises caused by the Asian tigers in 1997 and 1998 led to a high price and increased fear of foreign investments. That increased the risk of hot money which is known to be the most serious cause of price inflation and financial or economic disasters (Mishkin 1999). This will be discussed further in chapter 6. Thus, the primary aim of this research is to assess the effectiveness of the Qualified Rules in protecting local shareholders' rights from foreign investments after the liberalization of the Saudi stock exchange market. Also, the establishment of the Foreign Financial Institutions Investment Rules aims to attract foreign investors as well as regulate their operations in the stock market. These rules will benefit foreign investors and provide more opportunities to invest directly in Tadawul listed companies in terms of improving the position of investors. This explains the action of the Saudi Arabian policymakers who have shown a great interest in attracting and encouraging foreign institutions to invest directly in the Saudi stock exchange market. Therefore, this research also aims to assess the efficiency of these rules in relation to attracting foreign investment in the local stock market. More importantly, it aims to identify any rules that foreign investors might utilize to jeopardize the market stability and local interests and weaken economic growth. This research is essential as the new regulations in the Saudi stock exchange market might be insufficient to protect local shareholders' interests and could

consequently endanger the stock exchange market and lead the financial system in Saudi Arabia into crisis.

Moreover, this study aims to evaluate the effect of allowing foreign investors to invest in the Saudi stock exchange market. In view of the fact that the general trend of the Saudi Arabia policymakers is to attract foreign investments for the purpose of enhancing economic growth in the country, it is important to evaluate the level of growth after the country allowed foreign investment. Hence, this research also aims to identify and evaluate the level of growth that occurred after the liberalization of the Saudi stock exchange market. This research also recognizes the cultural and religious differences in the legal regime underpinning different jurisdictions to identify any apparent gaps in the law by comparing the rules in Saudi Arabia with Australia and the GCC countries. The chosen countries have a reputation for effective regulation of the stock exchange market. The final aim of this research is to propose recommendations based on the findings.

## **1.6 Research Questions**

It is worth noting that the CMA has made steps towards opening the stock exchange market for foreign investors and similar constructive reforms in this direction by applying the best financial standards and rules of the market, which were previously lacking in the Saudi market. As in the case of emerging markets such as South Korea and India, the Saudi authorities adopted a flexible methodology in dealing with the participation of foreign institutions in the local stock exchange market and the development of appropriate restrictions. Despite outstanding benefits that foreign investors bring to the Saudi economy, their existence in the Saudi stock exchange market put both the economy and local shareholders at risk. The regulators in the Saudi

capital market therefore developed the Qualified Foreign Financial Institutions Investment Rules in 2015 to protect the market and the economy from financial and economic risk. The local shareholders might face a risk of losing capital in situation of instability or economic crises in foreign investors' home country. Foreign investors may withdraw their investments suddenly and crash the Saudi market. Such risks concern many shareholders in Saudi Arabia as they consider the existence of foreign investments may jeopardize their investments. Therefore, the central research question addresses the protection of local shareholders rights in the Saudi Joint Stock market.

The proposed research attempts to answer the following questions:

- How can these rules protect the rights of local shareholders?
- To what extent can these rules be effective in protecting the rights of local shareholders?
- What are the weaknesses and strengths in these rules in regard to the protection of the local shareholders' rights?
- How can these rules attract direct foreign investments in the Saudi stock market?
- To what extent can these rules be effective in attracting foreign investors?
- How can these rules protect the Saudi economy and stock exchange market from the associated risks that come with foreign investments?
- To what extent might foreign investment benefit the Saudi economy and local stock market?

## **1.7 Contribution of Knowledge and Statement of Significance**

### **1.7.1 Contribution to Knowledge (Academic Contribution)**

This proposed research will contribute to and enhance knowledge in many aspects. It will conduct and explore an area not previously covered by researchers. There are several studies about protecting shareholders rights that focus on different aspects such as minority protection (Alexander 2014), corporate governance protection (Khalid 2011), and the protection of shareholders' rights in Saudi company law 1965 (Al-Zahrani 2013). However, no research has ever attempted to investigate the effects of the Rules of Qualified Foreign Financial Institutions Investment in Listed Shares in attracting and protecting the rights of local shareholders. While several researchers have focused on the importance of protecting foreign investors (Jacob 2010; Perkams & Hosking 2009), this research will focus on the protection of local shareholders rights from foreign investors after the liberalization of the Saudi stock exchange market.

This research will analyse the advantages and disadvantages points in regard to the protection of the local shareholders' rights after the publication of the Rules of Qualified Foreign Financial Institutions Investment in Listed Shares. This research in fact is worthwhile as it will cover a neglected area that has never been covered. It is somewhat surprising that there has been no previous research examining the effects of these rules, especially in developing countries such as the Kingdom of Saudi Arabia.

This study is the first research to investigate the rules for Qualified Foreign Financial Institutions Investments in Listed Shares in 2015 which make it valuable. It also aims to analyse these rules and identify any potential or existing gaps. This research will be the first study that should assist the Capital Market Authority in reconsidering the effectiveness of these rules and addressing any existing gaps.

This research aims to add and enrich the academic legal references and resources in the kingdom of Saudi Arabia, especially in subjects that concern and affect the majority of the community.

### **1.7.2 Statement of Significance (Practical Contribution)**

It is commonly understood that liberalisation of any market in general leads to an increase in the volume of national investment and resulted in expansion of investors base, which leads to increased savings and liquidity for the private sector as well as local institutions. The entry of foreign investment into the domestic market improves the acquisition of information as foreign investors usually demand a high level of transparency. When transparency increases, the market becomes more appealing to foreign investors. Therefore, the liberalisation of the stock exchange market in Saudi Arabia helps to increase market efficiency, improve the investment environment and boost the financial system (De la Torre, Gozzi & Schmukler 2007).

Nevertheless, opening the stock exchange market to foreign investment involves a high risk to local shareholders by potentially exacerbating swings and increasing price correction in operations. Therefore, the Capital Market Authority in the Kingdom of Saudi Arabia has established the Rules for Qualified Foreign Financial Institutions Investment in Listed Shares 2015 as a part of its responsibility to protect the rights of local shareholders as well as the stability of the stock market. The approach to make these rules effective in achieving its aims can be accomplished by boosting disclosure and providing adequate financial information on a regular and an immediate basis. The implementation of the Rules for Qualified Foreign Financial Institutions Investment in Listed Shares 2015 can eliminate and prevent fraud and manipulation in trading operations in the Saudi stock exchange market (Abu Amsa 2013).

It is worth noting that the main aim of this study is the protection of the local shareholders' rights. Thus, this research project sets out to measure the extent of the protection of the right of local shareholders in joint stock companies based on these rules. It also investigates long-term performance and examines the comprehensive approach of other countries such as the GCC and Australia. This research may produce useful and practical results that can assist the Kingdom of Saudi Arabia in improving the trading experience on the Saudi stock exchange market and avoiding repeating earlier mistakes. The outcomes of this research are expected to have a direct impact on Saudi society. In fact, these outcomes may ease the path for the Capital Market Authority in the Kingdom in developing its operations and extending its horizons.

This research will apply the qualitative and analytical methods to analyse current rules regarding foreign investments in the Saudi stock exchange market. It will also adopt a comparative method in analysing the Saudi rules with those of other GCC countries and the Australian regulations. The result of this comparison will be supported by international reports and organizations like MSCI.

## **1.8 Structure of the Thesis**

The structure of this thesis comprises eight chapters, starting with an introduction in chapter 1 that includes the importance of the study, objectives, research questions, and contribution to the knowledge. The others structures shall presented in the following sequence:

### **Chapter 2**

This chapter defines the stock exchange market and foreign investments from the perspectives of Saudi rules. It also discusses the factors of attracting foreign investors as well as their possible benefit and harm in the local stock exchange market.

The chapter presents an overview of the literature in regard to the protection of the host country market and possible effects of foreign investment on its stock exchange market. It also reviews the literature on various aspects of protecting shareholders and foreign investment influence in accordance with Saudi rules and regulations.

### **Chapter 3**

This chapter provides an historical review of the Saudi stock exchange with further explanation of the Saudi legal system and the strength stages of its local market. In respect to the research aims, the chapter presents a brief background of stock exchange markets in other selected countries. It also highlights foreign investors' ownership in the stock exchange market of these countries. The chapter provides statistics that show foreign investment flow in each sector of stock exchange markets.

### **Chapter 4**

The chapter describes the research methods and data collection techniques. It also justifies the reasons for adopting the research method as well as the model of examining the Qualified Foreign Investment Rules. It discusses the conceptual framework in terms of the relationship between foreign investment regulations and local stock exchange markets.

### **Chapter 5**

This chapter discusses the level of attracting foreign investment to the Saudi Stock Exchange based on the Qualified Foreign Investment Rules. It attempts to analyse the most feedback from foreign investors provided to the researcher by the CMA. Moreover, it investigates the level of attraction between the first and amended copy of Qualified Foreign Investment Rules. The analysis covers the recent statistics of foreign

investment flow and relies on points of view of experts and organizations. The examination also shall be in light of comparative analysis with the GCC countries and Australia.

## **Chapter 6**

This chapter explains the protection of Qualified Foreign Investment Rules as well as the role of Saudi entities and regulations in supporting the protection of local shareholders. It investigates the extent of the power of the CMA to the authorised persons and QFI. It critically looks at the strengths and weakness in the current rules in order to evaluate their level of protection as well as protection provided by other Saudi regulations and Islamic law. In addition, it examines the most essential regulations such as the Resolution of Securities Disputes (CRSD) and Saudi Corporate Governances Law and discusses what supports the level of protection. It also reviews the debate about hot money in the case of the Saudi stock exchange market. Finally, it discusses how other selected countries protect their local stock exchange market in comparison to the Saudi rules and regulations.

## **Chapter 7**

This chapter presents the results based on the investigation of this thesis. It implies to the strengths and weaknesses of the Qualified Foreign Investment Institutions Rules. It also analyses the positive influence of foreign investment on reforms of legal regulations in Saudi Arabia. Moreover, it discusses expectation of foreign investment flow toward the Saudi stock exchange market following the recent reform of its rules.

## **Chapter 8**

This chapter summarises and highlights the most important outcomes of previous chapters. Based on the discussion and finding, the chapter presents recommendations that might assist the CMA to improve or amend its rules. The chapter then suggests further research to increase the knowledge of the stock exchange market rules and foreign investors' activities.

### **1.9 Conclusion**

This chapter outlined the importance of this thesis in analysing the impact of the recent rules of foreign investment in the Saudi stock exchange. It provided a brief explanation and historical background to the Qualified Foreign Investment Rules. It reviewed the research questions and justified the reasons for the investigation. The contribution of the thesis to academic and practical knowledge was also discussed in the chapter.

## **Chapter 2**

### **Literature Review**

#### **2.1 Introduction**

This chapter reviews the literature in relation to protecting local shareholders' rights. It also points to the possible effects of foreign investment on the local stock market, particularly in Saudi Arabia, and analyses the literature on the effects of foreign direct investment (FDI) in various local stock markets around the world. The chapter is structured as follows. Section 2.2 presents the definitions followed by the importance of the stock market in section 2.3. Stock market characteristics and stock market types will be discussed in section 2.4 and 2.5 respectively. The main factors in attracting foreign direct investment are reviewed in section 2.6, followed by possible benefits of foreign investors in stock market in section 2.7. Section 2.8 provides an overview of protection in previous studies and the importance of protecting the right of local shareholders in 2.9. Studies of the effect of foreign investors on the local stock market will be reviewed in section 2.10, while the limitation of existing literature and gaps will be identified in section 2.11. Finally, section 2.12 will present the conclusion.

#### **2.2 Definitions**

##### **2.2.1 Stock Market**

The stock market is considered one of the most vital components of a local economy in terms of providing companies with capital while at the same time giving rights to local and foreign investors to own shares in the company. The concept of the stock market can be viewed as a meeting place in certain hours where transactions are made by

brokers who are usually qualified. This type of transaction deals with customers in very transparent and a clear way (Swalem 2001).

The executive regulations of Capital Markets Authority in Kuwait 2010 define the stock market as:

The place where stocks and other securities are bought and sold. A Stock Exchange Market follows the procedures applicable to trading and carries out the usual functions of a stock market in accordance with the standards and regulations issued by the Authority (p.20).

In essence, the stock market gives customers the opportunity to buy and sell securities through institutional, banks and brokers who carry out and complete securities exchange deals (Steiner et al. 1952).

### **2.2.2 Investment in the Stock Market**

While the role of the stock market is clear, it is necessary to understand the meaning of investment in the stock market. Investment in the stock market is considered the consequence of an investment process that desires to own financial assets such as stocks, bonds and certificates of deposit. The owner of the financial paper has the right to obtain these securities or shares from the revenues of the company's assets (Mater 1999).

The securities Commission Emirati has narrowly defined investors in the stock exchange market as dealers who purchase and sell securities under his or her name and for his or her account number whether getting the agreement by the market directly or through a mediator (Private Financial System Trading, Clearing and Settlement, Transfer Ownership and Custody of Securities in Emirati 2000, Article 1).

### **2.2.3 The Meaning of Securities**

The glossary of defined terms used in the Regulations and Rules of the Capital Market Authority (2014) defines securities as any of the shares, debt instruments, warrants, certificates, units, options, futures, contracts for differences, and long term insurance contracts.

It would appear that the most trading of securities in the Middle East are shares which represent the quota provided by partners when they contribute to the company's project (Swalem 2001).

### **2.2.4 Local Shareholders**

There is no specific definition of local shareholders in SCL 1965 and the RQFFII. However, a shareholder is any person who legally owns one or more shares of the company, whether he owned them when the company was started, or after it was founded (Al-Zahrani 2013). Consequently, a shareholder has a range of different rights and obligations (Saudi Company Law 1965 Article 96).

### **2.2.5 Foreign Direct Investments**

Foreign direct investment can be defined as the state or its nationals owning securities that are issued in another country, which may lead to ownership or controlling interest of local companies. The owner of foreign investment is able to exercise those rights and duties. (Darren 2009). Foreign investment also refers to the settled investors in their countries who buy stocks and bonds issued into the host country without being accompanied by the investor assets that owned the shares (Al-Ziyra 2009). According to Saudi Mining investment law 2004 Article 1, foreign investment can be defined as:

Investment of Foreign Capital in a licenced activity under this Act and foreign capital as money, instruments, securities and commercial instruments; foreign investment profits if reinvested to increase capital, expand existing investment entities or establish new ones (p.2).

The United Nations Conference on Trade and Development (UNCTAD) defines FDI as an investment involving a long-term relationship and reflecting a lasting interest which may control a resident entity in one economy. These investors have sought through this relationship to control the projects or institutions belonging to the host country (UNCTAD 1999).

### **2.2.6 Foreign Investors in the Saudi Stock Market**

As this research deals with foreign investment in Saudi Arabia, particularly in the stock market, these definitions should provide a clear picture in order to understand the meaning. According to Yannaca-Small (2008) investors might be a person or a legal entity. The Capital Market Authority in Article 2 of its Rules 2015 defines a qualified foreign investor as: “A foreign investor registered with the Authority in accordance with these Rules to invest in listed shares” (p. 3).

Foreign investors who under this subject have the right to appeal as Article 4 of these rules note that foreign investors or: “Any person subject to these Rules may appeal to the Committee in respect of any decision or action that the Authority takes under these Rules” (p.3).

In addition, in Article 3, if foreign investors or their clients under this definition have broken the law then;

The Authority may waive a provision of these Rules in whole or in part as it applies to an applicant, a QFI or any of their clients or an authorised person either on an application from any of the aforementioned persons or on the Authority's own initiative (p.4).

The Saudi Arabian Citizenship System Article 11(1955) defined foreign investor as a person who does not have a Saudi nationality and his investment in Saudi Arabia does not give the right to apply for a citizenship. The individual remains as a foreigner in the Saudi state, no matter how long he or she stays in the country, until granted citizenship.

Similarly, the Foreign Investment Law in the Kingdom of Saudi Arabia 2000 Article 1/E defined foreign investors as: “A natural person who is not of Saudi nationality or a legal person whose partners are not all Saudi” (p.2).

Importantly, the Saudi Capital Market Authority 2015 noticed in Article 1, that the investors from the GCC countries are not included as foreign investors. “These Rules shall not apply to Citizens of the Cooperation Council for the Arab States of the Gulf” (p.2).

The Foreign Acquisitions and Takeovers Act 1975 defined foreign investors as following;

'Foreign person' means:

(a) A foreign corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest; or

(b) A foreign corporation in which 2 or more persons, each of whom is a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest (p.14).

It is obvious that from the above definitions of foreign investors that the meaning is mostly around the one who does not have citizenship of the country.

### **2.3 The Importance of the Stock Market**

The capital market plays the role to bring long term financial resources to the local economy. However, one of the most integral parts of the capital market is the stock market, which is associated with economic improvement. In general, the stock exchange market may reflect local economic performance particularly of listed companies (CMA 2016i). The importance of the stock exchange market is to provide financial resources to a corporation through the sale of securities from stocks and bonds. Moreover, it assists investors to access investment opportunities that fit their goals, easily complete financial deals and speed the implementation processes of buying and selling financial assets (Mañas 2005). More specifically, stock exchange market contributes to indirectly acquiring funds for financial projects through liquidity provision to ensure the purchasing of shares (Alsultan 2014).

The securities market is considered as an important part of savings and investment in the economic system. It leads both the public and private sectors to increase the vitality of projects, attract financial surpluses and use them effectively. Also, the stock exchange market can revitalize the national economy during economic development by encouraging corporations to create the right climate and improve their corporate work style (Alsultan 2014).

### **2.4 Stock Market Characteristics**

Generally, stock markets have some characteristics that distinguish them from other markets such as commodity and real estate markets (CMA 2016i). In securities markets, however, the capital market is linked to long-term securities and earned a special

importance to financial products that need a large amount of capital in the long-term. Furthermore, stock markets are more systematic than the traditional markets. It means that the capital market has a high degree of specialization and skills in financial transactions. The yield of the capital market is mostly high, but the risk also is higher because of the fluctuation in bond and stock prices. Finally, the capital market needs for its success an active secondary market so that the owner of the securities can sell whenever he wants, even before the due date (Qatrouz 2004).

## **2.5 Stock Market Types**

There are two main types of stock markets: primary markets and secondary market.

### **1. Primary Market**

This market is considered to be the original source of securities. It gives the buyer the opportunity to trade and own in the securities market. Also, it specialises in new stocks and bonds for newly established companies (CMA 2016i).

### **2. Secondary Market**

This is the substantial type of trade on the stock market, where dealers can sell and buy the shares in the trading market hall. This trade must be done through agents and brokers (Qatrouz 2004).

This market is divided into two parts:

#### **A. Organized Security Market**

The trade in this market must be through the laws and regulations set by the state, through the Central Bank and the Finance Ministry. This market only allows trade for companies that meet the listing requirements of the management of the security market.

The marketing management job is to monitor and regulate the process of trading to protect the interests of investors.

#### B. Over the Counter Market

Transactions that are not traded in an organized security market are called non-performing transactions and are included in the market shares of companies that do not meet the conditions for inclusion in the regular market (Alshamery 1999).

### **2.6 The Main Factors in Attracting Foreign Direct Investments**

It should be emphasized that economic theories need to be reviewed in order to keep pace with the development in global trends. The appropriate investment environment does not only depend on the tax exemptions and facilitated registration and licensing, but also extends to include a package of various elements that must be combined as follows (Dutta & Roy 2009; Elasrag 2005):

1. The stability of macroeconomic policies considered necessary to take advantage of the potential benefits of financial globalization;
2. The industrial integration and monetary, financial, commercial and operational policies needed to encourage investment and enhance the investment environment;
3. The system of law must be effective and efficient which requires revising and updating the law. That will stimulate investment and enact new laws that fit with both domestic and international developments;
4. The stock market authority should facilitate administrative procedures associated with the activity in all investment institutions. This step is not only limited to the licensing and registration period, but also includes the

identification of obstacles and problems that might investors face as well as solutions;

5. The authority should intensify supervision to boost confidence in the investment environment in order to ensure peace of mind for investors, and to fight corruption and management misuse; and
6. It is important to provide fiscal incentives and grant exemptions in order to encourage projects that add benefits to the national economy. That includes requiring an investment map which integrates with a development plan.

Having said this, it is important that foreign investors carefully assess the efficiency and effectiveness of the financial market before making decisions, including the operational efficiency, market mechanisms, technology use, speed of implementation processes, fair trading environment, market liquidity (depth and breadth) and market integration with the other markets in the region. Thus, the Capital Market Authority should increase the efficiency and reduce risks in order to attract more investors (Abu Amsha 2013).

## **2.7 Possible Benefits of Foreign Investors in the Stock Market**

Foreign investment plays an important role in the revitalization of financial markets through the following (Abu Amsha 2013; Mohammed 2012; Qatrouz 2004):

1. A direct contribution to financing local companies in the primary market either in the form of financing (bonds) or participating in property (shares);
2. Increasing the degree of liquidity of stocks where investors can buy and sell quickly and get money. That leads to an increase in demand, raises value and decreases the cost of obtaining capital which in the end activate the financial market;

3. Foreign investment contributes to the development of accounting rules and systems market reports in a local capital market as well as raising the level of corporate disclosure. Corporate performance can be impacted by foreign investor demands for better rules, regulations and information systems. Moreover, foreign investors look to the availability of an advanced level of services that helps to trade like brokerages, conservation, depository, clearing and settlement, which leads to growth and efficiency of emerging markets; and
4. Foreign capital flow leads to the creation of an efficient relationship between the domestic market and foreign financial institutions that have advanced technology which can attract more flows and increase knowledge of these markets.

## **2.8 Protection the right in Previous Studies**

The few studies in Arabic literature on this topic focus primarily on the benefits of opening the stock exchange market for the country's economy and local investment. Most support development of the stock market, while keeping a focus on the potential dangers to shareholders rights.

Furthermore, many studies have indicated the importance of protecting foreign investors (Jacob 2010; Perkams and Hosking 2009) as international investment agreements ("IIAs") are designed to protect foreign investments against certain political risk that might arise in the host state, particularly with countries having dictatorial or weak regimes (Perkams & Hosking 2009).

However, there is a need to look at the importance of protecting local shareholders from foreign investors, especially from hot money that is aimed mainly at rapid "short range" price speculation. Foreign investors are usually more aggressive than local investors

about placing orders because they do not trade as often as locals (Sudiman et al. 2013). Against this background, this study will raise awareness by finding out how these rules will enhance shareholders' rights in Saudi Arabia.

As many researchers have an interest in shareholder issues, the protection of rights is considered one of the most popular subjects in corporate law and has been examined from various angles.

Burce (2009, cited in Campbell 2009) investigated shareholder protection rights in New Zealand and concluded that there is no distinction in domestic law between nationals and internationals in terms of protection, property rights and interests. His research examined the benefits of foreign investment and focused on protecting shareholders rights based on the stock exchange listing rules.

In terms of finding the issues of protecting the minority of shareholders in the stock exchange market, Alexander (2014) investigated the efficiency of protecting the right of the minority of shareholders in the Russian stock exchange market with the aim of developing measurement to create an effective system to protect minority shareholders' rights.

Another study by Khalid (2011) focused on the rules and applications of corporate governance in the context of examining their effect on the stock market. This study found that corporate governance needs to develop a comprehensive policy framework based on regular disclosure, transparency, and the protection of shareholders' rights in order to enhance the performance of the securities market in developing economies.

Al-Twaijiry et al. (2002) examined the role of audit committees in the Saudi corporate sector. They found that audit committees in the Saudi joint stock companies do not have

the power to control the board of directors or enhance the position of external and internal auditors. Moreover, they do not have the ability to protect the shareholders rights. The authors noted that the shareholders' position is still very weak in Saudi Arabia.

Finally, Al-Zahrani (2013) conducted research on protecting the rights of shareholders under Saudi Company Law 1965. He found that SCL 1965 does not adequately provide minority shareholders with all the rights that they should enjoy. This law has been not modified to any significant degree since 1965 and is still not sufficiently effective. Al-Zahrani also concluded that the SCL does not address many important issues relating to shareholders' rights in listed companies.

In addition, La Porta et al. (1998) argued that countries using civil law are the weakest while those using common law are the strongest in terms of legal protection for investors. Given that Saudi Arabia is one of the civil law countries, this implies that its rules about foreign investment need to be investigated.

As Saudi stock exchange market rules for foreign investors have only been recently established, this research aims to fill this gap, by closely examining the recent Rules for Qualified Foreign Financial Institutions Investment in Listed Shares 2015 in the Saudi Kingdom and their impact on shareholders rights.

## **2.9 The Importance of Protection of the Rights of Local Shareholders**

With the effects of globalization, trade barriers seem to continue to collapse. Investors can now easily invest their money from one country to another, with the aim of owning shares in different companies. Nevertheless, it will be increasingly important for countries to take into account advanced regulations in order to attract more investors

from abroad. In emerging markets a good system will guarantee local and foreign investors that the stock market authority controls both companies and shareholders. It will ensure that the managers of these companies will be supervised which encourages them to be honest and effective. Indeed, there is a strong relationship between the effective protection of shareholders and economic development (Al-Zumai 2006; Campbell 2009). The primary purpose of such protection regulations is to confirm that the local shareholders have their rights protected and foreign investors are not misusing their corporate powers. It has been argued that most countries in the Middle East do not pay enough attention to theoretical justifications such as the principles of justice and fairness behind the necessity of protecting local shareholders. They should not be violated by any stronger party such as foreign investors' institutions as they can use their power to influence company's decisions (Abu Amsa 2013). The Global Corporate Governance Principles of the International Corporate Governance Network ICGN (2009) have noted that the: "Boards should treat all the company's shareholders equitably and should respect and not prejudice the rights of all investors".

In Saudi Arabia, since the SCL 1965 was established, shareholder protection has been addressed in various articles. In addition, the other regulations have also indicated the protection such as the Saudi Corporate Governance Regulations (2006), the Saudi Market Conduct Regulations (2004) and the Saudi Listing Rules (2004). These regulations emphasize that protection of shareholders must be subject to the provisions of any further rules.

The Kingdom of Saudi Arabia is one of many countries that follow civil law. According to Lazarides (2009) markets in civil-law countries do not have the same legal capacity to control and monitor companies. Common law countries provide stronger protection

to the shareholder, whereas civil law countries provide the weakest protection of all legal systems (La Porta, Lopez-de-Silanes, et al. 1998). It is thus important to explore the new rules for Foreign Financial Institutions Investment in the Saudi stock exchange market.

During the past few decades there has been a dramatic increase in global capital flows which has led many researchers to assess the effects of investment flows into host countries. Indeed, the impact of foreign investment in the local stock exchange market has been a hot topic of academic research. There are a number of studies that have argued increasing the level of financial regulation in emerging markets will benefit local shareholders. Others believe that foreign investors can either positively or negatively influence the local stock market. The third type of studies indicates that cross-border investments may cause crisis in the local stock exchange market and impact on shareholders, which raises the issue of the importance rules to protect shareholders.

## **2.10 Studies of Foreign Investment Effects in the Local Stock Market**

### **2.10.1 Studies Supporting Positive Aspects**

Research has started to focus on the relationship between foreign investment and stock exchange market development, including the effects of foreign investment in emerging economies. According to Soumaré and Tchana (2015), there is a bidirectional link between FDI and stock exchange market development. Foreign investment can help to develop the stock exchange market by extending investment and developing stock exchange markets can help to attract foreign investors. In other words, the relationship between the FDI and stock exchange market development are highly correlated (Jeffus 2004).

Martin (2000) noticed that there are several advantages of FDI to the economy including the stock exchange market. Firstly, FDI helps to reduce the risk for capital owners when they diversify their lending and investments and to assure against financial crisis in the future. Secondly, capital markets can become part of the global integration that can improve practices in corporate governance and accounting rules. Thirdly, the global mobility of capital can impact on defective policies of governments. The host countries can get more benefits in terms of FDI will participate in training employee for their own businesses and sharing the profits generated from corporate tax.

Henry (2000a) and Acheampong and Wiafe (2013) noticed that the FDI has positive effects in terms of stock market liberalization as it increases the growth of investments and it may reduce the cost to the country when local and foreign investors share the risks (Henry 2000b). Empirical studies go further from this point to indicate that countries with more developed stock exchange markets, better legal systems and higher income were deemed to gain positive impacts, as evident in studies such as Bekaert et al. (2005), Durham (2002) Gupta and Yuan (2009), and Naceur et. al. (2008). In addition, Naceur et. al. (2008) who examined the effects in the MENA region realized that after comparing pre and post liberalization periods, there was significant improvement. Han Kim and Singal (2000) tended to conclude that the positive aspects outweighed the risks. They noticed that the increase in stock prices did not affect stock returns and it illustrated the importance of demand for local securities. As has been stated by the above-mentioned authors, Bekaert and Harvey (2000) also concurred with the last point and confirmed that an insignificant increase in the volatility of stock returns was an generally outcome of liberalization.

Agarwal and Mohtadi (2004) examined 21 emerging markets from 1980-1997 to gauge the relationship between financial market development and financing choices. They concluded in the study that FDI positively affects the stock market, particularly in banking sector.

Kalim et al. (2012) and Abdul Malik and Amjad (2013) examined the effect of FDI on stock market development in Pakistan. The results show a positive relationship between FDI and market capitalization. Basically, if the government in Pakistan took serious steps to develop their economy, this would be reflected in an increase of FDI. Likewise, Raza et al.(2012) found a similar result and noticed that a one percent increase in FDI would lead to about a 70% increase in the Pakistan stock market.

Agbloyor et al. (2013) investigated the link between financial markets and FDI in Africa from 1970-2007. The results showed that FDI flows can positively improve the stock exchange market and developing markets encourage further FDI to invest.

Adam and Tweneboah (2009) found that although previous research indicated negative impact on economic growth from FDI in Ghana, FDI can positively affect stock exchange market development. However, to attract foreign investors policymakers need to lift restrictions, improve strategies and offer economic incentives.

Baker et al. (2009) strongly supported the positive aspects of FDI with the source country stock market valuations, especially in the constituents that expected to come back in the next year. Moreover, FDI did not negatively impact on the host country valuations.

Babatunde (2011) examined the influence of financial liberalisation on financial development in eleven emerging countries. He found that the results were mixed based

on the three measures of financial liberalisation that were used. Overall, he noticed that financial integration causes an improvement in the stock exchange market and banking sector.

In a particular aspect, Ülkü and Weber (2014) indicated a significant interaction between foreign flows and market returns while comparing European emerging markets with Asian markets. Their findings suggested positive feedback in trading for some Asian markets.

Clark and Berko (1997), investigated if there was a significant relationship between foreign investors and the Mexican stock exchange market. They found that if foreign investors own one percent of market capitalization the price rises by about 13 percent.

Similar to this result, Reis et al. (2010) examined the link between foreign investors and stock returns in Brazil. They found that strong inflows of foreign investors raised stock returns between 1995 and 2005. The global stock index also indicated a positive relationship with returns. In contrast, they reported that there was a significant correlation between reducing foreign investors and weak returns.

Hanafi and Rhee (2004) investigated the impact of opening up markets on asset prices. They noticed that based on the progressive returns that have been shown, FDI had a positive effect. In this context, Wang, L-R and Shen (1999) focused on the effect of foreign investment on stock returns on Taiwan. They found that FDI has a moderate impact on the volatility of stock returns, but it was only a small component of stock market volatility as there are many factors that affect stock returns after foreign inflows.

Taher and Hassen (2013) also investigated the impact of foreign investment on stock market returns in 13 banks listed in the Iraq stock exchange. They found that there was

an increase in stock returns after foreign investors were admitted to the local stock exchange market, but no more activity in daily trading because of instability policies or the economy. However, they suggested that the Iraq stock exchange authority should limit the shares of foreign investors because they may cause a huge disaster in the future if investors suddenly left the market.

The study of Hsu and Huang (2010) is an essential reference that examined the effect of FDI on Taiwan stock fluctuation. The empirical results showed that before full financial liberalisation, local investors have herded when the stock exchange market was in the downside but they herded when the market was on the upside after full liberalisation. However, they noticed that after liberalisation the Taiwan stock exchange market was more stable.

From this point of view, Coppejans and Domowitz (2000) provided more insight into this important question of price stability. They found that FDI does not cause volatility in domestic emerging trading markets. Moreover, FDI causes an increase in traded volume on the domestic market which leads to raised returns.

Holmes and Wong (2001) noted that stock market regulators were afraid that opening the market to foreign investors may lead to price volatility which directly impacts the stock exchange market and economy. Therefore, they examined the changes in South-East Asian stock markets after opening up the stock exchange market to foreign investors. They found that there was no destabilization in the local stock exchange market. Surprisingly, the amount of volatility decreased after liberalisation which indicated that FDI had a positive impact on the local stock market.

Choe et al. (1999) investigated if there was any evidence that foreign investors cause the destabilization of the stock exchange market. They examined the impact of FDI from

1996 to 1997 in the Korean stock exchange market. Although, many Koreans were concerned about foreign investors, the result did not confirm that FDI caused stock exchange market volatility. While there were large sales in the stock exchange market that happened by foreign investors during the period, there was not negative impact on the stock exchange market.

Dornean et al. (2012) investigated the relationship between the financial crisis and FDI flows in Central and Eastern European countries. They found that the financial crisis strongly impacted on the amount of FDI, suggesting that FDI can have a positive effect on the economy as well as economic growth can positively influence the amount of FDI. Holland and Pain (1998) also found that the affect of FDI being positively higher in the more market-orientated economies in central and Eastern Europe.

Qatrouz (2004) examined the effects of foreign investment on the Amman stock exchange market particularly in increasing stock prices and market values. He found that there was a large trading volume when foreign investors became a part of trading. The price of shares increased in the event day when foreign investors purchased from local investors. The main explicable factor was that the local investors thought foreigners may have private information about the stock. Conversely, the stock price dropped when foreign investors sell to local investors. Likewise, when foreign investors sold stocks with high volume to others foreigners, the price dropped as well. It seemed that there was no confidence and trust between local investors and foreign investors as well as between foreign investors themselves, which may cause price volatility.

Benamraoui (2003) noted that FDI played an important role in increasing the trading volume and improving market liquidity in the Algerian stock market, and that opening

the stock exchange market to foreign investors requires the development of an economic system that would encourage more investors to increase their shares in local companies.

The study carried out by Gurbuz and Aybars (2010) highlighted the effects of foreign ownership on a company performance of companies listed on the Istanbul stock exchange market. The general outcomes concluded that FDI increased financial performance in Turkey stock exchange market to a particular level and found that foreign investors positively affected Turkish companies even if they considered the minority of shareholders of the local firms.

Darren (2009) noted that the impact of foreign investors may improve local companies and increase trading and market volume. Furthermore, based on a study of the Palestine stock market, the researcher found that foreign investment did not increase profits of listed companies in the market as it did not contribute to an increase to the company's financial disclosure. However, the size of foreign investment in the financial market was weak because of lack of confidence in foreign investors, which resulted from the poor economic and political conditions in Palestine. In the recommendation, the researcher suggested that the Palestinian Capital Market Authority should improve investment law to protect both foreign and local investment.

AL haje (2004) also investigated the impact of foreign investors on Palestinian listed companies. He found that there was no negative effect from foreign investors either on the joint - stock companies or on their profitability. Moreover, as the results indicated the only factors that affected profitability were changes in management style, marketing and operations rather than foreign investment.

Abu Amsha (2013) investigated the relationship between foreign investment and the Qatar stock exchange market and its efforts to engage FDI. The study showed that the

Qatar stock exchange market had improved in the last few years. In spite of its modernity, it had been able to attract a reasonable proportion of foreign investors that were looking for suitable investment opportunities, thus boosting economic development, and helping to fill the gap between savings and investing in the State of Qatar. The research noticed that one of the importance factors that may encourage foreign investments was the set of laws and regulations that govern and organize the Qatar stock exchange. Therefore, it was important for the State of Qatar to provide a suitable environment for investment, in particular reform of the judiciary and the completion of economic reform with its regulations, such as revision of corporate law and competition law. Moreover, to reassure and protect local and foreign investors Qatar also needed to strengthen governance rules on companies listed on the Qatar Stock Exchange Market. Finally, the research suggested that organizers of the stock exchange market should disclose the magnitude of foreign investors in each company and sector on their electronic website.

Shi et al. (2010) have documented the impact of FDI on stock exchange market integration between countries. They found a positive relationship can be appearing in business cycles between countries, such as cash flows on the stock exchange market. They realized that during the stock exchange market crash in 1987 in Australia, there was a similar movement between the cross-country stock markets on the same trading day.

Arčabić et al. (2013) investigated the relationship between the FDI and the stock exchange market in Croatia in the long and short term. The results showed that FDI in the short run contributed to the energy of the stock exchange market. Furthermore, movement in the stock exchange market can positively impact on the amount of FDI. In

the long term FDI influenced economic development, particularly the growth of stock exchange markets, as well as encouraging policymakers to improve the favourable investment climate and regulations on the domestic stock exchange market.

Ray (2012) conducted a study on the impact of foreign exchange reserves on stock exchange market capitalisation in India from 1990-91 to 2010-1. He found that there was a positive impact of foreign exchange reserves on stock market capitalisation. He also found that causality runs from foreign exchange reserves to stock market capitalization but not conversely and asserted that these findings would help to improve the role of stock brokers, agents, planners, and government policy makers in India.

Similarly, Karthik and Kannan (2011) investigated the impact of FDI on stock exchange market development in India and found a positive relationship between FDI and the Indian stock exchange market.

### **2.10.2 Studies Supporting Positive and Negative Aspects**

Mohammed (2012) examined the impact of foreign investors in the Arabic Gulf States from 1992 to 2010 and concluded that opening up the door to foreign investors would bring alternative finance to the local economy. In order to benefit from FDI, the Arab Gulf States have prepared the proper climate by improving the legislations and regulations. The research found that an improved investment climate in the host country leads to a faster and stronger rate of foreign investments and suggested that it is important to balance support of foreign investors with support of local shareholders. Otherwise, too much support for FDI can reduce the local investment and weaken state finances as a result of tax exemptions.

The conclusion of a study by Elasmag (2005) emphasized that the open-door policy to the foreign direct investment is considered the first step to achieving economic targets. It is necessary for the Arab Gulf States to keep in mind that a cost-effective flow of foreign direct investment must be greater than costs such as tax and custom exemptions. The research identified weaknesses in regulatory and legislative frameworks in Arabic countries that lead to price fluctuations and investment risk. It recommended that Arab stock markets attract more foreign direct investment to the market by enhancing transparency and disclosure and developing the role of local and foreign investors.

Al-Ziyra (2009) focused on the advantages and disadvantages of foreign investments to local stock exchange market. He argued that foreign profits leave the host countries. For example, in the late twentieth century foreign investors made enormous profits in a short period during the Asian tiger crisis there was a quick withdrawal of capital and these profits left the host country. The results showed that there was a huge crisis in the economy of all Asian tiger countries which lead to collapse of national currencies and stock markets. Of course, the losers were local institutions, national economies and the communities of these countries.

Sherean (2003-2004) investigated the effects of foreign investment on the local economy. She found that FDI had a positive effect on economic development. However, foreign investors can jeopardise the economy in terms fluctuations in capital flows or sudden exit. The author recommended host countries impose restrictions on the exit of foreign investment before the entry which will help to reduce financial instability. This may support the success of economic reform which increases the confidence of foreign investors in developing countries and the investment climate by supporting stability of investments.

Al-Halalmeh and Sayah (2010) have shed light on the influence of FDI on the value of the share market in the Amman Stock Exchange Market. They noticed that according to the Amman financial market, the statistics for 2007 there was a significant increase in the value of FDI attributes to foreign investors' confidence and investment environment in Jordan. Although FDI may benefit the domestic economy by creating new jobs and technology, it may cause strong competition for national businesses and lead to political issues. However, the outcomes confirmed that FDI constituted 45-50% of the value of the Amman shares market. It also showed that foreign investors impacted both positively and negatively on the price of company shares.

Raza, et al. (2013) also examined the impact of foreign investors on the Pakistan stock exchange market from 1976 to 2011. They found a similar result and added that even though FDI may destroy local industry, it has a positive impact in the short and long term as well as showing a bidirectional causal in the relationship between FDI and the domestic stock market. They suggested that local investors should pay attention to the direction of FDI in the stock exchange market in order to make prudent decision in their investments.

Likewise, Bosworth et al. (1999) noticed both positive and negative impacts of FDI on the financial market. After examining the effects, they found that even if FDI had a small negative effect, it seemed to have a high beneficial impact on the local market.

Kang et al. (2014) also examined the impact of foreign direct investment on the Korean stock market. They found that there was a positive impact on prices during periods of positive stock returns and negative impact in periods of negative returns. They concluded that the effect of foreigner trades was clearly concentrated in large companies.

Garg and Mitra (2015) noticed that foreign investors may have positive and negative impacts on county economy. The positive side, foreign investors encourage countries to develop efficient markets by increasing transparency of information about the stock exchange market. However, these investments may move from one country to another when markets are down, which influences the returns of the local stock market. Moreover, they pointed out that there was a relationship between foreign institutional investors' investment and stock market returns in relation to their trading behaviour in the Indian stock market.

Similarity, Akinlo (2015) questioned the relationship between foreign exchange reserves and stock market development in Nigeria over the period 1981-2011. He found on the one hand that reduction in foreign reserves negatively affected the stock market, but on the other hand, foreign reserves had a positive influence in stock market growth.

Saha (2009) examined the impact of foreign institutional investors on the Indian stock market. He noticed that since the opening up of the Indian stock exchange market in 1990, FDI played a key role. He argued that the serious negative impact should be taken into consideration such as short-term hot money which allows foreign investors to take more money back than what they bring in. However, he found that due to the unique and strong economy in India the risk had not emerged in the Indian stock exchange market until recently. Likewise, Goudarzi and Ramanarayanan (2011) confirmed that there was an integration and causality between foreign institutional investors and the Indian stock exchange market during world financial crisis of 2008. Although, there was a positive impact of foreign institutional investors in the Indian economy, they caused a decline in the index of 60% which was big disastrous for local investors. To avoid speculative risk that leads to a negative impact, they recommended that governments

should limit the lower price rather than both prices when the market breaks down. Moreover, policymakers should build up funds to protect the stock exchange market from future crisis.

Sameera (2014) examined the role of two types of foreign investors in India, foreign institutional investors and FDI. As policies facilitated foreign investors to invest in the Indian stock exchange market, the result showed that both types of investors contributed to growth in the economy and technological industry. However, the foreign direct investment in particular caused price fluctuations in the Indian capital markets.

Doytch (2013) examined foreign investment role in macroeconomic or microeconomic stock market development. He found that from a macroeconomic perspective there is a positive impact of foreign investment on the local stock exchange market whereas the microeconomic perspective still required more investigation.

Nonnemberg and de Mendonça (2004) found out a close relationship between financial market performance and foreign direct investment. They also found that high level of education and opening economy play the role to measure the effects of FDI. In this manner, Hajilee and Al Nasser (2015) reported that financial market development had an important effect in the short or long-run in the majority of 14 Latin American countries. They also suggest that these countries should remove taxes and regulatory restrictions to attract long terms flows. It seems that based on their finding foreign investors do not pose a risk to the economy even if these countries have weak financial systems which raises the question of why developing countries are keen to improve their financial systems to avoid such crises. Choong et al. (2004) argued that the presence of FDI inflows leads to positive effects if the domestic financial system has a certain level of financial development. Otherwise, negative influences may appear.

However, since foreign investors want to buy and sell in the stock exchange market to finance their investments, they can enhance domestic financial markets both positively and negatively (Jeffus 2004).

Naceur et al.'s (2008) study found that in 11 MENA countries, opening the stock exchange market for FDI had a negative impact on stock exchange market development in the short term while in the long term it showed a positive impact.

Furthermore, Kim and Singal (1997) believed that overseas investors and host countries high benefited from liberalizations. However, period of volatility or higher inflation are usually caused by policymakers not by the inflow of foreign investors. Mishkin (1999) supported this view when he found that capital flows were not the main reason for the Asian crisis of 1997-1998. Likewise, Hsu, Huang and Ntoko (2013) investigated if stocks being favoured by foreign investors, made them riskier than others during periods of financial crisis and found that they may not be riskier in general as long as they do not weaken the local stock market.

Aimpichaimongkol and Padungsaksawasdi (2013) examined the impact of FDI on stock market volatility after liberalization. They argued that foreign investors may help to stabilize stock markets because they can attend board meetings and obtain more information about firms. They noticed that foreign direct investment can have a negative impact on the local stock exchange market particularly in the industry sector.

Similarly, Li et al. (2011) examined the impact of large foreign ownership on stock exchange market volatility in 31 emerging markets. The results showed a negative relationship even after government protected the host country economy and its local shareholders. Interestingly, the most significant negative relationships were in countries that usually support shareholders. They noticed that positive impacts in the domestic

market occurred in the long term if governments improved the economic system and foreign direct investment.

The role of foreign investment in the revitalization of the Egyptian Stock Exchange Market was examined by (Aal 2013). He reported that foreign investors participated positively in stock market activities. However, the Egyptian Stock Exchange had not provided enough protection for the local stock market. He recommended that the Egyptian government should restrict its rules to control the money movement of foreign investment in the stock market.

It can therefore be concluded that, opening the local stock exchange market to foreign investment needs to achieve balance between these positive and negative aspects.

### **2.10.3 Studies Supporting Negative Aspects**

Some studies have argued that there is only a negative relationship between the development of the financial market and foreign direct investment. From this perspective, they found that foreign direct investment tends to invest in countries that are risky, undeveloped and have a weak system (Claessens, Klingebiel & Schmukler 2001; Hausmann & Fernandez-Arias 2000). For instance, in 1998-1999 FDI owned over 60% of gross flows in the Latin American market which was not healthy for the local share market. It implied that local markets worked poorly and local people sold their companies merely because they did not trust market growth (Hausmann & Fernandez-Arias 2000). One of the worst scenarios was reported by Claessens et al. (2001) that many countries have faced challenges in regarding to sustaining the local stock exchange market when FDI sell their shares in the local market which leads drop the local stock exchange.

Foreign ownership in emerging stock markets may also increase the volatility of domestic financial markets. According to Hargis research (2002), the results showed that the volatility in Latin American markets did not increase the emerging stock markets after foreign investment flows. Comparing this result with Asia markets, he realized that the volatility declined in Taiwan while it increased in Thailand. Moreover, he pointed out that the risk increased after opening markets in Argentina, Chile and Thailand to the index from American Depositary Receipts, country funds and foreign ownership. The same result also found by Bengoa et al. (2003) and pointed out that foreign direct investment is positively correlated with economic growth in the host countries.

Wang, J-X (2007) reported that there was a negative relationship between foreign investors and future volatility in Indonesian market. This effect was not related to the Asian financial crisis because it existed at various times. Importantly, the influence of volatility increased based on the foreign holdings. To reduce future volatility, risk sharing, great investor confidence, and corporate governance needed to be effectively applied.

Ng et al. (2011) described the impact of foreign investors in the stock market liquidity in 40 countries during the period 2002 to 2007. They found that the effects on the majority of these countries were negative. However, they realized that even if governments highlight the issues in the internal economy, the negative effects of FDI will not disappear. Moreover, this negative impact only appeared from FDI, not from the local ownership. The outcome of this negative impact was to increase foreign ownership which reduces free shares. Tellingly, countries with less disclosure of data had more negative impact than others. Finally, they suggested that policymakers should

consider the importance of increasing foreign investors in improving the local stock market.

There are also critical views about how the high mobility of foreign funds worried local investors. Kang et al. (2010) reported the effect of foreign institutional investors in terms of corporate dividend policy in the Korean stock market. They found that foreign investors can impact on dividends if they own more than 5% of a company's shares. Moreover, the more shares they have over major shareholders, the stronger is the influence of foreign institutional investors.

Konings (2000) investigated the impact of FDI on the productivity performance of domestic firms in three European countries, Bulgaria, Romania and Poland. He found that overall there was no proof of positive influence on local corporations. Conversely, there was evidence of negative impact on local corporations in Bulgaria and Romania, but there was no evidence in domestic firms in Poland.

In summary, over the last decade, stock exchange markets have received a great deal of attention from local and foreign investors as a source of financial development. In fact, economic growth and large swings in stock market valuation are strongly affected by global changes (Billmeier & Massa 2007). This liberalization and globalization contributes to closer trade and financial relations between emerging and developed countries. Most of these countries seek to increase foreign investment and support economic growth in order to face the lack of adequate funding by publishing regulations to attract foreign capital flows. At the same time they seek to ensure continuity to avoid economic and financial crisis. However, the subject of foreign investment is a matter of controversy among economists. There are those that support this kind of investment because the recipient countries will achieve the benefits of increased economic growth,

which contributes to the development of the money markets. On the other hand, there are those who oppose such investments that are associated with risk. As a matter of fact, foreign investors may increase the prospects of controlling important sectors of the economy. In addition, foreign direct investment may cause a financial crisis through the short time investments and instability in recipient countries. This brief summary aims to provide an understanding of the current situation of the Saudi stock exchange and its rules.

#### **2.10.4 Previous Empirical Studies on Saudi Arabia**

In Saudi Arabia there are only a few reports and articles in newspapers that discuss the effects of opening the stock exchange market to foreign investors. Alkhabeer (2015) indicated that foreign investment institutions contribute positively to the development of the financial market. They encourage a better position in the market for research methods, investor relations and management responsibility. They also help the market and its companies to improve and increase liquidity controls, corporate governance and transparency. This positive impact is particularly important for those companies that do not committed to obligations of transparency and disclosure standards. The report recommended that the Saudi authorities adopt a flexible methodology in dealing with the participation of foreign institutions in the local stock market. Also, they need to apply appropriate restrictions in strategic areas in the local stock exchange market and its regulations. However, the liberalisation of the Saudi market allows foreign investors to own shares that supported by huge government subsidies in certain sectors and companies in the Kingdom. There are also fears that the influx of foreign investors could exacerbate swings in the market and increase price correction. It is expected that the Capital Market Authority will impose important protection and control mechanisms to face the challenges that may arise from opening up the stock market.

Alsudary et al. (2015) noticed that the entry of foreign investors could have value in terms of the quality of investment decisions, but it will not increase the liquidity ratio. Also, the entry of foreigners is expected to be gradual, especially investors who have the investment skills and long experience prefer to find efficient investment environment and strong regulations in the market. The entry of foreigners will impact on the Saudi economy through the convergence between foreign institutions and local companies which could be a bridge for strategic development and human resources development. However, they pointed out that the phenomenon of hot money will not be an issue because the entry and exit of funds would be less volatile due to the limited percentage of ownership whether directly or through swap agreements.

In addition, a recent study by Alsultan (2014) investigated the investment impact either on local or foreign investors in the Saudi stock exchange market between 1985 and 2013. The results showed a positive relationship between investment and the stock exchange market index. It also implies that the Saudi government supported the financial and economic policies in order to increase investment and direct it towards the stock exchange market.

Dabbas (2015) discussed two aspects of foreign investment. First, some specialists consider that foreign investments in the financial markets aim at speculation and quick profits, and thus do not contribute to new production capacity. They point to the fact that trading or investing in stock markets is only a transfer of ownership from one shareholder to another without adding benefit to the economy. Others argue that the entry of foreign investments to stock markets contributes to the liberation of liquidity. The released funds may tend to generate new productive capacities. The author divided foreign investors into individual investors and institutional investors. The stock

retention period is usually short for foreign individual investors. Therefore, they are considered speculators and have a negative effect on the stability of financial markets. Most specialists warn about the negative effects of capital inflows on stock exchanges, which could lead to crises that probably affect economic stability. Furthermore, it is possible that these crises have negative financial, social and political effects. In contrast, foreign institutional investment is considered as long-term investment. It retains shares for a long time because investment decisions to buy and sell are based on financial situations and sector analysis of companies. Therefore, these institutions usually take into account many factors when they invest in any of the emerging markets, such as market depth and efficiency and liquidity in terms of number of listed companies. They also focus on the level of investment awareness, commitment to international disclosure and transparency standards, and the preparation of financial statements. In addition to the laws and regulations that confer legitimacy, justice and fairness on transactions with a strong level of investor protection. Finally, it seems that foreign investments are mostly attracted to Arabic markets because of the multiple positive effects of investment.

Khan (2012) reported that there were apparent benefits of foreign direct investment in the Saudi stock exchange market in general such as bringing liquidity, efficiency, transparency and better portfolio management. Moreover, it has been expected that foreign investors will contribute to improving the local stock exchange market as follows:

- Providing discipline to the stock market;
- Increasing the liquidity in addition to making the market deeper and broader;
- Bringing better corporate governance and transparency to companies;

- Changing Tadawul status to one of global equity index such as MSCI as it provides clear visibility to global investors who look for higher return;
- Saudi capital market will reap the benefit once it is classified as an emerging market; and
- Allowing the capital market to be a part of investment targets.

These benefits are not guaranteed and it depends on how the local market evolves over a period of time. However, foreign investors may impact negatively on the local stock market, such as the flow of hot money which most countries face when they open markets to foreign investors. There are also some issues specific to Saudi Arabia such as lack of independent monetary policy, lack of domestic institutional investors, and lack of a domestic bond market. These structural issues must be taken care of by the CMA and Saudi Arabian Monetary Agency SAMA.

Khan (2012) believes that the Saudi Arabian equity market is ready for foreign investors and argue that the benefits of allowing foreign investors outweigh the negative aspects in the medium to long term. He recommended that opening up the local market should be done in a gradual manner so that the advent of large foreign investors does not destabilize existing stakeholders.

## **2.11 Limitations of Existing Literature and Identifying Gaps**

A review of the literature shows that foreign investment has been the subject of much research. Most of studies focussed on the effects of foreign investors in the local stock market. Some strongly support the benefits side of foreign direct investment while others stress the importance of strong regulations to protect the local stock exchange market. In addition, there are previous studies that indicated the importance of

protecting local investors in investigating different regulations such as the corporate governance and company law. It seems that the legal aspect of attracting foreign investment and protecting local shareholders has not received much attention in previous studies. Thus, the current Rules of Qualified Foreign Investment Institutions in the Saudi stock exchange can play a role in attracting foreign investors and avoiding any further crises to the local shareholders. Furthermore, it plays a significant role to attract foreign direct investment which leads to increase their flow in the short term and thus reflect in the local stock exchange market performance. This thesis will examine the level of protection for local shareholders in the Rules of Qualified Foreign Investment Institutions

From previous discussion, it is clear that opening up the door for foreign investors may bring substantial benefits to the local stock market. However, it may also cause a disaster to the local shareholders and economy. As a developing country, Saudi Arabia has encouraged the flow of foreign investments into its stock exchange market and has published the rules for foreign investors in order to balance the outcomes of foreign flows. Since there is an intimate relationship between rules or regulations and foreign investors, this thesis will examine if these rules may lead to foreign direct investment benefiting or harming the local stock exchange market which in turn may impact on the Saudi local economy. Therefore, there is a need to examine the flow of foreign investment resulting from the current rules which may benefit the local stock exchange market and the extent of protection in these rules.

Based on the findings of Al-Zahrani's study, of the outcomes of Saudi Company Law 1965, there is an important question: are these new rules for Qualified Foreign Financial Institutions Investment in Listed Shares 2015 also weak keeping in mind that there is

still some manipulation and promotion of special interests in the Middle East and in Saudi Arabia (Luca 2000).

The current study is motivated by the gaps in the existing literature. Firstly, no previous research has investigated this topic in Saudi Arabia as far as I know, so the project will address the lack of knowledge about the effect of foreign investors in the local stock exchange market. It will investigate whether the RQFFII in Listed Shares 2015 and its amendments provide sufficient protection of the rights of local shareholders and enough attraction to foreign investors. Secondly, no previous research has examined and measured these rules by comparing them with other countries such as the GCC and Australia. Furthermore, as these rules were established in 2015 and have not yet been studied, this project will place the effects on shareholders' rights at the centre of this research, enhancing the significance of this thesis. Finally, the goal of this thesis is to assess these rules and examine outcomes which might assist the Saudi Capital Market Authority in the future.

The regulation of foreign investors in the stock exchange market in the Saudi Arabia is still in the development stage compared to other developed countries. This study will make an original contribution to knowledge by examining the development of the Saudi stock exchange market within the wider economic environment. It will also explore the foreign investment mechanisms in listed companies based on the new rules.

## **2.12 Conclusion**

This chapter has discussed an overview of the importance of stock exchange market in the local economy. The literature has explored the effects of foreign investors in the local stock exchange market and the importance of the protection of shareholders' rights. It indicated that the important regulations and supervisory changes must aim to

enhance transparency and oversight of stock exchange markets. Moreover, the chapter reviewed empirical studies about foreign influences in different developing countries to identify the scope of their contribution to the present study and to the gap in the research. It discussed the benefits of foreign investment in the stock exchange market and the main factors attracting investment. However, this research examines the current rules of foreign investment to further explore the protection extent within these rules and its role to attract foreign investment. Moreover, it will include evidence from other Gulf countries and Australia. No previous research has investigated this topic, so this project will address the lack of knowledge about these rules by examining influences on shareholders' rights. The significance of this research lies in its ability to help the Capital Market Authority in Saudi Arabia to measure these rules and increase shareholders' awareness. The next chapter examines the stock exchange markets in the GCC countries and Australia.

## **Chapter 3**

### **Methodology and Conceptual Framework**

#### **3.1 Introduction**

This chapter provides a summary of the research methods and data collection techniques. It is concerned with selecting the appropriate method to collect and analyse the data. The model to examine the recent regulations of foreign investments in Saudi Arabia has been discussed. The chapter presents a range of arguments to justify the decision to use qualitative methodology. It also describes the types of data collection in order to analyse and compare the main regulations that are related to the subject. It provides a clear picture of the conceptual framework, and considers the limitations of scope of the research.

The chapter is organized as follows: Section 3.2 discusses the research methodology in terms of using a qualitative approach and justifies reasons for using this research method. Section 3.3 explains the research objectives, followed by section 3.4 that concentrates on the research hypothesis. Section 3.5 describes the method of data collection, types of data collection, data analysis and comparative analysis. Section 3.6 deals with the limitation of this study, and section 3.7 describes the conceptual framework. Section 4.8 closes the chapter with a conclusion.

#### **3.2 Research Methodology**

The research method is a specific tool that is used by researchers to collect and analyse data that is related to their subject (Williams 2002). The importance of research methodology is that it answers the research questions and objectives (Creswell 2013; Punch 2013). The value of the research methodology is associated with the research

questions as well as the extent of knowledge that the area of study covers (Fassinger & Morrow 2013). According to Williams (2002), selecting the types of methodology usually are affected by three key issues: research questions, literature review, and the importance of research goals. Therefore, to select the appropriate methodology there is a need to keep in mind that the strength of the approach emanates from the relationship between the methodologies itself and solving the research issues.

In recent years, two different approaches quantitative and qualitative have been used in research design. Both quantitative and qualitative methods have advantages and disadvantages. Researchers typically use quantitative and qualitative methods based on the research design to convince opponents.

Qualitative methods usually involve inductive reasoning, while quantitative methods are employed in a positivist and deductive approach (Punch 2013; Veal 2005). Researchers who use qualitative method need to get deep data by investigating a few cases within a very limited framework. On the other hand, quantitative methodology uses different techniques by statistical methods to analyse data and has the ability to generalize results to a large population (Taylor 2005). Furthermore, quantitative research uses analysed information and then presents it in numerical form, unlike qualitative studies that may face an issue of identifying subjects (Haveman et al. 2004). Therefore, quantitative methodology uses in objective and scientific approach. On the other hand, qualitative method is humanistic and subjective in nature (Collis et al. 2003). Brannen (1992), noticed that quantitative research approaches usually use enumerative induction, while qualitative approaches use analytic induction.

Thus, it is important to begin with a few words about the qualitative approaches that have been chosen in order to examine and understand their characteristics.

### **3.2.1 Qualitative Approach**

Strauss and Corbin (1990) define the qualitative research method as any kind of research that does not obtain an outcome from statistical procedures. A qualitative method is a way of understanding the social world and dealing with people's behaviour such as how they think or reflect (Cozby 2012). This view is highly endorsed by Allan and Skinner (1991), who assert that the aim of using a qualitative approach is to gain an understanding of human activities. In most cases, when researchers employ this method they aim to use an inductive model to analyse and compare with other theories. This means that they are not testing the theory at the beginning because the theory may emerge through data collection (Creswell 2013). Moreover, qualitative methodology is not restricted by hypotheses and procedures that may limit its scope (Sarantakos 2012). Indeed, using a qualitative paradigm requires researchers to be the primary instrument to collect data through observation, interviews, actions, and visual images (Kreuger & Neuman 2006). This may be considered an advantage in terms of using them for deep description (Myers 2000).

Mason (2002) mentioned three types of qualitative methods: Case Studies, Ethnographic Studies, and Phenomenological Studies. From Creswell's (2013) viewpoint, these three types should be extended by two more types, grounded theory and narrative because these types are the most popular qualitative methods used by researchers.

The strength of the qualitative research approach can be seen in its ability to describe complex phenomena as well as deeply study a limited number of cases (Johnson, RB & Onwuegbuzie 2004). However, there are certain weaknesses associated with the use of qualitative methodology. First, it may consume more time in terms of collecting and

analysing resources and have the low credibility (Easterby-Smith et al. 1991). Secondly, the results might be affected by the researcher's personality. In this context, Faigman (1989) argued that the researcher's background and level of education can extremely affect the outcomes. On the contrary, Al-Zumai (2006) believed that the researcher's opinions cannot enhance the research outcomes, especially when there are no sensitive issues related to the subject. Finally, the generated knowledge may not apply to other people or other locations (Johnson, RB & Onwuegbuzie 2004). According to Creswell (2013) using inductive approach could be used as a qualitative inquiry which assists the researcher to emphasize in the main issue of the study. Moreover, it explores the given context, and test different scenarios which increase the level of investigation.

### **3.2.2 Justification of the Qualitative Approach for this study**

There can be no doubt that choosing a reliable and an appropriate method to answer the research questions is a big challenge for many academic researchers. In any academic research, selecting the right method usually relies on the research scope and available sources. After reviewing each methodology and highlighting the differences, this study has chosen to adopt a qualitative approach as it fits the purpose of this investigation. Since all stock markets are composed of people and their behaviour whether in person or in the electronic system and given that quantitative methodology relies on statistical outcomes, a qualitative approach has been employed. In addition, this research utilized inductive approach. This seems to be relevant and appropriate to answer the research question.

A qualitative analytical study is suggested as a useful and accurate approach (Neuman 2013). This study has utilized this approach to assess the current rules for foreign investments in the Saudi Stock exchange Market. This research is interested in using the

qualitative and critical analysis method because it has a number of advantages. Some of these advantages (Bryman et al. 1988; Conger 1998; Creswell 2013) include the follow:

- It enables the researcher to find more social meaning and symbolic dimensions;
- It is a flexible approach which allows the researcher to explore new issues and require further clarification; and
- It has the ability to describe the context of the variables and explore the interactions between the different variables in context.

Thus, as the aim of this project is to examine the current rules for foreign investment in the Saudi stock exchange market Listed Shares, a qualitative approach is most appropriate manner. Qualitative research is useful when there is little precedent knowledge, as it allows a more open exploratory format of data collection. It is also better suited for theoretical and model building than for hypothesis testing (Neuman 2013). A qualitative method stimulates researchers to identify and develop research assumptions (Fassinger & Morrow 2013).

For the purposes of this thesis, there is a broad gap in knowledge and deficiency of case law about the effect of these rules. Thus, a critical approach and content analysis are necessary primarily to explore the new rules and analyse data. The doctrinal approach in this study is supported by comparative studies with other foreign investment legislations in the GCC countries and Australia.

The use of a critical and content analysis method is preferable to obtain data from such legislation and other materials. It is frequently the most prevalent in the used of qualitative method in regard to analyse documents (Bryman 2015). In this context, it can be said that gathering data from documents is a better to use than other procedures

of data collection such as interviews and surveys in terms of the challenge of meeting people and their general lack of knowledge about foreign investor regulations. It is also important to bear in mind that the official may be reluctant to give straightforward answers, particularly in the Middle East, which makes interviews with officials impossible. Besides that, the sensitivity of interpreting data sometimes makes officials cautious about giving any information that may negatively affect their positions (Al-Zumai 2006).

### **3.3 Objectives of the Study**

Evidently, there are many countries around the world that are still suffering from weak enforcement of laws and legal environments (La Porta, Lopez-de-Silanes, et al. 1998). Thus, the primary objective of this study is to assess the level of protection of local shareholders' rights based on the new rules of 2015 for foreign investments in the Saudi Stock Exchange Market. In addition to the fact that in the recent years there has been an increase in local investor flows in the stock exchange market which emphasises the need of developing a legal framework (Abisourour 1994). It has been mentioned that the general trend of Saudi policymakers is to attract more foreign investors to the Saudi stock exchange market. For this reason, the thesis attempted to evaluate the efficacy of these rules in terms of encouraging foreign investors to invest in the local stock exchange market as well as identifying weak rules that may give an opportunity to foreign investors to endanger market stability in a way that could affect local investors. This study is crucial in terms of assuming that the newly imposed rules are not sufficient to protect local shareholders and therefore may cause a financial crash in the future, similar to the Asian Tigers crash of 1997-1998. Furthermore, with an undeveloped system in such rapidly growing countries, speculative activities could increase the phenomenon of hot money which would perhaps influence stock exchange

market performance. As well, others fragile regulations like the Saudi corporate law (Al-Zahrani 2013; Almadani 2011) and existing manipulation and abuse, could subject the stock exchange market to financial crisis.

A further objective of this research is to determine and analyse the differences between the cultural religious underpinnings of the legal regime in different jurisdictions in order to uncover any apparent gaps in the law. Moreover, this research attempts to provide an accurate interpretation of these regulations. This has been achieved by comparing these rules with other successful countries such as the GCC and the ASX in Australia which has been classified as one of the most important stock exchanges in the world. Finally, this research intends to illustrate the uniqueness and distinction between regulations in Saudi Arabia and other regulations in the neighbouring region and Australia. It is also aimed to propose recommendations, strategies, and areas of further study based on the findings.

### **3.4 Research hypothesis**

In order to make the research issues more specific, it is necessary to identify a specific research statement that assists the researcher to answer the research question (Henn, Weinstein & Foard 2005). The hypothesis of this research is that the Rules for Qualified Foreign Financial Institutions Investments (RQFFII) in the Saudi stock exchange are not appropriate to encourage foreign investors and protect local shareholders.

### **3.5 Data collection**

Before embarking on the study, it should be noted that collecting data is an essential part of conducting the research project. Good quality data collection leads to a strong level of the research findings (Gill & Johnson 2010). According to Smith, M (2014) it is essential for researchers to develop their skills in order to obtain and determine the data

location; otherwise, it will be time consuming and may cause more challenges and require more effort. Therefore, a good strategy is for researchers to identify the types of sources and know how to use them effectively.

To achieve the above stated objectives of this thesis, the data collection method has been determined. Because of the novelty of this research, the primary data has been sourced from the official website of the CMA in Saudi Arabia. This information consists of some rules for Qualified Foreign Financial Institutions Investment in Listed Shares which can be used to compare with the GCC and Australian regulations. The data has been extended by comprehensive research and reading. Therefore, the approach that is used in this study is a comparative analytical approach. The protection issues have been addressed by demonstrating RQFFII in Listed Shares 2015, and finding out what distinguishes the Saudi rules from regulations in other selected countries.

The data of the other selected countries has been the most important source for this thesis. Consequently, this research relied mostly on the official website of each of these countries to gain more information about its primary regulation of foreign investor activities in their stock exchanges market.

Although the search process of data collection and analysis has been carried out by studying the rules for Qualified Foreign Financial Institutions Investments in Listed Shares, the research also investigates how these rules operated together, with the relevant laws in Saudi Arabia, as Article 1 of these Rules states:

Rules shall be read in conjunction with and in addition to the Capital Market Law and its Implementing Regulations, including, the Listing Rules, the Market Conduct Regulations, the Authorised Persons Regulations, the Merger and Acquisition

Regulations and the Anti-Money Laundering and Counter-Terrorist Financing Rules (p. 3).

Data collection for this study is also expected to use data from the Saudi stock exchange and listed companies to learn about the development of these rules that have taken place during the past period, depending on the historical method, the descriptive approach, and the legal or theoretical approach.

The nature of qualitative methodology requires the researcher to go out and investigate to find data from various types of sources (Henn, Weinstein & Foard 2005). As a part of measuring the strength of shareholders' protection, the researcher requested informal discussions with a number of officials on the Saudi financial market, Saudi intermediaries companies, and some investors. Such informal conversations provided feedback as well as documents and annual reports to cover various aspects of the subject. The purpose of these informal discussions was to identify the exact restrictions as well as the need to develop these rules and to highlight the strengths and weaknesses of foreign investment rules. The useful feedback from their experiences also directly assisted the researcher in addressing the research questions. Moreover, discussions with local and foreign investors provided a better understanding of the protection norms for local investors provided in these regulations.

As a part of data collection and examining protection of shareholders' rights, this research have used the Morgan Stanley Capital International (MSCI) markets index, and the World Bank, as they are considered the most important indexes that provide annual reports for a wide range of countries (Komijani & Ahmadi 2012). Their reports provide information on different aspects of the evolutions of stock exchange markets, including the local rules in each country. These organizations undertook improvements in

response to the needs of the financial community as well as the flexibility of legislation and regulations to alter with the effect of globalization (Burgman & Roos 2007). Thus, these kinds of reports are important and should not be omitted in order to provide comprehensive evaluations of stock exchange market.

This research is also aware of the importance of corporate governance in these selected countries as it is considered the first line of defence to protect the economy and local shareholders in any crisis situation (Johnson, et al. 2000). There are many organizations that have emphasised the importance of corporate governance based on international benchmarks. For instance, the Organisation for Economic Co-operation and Development (OECD) benchmarks refer to the necessity of protecting and facilitating the exercise of shareholders' rights. The rules and governing procedures should be clearly disclosed, so that investors are able to understand their rights and options. The exercise of ownership rights, including these for institutional investors, should be facilitated. The OECD Principles of Corporate Governance (2004) noted that:

The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders, all shareholders should have the opportunity to obtain effective redress for violation of their rights (p.20).

In other words, these principles support equal treatment for both foreign and domestic investors in regard to corporate governance. Ultimately, it should be noted that history has confirmed that countries with weak corporate governance have suffered many financial disasters. Particularly, those with vulnerable systems to protect the minority shareholders (Johnson, S et al. 2000). Therefore, there is an urgent need to consider corporate governance as a primary part of examining foreign investment rules in the Saudi stock exchange market.

As a matter of fact, the main obstacle that any researcher encounters is the availability of the required data. For instance, the Bahrain Stock Exchange did not issue its regulations on its official website. In other words, it is not generally available to the public. In order to resolve this issue, the researcher needed to establish personal connection with the regulators to obtain information about foreign investors' rules in its local stock exchange market. Although this was true in the case in Bahrain, the markets in other selected countries had published rules on their official websites. However, this example indicated that such impediments could be addressed as most of the desired resources were able to be accessed.

### **The GCC Rules & Regulations of Foreign Investments**

<b>Country</b>	<b>Investment Law</b>
<b>Bahrain</b>	Related law: Commercial Companies Law – Decree Law No. 21 of 2001.
<b>Kuwait</b>	Law Regulating Direct Foreign Capital Investment No.8 of 2001, replacing Foreign Investment Law No. 10 of 1999.
<b>Oman</b>	Foreign Capital Investment Law – Royal Decree No.102 of 1994.
<b>Qatar</b>	Investment Law No.13 of 2000.
<b>Saudi Arabia</b>	Foreign Investment Act – Royal Decree No. M/1 of 2000 Rules for Qualified Foreign Financial Institutions Investment in Listed Securities Act Royal Decree No. 1-42-2015. Amended by Resolution of the Board of the Capital Market Authority Number 3-104-2016.
<b>United Arab Emirates</b>	No federal law on investment Dubai: Investment Trust Law No.5 of 2006, Regulatory Law No.1 of 2004, Collective Investment Law No.1 of 2006, Collective Investment Law No. 2 of 2010.

(OECD 2011)

In the light of the above, this thesis was expecting that providing evidence from foreign and local disputes would assist the researcher to measure the new regulations for foreign

investment institutions. It was also assumed that locating any complaints from local investors might indicate the sufficient effect of these regulations. Unfortunately, a part from useful court judgments or competent courts like the “Committee for the Resolution of Securities Disputes”, the researcher found it extremely difficult to get any evidence and documents. Apparently, the main explicable reasons for not providing information related to the officials’ need for privacy as well as the sensitivity of the data.

### **3.5.1 Types of Data Collection**

The sources can generally be classified into two categories, primary sources and secondary sources. Since this research deals with regulations and rules, it is necessary to clarify what are primary and secondary sources. A primary source of law refers to the statement of the law that has been approved by a government entity, for example, the president, and king, legislative and executive authority. In this research, the primary sources are the foreign investment rules in the Saudi Stock Exchange and the GCC countries and Australia. All the data was obtained from the official website of the Capital Market Authority in Saudi Arabia and from the other websites of selected countries.

A secondary source refers to any material that provides commentary, discusses, explains, and analyses the content of the law and ordinarily give extensive citations to the primary sources as well as the secondary sources. Some examples of the most common types of the secondary sources are: law reviews, legal newspapers, treaties, encyclopaedias, articles and books (Georgetown Law Library n.y.). It should be noted that the choice of secondary data is affected by the researcher’s experience and knowledge of the subject.

A secondary source material may assist the researcher to grasp an unfamiliar or overdeveloped area of law that reflects from the mystery in the primary sources. Additionally, it can help the researcher to use appropriate terminology in order to explain the concepts of legislation. If one assumes that some areas of law may change rapidly, secondary sources can be the best choice to bring the researcher's attention to these updates (Brooks & Steenken 2015; Georgetown Law Library n.y.). More simply, secondary data guides researchers directly to the primary sources. Most importantly, secondary data is often quite cheap or sometimes available free of cost as well as is less time consuming for the researcher (Patzner 1995). Indeed, secondary sources are extremely useful tools for many aspects of the research process.

Consequently, this research is based on using primary sources which consist of the new rules of qualified foreign investment in the Saudi stock exchange market. Ideally, this would be supported by secondary sources such as the Saudi Corporate Law 1965, and all current and previous laws that are relevant to this subject. The research has also explored academic writings and theses, articles, related documents, newspapers, magazines, judgments, studies, statistics issued by the official authorities, reports of local and international organizations reports, websites and others materials available on the internet. These sources included the World Bank and the International Trade Organization. These were all explored for information about the efficiency of the new regulations and level of protection of local shareholders. In examples described above, these sources were examined to ensure that all types of data, whether primary or secondary, were valid.

Arguably, after considering all of the above points, the primary and secondary data is most suitable sources for investigation in regard to this research.

### **3.5.2 Analysis of Content and Documents**

Without doubt, data analysis is being the most challenge part of the research process (Brooks & Steenken 2015). Nevertheless, it is a major method of social research that many researchers find it as a good strategy to explain the context of regulations (Mason 2002).

The model of qualitative content analysis has been discussed and developed in various types of research based on the particular research questions (Kohlbacher 2006; Mayring 2002). However, in the case of this thesis, the data have been collected from primary and secondary source were analysed to examine mainly the level of protection for local shareholders. After gathering the relevant sources, there is a need to understand the legal issues and find facts that relate to the research questions (Brooks & Steenken 2015).

The first move towards analysing the data is to find the patterns or commonalities in the data or the information communicated in textual data and meanwhile finding the most interesting data that is related to the research questions (Massengill n.y.). In other words, the material should be summarized, focusing on the essential contents that are related to the main subjects of the study. The analysis of the content is not limited to the manifest content, it should also include the latent content (Mayring 2000). The analysis process includes the explanation of particular regulations when there is a need for more explication to clarify the meaning. This explanation is supported by a narrow and a broad context analysis.

This research analyses the role of regulations in affecting the foreign investment flows either positively or negatively, which are reflected on the local stock exchange. As has been previously stated, in Article 1 of these rules, the foreign investment rules in the

Saudi stock exchange shall operate together with other laws. Therefore, in order to increase the level of analysis, the relevant regulations in Saudi Arabia must be taken into consideration to determine if these rules are compatible or incompatible to each other. Pertinent legislation eventually played a vital role in ensuring that the basic rules are obviously binding. Moreover, the related sources provided greater depth into understanding the lawmaker's intent in drafting the law (Brooks & Steenken 2015).

This study has covered several stages of analysis as follows:

1. Analysing the Rules of Qualified Foreign Financial Institutions Investment in Listed Shares with the Capital Market Law issued by Royal Decree No: M/30 dated 2003;
2. Analysing the RQFFII in Listed Shares with the laws that are closely linked to these rules such as the Saudi Corporate Governance Regulations (2006), the Saudi Market Conduct Regulations (2004) and the Saudi Listing Rules (2004);
3. Analysing the RQFFII in Listed Shares with Saudi Company Law, issued by the Royal Decree No: 6 dated 1965 in terms of the effects on shareholders' rights;
4. Analysing the RQFFII in Listed Shares with the Executive Rules of the Foreign Investment Act in Saudi Arabia (2001) and Foreign Investment Law in Saudi Arabia (2000);
5. Analysing Executive Branch Resolutions that are represented by the Saudi Capital Market Authority as it have been considered the most important and obvious explanation of the existing rules. For example, frequently asked questions in the Rules for Qualified Foreign Financial Institutions Investment in Listed Shares, No: 3-42, dated in 4-5-2015, Objectives of opening the Saudi stock exchange market for Foreign Investment, Information and Documents Required From Foreign Investors to Invest in

Listed Shares, and Glossary Of Defined Terms Used In The Regulations And Rules Of the Capital Market Authority (Amended by Resolution of the Board of the Capital Market Authority, Number 1-61, dated in 23 May 2016; and

6. Analysing the most important articles and reports that have been published by international organizations about the Saudi Stock Exchange and its regulations. Good examples are the Morgan Stanley Capital International (MSCI) Emerging Markets Index, S&P Dow Jones Indices, the Financial Times Stock Exchange (FTSE) 100 Index, and the Standard & Poor's (S&P) 500 Index. It is also germane to note that the analysis should include the annual reports that have been published by the World Bank and the International Trade Organization which help to measure foreign and business regulations.

The aim of the analysis process is to clarify the safeguarding as well as the minimal protection of local shareholders' rights. It also explored the risks associated with opening the stock exchange market to foreign investment and how the enactment of recent regulations has impacted on it. Meanwhile, the purpose of the analysis is to make inferences from collected data which can be used to solve the research issues. Finally, in the research scenarios, the analysis of this study must be conducted in the light of comparative studies.

### **3.5.3 Comparative Studies**

One of the main advantages of comparative law is to reform and simplify local regulations which can improve the efficiency of laws (Hill, Zweigert & Kötz 1989). Comparative law is much better than relying only on the description of law (Zweigert & Siehr 1971). From the perspective of many legislators around the world, there is no doubt that legislative development cannot be achieved without a comparative approach

with other regulations (Hill, Zweigert & Kötz 1989). Comparative law could assist legislators in the formulation of new rules or increase the effectiveness of current rules of foreign investment (Koetz & Weigert 1977). In addition, the outcomes of comparative law could be to examine the extent of these regulations as well as provide an optimal level of regulation. Therefore, for the purpose of the research analysis, comparative methods were adopted to accomplish the thesis objectives as well as to clarify the provisions of the Saudi regulations in comparison with the other GCC and Australian regulations.

This comparison is aimed to furnish additional knowledge about the recent rules that were introduced by the Saudi government to encourage foreign investments to invest in the local stock exchange market. The comparative analytical method was also employed to find the uniqueness and distinction between Saudi Arabia, the GCC countries and Australia and pointed out the development as well as advantages of foreign investment regulation in the local stock exchange market. The results of this comparative analysis could aid the Saudi government in improving protection of shareholders' rights.

In any comparative law studies, the researcher should ensure that the regulations are comparable; otherwise, the researcher will not be able to achieve the research objective (Koetz & Weigert 1977). Kamba (1974) agreed that the systematic methodology is the hardest part of the research in order to achieve a successful comparative law study. Subsequently, he suggested three main stages that can assist the researcher to cover various aspects of a comparison and avoid criticisms about the comparative law method. The three stages are: the descriptive, similarities and differences, and explanatory stages. In order to undertake a comparative analysis, the researcher needs to describe the norms of recent rules that offered for foreign investment. Meanwhile, the researcher explores the similarities and differences between these regulations and those selected

countries. Finally, the explanatory stages analyse these rules for foreign investment, taking in consideration the perspective of protecting local shareholders in the Saudi stock exchange market.

Concerning these points, the researcher therefore decided in this thesis to highlight the weakness of legislation and reforms needed in foreign investment rules in the Saudi stock exchange market. In order to clarify the comparison stages, this thesis has covered the following:

1. The Rules of Qualified Foreign Financial Institutions Investment in Listed Shares have been compared with the requirements of Islamic jurisprudence;
2. The RQFFII in Listed Shares provided by the Capital Market Authority have been compared with the rules of foreign investments in stock exchange market in other countries. These countries were chosen because of their similarity to Saudi Arabia in regard to society, language, religion and culture; and
3. Comparing these rules with Australian stock exchange market regulations from the perspective of encouraging foreign investment and protecting the right of companies and local shareholders such as the Foreign Acquisitions and Takeovers Act 1975 and foreign investment policy 2010.

In summary, this approach was followed because of the diversity in the law and regulations, taking into consideration the valuable outcome for the Saudi legal position. There were no restrictions on comparing regulation in these countries. Thus, the comprehensive method was adopted to extend the lawmakers' horizons.

The comparative analytical method also included the amendments in the Rules of Qualified Foreign Investment Institutions 2016 in order to determine any differences in this development.

### **3.6 Limitations**

The methodology of this thesis has limitations in regard to the regions and types of regulations. First of all, this thesis has examined Saudi rules of foreign investments in its stock exchange market and compared them to other countries in the region. These primary countries are Saudi Arabia, Kuwait, the United Arab Emirates, Qatar, Bahrain, and Oman. In addition the Australian regulations were examined in order to expand the areas and knowledge of the research. The reasons for chosen these countries were discussed in Chapter 1. Hence, it should be noted that other Islamic and Arabic countries are not included in the purpose of this thesis.

Secondly, in terms of regulations, this thesis covered only the regulations that pertain to foreign investment activities particularly in the local stock exchange market as well as discussed relevant rules when required in the research. The descriptive analysis of these regulations must be based on the text and content, whatever the motives behind issuing these regulations, which will not be considered by the researcher.

### **3.7 Conceptual Framework**

The importance of selecting a conceptual framework can have a bearing on understanding the research logic and orienting the researcher to the best way of collecting data (Williams 2002). The conceptual framework of this research is driven from the research questions and literature review that must be compatible with the research phenomenon. The government regulations also play a major role in the formation of the theoretical framework.

A review of the limitations in previous studies indicated that the relationships between the effects of foreign investors' regulations and the local stock exchange market have not been examined in such emerging markets as the Saudi stock exchange market.

These regulations have allowed foreign investment to invest which may enhance the local stock exchange either positively or negatively. It is the bridge for foreign investment to benefit or harm the stock exchange including local shareholders. This indicated the impact of foreign flows depends on the host country regulations. Therefore, this study has investigated the new rules of foreign investments in the stock exchange market in the Saudi Kingdom, looking specifically at protecting the rights of shareholders in Joint Stock Companies. This includes how the new rules should be developed, and how they can encourage foreign investors without causing local issues to the host country. It also discussed the Saudi government implementation of the local stock exchange market.

The conceptual framework is developed to understand the strength and weakness in these regulations. This can be achieved by investigating the application for registrations, continuing obligations, obligations of authorised person and power of the authority in relation to foreign investment regulations. The thesis should also be comparative in nature and refer to other systems, as much as the investigation needs to prove or disprove the theory.

In any modern stock exchange market, providing transparency in regulations, and clear information to all investors is regarded as the best model of an efficient market (Malkiel & Fama 1970). It has been assumed that law-makers in Saudi Arabia always tried to follow developed countries in order to achieve a higher standard of regulation. This effort needs to be supported by many researches to understand the legal frameworks in such developing countries. The main reason for the Saudi government passing these rules was to bring different aspects of improvements to the local stock exchange. As the Saudi stock exchange published these regulations in the recent years between the hopes and fears of foreign investment flows, doing comparisons with countries that have a

long history and experience may head the policymakers in Saudi Arabia in the right direction. The comparison might also assist in understanding the legal framework of the other countries that have been chosen in this study.

As has been mentioned in the literature review, the Saudi regulations have been affected by the civil law model. Therefore, the theoretical framework for this thesis referred to two models of protecting shareholders' rights. The first model is civil-law used in countries such as France, Spain, Italy and KSA. The second model is common law used in countries such as UK, Canada, AU, and USA (Almadani 2011). According to La Porta, et al. (1999), the French civil law countries provide the weakest protection of all legal systems, while common law countries provide stronger protection. In this context, Lazarides (2009) believed that the markets in the civil law countries do not have the same legal capacity to control and monitor companies. This discussion of the Saudi rules and the level of protection in common and civil law should also include the Islamic perspective in order to clarify the thesis investigation.

### **3.8 Conclusion**

This chapter has discussed the methodology used in the research. It has also justified the reasons behind choosing the qualitative research design. It also explained the decision to use critical and content analysis method because other types of methodology such as interviews and surveys seemed to be less appropriate. The aim of using a specific protocol for the research approach was to respond to such demanding research questions. The objectives of this study were discussed and how it would respond to gaps in knowledge. The chapter explained the possible methods that have been chosen to collect the research data. Both primary and secondary data were collected in order to play a vital role to demonstrate the impact of the newly imposed rules.

The decision to rely on secondary data sources was made as the research must be supported with more clarification and interpretation of the primary sources. Where possible, the study has used a wide variety of sources to update any further information gathered during the research period. The way of analysing the data has been interpreted in this chapter which guides the researcher in the right direction in answering the research questions. One of the research techniques discussed in this chapter is to compare the data with other intended markets. Principal examples of this are the foreign regulations in stock exchange of the GCC countries and Australia. The conceptual framework was also covered in this chapter in relation to the research questions, literature review and government regulations. The next chapter introduces the analysis of the new rules in terms of attracting foreign investors to the local stock exchange market.

## **Chapter 4**

### **Stock Exchange in the GCC Countries and Australia**

#### **4.1 Introduction**

This chapter will provide a clear picture of the KSA legal system and its link to Islamic rules and other civil laws in order to provide insight into its background. It will present an historical review and an overview of the Saudi equity market to highlight its strengths together with its responsibilities to local and foreign investors. This chapter also will provide an overview of Saudi listed companies, outlining the types of ownership, including foreign investors. One of the main objectives of this research is to compare the Saudi stock exchange market to the GCC countries and Australia. Therefore, this chapter will anchor the discussion of foreign investors in all countries to expand research horizons. A statistical review of foreign investors in the stock exchange is also provided.

This chapter is divided into 11 sections. The KSA legal system is reviewed in Section 4.2. Details about the Saudi Equity Market are outlined in Section 4.3, while Section 4.4 provides an overview of Saudi listed companies. Section 4.5 outlines the Kuwait Stock Exchange (KSE) and section 4.6 sheds light on Qatar Stock Exchange (QSE). Section 4.7 discusses of Bahrain Stock Exchange (BSE), while section 4.8 describes the important monitoring of the United Arab Emirates Stock Exchange (UAE). The Muscat Securities Market (MSM) is outlined in Section 4.9 and section 4.10 offers a brief historical view of Australian Securities Exchange (ASX). The final section 4.11 gives a brief summary of the chapter.

## **4.2 KSA legal System**

The KSA is a Muslim country where the majority of its citizens are Muslim. It is ranked second in the top 10 countries that have Shariah-compliant assets (Austrade 2010). In recent years, the KSA has been considered a cornerstone of Muslim countries that are seeking to invest in products completely compliant with their religious beliefs. In addition, the political stability and petroleum wealth increase confidence in the Saudi stock exchange market and encourage foreign investors to invest. Therefore, there is a need to understand Islamic law, as substantial trade has developed between Islamic countries and the West. The trade between Muslim and Western countries is estimated to be 87%, while it 13% between Muslim countries (Ahmad 2004). Nevertheless, the Islamic law seems to be not developed and understood worldwide (Austrade 2010). As foreign investors are more aware of legal systems, it is appropriate to begin this chapter with more explanation about Islamic law including the KSA legal system in order to clarify any uncertainties.

### **4.2.1 History of Islamic law**

Extensive parts of the Arabic World originated from the influence of the Ottoman Empire. At that time all business activities inside the Empire were subject to the regulations of what call the Justice Magazine (Albaga 2009). This magazine was the first in the civil law regulations that followed the official regulations of Islamic jurisprudence in 1869. There were a number of Arabic nations who developed their legal frameworks within the regulations of the Magazine; for example, Jordan, Egypt, Iraq, and the Gulf countries (Al-Zahrani 2013). After King Abdul-Aziz unified the Kingdom, he attempted with help of Islamic scholars to change the rules by following the Hanbali School “one of the fourth Islamic school of jurisprudence, Hanbali, Hanafi, Shafai and Maliki” (Ansary 2008; Cliffordchance 2014). The reason for changing the

rules was that the expansion of the civil jurisdiction might affect the application of sharia (Baamir 2013).

There is a big debate about whether or not Saudi company law was indirectly inspired by French company law. This argument refers to the period after the Ottoman Empire modifications when Egyptian legal scholars updated their regulations with French commercial law and then later the KSA refined its company law based on the Egyptian system (Lewis & Mallat 2000). Some argue that even it is similar to the French/Egyptian model; the Saudi law-makers have selected what can be appropriated within Islamic law (Al-Dohaiman 2008; Baamir 2013). Furthermore, if there is a conflict between Islamic law and other regulations, including the Saudi Government's rules, than Islamic law will generally prevail (Cliffordchance 2014). In all cases, this mix in the development of regulations might be considered a positive influence in the Saudi commercial environment. For example, the flexibility of the Foreign Capital Investment Law (2000) indicates that Saudi law makers are trying to diversify economic activities and not be dependant only on one source like oil (El Sheikh 2003). While other factors may be at play, the Saudi government cannot eschew the effects of global trading.

As the Islamic law depends on a variety of sources, it is important to know that the paramount body of law in the Kingdom of Saudi Arabia is the Shari'ah. This is comprised of a collection of fundamental principles derived from a number of different sources, which include the Holy Quran, the Sunnah (sayings of the Prophet Mohammed) and the works of Shari'ah scholars. According to Article 1 of The Basic Law of Governance 1992:

The Kingdom of Saudi Arabia is a fully sovereign Arab Islamic State. Its religion shall be Islam and its constitution shall be the Book of God and the Sunnah (Traditions) of His Messenger, may God's blessings and peace be upon him (p.2).

The Saudi legal system also has divided the authorities of the state into three sections, namely the legislative, the executive, and the judiciary. As well as these three authorities, the basic law of governance has given authority to the king. The Article 44 of the Basic Law of Governance 1992 states:

Authorities in the State shall consist of Judicial Authority, Executive Authority, and Regulatory Authority. These authorities shall cooperate in the discharge of their functions in accordance with this Law and other laws. The King shall be their final authority (p.8).

Indeed, there is no separation of powers, particularly of the legislative and the executive branches (Gause 1994). However, these sections have been explained in details by the state constitution which basically defines the mandate of each (Al-Jarbou 2004).

In addition, Saudi law is derived from enacted legislation such as Royal Orders, Royal Decrees, Council of Ministers' Resolutions, Ministerial Resolutions and Ministerial Circulars (Watkins 2013).

#### **4.2.2 The Legislative Authority**

According to the Article 19 of the council of ministers' law, the legislative authority is divided between the King, the Council of Ministers and the Shura Council which means the consultative council or parliament as noted in Article 67 of the Basic Law of Governance 1992:

The regulatory authority shall have the jurisdiction of formulating laws and rules conducive to the realization of the well-being or warding off harm to State affairs in accordance with the principles of the Islamic Shari'ah. It shall exercise its jurisdiction in accordance with this Law, and the Laws of the Council of Ministers and the Shari'ah Council (p.11).

The top of the pyramid of these authorities is the king and all three authorities defer to him (Article 44 of the Basic Law of Governance 1992). The king has unrestricted power that includes the enactment and amendment or repealing of laws by Royal Order (Article 26: of the Law of Council of Ministers). The king is only required to abide by Islamic Shari'ah; other than this, there are no limitations to the authority of the King provided in the Basic Law of Governance (Al-Jarbou 2004).

The council of ministers use legislative powers besides the Shura Council that assess the laws and regulations (Article 15 and 18 of the Law of the Shura Council).

### **4.2.3 The Executive Authority**

The Executive Authority consists of the King, the Council of Ministers, local government and ministerial subsidiaries (Ansary 2008). The Council of Ministers is the highest executive authority and may overrule all other executive powers (Al-Harbi 2010). In addition, the Council of Ministers has the authority to determine domestic, foreign, financial, economic, instructive and defence policies and supervise their implementation. In accordance with Article 19 of the Law of the Council of Ministers, it is the reference point for the financial and administrative affairs in other ministries and government bodies.

Article 24 of the law of the Council of Ministers notes that it has the right to follow up the implementation of laws, establish necessary organizations required for public welfare and supervise the implementation of development plans.

#### **4.2.4 The Judicial Authority**

The judicial authority has a unique role in the state. It is independent and the judge is not subject to any authority except Shari'ah (Article 46 of the Basic Law of Governance). The citizens and residents are equally guaranteed to have the right of litigation to the courts (Article 47 of the Basic Law of Governance). The judicial system that was updated in 2007 notes that courts should be as follows: 1. Supreme Court, 2. Appeal Courts, and 3. Courts of First Instance, which include the general courts, summary courts, criminal courts, personal status courts, commercial courts and labour courts (Ansary 2008). Furthermore, the Supreme Judicial Council may establish other specialized courts in accordance with the King's approval (Article 9 of the Law of the Judiciary). In addition, there is an administrative Court (Board of Grievances) which is considered as an administrative Courts system. There is also another type known as Quasi-Judicial Committees which number more than 75. These committees are affiliated to government executive departments such as the Saudi Monetary Agency, Capital Market Authority, and Ministry of Commerce and Investment (MOCI). They handle administrative disputes according to certain procedures (Alknezan 2011).

However, it has been argued that these Committees may detract from the principle of independence of committees, as the Capital Market Authority appointed the members of the Resolution of Securities Disputes (CRSD) Committee for a three-year renewable term, while it should have been the Law of the Judiciary (Al-Zahrani 2013). In order to

highlight this, Article 25 of the Capital Market Law 2003 explains the complaints procedures:

The Authority shall establish a committee known as the "Committee for the Resolution of Securities Disputes" which shall have jurisdiction over the disputes falling under the provisions of this Law, its Implementing Regulations, and the regulations, rules and instructions issued by the Authority and the Exchange, with respect to the public and private actions. The Committee shall have all necessary powers to investigate and settle complaints and suits, including the power to issue subpoenas, issue decisions, impose sanctions and order the production of evidence and documents (p.28).

Article 25/B also notes that these members shall not have any commercial interests whether direct or indirect and any family relationship with parties involved in the complaint. If the clients do not accept the committee's decision they have to provide a statement of claim to the Appeal Panel within 90 days. According to the same article, this Panel is formed by a Council of Ministers' decision and;

It shall have three members representing the Ministry of Finance, the Ministry of Commerce and Industry and the Bureau of Experts at the Council of Ministers. The members of the Appeal Panel shall be appointed for a three-year term renewable. The Appeal Panel shall have the discretion to refuse to review the decisions of the Committee for the Resolution of Securities Disputes, to affirm such decisions, to undertake a de novo review of the complaint or suit based on the record developed at the hearing before the Committee and to issue such decision as it deems appropriate in relation to the complaint or the suit. The decisions of the Appeal Panel shall be final (p.29).

After that, the Capital Market Authority requests that the government agency take responsibility and enforce judicial judgments in accordance with the enforcement procedure of judicial judgment in civil proceedings.

As a matter of fact, the judicial system in Saudi Arabia still has a shortage in the number of judges as well as a large number of law suits which indicates the urgent need for specialization principle in the courts of general jurisdiction (Ansary 2008).

These examples show the need for reform of the judicial system, otherwise, there can be negative consequences for litigants and reluctance on the part of foreign investors to invest in Saudi Arabia.

#### **4.2.5 The Royal Orders and Royal Decrees**

As described above, both royal orders and royal decrees represent the royal property, which is a written decision with a specific formula holds by the King signature as the head of state in the subject that was not presented to the Council of Ministers and the Shura Council. There is no legal text that illustrates the use of cases and royal powers or limits of command. This absence of a legal text applies to all regulatory tools such as the Royal Decree (King's decision, after the matter is presented to the Council of Ministers or Shura), Royal guidance (order issued orally by the King, and the Royal Court writes and sends it to the concerned authority), and Royal commands (decision by the Council of Ministers, whether the King or one of his deputies was present at the meeting at which the decision was taken) (Al-Jarbou 2004).

The Royal Order is the original legal tool in Saudi Arabia. The King has absolute power as a head of state, and can make decisions on any subject, unconditionally (Article 55 and 56 of the law of the Basic Law of Governance).

The Royal Decrees is an official document that reflects the decision of the King, agreeing on the subject that has already been presented to both Ministers and the Shura Council. The document needs the approval from the Council of Ministers and Shura Council, and it requires approval from the King to be effective and official for the purpose of publishing it in the Official Gazette (Article 23 of the Law of the Council of Ministers). Most of the Royal Decrees agree on the project or law and the approval of international agreements (Article 20 of the Law of the Council of Ministers). Moreover, all ministers who support proposed legislation identified by their ministry, must seek approval from the Council of Ministers, and then send their proposed legislation to the King for getting approval through Royal Decree (Article 22 of the Law of the Council of Ministers).

In summary, the Saudi legal system since its foundation has changed and developed. It provides full protection for citizens' rights and justice, as will be further elaborated in chapter 6. The recent reforms in the Saudi constitutional system indicate that there changes and developments are required (Ansary 2008). If Saudi leaders keep implementing such improvements, the Kingdom of Saudi Arabia will continue to flourish.

### **4.3 Overview of the Saudi Equity Market**

#### **4.3.1 Strength of the Financial System in Saudi Arabia**

The capital market is supported in Saudi Arabia through a strong financial system (the banking system), which is organized by the Saudi Arabian Monetary Agency (SAMA). The supervision by the Central Bank limits the accumulation of risk in the stability of banking system. This was the reason behind the safe banking system in Saudi Arabia during 2008-2009 when the financial and economic crises spread into other countries.

The central bank has successfully controlled liquidity conditions, although monetary policy tools at the central bank are very limited (Khan 2012).

### **4.3.2 Strength of the Saudi Stock Exchange Market**

The Saudi Arabia Exchange provides a variety of options to attract foreign investment, particularly those who have invested in developed markets and achieved higher returns. Although the number of listed companies in the Saudi market is about 170, capitalization in the market is huge. It is currently the largest market in the Middle East and North Africa in terms of market capitalization and trading volume (Al-Sudairi Salman et al. 2014). The market's value is about \$559 billion which outstrips bourses in South Africa, Russia, Turkey, and Malaysia. Compared to stock market capitalization in Latin America, the Saudi stock exchange is the second largest after the Brazil stock exchange, while it is the fifth in Asia after China, India, Korea, and Taiwan (CMA 2016j; Riyadh 2015). Moreover, the liquidity available in the market as the stocks are traded on a daily basis makes the market robust and more effective than other regional markets (Alkhareif 2015).

The pillars of the Saudi stock exchange market are the strong economic fundamentals which are the firm central financial system, the depth and breadth of the market, and the advanced regulatory environment of the financial market. It seems that the strength of the market in the long term comes from these strong economic fundamentals as well as the latest technical systems that are very important to the work market and economy (Alkhabeer 2014).

The petrochemical sector and the banking sector are also highly profitable. The Saudi banks have continued to show a great achievement that outperforms their Western peers in regards to profitability. For instance, Saudi banks stand at over 10% returns profits

compared to single digit returns for the larger European and US banks (Alkhabeer 2014; Alkhareif 2015).

As a matter of fact, Saudi Arabia boasts to have the largest crude oil reserves (20% of the world's reserves). These largest reserves along with the largest production in the world enable the country to be the largest exporter of crude oil. The oil sector recently contributed to nearly 90% of government revenue, as well as export revenue. The huge trade surplus during the last decade has led to the accumulation of foreign exchange reserves which is nearly 100% of gross domestic product (GDP). The Saudi economy has one of the largest reserve ratios to GDP as well as one of the lowest public debts to GDP (Khan 2012).

The best example of the strong economy was when the government embarked on a massive fiscal expansion during 2008-2009, at a time when other countries were suffering from lengthy deflation (Khan 2012). The Arab Spring that spread across the Middle East in 2010 had a huge negative effect in many countries in the region, while the Saudi economy remained stable and avoided such crisis (Cliffordchance 2014). More recently, when oil prices began to decline in 2014 the Kingdom demonstrated a great management in controlling the adverse impacts (Alkhareif 2015).

According to the United Nations Conference on Trade and Development's World Investment Report 2013, Saudi is the largest destination for foreign direct investment in the Arab World. However, it is expected that the Saudi Arabian Kingdom could see an increase in foreign capital flows ranging from 25 billion to 45 billion US dollars in the near future (Al-Sudairi Salman et al. 2014). If Saudi Arabia is included in the Emerging Markets Indexes, especially Morgan Stanley Capital International (MSCI), total capital flows into the Saudi stock exchange market could be much greater in the long term and

are estimated to be 27 billion (Riyadh 2015). This is clearly reflected in the response of foreign institutions to the recent announcement issued by the Capital Market Authority under the Rules for Qualified Foreign Financial Institutions Investment in Listed Shares 2015. These rules can play a major role in encouraging foreign investors and protecting the rights of shareholders.

Ultimately, it can be said, the advantage of the Saudi stock exchange market is that it is distinctive. Saudi Arabia has the largest oil reserves and one of the most dynamic and creditworthy markets in the world (Bancal 1993), in addition to its political stability and the quality of its infrastructure. Over the past few years, the Saudi government has used high oil profits to wipe out the country's debt and increase its foreign reserves to 100% of GDP ( Devassy 2015). This could be clear when the government was able to increase spending during the global economic recession in 2008-2009. Along with that, as a member of G20 Saudi Arabia may use its agenda and power to reduce the risk associated depending only on the oil sources (Baamir 2013; Cliffordchance 2014). Consequently, the Kingdom of Saudi Arabia is a healthy environment that might increase investors' confidence.

The Capital Market Authority in Saudi Arabia is the most respected in the Middle East and has a good reputation on several occasions in terms of reports and listing rules.

### **4.3.3 Saudi Capital Market Authority Functions**

The Capital Market Authority is a government organization that has financial and administrative independence from the government as well as direct contact with the Prime Minister. The following is a summary of its main functions (CMA 2016a):

The CMA's functions are to regulate and develop the Saudi Capital Market by issuing required rules and regulations for implementing the provisions of Capital Market Law.

The basic objectives are to create an appropriate investment environment, boost confidence, and reinforce transparency and disclosure standards in all listed companies, and moreover to protect the investors and dealers from illegal acts in the market.

The Capital Market Authority is responsible for increasing the level of corporate governance, the investment culture for all shareholders in addition to the commitment and implementing regulations for the financial market system. This can be achieved through the effective censorship and awareness with dissuasive policies to the offenders (Cliffordchance 2014; CMA 2016a). However, the Capital Market Authority has been continuing its efforts to assess in the near future the feasibility of allowing foreign investors to own strategic shareholdings in listed companies (CMA 2014).

#### **4.3.4 History of the Stock Exchange Market in Saudi Arabia (Tadawul)**

The SCL 1965 is considered the primary regulator for the issuance of securities. However, in 1983 the government organized the secondary market, which was the only way to trade shares through the commercial banks. The Saudi stock exchange has developed over the three basic stages represented as follows:

The first stage covers the period from 1954 to 1982 when the number of joint stock companies amounted to about 10 companies with a capital of 1.7 million (Riyal). The stock was traded initially through direct contact, but after a while brokerage offices emerged which increased selling and buying operations in higher trading volume. With the beginning of the eighties century the stock prices reached the highest levels in the stock exchange market (Alkhareif 2015; Salah 2010).

The second stage covered the period from the beginning of 1983 until 2003. This phase was characterized by development of the Saudi financial market structure when the

government required the Saudi company to register for stocks in 1983. Meanwhile, the government issued a decree to establish a monitoring committee of the stock exchange market as well as the Saudi Arabian Monetary Agency (SAMA) issued a circular to explain the stock exchange market trade (Alkhareif 2015; Baamir 2013). In 1990 work began on an electronic system for trading and updated a new generation of trading systems (selling and buying) called Tadawul in 2001(Salah 2010).

The third stage is considered the modern stage started from 2003 until 2009. The Financial Market Authority was established under the Capital Market Law issued by Royal Decree No (M/30) on 31 July 2003 (Tadawul 2013). This government authority is financially and administratively independent. Its basic objectives are to organize the work of investors and brokers along with following-up registration and trading of securities and all related operations of the stock exchange (CMA 2016a; Salah 2010). In 2009, the Saudi Capital Market Authority expanded the market to include bonds.

**Change in the Stock Market Index in the Kingdom of Saudi Arabia (1985-2015)  
based on the Final Report of SAMA (2016)**

Years	Stock Market Index (Million Riyals)	Percentage Change
1685	759.97	-
1990	4403.24	0.827407
1995	23226.59	0.810422
2000	65292	0.644266
2005	4138695	0.984224
2010	759184	-4.4515
2013	1,369,666	0.445716
2014	2,146,512	0.56719

2015	1,660,622	0.445716
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Source: SAMA (2016)

The table shows that there was a significant change in 2005 that reached to 0.98% and related to the establishment of the Capital Market Authority. Interestingly, the sudden decrease in 2010 by -4.45% was associated with the local crisis in 2006 and the mortgage crisis in the USA in 2008, which caused the market to drop sharply.

Currently, the Saudi stock exchange market is considered by far the biggest market in the Middle East and North Africa with over \$559 billion in terms of market capitalization and trading volume (Riyadh 2015). Although the Saudi stock exchange market is very young, the market value equals 79% of all 13 Arab stock markets (Alajlan 2004). It is in the top of many countries in Europe and Africa such as Russia, Turkey, Poland, Greece, Hungary and South Africa. The Saudi stock exchange market is the second market in Latin America and the fifth in Asia (CMA 2016j). Moreover, the Saudi stock exchange market has a market cap greater than all other GCC countries combined together, which logically implies that the Saudi market is able to attract more foreign investors than the total foreign investment in the GCC. (Devassy 2015, cited in Al Rajhi Capital report 2015; Alkhabeer 2014). This probably will increase, especially after a possible inclusion of Saudi Arabia into the Morgan Stanley Capital International (MSCI) emerging markets index in the future. Tadawul is the most important market in terms of daily trading volumes and the most diversified in terms of issuers (Al-Sudairi Salman et al. 2014). It is important to note that the Saudi stock exchange market is positively correlated with oil prices, GCC markets, and other major markets like the New York Stock Exchange, while it is negatively correlated with the U.S. dollar index which therefore has advantages for foreign investors (Alkhareif 2015).

The stock companies are divided into 15 sectors; Banks and Financial Services, Petrochemical Industries, Cement, Retail, Energy and Utilities, Agriculture and Food Industries, Telecommunication and Information Technology, Insurance, Multi-Investment, Industrial Investment, Building and Construction, Real Estate Development, Transport, Media and Publishing, and Hotel and Tourism (CMA 2016a).

## **4.4 Overview of the Saudi Listed Companies**

### **4.4.1 Background of Foreign Investment in the Saudi Stock Exchange Market**

Before discussing the background of foreign investment, it must be stated that GCC citizens are not considered to be foreign investors. This is because of the agreements between these countries that deem GCC citizens to have the same rights, including for investment as Article 3 of the Economic Agreement states:

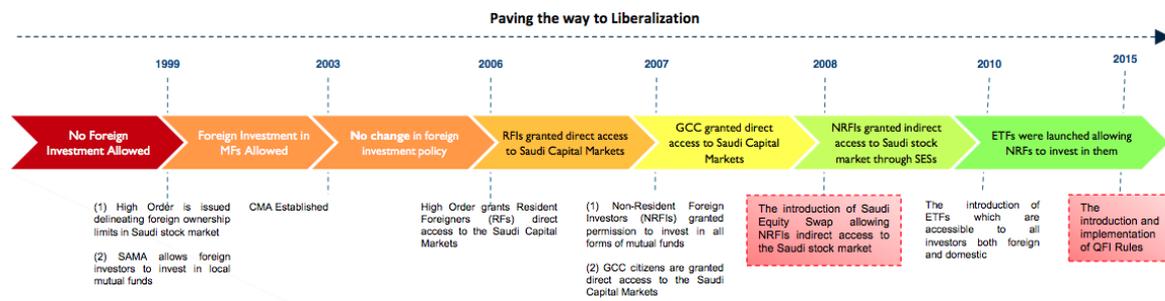
Pursuant to the GCC Charter which calls for closer ties and stronger links among Member States; and In the light of reviewing the economic achievements attained since the inception of the Council, including accomplishments attained by the Economic Agreement signed in 1981... and Responding to the aspirations and expectations of GCC citizens towards achieving Gulf citizenship, including equal treatment in the exercise of their rights to movement, residence, work, investment, education, health and social services (p.37).

The diagram below shows that before 1999 no foreign investments were allowed in the stock exchange market. From then until 2008, the CMA permitted non-resident foreign investors to invest only through mutual funds. In 2008 the CMA began to allow foreign investors to invest indirectly through swaps with local intermediaries who already had a licences and approval from the CMA. In August 2014 the CMA announced the draft of

RQFFII in Listed Shares for consultation. The Draft Rules contributed to a significant step towards improving the investment climate and opening up the capital market for foreign investments. It is worth noting that the rules only apply to foreign investments in listed shares, not other Saudi securities like Sukuk (CMA 2015c).

On 4 May 2015 the CMA has permitted non- citizens to participate directly in the Kingdom’s stock exchange (Tadawul) and published its rules for Qualified Foreign Financial Institutions Investments in Listed Shares. This step was a highly anticipated and long awaited event in regard to clarifying the promotion of foreign investment in the Saudi stock exchange market (CMA 2016j). However, Tadawul at the time of writing this thesis welcomes only established institutional foreign investors not individual investors (CMA 2016a).

The difference between investment through the QFI Framework and the Swap Agreements Framework is that Swap Agreements only provide economic benefits to foreign investors. by comparing the QFI Framework, it offers shares under the name of the investor which leads them to exercise their rights, such as voting rights and appointing a representative on the board of directors of the companies (CMA 2015c).



#### **4.4.2 Companies Owned by the Saudi Government, Families, Individuals and Foreign Investors**

The number of listed companies in the market started with 46 in 1986 and had increased remarkably to 146 in 2010 (Based on SAMA Report 2013, cited in Alshammary 2014). Currently, the Saudi stock exchange has about 170 listed companies with market capitalization estimated at 2 trillion riyals (Al-Ghamdi 2015). The government owns a majority of these companies. It controls 37% of the total market (Azzam 1997). According to Al-Ghamdi (2015), the chief executive officer (CEO) of the Saudi financial market private and government institutions owned 58% of the Saudi stock exchange market, noting that it reversed commonly held views. For instance, in the electrical and communication sectors, the government owns 76% and 70% respectively (Al-Dohaiman 2008). In the Saudi Arabia Basic Industries Corporation (SABIC), the largest public company in Saudi Arabia and listed company in the Middle East, the government still owns 70% of its shares (Azzam 1997). The government also owns 21.7% of Riyadh Bank, 22.9% of Saudi American Bank, and 21.5% of Saudi investment Bank (Argaam 2013). This proportion of government ownership is similar to other developing countries in the world. The state in Singapore for example owns 45% of traded firms (La Porta et al.1999). Likewise, state ownership in New Zealand reached to 25.35% and in Spain 30% (Alajlan 2004).

The largest shares were held by rich families and individual investors with 34% of the total market (Al-Ghamdi 2015). There are 21 companies on the Saudi stock exchange market belonging to one person or one family. The largest owner is Prince Al-Waleed Bin Talal who owns 95% of the Kingdom Holding Company estimated at 74.11 billion KSA Riyals of market value and he is one of the major shareholders of the Saudi American Bank (Alajlan 2004; Argaam 2013). The second largest owner is Suleiman

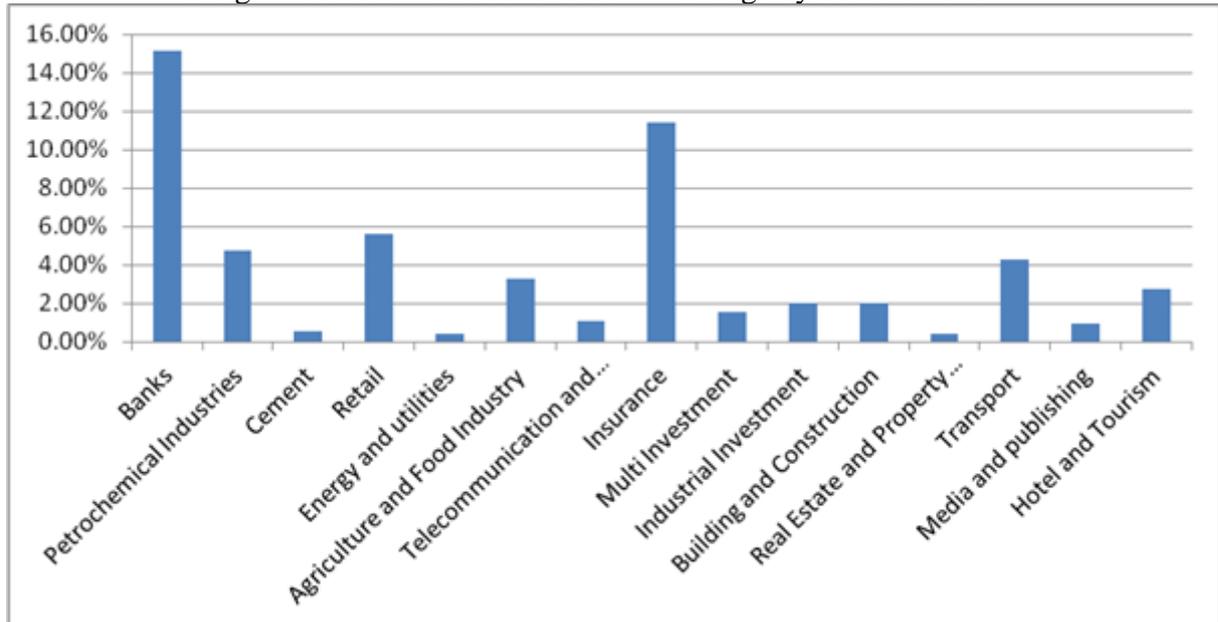
Bin Abdul Aziz Al-Rajhi, estimated at 21.46 billion Riyals of market value (Argaam 2013). The third owner is Olayan Financing Company owned by the Saleh Kamel and Olayan families. They hold 16.9% of Saudi British Bank, 21.8% of the Saudi Hollandi Bank, and 5.8% of the National Industrialization Company which is estimated at 11.03 billion Riyals of market value (Argaam 2013). Family ownership and control in traded firms is widespread in Western Europe, South and East Asia, Latin America, the Middle East and Africa (Burkart et al. 2003; Claessens et al. 2000; La Porta et al. 1998; La Porta et al.1999). Comparing Saudi Arabia to other countries, family ownership in traded firms in Argentina is 65% and Hong Kong 70%. Some countries have smaller percentage than the Saudi market such as Singapore with 30%, Canada 25%, Norway 25% Spain 15% and the U.S. 20% (La Porta et al.1999). Therefore, this comparison indicates that the proportion of family ownership in the Saudi firms is average.

Although the ownership of individuals makes up 34% of the Saudi stock exchange market they represent 89% of the monthly volume of trading (Al-Ghamdi 2015). The statistic of the first half of 2015 showed that individual sales exceeded the size of purchase by 21.8 billion riyals. At the same time, the stock exchange market increased by 15.27%, which indicates individual investors decision was mostly wrong and thus did not benefit from the local market growth (Alistithmar 2015).

In terms of foreign ownership in Saudi firms, Tadawul statistics showed in 2015 that foreign investors, including owners and swaps, hold only 4.8% of the total market. 1.18% out of 4.8% is owned through swaps in strategic investments in the banking and insurance sectors (Devassy 2015). 22 companies out of the 170 companies listed on Tadawul have more than 10% of total foreign ownership, while 31 companies have more than 5% of total foreign ownership (Devassy 2015).

According to the recent reports published by Tadawul at the end of June 2016, total foreign ownership in all categories, whether residents or non-residents including interests under swaps account for about 4.21%. The diagram below represents the ownership of foreign investors in each sector based on this report; it indicates that the bank sector was the highest sector where foreign investors owned over 15%, followed by the insurance companies sectors where foreign investors owned over 11%. Foreign investors represented around 6% of the retail sector, followed by 4.37% of the petrochemical industries sector and 4.31% of the transport sector. Their investment in the remaining sectors ranges from 3.26% in the agriculture and food industry to 0.41% in the energy and utilities sector which is considered the lowest amount. Therefore, foreign investors are keen to invest their money in the safest and beneficial sectors which suggest a positive and negative effect associated with the most important sector like banks sector to the local economy including the stock market. As the bank sector has the strongest weight in the index estimated at 28.9 % (Tadawul 2016) it may be assumed that the bank sector is a double-edged sword. There is no doubt that the main concern of foreign investors is to generate profits.

Foreign Investors in the Saudi Stock Exchange by Sectors 2016



Source: Tadawul

Foreign players now have sizable holdings in 12 companies mostly through strategic investments. They have investments scope of less than 20% because the maximum limit for QFIs and their clients is 20%. However, combined institutions are allowed to have total foreign investments of 49% of a company. For example Saudi Hollandi Bank already has foreign holdings of 42%, leaving only a 7% stake available for QFIs to acquire (Devassy 2015). Interestingly, foreign ownership is most apparent in the banking sector where seven out of 12 have foreign ownership ranging from 5.41% to 41.22 (CMA 2016l).

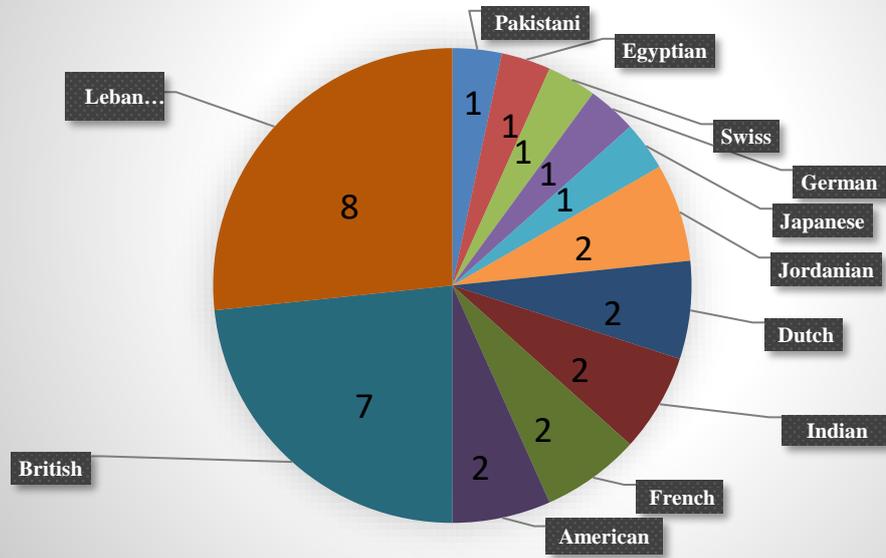
There are five companies that do not have any allowance for foreign investors- Jabal Omar, Makkah Construction, Knowledge Economic City and Taiba. These companies have government contracts to build the holy cities of Makkah and Madinah. Nevertheless, the National Shipping Corporation of Saudi Arabia already has a 0.59% foreign stake even though it is not permitted to have any foreign ownership (CMA 2015b). Currently, the rate of foreign investments is quite low, but it is expected that after possible inclusion of Saudi Arabia into the MSCI emerging markets index, foreign

investors will increase as they become more confident in the Saudi stock exchange market.

#### **4.4.3 Foreigners in CEO Positions at Saudi-Based Firms**

Chief Executive Officer "CEO" is considered the highest authority in a company and he or she is responsible for managing and implementing the policies approved by the Board of Directors. In addition, CEOs are responsible for planning objectives, organization resources, staff orientation and workflow control to achieve company goals. In fact, the performance of the CEO is the biggest factor in company's success or failure (Buchholtz & Ribbens 1994). According to statistics by Argaam (2015b) of the number of CEOs in Saudi joint stock companies, the number of foreign chief executive officers was 30, accounting for about 18% of the total number of joint stock companies, while the number of Saudis chief executive officers was 136 accounting for 82%. The following diagram shows the number of CEOs and their nationalities. In more detailed manner, the majority of CEO's are in the insurance sector, where there are 16 compared to 18 Saudis. In the bank sector, there are six foreigners leading firms which are equal to the number of Saudis CEOs. Similarity, the telecommunication sector has two Lebanese nationals as CEOs in Etihad Etisalat and Zain Company. In the agricultural sector two Swiss and German national are working as CEO's in Almarai and Saudi Dairy Foodstuff Company, comprising 14% of the total sector. In the industrial investment sector there is only one foreign chief executive from Egypt. Surprisingly, there are no foreign chief executive officers in the other sectors such as petrochemical, cement, retail, energy, multi-investment, real estate development, hospitality, and media (Argaam 2015b).

### Foreign Chief Executive Officers (CEO) in Saudi Companies (2015)



Source: (Argaam 2015)

However, this is not the whole picture of foreign investors in Saudi stock exchange market. In August 2015, The Capital Market Authority divided the investors into new categories including foreign investors. The report shows the segmentation of each investor type, by nationality, trading activities, traded volume, stock market ownership value, and whether institutional or non-institutional investors. This step aims to development stock transparency and provide more details to shareholders. This type of classifications can be seen as follows (Tadawul 2015):

1. Saudi Individuals have been classified into the following four categories:
  - a. Retail Investors;
  - b. High Net Worth Investors (HNWIs);
  - c. Individual Professional Investors (IPIs); and
  - d. Individual DPMs.

2. Saudi Institutions have been classified into the following four categories:
  - a. Corporate;
  - b. Mutual Funds;
  - c. Government Related Entities (GREs); and
  - d. Institutional DPMs.
3. GCC investors have been classified into the following three categories:
  - a. Individual Investors;
  - b. Institutional Investors; and
  - c. GCC DPMs.
4. Foreign investors have been classified into the following five categories:
  - a. SWAP Holders;
  - b. Foreign Resident Investors;
  - c. Strategic Partners;
  - d. QFIs; and
  - e. Foreign DPMs.
5. The report is divided into the following four sections:
  - a. Value Traded by Nationality and Investor Type;
  - b. Value Traded by Investor Classification;
  - c. Ownership Value by Nationality and Investor Type; and
  - d. Ownership by Investor Classification.

The CMA in this regard committed to publishing and updating this report every week on its website from 6 September 2015 which allows local and foreign investors to read in advance the stock exchange market directions. Finally, the Tadawul provides at the end of every day on its website the percentage of local investors, if they own more than

5% in each company and at the same time provides information on any type of foreign investors (Tadawul 2015).

#### **4.5 Kuwait Stock Exchange (KSE)**

The Kuwait stock exchange market began in 1950 when the National Bank of Kuwait created as the first Kuwaiti shareholding company (KSE 2010). Then after implementation of the Commercial Companies Law in 1960 share holding companies increased rapidly (GulfBase 2001a). In August 1983, a government decree organized stock-trading activities by issuing a number of laws and rules to the public (KSE 2010). Since then, the regulations have been extended through developments such as an electronic trading system in 1995 and Online trading in 2003 (KSE 2010). In order to strengthen the stock exchange, the government transferred its responsibility to the Capital Markets Authority in according to the Law No. 7/2010 which aimed to attract both domestic and foreign investors (KSE 2010; Oxford 2012). In recent years, the KSE is considered one of the oldest exchanges and the third-largest in the GCC behind the Saudi and Qatar stock exchanges markets with market capitalization of over \$101.080 billion (Oxford 2012; Alsameen 2013). There are currently 200 companies divided into 13 sectors: Oil and Gas, Basic Materials, Industrials, Consumer Goods, Health Care, Consumer Services, Telecommunications, Banks, Insurance, Real Estate, Financial Services, Technology and Apparel (KSE 2010). The government own about 26% of the Kuwait stock exchange in terms of total market capitalization (Azzam 1997; Sartawi 2012).

Pursuant of its objectives, on 14 December 2014 the Kuwait government issued the Executive Regulations of Law No. 116 of 2013 to allow Direct Investment in the Kuwait stock market. The Executive Regulations comprise 45 articles divided into nine

chapters. According to the Article 8 of the Executive Regulations, foreign investors may obtain up to 100% of the shares of the capital of a shareholding company, limited liability Company, and a single person company.

The government had allowed foreign investors to invest in the stock exchange market since 1999. In order to widen its foreign investor base, the government exempted foreign investors from taxes on profits that accrued by investing in the stock exchange market. Consequently, the number of foreign investors has increased as well as trading volume in the stock exchange market (KSE 2010). In regard to government regulation of the stock exchange, the GCC citizens can own up to 100% of listed companies while non- GCC citizens can own up to 49% of listed companies (Alsameen 2013). Nevertheless, until 2012 the participation of foreign investors was only 6% of listed companies in Kuwait (Kern, S 2012). To encourage more investors, the government has allowed foreign companies who have extensive experience to own up to 44% of the Kuwait Stock Exchange Market. This step may encourage international exchange operators such as Nasdaq, OMX and Euronext to own shares in one of the Middle East's oldest stock markets (Al-Sayegh 2015).

Based on the document provided by an official in KSE on 31 March 2016, foreign investors owned 1.34% of the bank sector, 4.16% of the financial services sector, 3.31% of the consumer goods sector, 10.25 of the healthcare sector, 2.19 % of the industrial sector, 1.48% of the consumer services sector, 1.12% of the apparel sector, 1.98% of the telecomm sector, 1.64% of the technology sector, 1.41% of the real estate sector, 1.00% of the basic materials sector, 0.55% of the oil and gas sector, and 0.18% of the insurance sector. These statistics show that the strongest foreign ownership was in the healthcare sector and the weakest, was in the insurance sector.

## **4.6 Qatar Stock Exchange (QSE)**

Until the end of 1995 there was no opportunity to exchange securities on the Stock Exchange due to the limited number of public shareholding companies in Qatar. At that time, people bought and sold stocks through some unspecialized and unlicensed offices. In 1995, the Qatar Stock Exchange Market established its rules under Law No. 14/1995 in order to stimulate the recovery of the Qatari economy, develop natural gas, and start public shareholding companies. The official beginning was modestly in 1997 starting with a small number of listed companies, stood at 17 public joint stock companies with an estimated its capital of \$567.225 (Abu Amsha 2013; Coleman 2015). As a part of its structural reforms in 2005, the government established the Qatar Financial Markets Authority (QFMA) to supervise and monitor the stock exchange (QFMA 2005). Although the Qatar stock exchange is one of the smallest markets in the region with only 43 listed companies, it was recently upgraded to the Secondary Emerging Markets Index by global index providers Like Financial Times Stock Exchange (FTSE) and Morgan Stanley Capital International (MSCI). In addition, it established a partnership with NYSE and Euronext with a share of 20% for reform and improvement purposes (Fadlalla & Amani 2014; Yun, Kim & Hammami 2012). The stock exchange market is divided into seven sectors: Banks, Consumer Goods, Industrial, Insurance, Real State, Telecommunications, and Transportation (QSE 2016).

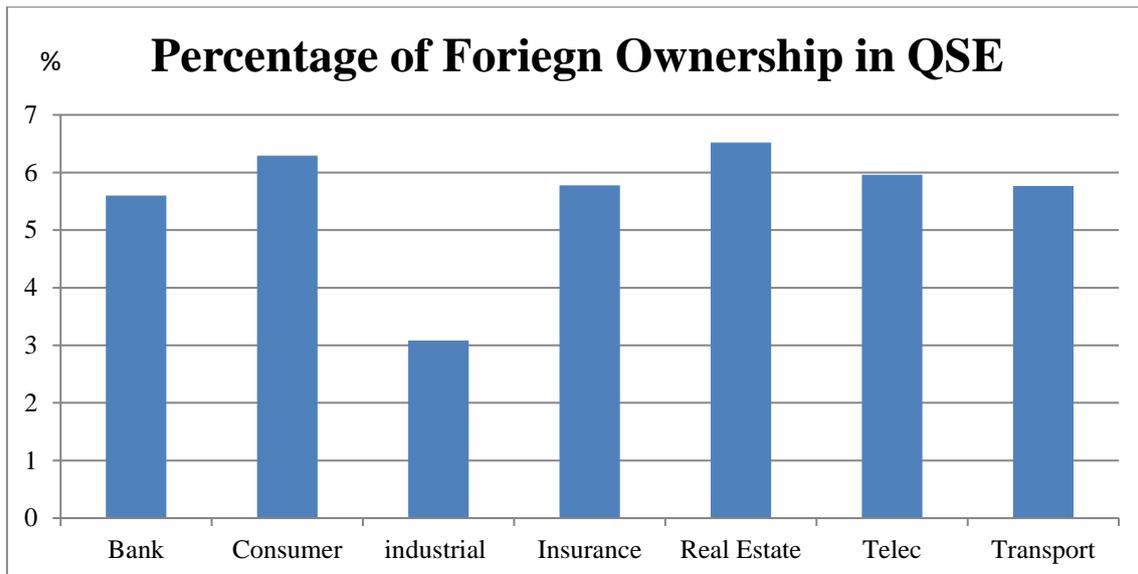
The equity market capitalization has risen from \$128.439 billion in 2011 to \$130.677 billion in 2012, while the stock of its regional peers have decreased in the same period (Alsameen 2013). On the 1<sup>st</sup> August 2013 the market capitalization increased up to \$265.22B (Fadlalla & Amani 2014). However, the last five years have shown an impressive performance which makes the QSE Index as the second largest market after the Saudi stock exchange market Tadawul, in terms of price change and annual returns

(Fadlalla & Amani 2014). It has become one of the prominent stock markets in the Middle East region and the GCC area in particular (Ahmed 2012).

The QFMA opened the door to foreign investors gradually with the aim of expanding the stock exchange market and developing the financial economy. On 3 of April 2005, law No.13 of the year 2000, stated that non-Qataris were not allowed to exceed 25% of the trade shares (Al-Khoury & Abdallah 2012). As a part of its reforms, the government amended the new law issued in 2014 (Article 2), to allow foreign investors whether entities or individuals to own up to 49% aggregate. In according to the Article 2, foreign investors can only exceed this percentage if they get agreement from the Council of Ministers. It seems, however, that the government has a generally liberal approach. Moreover, the Qatar regulations do not consider GCC citizens as foreign investors.

The diagram below shows the percentage of foreign investors in each sector based on a report of the 4 of Jan 2016. These statistics indicate that the highest percentage was in the real state sector with around 6.52%, followed by the Consumer sector with about 6.29%. The others sector such as Telecommunications, Transport, Insurance, and Bank each has over 5% of foreign investors. The industrial sector shows the lowest percentage estimated by around 3.8%.

It is important to note that the limit does not apply to foreign investors in three listed companies in the Qatar Stock Exchange Market. These were: Salam international, Ooredoo, and VodaFone Qatar (QSE 2016).



Source: QSE

#### 4.7 Bahrain Stock Exchange (BSE)

The Bahrain Stock Exchange dates back to the Amiri Decree No.4 of 1987, but officially started operations on 17 of June 1989 with 29 companies (Asiri 2008; BHB 2013). The number of companies increased to 45 in 2004 (Asiri 2008). In order to develop the trading system, the government replaced the old manual system with the Automated Trading System (ATS) in 1999. In 2002, the government transferred the supervision of the bourse's activities from the Ministry of Commerce to the Central Bank of Bahrain CBB (BHB 2013). In 2009, the government issued law No.60 to establish the Bahrain Bourse as a licensed joint stock company. A significant change occurred in 2014 when the BSE launched a NASDAQ OMX trading platform (Wells 2014). Currently, there are 45 companies listed on the Bourse and classified according to their activities in the market. These companies are listed under nine sectors: Commercial Bank, Investment, Services, Insurance, Industrial, Hotels and Tourism, Preferred Shares, Closed Company and Non Bahraini Company (BHB 2013). The equity market capitalization rose to \$19.9 billion by the end of September 2015, and most of it was centralized in the commercial banking sector (AMF 2015). Although the

BSE is much smaller than other markets in the region, it seems that the government reforms should help to boost interest in the bourse as the FDI is the top of government's priorities.

The Bahrain Stock Exchange Market opened the door for foreign investors to invest in the market in 1997 (Hammoudeh & Li 2008). Among the other GCC markets, the BSE has focused its efforts on facilities to attract more foreign investors, such as offering a tax-free environment and relaxed rules (Asiri 2008). Moreover, new Bahrain regulations in 1999 allowed GCC nationals to own up to 100% and non-GCC nationals to buy and sell up to 49% of any domestic joint stock company. The law also allowed an expatriate who had lived in Bahrain for more than a year to own up to 49% thus making no significant distinction between residents and non-residents (Fernandez & Sahawneh 2010). Foreign investors are legally able to enjoy other rights similar to the other ownerships of securities such as company interest and voting rights.

#### **4.8 United Arab Emirates Stock Exchange (UAE)**

The United Arab Emirates (UAE) stock exchange market goes back to 2000, when the government started the market with small joint-stock companies. Officially, the Emirates government established two governmental stock markets, Dubai Financial Market (DFM) and Abu Dhabi Securities Market (ADSM) in the same year (Marashdeh & Shrestha 2008; Moustafa 2004). Both markets were under the supervision of the Emirates Securities and Commodities Authority (ESCA) in accordance with federal law No. 4 of 2000. As a part of its functions, the ESCA begin to develop regulations and instructions to the markets in order to create a favourable environment for investment as well as to monitor the company operations (SCA 2014). Furthermore, the ESCA has introduced several improvements in trading such as an electronic link between both the

formal stock markets, DFM and ADSM (Moustafa 2004). The UAE stock market capitalization is considered to be the largest market in the GCC region following Saudi Arabia (Alsameen 2013). At the beginning of the UAE stock exchange, purchases were only limited to nationals, but in 2003 foreigners were also permitted to invest in most listed stocks in both markets (Maghyereh & Awartani 2012).

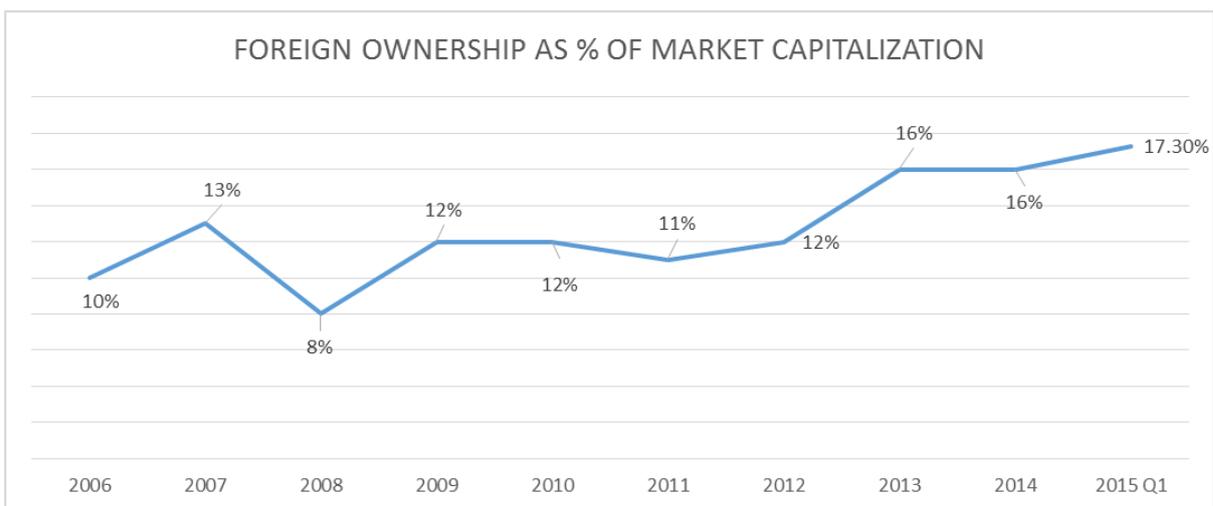
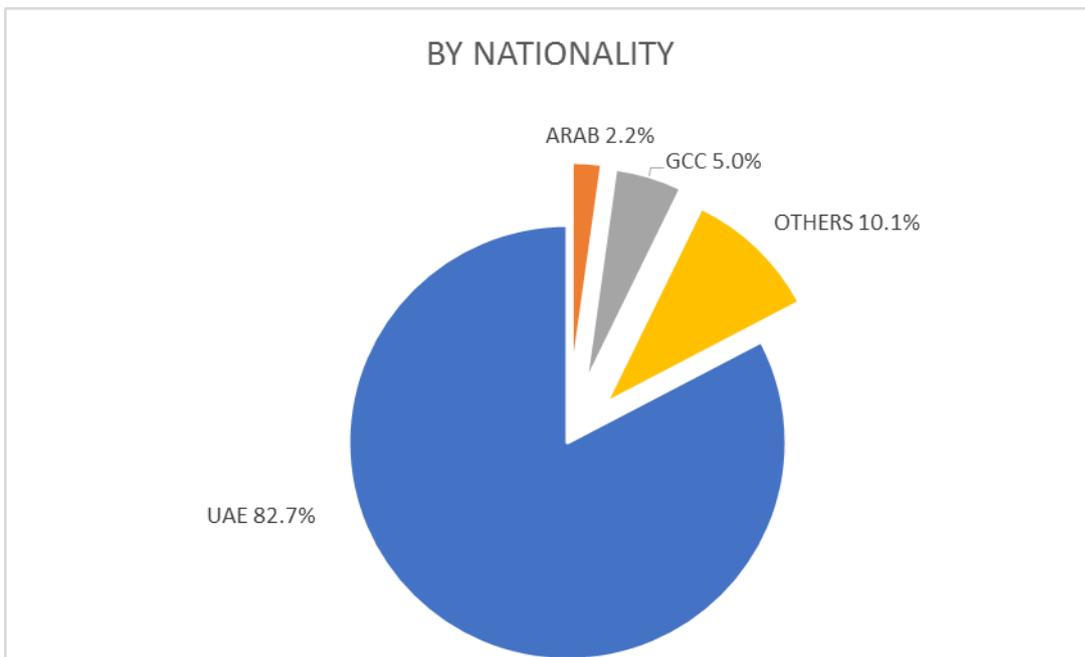
#### **4.8.1 Dubai Financial Market (DFM)**

The DFM was the first market in the UAE as it founded on 26 of March 2000, and located in Dubai city. The market commenced frugally with only seven listed companies and ten brokers (Assaleh, El-Baz & Al-Salkhadi 2011). By 2005, the DFM was ranked as the fastest growing stock exchange market in the world, registering unprecedented growth in the market value rate which reached to 208% (DFM 2016). In addition, the DFM annual report shows that the growth rate increased to reach 60% in new securities in just 12 months. That year DFM continued to provide innovative solutions to investors through the provision of an audio electronic portal for stock prices the first of any stock exchange markets in the Middle East (DFM 2016). After a while, by 2007, the DFM briefly became the fifth-largest exchange in the world in terms of market value and launched its first conference to global investors in London, which attracted international investors' attention.

There are currently 62 listed companies in the DFM classified in eight sectors. The equity market capitalization rose to \$95.0 billion at the end of September 2015 (AMF 2015).

The diagram below reveals that foreign investors in the DFM owned about 10.1% of the total market according to its 2016 the annual report. The GCC and Arab countries owned 5.0% and 2.2% respectively. In terms of their participants to market

capitalization, the diagram shows that the percentage ranged from 10% in 2010 to 17.30% in 2015. This implies that less restricted rules may play a significant part in increasing foreign investment on the stock exchange market. For instance, companies can open up to 49% to foreign investors; however, each company is different depending on its Article of association. Moreover, any one investor cannot invest more than 5 % in a company but this also depends on each individual company (DFM 2016).

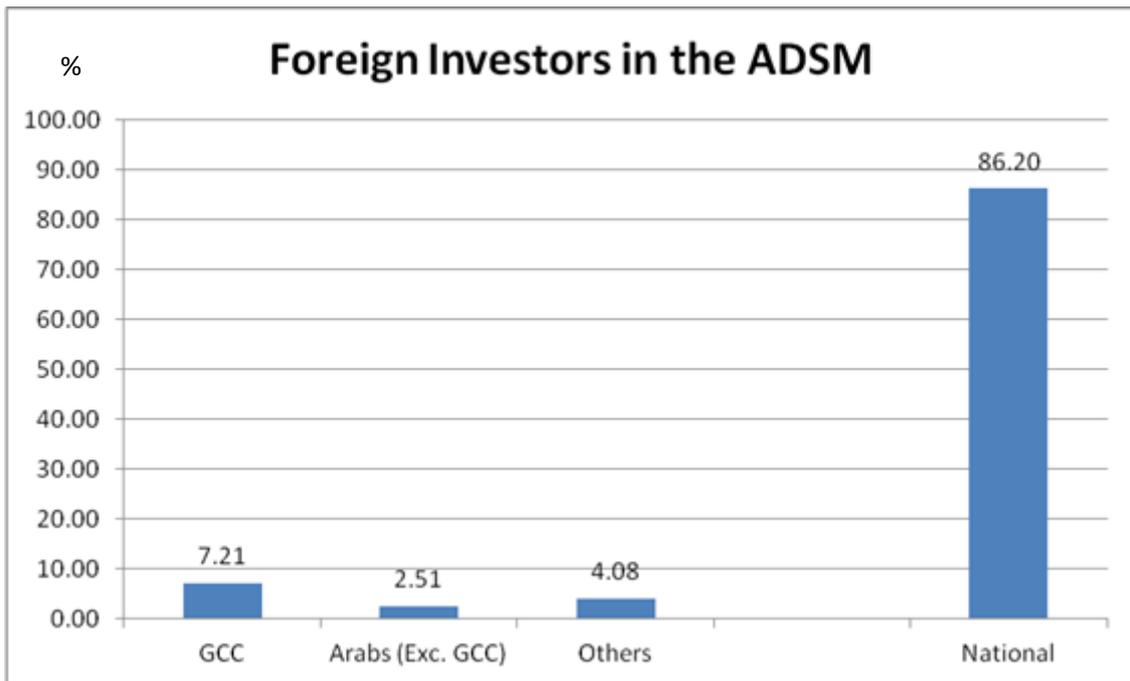


Source: (DFM Web 2016)

#### **4.8.2 Abu Dhabi Securities Market (ADSM)**

The ADSM is the larger of the two UAE markets, established on 15th November 2000 in accordance with local law No.3. The ADSM is located in Abu Dhabi city as it is considered the capital of the UAE. The ADSM has grown steadily with tremendous speculative activity to attract a huge amount of capital (Maghyereh & Awartani 2012). Until 2005, there were only 50 companies listed in the ADSM (Squalli 2006). In recent years, the numbers of listed companies has increased to 73 representing nine sectors of the economy with a significant growth potential. The market capitalization reached \$115.6 billion at the end of September 2015 (AMF 2015).

In terms of foreign investors ownership, it is important to note that 19 out of 73 companies did not permit foreign investment to own shares (ADSE 2016). Meanwhile, there are four companies that allow foreigners to own up to 100% of its shares: these are NBAD OneShare MSCI UAE ETF, NBAD Convertible Notes, Ooredoo and Sudatel. The majority of ADSM companies have a ratio between 25% and 49% (ADSE 2016). Whatever was the reason behind this diversity, the ADSE report in 2016, as can be seen in the following diagram, shows that foreign investors owned 4.08% of the total market. On the other hand, the GCC nationals owned 7.21% while other Arabs owned 2.51% of the total market.



Source: (ADSE Web 2016)

After several years of hard work to develop the market infrastructure, the MSCI Corporation and S & P Dow Jones upgraded the UAE market in the category of an emerging market (DFM 2016). It is worth mentioning here that even though the UAE stock exchange is the youngest stock exchange in the region, it serves as a good example of an emerging market as it has desirable characteristics for financial markets.

#### **4.9 Muscat Securities Market (MSM)**

The MSM was set up in June 1989 by Royal Decree No.53/88, issued on 21 of June 1988 and is located in the Sultanate of Oman. The decree provided a clear legal structure for the market to be an independent organization. A decade later swift changes occurred in accordance to the Royal Decree No.80/98 of 9 of November 1998 when the government split the MSM into two separate entities, the Capital Market Authority (CMA) and Muscat Securities Market (MSM). The main explicable factor of this is to increase control and regulation of market activities which might lead to better protection for investors (MSM 2015b). Like in other GCC countries, the Capital Market Authority

in Oman has responsibility to maintain investors' confidence, and organize and oversee market activities (OCMA 2016). Although the MSM is considered a government entity as it has financial and administrative independence, it is still under the government supervision as the government elects the board of directors (Oyelere & Mohamed 2007). Furthermore, in 1999 the government of Oman reorganized the market and introduced an electronic system (Alsameen 2013).

The market started with 68 joint stock companies and reached to 116 in 2016, with market capitalization estimated at \$38,3696 billion by the end of September 2015 (AMF 2015). Companies in the market are divided into three sectors: financial industrial services, industrial, and services. The greatest value of market capitalization was in the financial industrial services sector estimated at 46% of the total market (Alsameen 2013).

In order to further develop, the MSM maintains a strong relationship with other exchanges and has agreements with some providers such as Dow Jones, the global index provider, Reuters and Bloomberg (MSM 2015b).

The MSM opened the door for eligible investors at the end of 1996. According to the Article 51 of the Muscat Securities Market Law 1997, non-GCC companies shall not exceed 49% ownership in all listed companies, whereas GCC nationals can own up to 100%. Foreign investment in the beginning was with nearly 10.6% of total the market capitalization which is high in comparison with other GCC countries. The non-GCC nationals owned 4.76%, while GCC nationals owned the remaining 5.84% (GulfBase 2001b). In 2001 the foreign flow increased to about 15% of market capitalization as a result of an easing of investment restrictions (Smith, G 2007). From then until 2012, the contribution of foreign investors accounted for approximately 28% of listed companies

(Kern, S 2012). By the end of 2015, as the table below shows, the amount of foreign investment reached 29.94% divided between Gulf nationals with 15.63% and non-Gulf citizens with 14.30% (MSM 2015a).

### **Foreign and GCC Investments in MSM**

Period	Financial		Industrial		Services		General		Total
	GCC	Foreigners	GCC	Foreigners	GCC	Foreigners	GCC	Foreigners	
December 2014	14.82%	13.54%	9.09%	11.64%	24.08%	12.51%	16.16%	13.09%	29.25%
December 2015	14.39%	12.26%	10.74%	24.79%	23.80%	12.09%	15.63%	14.30%	29.94%
Change %	-2.96%	-9.50%	18.22%	113%	-1.19%	-3.37%	-3.26%	9.26%	2.34%

Source: (MSM 2015)

#### **4.10 Australian Securities Exchange (ASX)**

The origins of the ASX date back over 100 years in separate exchanges in each of the Australian states. The ASX was formed in 1987 when the Australian Parliament designed legislation to merge the six state securities exchanges (New South Wales, Queensland, Western Australia, South Australia, Tasmania, and Victoria). The amalgamation expanded to the Sydney Futures Exchange in 2006 to include its operations under the name of Australian Securities Exchange (ASX 2016a). Meanwhile, the Federal Government announced that securities would be under its legislative control (Fischer 1988). In order to become global, the ASX has joined the two best market indices, Standard & Poor's (S&P) and Morgan Stanley since 1999 (Steen & Kendall 2005). The amalgamation played the role to put Australia in the world standard which encouraged foreign investors to the Australian market as well as helped the local investors to compare their own market to the world market. In fact, it is highly likely

that such opening the market to world standards contributed to increasing transparency in the investment process. Currently, the ASX is considered as one of the world's top-10 listed exchange groups in terms of market capitalization and is one of the most active share markets (ASX 2016a). There were 2205 listed companies based on the ASX report issued on 4 of May 2016.

The major function of the ASX is to raise large amounts of funds for companies or government and facilitate investment operations for stock exchange market investors (Fischer 1988). The ASX is divided into 14 sectors: all Ordinaries Gold, Consumer Discretionary, Consumer Staples, Energy, Financial, Health Care, Industrials, Information Technology, Materials, Metals and Mining, Resources, Telecommunications Services, Utilities, and Banks (ASX 2016c).

Large overseas companies can be listed in the Australian stock exchange if they are listed on the stock exchange market in their home country and do not controlled by local company rules, than the Australian stock exchange will not allow these companies to be included. There are about 70 foreign companies listed on the Australian stock exchange (ASX 2016b).

As with other stock exchanges, shares trading has similar approaches begin with customers dealing through brokers to buy and sell specific stock. Since 1962, this approach has been replaced by the post system that deals with trading in official hours. When the ASX settled down in 1987, trading in shares moves to computer screens (automatic system) which was fully extended to all stocks in 1990, known as Stock Exchange Automated Trading System (SEATS) (Renton 2004; Steen & Kendall 2005).

To access SEATS, investors must have a formal agreement with a licensed stockbroker (Steen & Kendall 2005). It is important to note that these brokers became known as

participating organisations. Nowadays, any investor who seeks to trade on the stock exchange market needs to select one of these organisations that are fully responsible for transferring ownership in accordance with the Financial Services Reform Act 2001. It is germane to say that there are more than 80 of these organisations in the six state capitals and clients are able to obtain the list from the stock exchange market (Renton 2004).

In terms of the investors' types, there are three types of investors in the ASX: Australian households, Australian institutional investors and foreign investors (ASX 2013). The ASX statistics showed that the end of 2012 the Australians owned 38% of the total market either directly or indirectly (ASX 2013). In terms of foreign investors, in 2007 they constituted around half of the investor base of Australian equities and bonds. They also accounted for around one-third of the investor base in the Australian stock exchange market (Black & Kirkwood 2010). In 2009 the shares value of foreign investors in the ASX exceeded \$400 billion and kept rising until 2014 accounting for over \$1000 billion weighted in average price (Bradraniaa et al. 2006). Based on the most recent statistics of the ASX in 2012, foreign investors owned around 41% of the total market (ASX 2012), which indicates that they represented a high rate of the total market. According to the Business Council of Australia (2014), foreign investment stock as of 30 June 2013 was estimated at \$AUD 2.46 trillion which is over 50% of Australia's total capital stock estimated at \$AUD 4.82 trillion. The Business Council of Australia has also confirmed that it will continue to attract more foreign investors in the future.

#### **4.11 Conclusion**

This chapter aimed to provide an overview of the Saudi legal system and the relationship between Islamic and civil laws. The development of the Saudi capital

market has increased considerably in recent years in order to meet the needs of global trading. The chapter explored the role of investors in the stock exchange market and provided some details of foreign investment in each stock exchange market. It argued that a clear view about the Saudi legal system may assist both local and any type of foreign investors particularly in the stock exchange. This chapter also described the Saudi listed companies and provided more details of the type of ownership based on the last updated statistics and highlighted the percentage of foreign investors' in particular. Last but not least, this chapter examined the history of stock exchange markets in general and the history of foreign investment in particular in neighbouring GCC countries and in Australia. The development of those markets has led to a great increase in foreign investors which indicates that flexible rules, lengthy experience in the stock markets and a strong economy may encourage more investors. Also, there is a global uptrend in international investment. The following chapter will present the methodology for testing the Saudi rules for foreign investors in terms of its effects on the local stock exchange market and the extent of protection of shareholders.

## **Chapter 5**

### **The Attraction of the Rules for Foreign Financial Institutions Investment in the Saudi Listed Securities**

#### **5.1 Introduction**

In considering of the aim of the CMA to attract foreign investors to the local stock exchange, the purpose of this chapter is to study and evaluate the level of attraction. The analysis is supported by unpublished data that has been provided by the CMA in Saudi Arabia. This data is supplemented by recent statistics of foreign investment flows to the Saudi stock exchange market. The chapter also aims to examine the extent of the attraction comparing between the original and amended copies of Qualified Foreign Investment Rules as well as the regulations in the GCC countries and Australia.

The chapter is divided into 12 sections. Section 5.2 discusses the influence of rules on attraction of foreign institutional investment. Section 5.3 analyses the important feedback on foreign investment regulations and section 5.4 examines the amendments in Qualified Foreign Investment Institutions Regulations. Section 5.5, 5.6 and 5.7 address respectively the tax requirements, short-selling activity and money transfer procedures in and out the Kingdom. Section 5.8 analyses the period after opening up of the Saudi Stock Exchange for foreign investment. The procedures and regulations of other GCC countries will be discussed in the section 5.9 and their significant differences from other countries will be examined in section 5.10. The Australian regulations will be conserved in section 5.11. Finally, section 5.12 will conclude the chapter.

#### **5.2 The Influence of the Rules on Attracting Foreign Investments**

The first step to invest in the Saudi stock exchange market is to submit an application for registration to an assessing authorised person. The applicant according to Article

two of these rules is: “A foreign investor that submits an application for registration to an assessing authorised person” (p.2).

Article two of these regulations defines the authorised person as:

An authorised person who has agreed with an applicant to assess its application for registration as a QFI, or an authorised person who has executed a QFI assessment agreement with a QFI (p.2).

However, the current regulations explain the registration conditions and registration procedures. It can be assumed that in creating new regulations the lawmakers usually aimed to facilitate the rules as the target was to attract foreign investors. Thus, the purpose into explaining and examining these steps is to find out the extent of obstacles or facilitation which reflects on foreign investment flows and their influence on the local stock exchange market.

### **5.2.1 Registration Conditions**

First of all, the applicant must be a financial institution that has a legal entity, not a person. Article 6 in part (A/1) as the first draft of these rules identified the financial institution as one of these types: (Banks, Brokerage and securities firms, Fund managers and Insurance companies. Furthermore, the regulations in part (A/2) emphasise that the financial institution must be licensed by a regulatory authority or at least be under its supervision and control. It must also be established in a country that has followed regulatory standards that are compatible with the Saudi regulatory standards. The Capital Market Authority has the full right to determine what can be equivalent to Saudi regulatory standards. The list of these countries has been provided by the Saudi Capital Market Authority with a commitment to update any change that occurs to the list. The selection of these foreign institutions has been done based on studies in this area as well

as the CMA’s desire to focus on foreign financial institutions that have expertise in foreign markets (CMA 2015d) as confirmed in Article 6/A that states:

For the purposes of this Article, the Authority may, at its absolute discretion, determine whether the regulatory and monitoring standards are equivalent to those of the Authority or acceptable to it, and the Authority shall provide authorised persons duly authorised to conduct custody or dealing activities with a list of jurisdictions that applies regulatory and monitoring standards equivalent to those of the Authority or acceptable to it, and any update occurs to that list (p.4).

The standards include all international financial standards and the requirements of the Anti-Money Laundering as well as Counter-Terrorist Financing rules (CMA 2015c). Article two of the Anti-Money Laundering and Counter-Terrorist Financing Rules 2008, clarifies the meaning of Money Laundering as:

It refers to committing or attempting to commit any act for the purpose of concealing or disguising the true origin of funds acquired by means contrary to Shari'ah or law, thus making the funds appear as if they had come from a legitimate source (p.3).

The CMA has confirmed the countries that have followed regulatory standards in the Board’s decision No.2-6 of 6 January 2016 as follows:

<b>Countries of Qualified Foreign Investors</b>		
Australia	India	Portugal
Austria	Indonesia	Qatar*
Bahrain*	Ireland	Russia
Belgium	Italy	Singapore
Brazil	Japan	South Africa

Canada	Kuwait*	South Korea
China	Luxemburg	Spain
Colombia	Malaysia	Sweden
Czech Republic	Mexico	Switzerland
Denmark	Morocco	Taiwan
Egypt	Netherlands	Thailand
Finland	New Zealand	Turkey
France	Norway	UAE*
Germany	Oman*	United Kingdom
Greece	Pakistan	United States of America
Hong Kong	Peru	
Hungary	Poland	
* For juridical persons that owned the majority of its capital and they are not GCC nationals or GCC governments who enjoy the nationality of one of the Gulf Cooperation Council countries.		

Source: (CMA 2016)

Although the current regulations have not clarified the words “at its absolute discretion” in Article 6, it can be said that most of these are developing countries and emerging markets are based on the MSCI classifications in 2016. These countries have strong economic and politics stability as well as compatible regulations that may encourage foreign investments (MSCI 2016a). Moreover, Articles 1/b and 6/3-4 noted that countries operating in money laundering and terrorist financing are prohibited from entering the Saudi stock exchange market.

### **5.2.2 Foreign Institution Assets**

Part (B) of the first draft of these rules indicated that the financial institution must have assets under management of SAR 18,750,000,000 or an equivalent amount (USD\$5bn). The Saudi Capital Market Authority may reduce the minimum for these assets to SAR 11,250,000,000 or an equivalent amount (USD\$3bn). The assets under management

include assets owned by the applicant or its group and assets managed by the applicant or its group for the account of another person or persons. In part (C), the authority has also require a high level of experience particularly in securities activities with a minimum of five years.

In terms of QFI clients, the regulations in Article 7 do not allow the QFI to invest in listed shares on behalf of any of its clients unless the client has been approved. To obtain the approval there are some conditions as follows:

- 1). The QFI or the applicant is responsible for the management of the client funds when invested in listed shares;
- 2). The client is neither a QFI nor approved QFI client of another QFI; and
- 3). The client is either:
  - a) An investment fund which must be incorporated in a jurisdiction that applies regulatory and monitoring standards equivalent to those of the Authority or acceptable to it; or
  - b) A financial institution that meets each of the conditions prescribed by Article 6 of these Rules (p.6).

In order to clarify the meaning of the investment fund, the Article 2 of these rules has identified the meaning as any of the following legal persons:

- 1). A sovereign wealth fund that is fully owned by a government entity, or by a legal person fully owned by a government entity.
- 2). A pension fund in which its main objective is to collect fees or periodic contributions from participants or for their interest, for the purpose of compensating them according to a specific mechanism; or

- 3). A collective investment scheme aimed at providing investors therein with an opportunity to participate collectively in the profits of the scheme (p.2).

### **5.2.3 Registration Procedures**

Article 8 notes that the application for registration of foreign investors must be submitted to an assessing authorised person in accordance with the form that has been approved by the authority. The application must be accompanied by the information and documents required under Annex 2.1 of these Rules. In this case, in order to examine the reasonableness of information and documents, it is appropriate to begin by summarizing the information and documents that must be provided by applicants. Based on Annex 2.1, the following information must be provided in the prescribed manner by the authority:

1. Details of the applicant's legal firm and jurisdiction of establishment obtained from copies of official documents;
2. A description of the applicant's business activities which must include the previous period of doing investment in the stock exchange;
3. Evidence of the regulatory situation of the applicant;
4. A list of all controllers of the applicant including the identity and ownership of each one of them;
5. A copy of the most recent annual report;
6. Details of other account names and subsidiaries that the applicant has been used to invest;
7. Details of all authorised persons;
8. Details of all legal and regulatory sanctions that have been imposed in the prior five years which include: the suspension or revocation of any licence by a

regulatory authority and any criminal, civil or regulatory sanction. The details must clarify any pending or ongoing criminal and regulatory investigations as well as any related settlement;

9. Financial statements prepared and accredited by the applicant's auditors;
10. Confirmation by the applicant to disclose about any information to the Capital Market Authority or other government agencies in Saudi Arabia; and
11. If the client is an investment fund, the information must include details of the fund's jurisdiction of establishment, the fund's investment policy, and a list of all of the fund's controllers with their identity.

In accordance with Article (9), after submitting the application the assessing authorised person must decide on the application for registration within five days. There are two cases of the process based on Articles 9 and 10:

1. Acceptance:

When the assessing authorised person has decided to accept the application, the Saudi Capital Market Authority will register the applicant as a QFI and immediately notify the assessing authorised person in writing. After the Authority's notification of registration the assessing authorised person must do the following:

- A. Notify within one day the QFI in writing that it has been registered with the Authority;
- B. Accept the QFI as a client in accordance with the Authorised Persons Regulations; and
- C. Signing the QFI assessment agreement that has been agreed in Article 14 of these rules and send a copy to the Saudi Capital Market Authority.

Once the QFI gets the approval and obtains legal ownership of Saudi listed shares under the name of the investor in the Depository Centre, he or she has the capacity to exercise their rights. The current regulations on the right of foreign investors are outlined in Article (4) which states: “Any person subject to these Rules may appeal to the Committee in respect of any decision or action that the Authority takes under these Rules” (p.3).

Although, the current regulations do not provide more information on foreign investor’s rights, other regulations such as the Capital Market Law 2003 and the Foreign Investment Law 2000 guaranteed all the types of rights. These rights include voting rights and appointing a representative to the board of directors of the company based on Saudi Companies Law (CMA 2015c).

## 2. Rejection

The assessing authorised person must notify the applicant in writing that the application has been rejected when the decision becomes final, whether from the assessing authorised person or from the Saudi Capital Market Authority.

In terms of information and documents required from the QFI and the approved QFI client to open a client account in a local bank, the current rules do not provide more information. However, the Frequently Asked Questions No.51 on the Rules for Qualified Foreign Financial Institutions Investment in Listed Shares (2014) clarifies the procedures. It notes that the CMA works in coordination with the relevant authorities to facilitate requirements for opening an account. The CMA publishes on its website the list of information and documents that are required from foreign investors by the CMA and the Saudi Arabian Monetary Agency. For example, the QFI and the approved QFI Client should submit 13 documents to the Assessing Authorised Person (AAP). It seems

that most of them are straightforward and quite easy to go through it. The most critical requirement is in requiring disclose of the end beneficiaries who own 5% as per the articles of association and its appendices (CMA 2016k).

To begin trading Article (14) notes that a QFI is not allowed investing in any listed shares until he or she holds a client account and an account with the Depository Centre. The Capital Market Authority in part 3 of this Article has extended its requirements, as the applicant must satisfy any other conditions that it may impose by the Authority. Although this condition has given full power to the Capital Market Authority to make any requirements in the future, it gives unclear vision to foreign investors as new requirements by the Authority might be acceptable or unacceptable.

#### **5.2.4 Cancellation of a QFI's Registration**

In the case of the QFI wishes to cancel registration, the procedures in Article 21 seem to be easy to follow. The assessing authorised person will be responsible for submitting the cancellation request to the Authority as well as notifying the QFI that the request has either been accepted or rejected. It can be said that the current regulations do not include any requirement to explain the reasons for cancellation. The Authority has the right to reject the cancellation and provide reasons, as Article 21/C notes: “The Authority may issue a notice rejecting the cancellation request submitted under paragraph (a) of this Article within 2 days of receiving such request, giving reasons for the rejection” (p.15).

In addition, Article 21 states that where the Capital Market Authority does not issue a notice within two days of receiving the cancellation request, the cancellation of foreign investors shall be effective. It also appears from this Article that the Capital Market Authority provides an example of its power in relation to rejecting the cancellation based on its justification and this process is clear to foreign investors.

### **5.2.5 Investment Limitations**

The regulations subjected the QFI and approved QFI clients to the following restrictions as noted in Article 21 of the first draft of these Rules:

1. The QFI with its affiliates or approved QFI clients are not allowed to own more than 5% in the listed companies;
2. The QFI are not allowed to execute a transaction on behalf of an approved client and its affiliates to own more than 5% of the shares in any listed company;
3. If there is more than one QFI and approved QFI client, the regulations limit them to owning up to 20%;
4. If all foreign investors (in all categories, whether residents or non-residents) want to own in one company, the maximum proportion is limited to 49% that includes any interest under swaps; and
5. In regard to the market value, the maximum proportion for the QFIs and approved QFI clients is limited to 10%, including any interests under swaps.

The regulations in Article 21/6-7 also include any other legislative limitations on foreign ownership in joint stock companies as well as any limitation in the articles of association and any instructions issued by the supervisory or regulatory authorities. This regulation does not permit foreigners to invest in companies such as «Jabal Omar», «Mecca» and «Taiba» as these companies are working in holy places. This regulation is also supported by the Foreign Investment Law 2000 and the basic laws of these companies which prevent non-Muslims from entering Mecca and Medina.

### **5.3 Analysing Important Feedback on Foreign Investment Rules**

In order to encourage foreign ownership to invest in Saudi listed companies, the Capital Market Authority published a draft of its regulations for consultation on 21 August

2014. The consultation period was continued for 90 days, ended on 20 November 2014 (CMA 2016). The official spokesman for the Capital Market Authority, Abdullah Al-Qahtani, said in that period the commission received more than 500 notes from 33 local and external investors. The internal agencies were from government, legal offices and individual investors while feedback from the foreign entities came from banks, brokerage firms and fund managers (Minshawi 2015).

Unpublished feedback on the draft of Rules for Qualified Foreign Financial Institutions Investment in Listed Securities for consultation in 2014 was provided to the research by an internal source in the Saudi Capital Market Authority. The feedback aimed to assist the researcher to clarify the differences between the first draft and what was published in 2015 and emended in 2016.

For the sake of convenience, the feedback has been divided into three groups based on the type of their opinions and questions which are; sufficient, insufficient, and somewhat sufficient or agree, disagree, and somewhat agree. Also, the feedback was related to the following points:

### **1. The type of financial institutions**

The first group considered that the existing rules including the type of financial institutions were sufficient and would help to achieve the following:

- A. Increase an institutional investments in the market;
- B. Allow them to take medium to long term investment decisions which would reduce speculation; and
- C. They would depend on market research and deep evaluation in the process to take investment decisions.

On the contrary, the group who disagreed with the draft believed that the types of financial institutions were limited argued that the regulations should allow all types of foreign financial institutions. However, the third group argued that the type of financial institutions should include sovereign wealth funds and central government agencies but not all types of foreign investments. They added that for several reasons working with asset managers would assist in developing corporate governance, reporting and global best practice.

## **2. The size of the financial institution**

The size of the financial institution was a big topic in the feedback. The first group opposed this condition and considered that USD\$5bn was too high of foreign financial institution. At the same time, they suggested that decreasing the size of the institution to be USD\$5bn would be good at this stage in opening the Saudi stock exchange market. Another group believed that the rules about size were in somewhat sufficient, but that size should not be the criteria for registration. At the same time they argued that opening up the opportunity for less institution could increase the number of applications. They suggested that a size of USD\$1- 3bn would comply with other registration rules. Based on their opinion, larger financial institutions would be able to meet the Saudi regulations requirements. Therefore, a downward revision would encourage smaller financial institutions to access the Saudi stock exchange market. It should be added that the Capital Market Authority at its discretion can reduce this entry requirement which would promote more institutional participation with a high quality in the market as well as reduce the impact of retail investors on the market. It is worth noting that no one agreed that the size of financial institutions was sufficient.

## **3. The investment experience**

Most of the feedback considered the minimum of five years of investment experience was reasonable for a start. Based on their opinion, this minimum is to insure that they are stable and have enough experience. As the Saudi policymakers aimed to achieve global best practice, global experience would guide them in this regard.

#### **4. QFI and QFI Client conditions**

The group who agreed with existing conditions believed that they will add more transparency to QFI investments. The second group partially agreed and argued there should be more details in the rules and regulations to clarify its description. The final group disagreed with the differences between QFI and QFI Client conditions, arguing that the QFIC should have fewer restrictions as long as the QFI is already registered. They pointed out that the majority of pension funds around the world are valued at less than \$3 billion. In the meantime, they cannot rely on their investment manager to help them meet the QFIC entry criteria. In other words, the usual strategy of pension funds is to allow a 5-10% weighting for emerging and frontier market investments and they invest in several markets around the world. However, with the current conditions it seems that they would not be able to join the Saudi Stock Exchange.

As part of this discussion, the current rules allow a QFI Client to have only one QFI which may limit investor interest in the Saudi stock exchange market. The group who disagreed with this point argued that perhaps the limitation will lead to well diversified investment. In the group that somewhat agree, although it may require more clarification, QFI Clients should be classified as a QFI allowing them to appoint multiple asset managers. The third group who agreed with this argument assumed that this condition may prove to be a major challenge for several large asset owners such as sovereign wealth funds and pension funds who usually prefer their assets being

managed by multiple asset managers. Thus, there should be no limitation on whether a QFIC employs one or more QFI to manage its funds.

## **5. QFI Registration Procedures**

The feedback on registration procedures has considered the reasonableness of information and documents required. The first group believed that the requested documents and information were reasonable as the Saudi authorities intended to provide comprehensive information. The procedures may reflect the transparency of the Saudi market as well as increase protection of local investors. The somewhat reasonable group indicated that these procedures seem to be sufficient, but were onerous and some clients could not meet all the requirements. Therefore, they suggested that the Capital Market Authority should require the documents based on the type of entity or nature of business, particularly the trust clients like endowments. The final group believed that these procedures were excessive based on comparing registration procedures for their investments in most other markets. For instance, providing information on affiliates and beneficial ownership of funds was considered to be challenging.

In terms of identifying the most difficult information and documents that must be obtained by the applicant, details of legal or regulatory sanctions and details of the identity and ownership of each controller were in the top of these challenges. This was particularly so in the latter case when applying for QFIC, because domicile investment funds in some countries such as Luxemburg or Switzerland rely on secrecy laws. In instances such as this, providing details of the ultimate controllers or who is behind the nominee owners is nearly impossible.

## **6. Post CMA Registration**

In some feedback it was expected that the procedure should be quite easy, although, the rules did not provide much details about opening an account with the depository centre. It is noteworthy that most of the feedback considered the procedure to open an account with a depository centre and its documentation requirements were very easy.

Generally speaking, it could be said that most feedback noted that the SAMA requirements to open such accounts were compatible with the minimum regulatory framework that is usually required for bank accounts. The procedures are required to apply for both local investments and foreign investments. In some feedback, the SAMA's procedures for opening an investment account for foreign investments institutions need in some instances more time to complete. As an example, most of the documents that got approval from the CMA were required again from SAMA to open investment cash accounts for financial institutions. Thus, getting approval from the CMA should be sufficient in order to avoid time consuming paperwork. It should be noted that some of the information and documents required by SAMA are in some cases difficult to obtain. The feedback provided an example of such nearly impossible requirements: as point number 5 in circular 400-4 of SAMA rules requires identification of the actual beneficiaries and final controllers with a minimum natural owner who holds 5%. The reasonable reason behind the difficulty is that investment funds in several developed markets do not permit the disclosure of owner information. In addition, many of funds are open ended funds in which the shareholders register changes every day.

## **7. Investment limitations**

The group that generally agreed with the limitations believed that they are warranted, but suggested that the Capital Market Authority can add more flexibility to QFI's by

increasing the single limit for QFI and related clients (5%) to reach (10%). The limitation of more than one QFI and approved QFI clients is set at 20% whereas for all QFI and Swaps together is set at 49%. As a result of that limitation, foreign investors would prefer to invest through the swap route. Another group believed that the single and total ownership percentage of QFI and approved QFI clients are the greatest obstacle to the success of the current regulations. They anticipated that all current limitations would be detrimental to the Saudi equity market as it is not able to include the MSCI. Moreover, the maximum proportion of QFIs and approved QFI clients to be 10% by market value including any interests under swaps is not necessarily a limitation as it renders the size of Saudi Stock Exchange market less relevant compared to other stock exchange markets. Based on these estimates, if the Saudi regulators waive those limitations this could potentially lead to flow of foreign investment in the near future.

## **8. The settlement cycle**

In regard to knowing if the settlement cycle might impact on foreign investors applying to become QFIs and QFI Clients, most of the groups agreed that it would affect the influence. They suggested that the settlement cycle should be changed from T+0 to at least T+1 or T+2 for the QFI and their clients. The T+0 market effects the ability of investors and asset manager to manage cash and that investors may miss an investment opportunity because they do not have enough sufficient in the cash account.

It could be summarized that the most obstacles in the rules related to the size of financial institutions and investment limitations. Although these constraints were mentioned by some foreign investors, they had not initially been addressed. Therefore, the final rules in 2015 were almost similar to the rules draft that issued in August 2014. However, during 2016 the Capital Market Authority amended its regulations. The most

important changes are outlined in the next section. The feedback discussed above was addressed by the Capital Market Authority in the amended rules 2016.

#### **5.4 The Amendments in Qualified Foreign Investment Institutions Rules**

With weak purchases of foreign investors in the Saudi stock exchange market in the long and short term, and macro-economic reforms included in the Saudi Vision 2030, the Capital Market Authority issued its resolution number 3-104-2016 dated 8 August 2016 to amend foreign investment rules. The resolution also was consistent with the Capital Market Authority efforts to develop the stock exchange market in the Kingdom of Saudi Arabia. The revised rules became effective from 4 September 2016. It should be noted that most of the amendments focused on facilitating the previous rules for qualified foreign institutional investors. It also can be mentioned that these amendments may pave the way for the Saudi Stock Exchange to be included in the MSCI Emerging Market Index (MSCI) (Alturki & Khan 2016). However, the amended rules could be considered a novel development compared to the previous rules.

Although most of these amendments were mentioned in the feedback in 2014, the Capital Market Authority did not give them attention because its priority was to encourage foreign investment benefits in a gradual and cautious opening. For instance, the Capital Market Authority did not include sovereign wealth funds and government and government related entities in the type of financial investment institutions, as suggested during the feedback period. Another example is the size of financial institutions which in the previous rules was required to be \$5 billion, while in the amended rules it was \$1 billion as suggested on the feedback. The last example is the increase in the single limitation from 5% to 10% and Combined QFI from 20% to 49%

as noted previously in the feedback. Whatever was the case of recent reforms this perhaps may support the previous idea of the critics' team that suggested these amendments in the consultation period. Based on the Article 6 and 16 of the amended rules, the amendments have included the following:

- It requires any qualified foreign investor who wants to invest in the Saudi Stock Exchange to have under their assets management no less than \$ 1 billion while in the previous rules this was \$ 5 billion. The authority also has the right to reduce these assets;
- QFI and their affiliates can hold a maximum of 10% of any one listed company, while in the previous rules this was only 5%;
- Eliminating the clause that relates to combined QFI owning only 20% as a maximum in any one of listed company; and
- The maximum proportion of shares has been retained. Thus all foreign investors including residents, non-residents, and swaps are able to own in aggregate 49% of issued shares of any listed company. The following table summarizes those differences between the previous and amended rules.

### CMA QFI-Related Amendments

	Previous	Amended
<b>Assets Under Management</b>	\$5 billion	\$1 billion
Each QFIs max. owner- ship of single company	5 percent	10 percent
Combined QFIs max. ownership of single company	20 percent	49 percent*
CMA defined QFI institution	banks; brokerage and securities firms; fund managers; and insurance companies	previous plus sovereign wealth funds; and university endowments
*Note: Foreign investors including residents and non-residents, swaps and QFIs		

Source: (Alturki & Khan 2016)

Moreover, in accordance with the new amendments Article 2, the definition of the QFIs and QFIC has been modified to include Sovereign Wealth Funds and University Endowments. Article 6/A identified the type of financial investment institution as following:

The applicant must be a financial institution that has a legal personality which falls within one of the following types:

- a) Banks;
- b) Brokerage and securities firms;
- c) Insurance companies.
- d) Government and government related entities.
- e) Investment funds; and
- f) Any other financial institution considered eligible by the Authority (p.4).

The inclusion of such entities should have a positive effect in the long term as they are deemed major global investors with financial depth who will make decisions based on long term investment (Alturki & Khan 2016). The changes also include the settlement cycle from (T+0) to (T+2) (CMA 2016g). In the opinion of some experts, the recent amendments may encourage foreign investors in the long term which will have a positive effect on the Saudi Stock Exchange (Minshawi 2016). Moreover, a significant change may appear in foreign ownership in the next a few years. The adoption of these amendments and reforms aimed to facilitate the access of foreign investors to the Saudi Stock Exchange which will enhance market opportunities to achieve membership of the emerging markets indexes. Such strong classification will attract millions in additional

capital that relies on these criteria in their own business (Minshawi 2016). The recent amendment also confirmed the slow and steady progress in opening the Saudi Stock Exchange for foreign investments. The expert Ryan Lemand, the head of managed solutions for asset management at ADS Securities in Abu Dhabi noted that (Everington & Cronin 2016):

Saudi Arabia didn't want a wall of money coming in all at once when they opened the doors to QFIs last year. Their approach has been more incremental, gradually rolling out something that is well thought out, based on solid principles. Today's announcement is a natural extension of that policy.

Recently, in 2018 the CMA has also changed the size of the financial institution to be about 500,000 million. According to article 6 (B):

With the exception of sub paragraph d (1) of paragraph (a) of this Article, the applicant must have assets under management or custody of SAR 1,875,000,000 one billion eight hundred and seventy five million Saudi Riyals (or an equivalent amount) or more. And the Authority may reduce these assets.

#### **5.4.1 Are the Assets High or Normal?**

In the case of considering this reason stands behind the weak influence of foreign investment flow as some of the feedback mentioned, it might be argued that on the other side of thoughts the assets might not be a major effect to attract foreign investors. Even if the Capital Market Authority recently reduced the amount to \$1 billion, the amount is not the main obstacle to global institutions since some of them do not accept investment of less than \$5 billion (Hamidi 2014). This statement is supported by the reality that some countries have more than the amount required by the Saudi Capital Market Authority. For example, in the Chinese Stock Exchange Market the amount of assets should be between US \$ 500 million to US \$ 5 billion (Alkhabeer 2015). In the Indian

Stock Exchange Market the assets under management must worth \$2 billion (Alturki & Khan 2015). However, considering the Capital Market Authority has discretion to reduce the amount, it is clearly set up to attract more foreign investors. Therefore, the amount of assets at the moment is not the market norm particularly after it reduced the amount to \$1 billion (Heshmaty 2015).

#### **5.4.2 Are Foreign Ownership Limitations Higher or Normal?**

It is not surprising that the Saudi Arabia restricted the percentage of ownership of foreign investors in its stock exchange market as it plays a geopolitical role in affecting the oil price. After the Asian financial crisis occurred in 1997, China and Taiwan restricted foreign investors' ownership as a lesson from that event. Thus, the restriction on foreign ownership might be the appropriate mechanism in order to protect its economy and stock exchange market from investors suddenly exiting (Heshmaty 2015).

It could be said that, most emerging markets impose a limitation on foreign investors in the total market and specific sectors. But on the other hand, in such major markets there are no limitations except some restrictions on certain sectors particularly those owned by the government or its entities and what is considered protection of national security (Alkhabeer 2015). For instance, the limitation of foreign ownership in China is 10% for individuals and 30% of combined ownership. In Indian companies there is a maximum of 24% foreign investment ownership, and between 25% and 49% in Canadian companies in the transport and communications sectors. In the USA, American airline companies limit foreign ownership to 25%, while in Japan foreign ownership is limited in 17 companies linked to airlines, telecommunications and media sectors and range from 20% to 30.3% (Alkhabeer 2015).

In the opinion of some local investors, while appreciating the CMA keenness to protect the market from hot money, they fear the Capital Market Authority conditions and criteria for the entry of direct foreign investments may lower foreign investment flows in the stock exchange market. As happened with the previous steps, such as swap agreements, that had not granted the foreigners property rights when they own shares which has led to the reluctance of foreign investors in investing in the stock exchange market (Owaid 2010).

Alkhabeer (2015) also agreed that the current rules were restrictive and noted that excessive regulation is an obstacle; thus the CMA can be more flexible in rules about foreign ownership. The CMA should impose tighter controls on foreign investment only in such strategic sectors as the case in most emerging markets around the world that have opened their doors for foreign investors.

On the other side of this argument, some observers support the rules of foreign investments that apply to other countries like China. China's rules are very close to those of the Saudi Stock Exchange Market in terms of its regulations and individual investors who account for 80% of stock exchange market volume. Since the Shanghai Stock Exchange opened its doors to foreign investment in 2003, the statistics show that by the end of 2013, foreign investors accounted for only about 1.6 percent of total market capitalization. The low percentage is related to its rules that encourage a gradual and cautious opening. Therefore, there is no surprise that Saudi regulators have also been cautious in opening up the stock exchange market to foreign investment institutions (Alturki & Khan 2015). This will be discussed further in chapter 7.

## **5.5 The Tax Requirements**

In regard to income tax, the Saudi Income Tax Law (Article. 10) indicates that the capital gains from securities traded are exempt from income tax. The content of the current rules did not mention income tax on foreign investments institutions in the listed shares. However, the Frequently Asked Questions No.6 on the Rules for Qualified Foreign Financial Institutions Investment in Listed Shares (2014) clarified that QFIs and approved QFI Clients are subject to the Income Tax Law which is the responsibility of the Income Tax Department of Zakat and Income. Further, the Capital Market Authority will impose a tax estimated at 5% of dividends, but this tax will not include distribution of bonus shares or capital gains. The deduction of the tax must be taken by the listed company from its profits before making a distribution in accordance with the special section of frequently asked questions No.7. However, this tax is considered among the lowest ratios in the world, which makes the Saudi securities exchange market one of the most attractive markets (Alturki & Khan 2015).

Some observers would still argue that foreign investors may agree with chartered accountants recording the investment loss. Even if the clients pay the tax from profits in one year and lose in another year, they shall be deducted from the tax already paid in the previous year. In contrast, local institutions and companies in Saudi Arabia (the contribution or non-contribution), pay the Zakat whether they have a loss or profit in accordance with Tax Department of Zakat. However, it is still complex and raises many problems and lawsuits between the companies and the Department of Zakat and Income (Aldjaatn 2011). Comparing these regulations to regulations in other GCC countries, in the Kuwaiti Stock Exchange investors are exempt from taxation including profits earned from securities listed and foreign investors are not subject to the tax (Kern, D 2015). In

the Qatar Stock Exchange, there is no tax on dividends from listed companies (OBG 2016).

## **5.6 Short-selling**

In order to improve the capital market environment, attract foreign institutional investors and reach the criteria of MSCI index, the CMA has approved the introduction of securities lending and covered short-selling per the regulations (CMA 2016f). It is important to note that short-selling was not previously allowed in Saudi stock exchange market regulations. The reason to include short-selling in the analysis of this thesis relates to its importance to foreign investors as it also required by the emerging market index (CMA 2016m). This has been confirmed by Ryan Lemand, the head of managed solutions for asset management at ADS Securities in Abu Dhabi who noted that (Everington & Cronin 2016):

Covered short-selling and lending and borrowing are essential tools for foreign institutional investors and professional portfolio managers. Having such tools in place should create substantial liquidity for the market.

To govern this activity, the regulations of this system will be issued before the end of the first half of 2017 (CMA 2016g). Thus, the Saudi regulations did not yet provide a definition. In general, short selling is selling a stock that the seller doesn't own. The seller can benefit from borrowing a security and selling it in order to buy it back at a lower price (Hashemi 2015; Picardo n.y).

According to Ikrame (2015), short selling on the one hand can prevent price bubbles in shares, increase the business of the brokers institutions, and provide additional income for long-term investors. It is considered in most cases the appropriate activity to improve the county economy. On the other hand, it can lead to the collapse of the

market, and broker manipulation which harms local investors. For example, there was a temporary short-selling ban in 2008 in 799 listed companies on the USA in a move to support the stability of those shares after the financial collapse that occurred in global markets (Ikrami 2015). However, the New York Federal Reserve in 2011 found that the share decline was not driven by short selling (Hashemi 2015). It also supported a 2014 study done by the Turkish Stock Exchange Market and found that short selling helps to increase market efficiency. However, there is not enough evidence to support the prevalent view that short selling may cause unstable stock exchange markets (Alturki & Khan 2016).

In regard to the GCC countries, as the UAE and Qatar upgraded on the MSCI index, short selling has been included in its regulations. It could be said that GCC governments included short selling with varying degrees of enthusiasm (Hashemi 2015).

In Australian regulations, the Corporations Act 2001 addressed the naked short selling prohibition and disclosure obligations.

## **5.7 Money Transfer in and out the Kingdom**

It is noted that the financial policies in Saudi Arabia seems to be flexible about transferring money in or out of the Kingdom as it does not impinge on Saudi commercial laws (EB 2013). Article (V) of the Implementing Regulation for the Foreign Investment Law 2000 has confirmed that:

Re-transferring of the foreign investor's share outside the Kingdom, of his share`s sale or from liquidation surpluses or profits made by the institution, and dispose of it for any other legitimate obligations, also he has the right to transfer the amounts necessary to meet his contractual obligations for any particular project. The foreign investment would enjoy the freedom of movement of shares among the partners and others (p.16).

Foreign investors' transfers into and out of the Saudi Stock Exchange is subject to monitoring by the CMA and the SAMA monitoring (FSB 2015). Saudi Arabia and other gulf countries are committed to international obligations such as transferring profits and dividends as well as the right to sale and re-sale of shares (OECD 2011).

## **5.8 Analysis of the Period after opening the Saudi Stock Exchange for Foreign Investment**

Recent statistics by the CMA on 26 May 2016 showed that since it launched the new rules there have been no significant changes in foreign investment flows, with foreign ownership in the Saudi stock exchange market ranging from 4.8% in 2015 to 4.21% in 2016 of the total market. According to a report published by the CMA (2016l) at the end of June 2016, the total value of shares purchased by "Foreign Investors" during this period amounted to SAR 2.17 billion representing 2.57% of total buying activity, and sales of SAR 2.11 billion representing 2.50% of total selling activity. However, this refers to the easy exit of foreign investors from the Saudi financial market (Amare 2015). At the time of writing this research, foreign investments in the Saudi Stock Exchange stood at 4.21% of total market capitalization based on the CMA report in August 2016.

This was the flow expected by many observers as it is considered very weak entry of qualified foreign investors to the market. The low flow of FDI was related perhaps to the rules themselves as well as the other factors such as politics and economic and region stability may play a part. There are many experts, reports and organizations supported this statement and argued that the rules of foreign investment stood behind the low flow. For instance, an economic and financial analyst Ali al-Zahrani noted that although there was recently a decline in prices for each local market companies, it did

not attract the foreign investors (Economic 2016). Financial analyst, Mohammed Omran added that many requirements from the previous period remain, including primarily the need to improve foreign investment institutions rules (Economic 2016). He reported that, there is still a need to apply international standards in corporate governance and disputes as well as to enforce rules on the violating companies in order to increase credibility and encourage foreign investment institutions flow (Economic 2016).

Mr. Young Willie, the head of equities in the Middle East and North Africa in the UAE, National Bank of Dubai, asserted that the greatest concern of foreign investors that affects their investment flow related to the regulations. For instance, restrictions limit foreign ownership to 20% for each listed company and the settlement A+0. Once foreign investors confirm that they are comfortable with these issues, the flow of foreign investors will increase and it will be likely that the Morgan Stanley index of emerging markets will announce that the Saudi market is ready to be included in the emerging markets index (Halligan 2015).

According to the Argaam Capital Report, the low level of foreign ownership in the Saudi market is due to the strict criteria that determine the eligibility of foreign investors to enter the market. Along with that, the limitation on the percentage of foreign ownership and difficulties resulting from the transactions settlement might be reasonable to the low flow. It is noteworthy that the percentage of foreign ownership in emerging and frontier markets rate is around 28 percent of the total value of the market (Dayoub 2015), which means that the Saudi stock exchange is below the average foreign investment rate in emerging and frontier markets. Further, it was mentioned earlier in this thesis that most of these constraints were motioned during the consultation period in 2014, but the CMA did not address these which has significantly diminished the intake of foreign investors.

From the perspective of some experts, the entrance of foreign investors indicates the strength of the host country regulations and the level of protection and reflects a compatible environment for investments. Foreign investors are unlikely to expose their investments to countries experiencing legal and financial uncertainty (Hamidi 2014). Therefore, it can be said that low flows of foreign investment may reflect weak application of regulations in the host country.

These views have perhaps lead the Capital Market Authority and other regulators in Saudi Arabia to amend the QFI regulations in mid-2016 and to review other related regulations such as Corporate Governance and Resolution of Securities Disputes Proceedings Regulations. Moreover, to attract more foreign investment institutions and protect shareholders' rights the Capital Market Authority required listed companies in Saudi stock exchange market to adopt the International Financial Reporting Standards (IFRS) in their financial statements. This may assist the Capital Market Authority in monitoring full disclosure of information that relates to financial securities and their issuers (CMA 2016d).

In terms of foreign institutions that have applied to invest the Saudi Stock Exchange Market the annual report of the Capital Market Authority by the end of 2015 showed that the number of registered qualified foreign investors and their approved clients for investment in local shares was 17 investors. There were nine qualified foreign investors registered by Capital Market Authority, while eight of their clients were approved to invest in listed shares. The report also indicated that the Capital Market Authority has received seven new swap agreements during 2015 making the total swap agreements 34 (CMA 2015a). The table below shows the list of the names of registered qualified foreign investors and their clients approved to invest in the local stock exchange in 2015.

HSBC was the first to obtain a licence, followed by Ashmore Group. In the opinion of some investors, Mr. John Sfakianakis, Director of the Ashmore Group in the Middle East said that the process was very simple in terms of providing required paperwork and did not take much time and effort (Halligan 2015). This may indicate to the process is straightforward if the application complies with Capital Market Authority conditions.

Based on the CMA data mentioned by Everington and Cronin (2016), Licensed QFIs such as Blackrock, Ashmore Group, Citigroup and HSBC, owned only 0.09% of stocks in Tadawul listed companies at the end of April 2016.

### **Registered Qualified Foreign Investors and Their Approved Clients for Investment**

No.	QFI	QFI Clients
1	HSBC Bank Plc	–
2	Ashmore Investment Management Limited	–
3	Silchester International Investors LLP	1- CAPE ANN GLOBAL DEVELOPING MARKETS FUND
4	Citigroup Global Markets Limited	–
5	Ashmore Equities Investment Management US LLC	1- Ashmore SICAV Middle East Equity Fund 2- Ashmore Emerging Markets Frontier Equity Fund 3- Ashmore SICAV Emerging Markets Global Small Cap Equity Fund 4- Ashmore SICAV Emerging Markets Frontier Equity Fund
6	Black Rock Fund Advisors	1- iShares MSCI Saudi Arabia Capped ETF
7	Black Rock Advisors UK Limited	1- iShares MSCI Saudi Arabia Capped IMI UCITS ETF
8	UNLU MENKUL DEGERLER AS	–
9	La Francaise Asset Management	1- Fonds Equipe de France

Source: CMA (2015)

## **5.9 The other GCC Countries Procedures and Regulations**

In recent years, there were significant changes that have taken place in some Gulf financial markets during 2005 and 2006 in respect of opening up their markets to non-citizens to own the shares of listed companies. These changes in the Gulf Arab financial markets had varied from absolute openness without any restrictions to opening up the

market to non-citizens under certain conditions (Abdmoulah 2010; Dabbas 2015). In 2014 most of the UAE public joint stock companies allowed foreigners to own a share of their capital. Several companies have allowed foreigners to own 49% of their capital, while others allowed some foreigners to own 20%. It should be noted that foreign investment by individuals had a specific role in driving speculation in the UAE Stock Exchange market in 2014 and causing the market to decline. Thus, the UAE national banks have suggested that foreign investors should be in long-term investment through mutual funds (Dabbas 2015).

Dabbas (2015), reflecting the views of other observers, argued that Arabic markets should encourage foreign investment institutions as it has positive effects on investment in stock exchange markets in long-term. This is because foreign institutions usually take into account many factors when investing in the emerging markets. These positive effects include: the standard of laws and regulations that confer legitimacy, justice and fairness in such transactions and trading in these markets are the most crucial steps in protecting local investors (Abdmoulah 2010; Dabbas 2015). Other factors are: market depth, efficiency and liquidity in terms of the number of listed companies, available investment tools, lack of concentrated trading on the shares of a few companies, the level of investment awareness, commitment to international disclosure and transparency standards, and the preparation of financial statements (Dabbas 2015).

The foreign investment law and other related regulations usually include important indicators that need to be evaluated by foreign investors in addition to the other factors. Therefore, based on the GCC Chamber's Council report cited in Alyaum website (2003), documents explaining the law to foreign investors is considered one of the documents that foreign investor are keen to study in advance before making decisions. However, as stock exchange markets in the GCC region were only established and

regulated between 1980 and 1990, which indicates that they only have limited experience compared to the global financial markets (Abdmoulah 2010; Alahjhoj 2004; Jamaani & Roca 2015). Moreover, capital market authorities in these countries have been keen to improve this regulatory environment as well as transparency and liquidity (Abdmoulah 2010). It should be noted that all GCC countries have foreign investment regulations except the UAE and Bahrain that have no particular legislation on foreign investment in stock exchange markets. The foreign investment rules in the two countries have been included in corporate law and other related regulations (GCC-Chambers-Council 2003). One more unique difference that distinguishes Saudi Arabia from the other Gulf countries is that foreign investment in the stock exchange has separated rules that may clarify foreign rules much better than in other GCC countries.

### **Oman**

Article 2 of the Foreign Capital Investment Law in Oman states that foreign shares shall not exceed 49% of the total capital, but this percentage may be increased up to 65% of the company's capital by the Minister of Commerce and Industry based on the recommendation of foreign capital investment committee. However, if the company's capital contributes to the development of the national economy the percentage above may be further increased up to 100%.

### **Qatar**

The Qatar authority amended its regulations in Article 2/4-2014 to allow foreign investors to own up to 49% in listed companies. The council of ministers has the authority to increase this percentage up to 100% if directed by the minister suggestion. Article 4 of Qatar's investment law 2000 requires foreign investors to obtain the necessary licences in order to invest in any of the authorised activities. Article 9 also

indicates that foreign investors can transfer money into and out of the country without delay.

### **Bahrain**

The Bahrain Rules 1999 and Bahrain Stock Exchange Rules 2001 allow foreign investors to own up to 49% of listed companies and 100% of foreign companies.

### **Kuwait**

The Kuwait Stock Exchange Regulations 2013 allow foreign investors to own up to 49% of listed companies.

### **United Arab Emirates**

The Concerning Commercial Companies (CCL) draft 2013 Article 10 restricts the shareholding of foreign investors to own up to 49% of listed companies and companies may choose to set a lower limit. The law also allows the limit to be increased to above 49% in some companies and sectors if approval is granted by the UAE Cabinet.

#### **1. Dubai Financial Market**

The Concerning Commercial Companies (CCL) draft 2013, states that foreign investors are limited to 49% of total shares. The regulations permit individual foreign investors to own more than 5% of each company each company listed on the Dubai stock exchange market.

#### **2. Abu Dhabi Securities Market**

The Concerning Commercial Companies (CCL) draft 2013, notes that foreign investors are limited to 49 percent of total shares. The regulations also give companies the option to increase the percentages of foreign investors to own up to 100% (ADSE 2016).

## **5.10 The Significant Differences compared to other Countries**

The regulations of foreign financial institutions in Saudi Arabia have ten significant differences compared to their counterparts in the GCC countries, including different percentages of ownership permitted in listed companies. This comparison is based on the Saudi rules and GCC regulations of foreign investors. The differences can be organized as follows:

1. The first difference is that foreign investors according to Frequently Asked Questions No.6 (2014) are responsible for paying tax to the Income Department of Zakat. The tax is 5% of the dividend which will not include distribution of bonus shares or capital gains. On the other hand, as mentioned previously, there is no such tax in the stock markets of the Gulf States.

2. The second difference in the list of foreign investment rules is related to the settlement in the market system to be T + 0. In May 2016, the CMA approved the Saudi Stock Exchange's (Tadawul) request to amend the transactions settlement cycle of listed shares from (T+0) to (T+2) and this change will begin in the first half of 2017 (CMA 2016g). In contrast, the rest of the other GCC markets have chosen the settlements of T + 2 and T + 3. The changes in the Saudi rules are based on demands of foreign institutions to move the settlement period for shares to two days (T + 2), rather than on the same day (T + 0) as well as the MSCI requirements to include emerging stock exchange market (Alturki & Khan 2016). The aim of this requirement is that because of the lack of cash in their portfolios foreign institutions need to transfer funds which normally takes two days (Abdullah 2015). In this context, modifying the settlement system aims to shrink speculation in the market, as well as to be compatible with similar regulations in the international, Arab and Gulf bourses that have regularly chosen T + 2,

and T + 3 (CMA 2016g; Ikrami 2015). Internationally, many countries such as Hong Kong and Europe, US, and New Zealand adopted the moving to T+2 settlement in their stock exchange markets (ASX 2016d).

3. The third difference is that the list of foreign investments in Saudi Arabia only allows foreign investment institutions to post subscriptions after consultation between the Saudi Capital Market Authority and the company that offered the subscription. In comparison, foreigners have the right to participate directly in subscription in the GCC Stock Exchange Markets without consultation (Abdullah 2015).

4. The fourth difference is that the Saudi Capital Market Authority in the current list of foreign investment regulations is considering imposing a fee for the foreign investor understudy. However, at the time of writing, there was no update from the Capital Market Authority. It could be said that if the Saudi Stock Exchange Market imposes fees it will be the only market to do so; other stock exchange markets in the GCC do not charge fees for foreign investors who have registered (Abdullah 2015).

5. The rule of foreign investment institutions in the Saudi market stipulate in Article 6/B that the assets of foreign financial investment institutions must be 1 billion dollars or more, and the Capital Market Authority has the right to reduce the assets. Based on this research investigation, there is no mention in information in the other GCC regulations related to this condition.

6. The Saudi rules require foreign investment institutions to have at least five years' experience based on Article 6/C. In contrast, to the best of the research knowledge, this condition is not required in other GCC regulations.

7. There are other differences regarding the ownership percentage for foreigners in listed companies. For instance, each QFI may not own more than 10% in any listed company. All types of foreigners (qualified foreign institutions, residents and non-residents) cannot own more than 49% of any listed company. In addition there are other legislative limitations of foreign ownership in joint stock companies that need to be followed. However, the other GCC countries have allowed foreign investor ownership of up to 49% with specific details in the UAE, Qatar and Oman.

8. In the Saudi rules, the QFI clients are only allowed to access the Saudi Stock Exchange through a single QFI as Article 17/A states:

A QFI must have, for as long as it remains registered as a QFI, an assessing authorised person engaged by it, and must not engage with more than one assessing authorised person within the same period (p.11).

9. The Saudi rules have allowed only foreign investment institutions to invest in the local stock market, while in the UAE and Qatar the rules allowed both institutions and individual foreign investors to invest (Argaam 2015a).

10. In the Saudi rules, the QFI and QFI client must obtain approval from the CMA, in addition to disclosing ownership details. This may restrict foreign participation in the Saudi Stock Exchange Market (Heshmaty 2015).

The review of differences in regulations between Saudi Arabia and the GCC countries indicates that the percentage of ownership for foreign investors in listed companies was the main difference and one that is of the most concern to foreign investors.

Notably, the current rules have not considered GCC citizens as foreign investors. In the case of there are companies holding GCC nationality with foreign investment

ownership. The rules emphasize that the majority of investors must be GCC citizens and Article 2 defines Citizens of the Cooperation Council for the Arab States of the Gulf as:

natural persons who hold the citizenship of one of the Cooperation Council for the Arab States of the Gulf countries, or legal persons that (i) capital of which is majority owned by citizens or governments of the Cooperation Council for the Arab States of the Gulf; and (ii) holding the citizenship of one of the Cooperation Council for the Arab States of the Gulf countries, in accordance with the definition set out in the resolution of the Supreme Council of the Cooperation Council for the Arab States of the Gulf in its 15th session approved by the Council of Ministers Resolution number (16) dated 20/01/1418H (p.3).

Giving attention to the word “majority” raises the question that if the foreign investors owned 49%, then they do not need to apply as QFI. It would seem that the rules were silent on interpretation of the extent of foreign investment institutions in the GCC companies.

In terms of procedures, it can be said that foreign investors procedures in the GCC countries generally present a stronger obstacles even though there are clear reforms in investment policies (OECD 2011). For example, the procedures for foreign investors to open accounts in the Kuwait Stock Exchange Market must be in Arabic while in the Saudi Stock Exchange Market they are in English. It might take a period of five days to approve the application in Kuwait Stock Exchange Market which is similar to the Saudi procedures (KAMCO 2011).

In Qatar Stock Exchange Market, registration procedures require a National Identification Number prior to trading. Each investor must have only one account in the Central Clearing and Registration department (CCR). Foreign investors must provide legal evidence of the existence of their representative. Generally speaking, in the Qatar

Stock Exchange Market, registration procedures are considered efficient in terms of attracting and protecting shareholders (Saidi, Prasad & Naik 2012).

In aggregate, the GCC countries procedures to develop financial markets have been affected by the sophisticated systems in other developed countries (Shankaraiah & Rao 2010). The following table summarizes the above points:

Comparison of the Foreign Investment Regulations in the GCC Stock Exchange							
	KSA	Dubai	Abu Dhabi	Bahrain	Oman	Kuwait	Qatar
Tax	5%	N/A	N/A	N/A	N/A	N/A	N/A
Settlement	T+2	T+2	T+2	N/A	T+3	N/A	T+3
The participation of foreigners in IPOs	In consultation with the CMA	Yes	Yes	Yes	Yes	N/A	Yes
License fees for foreigners	understudy	N/A	N/A	N/A	N/A	N/A	N/A
Limitations	10%, 49%	49%*	49%*	49%	49%*	49%	49%*
Experience	5 years	N/A	N/A	N/A	N/A	N/A	N/A
The assets	\$1 billion	N/A	N/A	N/A	N/A	N/A	N/A
Institutions or individual	Institutions	Institutions and individual	Institutions and individual	N/A	N/A	N/A	Institutions and individual
* Possible exchange may accrue based in its regulations							

### 5.10.1 GCC Stock Markets Statistics

As stated previously, the restrictions imposed in the GCC countries identified that foreign ownership could own up to 49% with specific regulations in the UAE and Qatar allowing foreign investors to own up to 100%. Foreign ownership in the GCC countries

ranged between 4.21% and 17.30% in accordance with the recent statistics in 2016 that have been mentioned in chapter 3. However, the foreign ownership in GCC countries is low in comparison to developing countries. The amount of foreign ownership might reflect both restrictions on investment and easing regulations (Jamaani & Roca 2015). If that was the case, it might indicate that there is a negative relationship between restricted regulations and foreign investment flows.

In Qatar Stock Exchange Market, there was a major change in trading volumes after 2005, when they allowed non-Qataris to invest in the stock market. The traded volume rose to unprecedented levels from 60 billion in 2005 to 180 billion in 2014 (QSE 2016). This improvement is related to the increase in the minimum percentage of foreign participation and inclusion in the MSCI emerging markets (Alkhabeer 2015).

Moreover, the increase of foreign investors in Abu Dhabi, Dubai, and Oman in recent years may indicate more openness in regulations toward foreign investors. However, it seems that the Saudi stock exchange market has a low rate of foreign investment flows compared to most other GCC countries in the region. It can therefore be concluded that the Saudi rules are responsible for of the low flows of foreign investment as the other factors affecting investment have been experienced by other countries in the region.

### **5.10.2 The International Report Overview**

When Saudi Arabia opened up the Saudi Stock Exchange Market to foreign investors, some economists forecast that the flow of foreign investment institutions would be weak in light of the current restrictions. The rules in the opinion of some experts are highly restrictive and not able to attract more investors (Khatoun & Shamma 2015). For example, the maximum foreign ownership of company shares and the strict rules for foreign direct investment licenses, including the asset value managed by eligible

institutions of five billion dollars and that the foreign investment institutions have no less than five years' experience of investment. These restrictions have led to criticism from public companies and indices such as the MSCI and Financial Times that are considered very important to many global institutions. This indicates that the Kingdom will need to amend these rules if it wants to join the global institutions (Reuters 2015).

A study by Morgan Stanley Capital International in 2014 found that Saudi Arabia was the least open country in terms of the ability of foreign investors to enter the market. This was in comparison to other emerging markets such as Qatar Stock Exchange Market and; the UAE Stock Exchange Market in the GCC countries, India, China, South Africa and Malaysia (Morgan Stanley 2014 cited in Alkhabeer 2015). According to the Maceen Capital Annual Report (2015), one factors that may pose obstacles to foreign investment institutions and reduce their attraction to the Saudi Stock Exchange Market is the regulations. As an example, the Saudi rules set the top percentage of foreign financial investment institutions at 20%. The report added that in comparing the region's markets that have been previously included in the index MSCI, regulations in most countries allowed their companies to open foreign ratios based on each company's system. This is obvious in the Dubai Stock Exchange Market which increased the percentage up to 100% for the Emirates integrated Telecommunications Company or 0% as in the Emirates Investment Bank. In addition, the Qatar stock Exchange has allowed foreign investors to have a maximum 49% in a listed company an increase from 25% previously.

In 2016 the MSCI has reviewed the rules of foreign investment in the Saudi Stock Exchange Market. It noted that although the Saudi regulators have attempted to improve accessibility to the local market, it still monitors the positive evolution of foreign investment flows. It seems that regulation and other reforms in the stock exchange

market need to change in the future if Saudi Arabia is to join the MSCI and other global institutions. In this report the MSCI did not reveal the reasons behind its judgment in details, but amendments to the Rules for Qualified Foreign Investment institutions planned for the mid of 2017 may bring the Saudi Equity Market closer to the emerging market (MSCI 2016b).

A few days after the MSCI report was released, the Capital Market Authority in Saudi Arabia announced that it intended to review the regulations and others operational matters in order to increase the level of attraction and protection for foreign investors and for Saudi Arabia to be included in the MSCI emerging market index. In respect to this goal, the amendments to modify registry conditions of qualified foreign financial institutions, such as lowering the minimum value of assets under management to SAR 3.75 Billion (equivalent amount \$1 billion), rather than SAR 18.75 Billion (equivalent amount \$5 billion) and extending foreign institutions to include sovereign wealth funds and university endowments. In addition, the Capital Market Authority and the Saudi Stock Exchange (Tadawul) noted that there is continuous consultation with MSCI to achieve its development goals (CMA 2016m). It is clear that the Capital Market Authority is very interested in including its stock exchange market in the emerging markets as it apparent in the following statement on its official website (CMA 2016m):

The Capital Market Authority recognizes that the inclusion of Saudi Arabia into international indices including MSCI emerging market index, would have a positive effect on the CMA's strategic objective of further developing the Saudi capital market to create a world class transparent capital market.

However, in May 2014 the MSCI upgraded two stock markets in the gulf region the United Arab Emirates and Qatar Stock Exchange Market to emerging market status which has had positive impact on their Stock Exchange Markets (Salman Al-Sudairi et

al. 2014). There were significant share price rises on the Qatar and Emirates stock exchanges after their inclusion (Tarbuck & Simpson 2013). These two countries were included in the index because of improvements of many notable aspects such as liberalisation and relaxation of foreign ownership restrictions. The other Gulf countries have not been included in the MSCI and will need to speed up reforms toward liberalization (Tarbuck & Simpson 2013).

The inclusion of the UAE Stock Exchange Market and Qatar Stock Exchange Market into the emerging markets index in 2014 reflects the robustness of regulations and operational structures in their stock markets and foreign investment. These countries have the highest percentage of foreign investors in their markets compared to the other markets in the region. Such inclusion implies that improving regulations and registration procedures makes foreign investors more willing to invest in these stock exchange markets. Furthermore, improving regulations to the standard required by the MSCI will attract high quality of foreign investors. Madhi Mattar, CEO at Abu Dhabi-based Finance House Capital, told CNBC after UAE Stock Exchange Market and Qatar Stock Exchange Market were included in MSCI (El-Din 2013): "It's not just the amount of the flow that is expected to come here; it's the quality of the flow. You will have more of the long-term, educated investors rather than the hedge funds".

Having been formally included the UAE and the Qatar stock exchange markets in the MSCI emerging markets, statistics on 26 May, 2014 showed that the Abu Dhabi Securities Exchange had risen by 17.7%, while the Dubai Financial Market had surged by 47% and Qatar Securities Exchange had risen 29% (Saidi 2014). The improvements in those markets imply that MSCI classification has expected benefit in increasing the foreign investment flow (Saidi 2014). However, it has been assumed that the main objective behind these regulations is to increase transparency and corporate governance,

rather than simply to increase the flow of additional funds into the local stock exchange market (Halligan 2015).

In such considering the MSCI report, it is clear that the Saudi rules are very essential to foreign investors and Saudi policymakers must bear in mind that the foreign investors appreciate the MSCI evaluation. Foreign investors trust the MSCI and other organizations as they play a role in increasing foreign investors' ability to trade freely which reflects positively on local investors, individuals and institutions. Moreover, they participate in devolving legislative and regulatory framework that governs domestic and foreign investments (KAMCO 2011). Therefore there are benefits in using MSCI and other organizations reports to assess how to attract foreign investors and protect shareholders in the current rules.

However, going back to the main discussion about the MSCI classifications, raising the limitation on foreign investment institutions, corporate governance and stock exchange market system were on the top of its agenda (Saidi, Prasad & Naik 2012). In addition to other criteria that were considered such as market capitalization, short selling, custody, and settlement. According to Saidi et al. (2012), other international emerging indexes such as S&P, Dow Jones and Russell mostly have considered these standards in their evaluations. For example, S&P in its 2015 report mentioned that the Saudi stock exchange was still not eligible to be included in its index because of its foreign ownership restrictions. The Capital Market Authority will need to take a big step forward in implementing reforms to develop its market structure, which lead to an increase in foreign investors flow (S&P 2015).

It is equally important to indicate that reclassification may cause a negative effect in terms of falling prices on the stock securities market (Saidi 2014). In this case, it is

essential for Saudi regulators to work strongly with its regulations that are related to foreign investors, particularly corporate governance, before applying to be included in the emerging market index.

Looking at Australian classification in international review, the MSCI has classified the Australia stock exchange as one of the developed markets such as North America and Western European countries (Saidi, Prasad & Naik 2012). Based on the MACI criteria above, it may indicate that the Australian regulations and its procedures are stronger and better than the Saudi Stock Exchange Rules.

### **5.11 The Australian Regulations**

Foreign investment in Australia is regulated primarily by the Foreign Acquisitions and Takeovers Act 1975 (FATA) and the Australia's Foreign Investment Policy (Winter & Slattery 2014). Other regulations and authorities, including the Australian Stock Exchange Market play a role in organizing and protecting the local economy from illegal activities. Other authority include the Treasury/Foreign Investment Review Board (FIRB), the Australian Securities and Investments Commission (ASIC), and the Australian Securities Exchange (ASX) (BCA 2014).

The Foreign Acquisitions and Takeovers Act 1975 Article 11, states that a 'substantial interest' occurs in two cases:

1. When a single foreign person has 15 per cent or more of the ownership; or
2. Several foreigners have 40 per cent or more in the total of ownership of any corporation, business and trust.

The Article indicates that both a single foreign person and several foreigners are allowed to invest, while in the Saudi rules only foreign investment institutions are allowed to invest.

The Australia's Foreign Investment Policy No.2, also states that foreign investment and related entities have to inform the Australian government in advance before making any decision to invest in or control an Australian business valued above \$248 million (in 2013 prices, indexed annually).

According to the Regulation of Foreign Investment in Australia (2011), there are specific regulations for industry. It states that:

Foreign persons should also be aware that separate legislation includes other requirements and/or imposes limits on foreign investment in the following instances:

- Foreign investment in the banking sector must be consistent with the Banking Act 1959, the Financial Sector (Shareholdings) Act 1998 and banking policy;
- Total foreign investment in Australian international airlines (including Qantas) is limited to 49 per cent;
- The Airports Act 1996 limits foreign ownership of airports offered for sale by the Commonwealth to 49 per cent, with a 5 per cent airline ownership limit and cross ownership limits between Sydney airport (together with Sydney West) and Melbourne, Brisbane and Perth airports;
- The Shipping Registration Act 1981 requires a ship to be majority Australian-owned if it is to be registered in Australia; and
- Aggregate foreign ownership of Telstra is limited to 35 per cent of the privatised equity and individual foreign investors are only allowed to own up to 5 per cent (p.3).

As the ASX is a company, the Corporations Act 2001 states that there is a 15% limit for ownership in the ASX. Thus, foreign investments are not permissible to exceed the limited percentage. This limitation provides the Australian government and regulators with more control in its local stock exchange market (ASX 2014). Comparing to the Tadawul, foreign investors and local investors are not able to own shares as it considered a government entity owned by the Saudi Public Investment Fund (CMA 2016b). This is based on Article one of Primary law (2007) of the Saudi Stock Exchange that indicates:

A Saudi stock company named the “Saudi Stock Exchange (Tadawul)” shall be incorporated in accordance with these Bylaws and the provisions of the Capital Market Law and the Companies Law with its legal personality and financial independence. It shall be referred to hereinafter as “The Company” (p.1).

In regard to the settlement cycle, since 2014 in Australia there has been there consultation about moving from a T+3 to a T+2 settlement cycle for cash market trades (ASX 2014). In 2016 the ASX transitioned to T+2 after receiving strong endorsement from the broad market. Based on the ASX regulations, this step will keep Australia at the forefront of global best practice as well as reduce risk for individual investors (ASX 2016d).

## **5.12 Conclusion**

The chapter analysed the level of attraction in the initial rules and what has been changed under the amended rules. It showed the differences between these two versions and discussed the improvement in terms of attracting foreign investors. The feedback of investors explained was discussed in order extend the research to include other perspective. This feedback was very helpful in estimating the extent of attraction of

foreign investment institutions. The type and size of financial institutions were considered the most important points during this discussion. Other related factors that play an essential role in attracting foreign investment were analysed such as tax requirements, short-selling and money transfer. The period after the stock exchange market was considered and performance based on recent statistics analysed to estimate the foreign investment institutions flows which are reflected in the level of attraction. The regulations of selected countries were compared and analysed with the Qualified Foreign Investment Institutions Rules. Finally, reports of international organizations like MSCI were analysed. The next chapter will discuss the most important part of this thesis which relates to the protection of local shareholders.

## **Chapter 6**

### **Protection in the Rules for Foreign Financial Institutions Investment in the Saudi Listed Securities**

#### **6.1 Introduction**

This chapter highlights the protection provided to local shareholders investors in Saudi Arabia. It explains and discusses the power of the CMA whether to the authorised persons or QFI. This chapter describes the procedures developed by the CMA to deal with a sudden withdrawal of foreign investment that might harm the local market. As the protection also relies on the other Saudi regulations, this chapter analyses other related regulations and the Islamic law perspective.

The role of the other government entities in response to what is occurring on the stock exchange market is discussed in order to determine the level of cooperation between them in regard to protecting the local stock exchange from foreign investment risks. Two important regulations in Saudi Arabia are included in the discussion, the Resolution of Securities Disputes (CRSD) and Corporate Governances. The possibility of hot money in the Saudi stock exchange is also examined in this chapter. The other selected countries are used to compare the power of their regulations with the Saudi regulations.

The structure of the chapter as follows: Section 6.2 presents the protection provided by the Rules of Qualified Foreign Investment Institutions. Section 6.3 discusses the powers of the Authority, while section 6.4 and 6.5 address the support of other Saudi regulations and government entities. The protection afforded by the CRSD and corporate governances is explained in section 6.6. The Saudi government institutions and the role of family owners are clarified in section 6.7. Section 6.8 explores the

possibility of hot money in the Saudi Stock Exchange and section 6.9 and 6.10 give an overview of the GCC countries and Australian regulations. Section 6.11 summarises the protection analysis.

## **6.2 Protection during the Articles**

The Stock exchange market deems a very danger business particularly with less information and incomplete disclosure of companies as well as weak enforcement of the authority (Menzies & Adviser 1992). It has been mentioned in the chapter 3 that one of the main stated objectives of the Capital Market Authority is to safeguard local investors. Saudi Arabia is one of the civil law countries, and the literature suggests that in these countries ordinary shareholders can be ignored by governments in favour powerful shareholders (Mañas 2005). However, it has been assumed that the main goals of the current rules of QFI as the Capital Market Authority noted are to protect local shareholders.

The articles of the current rules on foreign investment indicate directly or indirectly that the local market including shareholders should be protected. Therefore, the rules themselves and power of the Authority should be clarified in order to highlight the extent of its protection. In regard to Article 3 of these rules, the Capital Market Authority has the right of waivers as stated:

The Authority may waive a provision of these Rules in whole or in part as it applies to an applicant, a QFI or an authorised person either on an application from any of the aforementioned persons or on the Authority's own initiative (p.3).

This Article authorizes the Capital Market Authority to exempt foreign investors from the provision. In the opinion of some experts, the Article grants irregular power to the Capital Market Authority because it can allow or exempt foreign investors without

giving reasons. Based on this opinion, the Saudi system has not given the Capital Market Authority full power to act, but at the same time it is contrary to the change system which makes this text irregularly (Hamidi 2014). However, it may be argued that this criticism is negated by Article 4 of these rules that note the right to appeal: “Any person subject to these Rules may appeal to the Committee in respect of any decision or action that the Authority takes under these Rules” (p.3).

Although the regulations have given the Capital Market Authority the right to control local and foreign investors, Article 4 balance the Capital Market Authority powers by providing a right of appeal. Nevertheless, it can be said that the current rules have not clarified the process for making a complaint and to what entity in the government it should be submitted.

With the current rules on foreign, there are several obvious places in the articles where the level of protection can be extended. In order to highlight these places, it is necessary to explain these articles. Although the main aim of these rules is to protect the local market including its investors, the rules in an indirect way provide rights to foreign investors. The following are examples of these places:

- In Article 10 during the explanation of the QFI assessment agreement, the Capital Market Authority indicates that the QFI assessment agreement between an assessing authorised person and the applicant must meet the minimum requirements. The applicant is required to provide information and documents confirming that they meet the registration conditions. In the case of the applicant needs to change the agreement under any circumstances, he or she must sign in advance that will notify the assessing authorised person within maximum five days. This seems to be a regular procedure to approve the application and document the rights.

- The Capital Market Authority emphasizes that the applicant must disclose to any related authority in the Kingdom under its related regulations. The applicant will be responsible to provide such documents or information. All the related government authorities have the right to ask foreign investors to provide any documents. From the evidence above, it can be said that the government entities work together and the Capital Market Authority is not the only responsible party for protecting the rights of local investors. This is obvious in Article 15 of these rules that states:

A QFI must at all times comply with the applicable provisions stated in the Capital Market Law and its Implementing Regulations, as well as the rules and the regulations of the Exchange and other relevant laws (p.11).

- Moreover, the applicant must confirm that he or she will abide by the Capital Market Law and its Implementing Regulations, the rules of the Exchange and other relevant laws. The strongest point relating to protecting investors is that the confirmation will be only specified by the Capital Market Authority form. This condition has been prescribed due to many articles in the regulations such as Articles 9, 10, and Annex 2.1 which will be further elaborated in section 6.3. This indicates that the Capital Market Authority has restricted any chance that might give the chance to foreign investment to harm local stock exchange market and affect the Capital Market Authority commitments.
- In Annex 2.1 of these rules, the Capital Market Authority requires the applicant to provide any material regarding legal or regulatory sanctions that accrued during the previous five years. It seems that providing the history of the applicant may assist the Capital Market Authority in excluding risky investment even though the type of foreign investment institutions allowed mostly have a clean history. This interest in the history of investors is supported by the requirements of financial statements in

accordance with accounting standards prescribed by the relevant authorities in the applicant's jurisdiction. The authority requires the applicant to confirm the above details which gives it the right to waive the application in any time. It can be said that the Capital Market Authority in this regard restricts in advance any negative influence of FDI in its market and continues to control it even after accepting the application.

- In Article 18 of these rules the Capital Market Authority emphasizes the importance of the disclosure requirements of foreign investors in regard to any change that may affect the level of protection. The disclosure includes the following:
  - The QFI must notify the assessing authorised person about any changes within maximum 5 days;
  - The QFI must immediately provide the Authority with any information and documents; and
  - All information and documents must be complete, clear, accurate and not misleading.
  
- In Annex 3.1, the Capital Market Authority goes further in notifying events that must be disclosed by QFIs to the assessing authorised persons. The information and documents must be provided even if the proceedings accrued in any jurisdiction outside the host country; for instance, the commencement of insolvency proceedings and the commencement of criminal or legal or regulatory proceedings against the QFI. In the case of the local market, the QFI must disclose the following:
  - Any breach or anticipated breach of the current regulations;
  - Any breach or anticipated breach of its obligations;
  - When the QFI becomes a client of another authorised person;
  - When the QFI engages with a new foreign portfolio manager; and

- Any material change that affects its status.

It seems that, there are too many details in regard to the QFI obligations which indicate that the CMA is very keen to clarify its rules and avoiding any negative effects on the local Stock Exchange Market.

- Beside the QFI obligations, in Article 19 the authorised persons who are eligible by the authority also have to abide by its obligations with the CMA. The authorised persons are responsible for ensuring that the QFI is duly registered with the Authority in accordance with these Rules. The authorised persons must also comply with the applicable provisions of the Capital Market Law and its Implementing Regulations, as well as the rules and the regulations of the Exchange and other relevant laws. For example the CMA's power over authorised persons in Article 19/E, which states: "The Authority may impose any conditions and/or limitations that it sees fit on authorised persons in relation to their dealings with QFIs" (p.14).

The authorised person based on Article/F is required to pay fees to the Capital Market Authority for the registration of applicants. It should be noted that the fees in this regard are required from the authorised persons not from the QFI. However, it has been mentioned that at the time of this investigation, imposing the fees on the QFI is still under investigation by the Capital Market Authority.

- The Capital Market Authority in Article 20 gives the assessing authorised person the authority to monitor any change by the QFI to the registration conditions stated in these Rules. The assessing authorised person must report immediately in writing to the Capital Market Authority if they become aware of any of the following events:

- 1) Details of the commencement of insolvency proceedings against the QFI in any jurisdiction;

- 2) Details of the commencement of criminal or legal or regulatory proceedings against the QFI in any jurisdiction;
  - 3) The QFI becomes a client of another authorised person for the purpose of investing in listed securities;
  - 4) Where the QFI engages with a new foreign portfolio manager for the purpose of investing in listed securities
  - 5) Any restructuring of the QFI; and
  - 6) Any material changes to the information provided pursuant to sub-paragraph 1 (g), of Annex 2.1 of these Rules (p.14).
- In the case of QFI would cancel the registration which could affect the local market, Article 21 states that the Authority may issue a rejection notice about the cancellation request within two days of receiving the request. To accept the request, the QFI must confirm that it does not own any listed securities. Although the Article has not interpreted the type of reasons behind the rejection, it may reflect the CMA's diligence in controlling the QFI from any movement that might enhance the local market and its investors.
  - According to Article 16, to increase the level of transparency of foreign ownership for other investors, the Saudi Stock Exchange shall publish on its website statistical information that reflects ownership percentages in addition to the limitation stated in the information from listed companies. Where there is non-compliance from foreign investors to the limited ownership, the Capital Market Authority will consider the foreign investors' action has breached its regulations. The Capital Market Authority has the right to do so in accordance with Article 23 of the current rules. The CMA's power of infraction to foreign investors is identified in Article 23 with more explanation of the procedure in this regard.

Although the above details may be considered positive in terms of disclosing information, it may raise concerns about how the Capital Market Authority will ensure that a QFI informs it of any changes or hides this information. It could be argued that when the Capital Market Authority requires foreign investors' obligations that does not mean they will follow the requirements. Therefore, the Capital Market Authority in this case should extend its authority to implementing obligations such as doing regular investigations of the type of foreign investors and their activities. On the other side of the argument, it may be said that in signing the obligations foreign investors will give the CMA the right to enforce its legal sanctions. Furthermore, the Capital Market Authority cannot exceed its authority to investigate in what can be considered a part of investors' privacy.

### **6.3 Powers of the Authority**

The Capital Market Authority in these regulations explained its power in Articles 22 and 23 in terms of its rules with the authorised person and the QFI. Since the Capital Market Authority published its rules, it is worth mentioning the power of the authority which is considered a positive aspect of such regulations. The rules have identified in these two articles the CMA's power. Firstly, the CMA power to the authorised persons who engaged with QFIs. The authority has the full right to prohibit an authorised person from engaging with QFIs. The decision of the Capital Market Authority must be issued to the authorised person by a written notice. The authority also has the right to require any information and documents as well as dealings with QFIs. Going further, the authority has the right to ask the authorised person, or its representative, to attend and interpret any aspect of its dealings with QFIs or any other questions that need to be answered. In the case of emergency conditions, the authority has the right to transfer the authorised person's rights that related to the QFI to be upon its responsibility. The

authority in this Article has not clarified the type of emergency circumstances. In whatever was the case, it may assume that the Capital Market Authority will impose its power in advance in any such danger that could affect the local market. Secondly, Powers of the Authority in relation to QFIs. The rules give the CMA's power to govern the investments of foreign institutions in the Saudi Stock Exchange in eight cases. Based on Article 23, the Capital Market Authority has the right to adjust the investment of these institutions and protect the domestic market. Furthermore, the Article stresses the right of the Capital Market Authority to request any licensed institution to provide without delay any information or documents about its dealings in the market.

The Article 23 has interpreted QFI infractions as any one of the following:

- 1) The QFI no longer meets the conditions, obligations or requirements stated in these Rules;
- 2) The QFI has not fulfilled the requirements of paragraph (a) of Article (14) of these Rules within 60 days of its registration;
- 3) An insolvency event has occurred in relation to the QFI;
- 4) The QFI has breached any of its obligations under the Capital Market Law and its Implementing Regulations and/or any other laws of the Kingdom;
- 5) The QFI has obtained its registration on the basis of incomplete, unclear, inaccurate or misleading information;
- 6) The QFI has been the subject of any material legal or regulatory sanction in any jurisdiction;
- 7) Any restructuring of the QFI; and

8) Any other event that the Authority believes necessitates its intervention in order to protect investors or safeguard the functioning of the capital market within the Kingdom.

However, according to this article, the breach is not only about what has occurred in relation to a QFI, it included what is likely to occur based in the authority estimates. Again, this may considered appreciation of investors which reflects what was mentioned earlier about the Capital Market Authority protecting local investors in advance. The procedure of the Capital Market Authority for QFI infractions is outlined as flows in Article 23:

- 1) Require the QFI to provide such information and documents with written explanation as the Authority requires in respect of the matters giving rise to its consideration;
- 2) Require the QFI or its representative, to attend before the Authority to answer questions and explain any matter the Authority considers relevant;
- 3) Carry out any enquiries that it considers appropriate;
- 4) Take any steps to verify any information furnished by the QFI, including by communicating with overseas regulatory authorities;
- 5) Suspend the QFI's registration or prohibit the QFI;
- 6) Cancel the QFI's registration; and
- 7) Exercise any of its other powers under the Capital Market Law.

The rules in last part of the above Article do not clarify the CMA's power under the Capital Market Law 2003. There are explained in chapter 10 of the Capital Market Law 2003 in order to clarify the sanctions and penalties for violations as states in Article 55:

any person who violates Article 49 of this law or any of the regulations or the rules issued by the authority pursuant to the said Article by engaging in an act or transaction for the purpose of intentionally manipulating the price of a security, or participating in such act or transaction, or is responsible for a person who undertakes such act or transaction shall be liable for damages to any person who purchases or sells the security whose price has been significantly adversely affected by such manipulation for amount such person's purchase or sale price was so affected (p.25).

Article 59 of the capital market law 2003 states that in addition to indemnifying the person who suffered from the damage, the authority has the right to suspend trading in the security, and prevent the violating person from acting as a broker, portfolio manager and investment adviser. Furthermore, it can seize property, and prohibit the person from traveling, work in the Saudi listed company in the Stock Exchange Market.

Article 23 also clarifies that suspension of registration and cancellation shall take effect immediately once the Capital Market Authority sends a written notice to a foreign investor or a qualified person. The CMA has the right to publish the identity of any financial institutions suspended or revoked registration under these procedures. In addition, the Capital Market Authority in Article 23 prohibits the QFI who has registration cancelled or suspended from purchasing any listed securities as well as disposing of securities that have been held in its account without the prior consent of the Capital Market Authority. However, one critic believes the above procedure is not clear enough (Hamidi 2014) while another critics from Saudi Arabia believes that after improving the electronic system in the Saudi stock exchange market the Capital Market Authority can control the exceeded ratio (Personal Communication, 2015).

It can be added what supports the power of the Capital Market Authority to run the local stock exchange market is that its membership comprises the strongest financial entities in the Kingdom as Article 22/B of the Capital Market law makes clear:

B. The Exchange shall be managed by a Board of Directors comprising nine members who shall be appointed by a Council of Ministers Resolution upon nomination by the chairman of the Board of the Authority and who will choose from among them a chairman and a vice chairman. The membership will be as follows:

1. A representative of the Ministry of Finance;
2. A representative of the Ministry of Commerce and Industry;
3. A representative of the Saudi Arabian Monetary Agency;
4. Four members representing licensed brokerage companies; and
5. Two members representing the joint stock companies listed on the Exchange (p.26).

In addition to strengthening the protection of local investors, the Capital Market Authority insists that it is important to raise awareness and the investment culture among the participants in the market. The Capital Market Authority appreciates that the participation of licensed persons can increase the level of protection of local shareholders (CMA 2016h).

In a good example of the protection powers in these rules, the Capital Market Authority requires the formula of documents to be verbally specified by its words. The Authority insists in many articles that its formula must be used to avoid such words that might affect its responsibility or obligations. The words “in such form” are repeated four times in these rules. The position of these words can be seen in the following:

1. During the explanation of the determination of applications in chapter three, Article 9, in the case of the assessing authorised person has decided whether or not to accept the application, the part B has notes:

The assessing authorised person must provide the Authority with a written notice of its determination, including a written statement of the reasons for its determination in such form as the Authority may require (p.6).

2. Where the assessing authorised person has accepted the application, part C/2 required the authorised person to provide the following: “A written declaration in such form as the Authority may require confirming that the applicant meets the registration conditions stated in these Rules” (p.6).

3. In the requirements of the QFI assessment agreement, Article 10/C states that all requirements specified in paragraph (b) of this Article, must be in such form as the Authority may require. All the requirements in paragraph (b) consist of confirmations and obligations by the applicant as follows:

1) a representation by the applicant that it meets the registration conditions stated in these Rules;

2) an undertaking by the applicant to provide the assessing authorised person with all information and documents required under these Rules;

3) an undertaking by the applicant to notify the assessing authorised person within a reasonable period of time not exceeding 5 days of any event or circumstance requiring such notification under these Rules;

4) a confirmation by the applicant of its consent that the assessing authorised person may disclose to the Authority or the Exchange information or documents which the assessing authorised person receives under these Rules or the Capital Market Law and

its Implementing Regulations, and that such information may also be disclosed to other government agencies of the Kingdom in accordance with the relevant laws; and

5) an undertaking by the applicant to abide by the Capital Market Law and its Implementing Regulations and the rules of the Exchange and other relevant laws (p.6).

4. The Annex 2.1 also required such Information and documents to be provided by applicants as stated: “The applicant must provide the below information to the assessing authorised person, in such form as the Authority may prescribe” (p.9).

A summary of these information and documents that must be provided using the CMA formula are stated on the following:

1. Details of the applicant's legal form and jurisdiction of establishment;
2. A description of the applicant's business activities;
3. A copy of the most recent annual report and consolidated accounts of the applicant or its group;
4. Details of other account names and affiliations;
5. Details of any material legal and regulatory sanctions;
6. Details of any pending, ongoing criminal and regulatory investigations;
7. Details of any settlement regarding criminal and regulatory investigations;
8. Financial statements prepared and accredited by the applicant's; and
9. Other documents and other evidence that the CMA may require.

However, if one assumes that the Capital Market Authority asking for too much information in its form that may put obstacles in the way of foreign investment flows, it could be argued that most of the supervisors in the stock exchange market are specialists in law. This may indicate that they should ensure when they write such formula that the rights of foreign investors and the Capital Market Authority are protected. Dr Aljadaan

chairman of CMA said in the Alhayat Newspaper on 30 January 2015 and quoted in (Abdulkarim 2015):

The stock exchange market inherently managed by specialist in law and there are other efficiencies who are not lawyers work with CMA on the developments. We are working as one organization to that aim of developing the regulations and expanding its base.

### **6.3.1 Dealing with Investors Suddenly Exiting the Stock Market**

In relation to protecting local shareholders from the risk of foreign investors suddenly withdrawing from the stock market, Article 16 of the qualified foreign financial institutions investments in listed securities emphasizes that it is not permissible for a foreign investor to own 10% or more of the shares of any source. Secondly, it is stated in the Listing Rules (2004), control of ownerships that have large equity stakes also apply to foreign investors. Based on Article 45 of the Listing Rules (2004), any person must notify the issuer and the Authority at the end of the trading day of the following relevant events:

1. becoming the owner of, or interested in, 5% or more of any class of voting shares or convertible debt instrument of the issuer;
2. a director or senior executive of the issuer becoming the owner of, or interested in, any rights in the shares or convertible debt instruments of that issuer; and
3. In case of a change in the ownership or interest objective that was previously disclosed, the relevant person shall promptly notify the issuer and the Authority of such change and must not dispose of any shares or convertible debt instruments of that issuer except after the expiry of (10) days from the date of that notification.
4. Without prejudice to the provisions of this Article, a person who has become an owner of or interested in 10% or more of any class of shares or convertible debt instruments of the issuer, must not dispose of the same without the approval of the

Authority. The Authority may impose certain restrictions on such a disposal and specify its method (p.36).

This Article states that the investor must notify the issuer and the Authority when he or she becomes an owner or has an interest in 10% or more of the shares of any source and when a change of ownership accrues by 1% or more. In addition, it is not permissible for the investors to dispose of stock ownership by 10% or more until he or she get Commission approval from the Authority. The Authority has the right to impose certain restrictions on the disposition and make its own determination. The Article also explains that these restrictions apply to investors who act under the agreements.

In the case of foreign investors who exceed the limitation of the allowed percentage, the Tadawul system will send a warning message to the broker and at the same time does not expect an order from the client as it will be automatically rejected (Amare 2015).

In addition, the Capital Market Authority has the right to suspend market activity for a period not exceeding one day. In exceptional cases, as determined by the Capital Market Authority or the Minister of Finance, the suspension of market activity can be more than one day if approved by the Minister of Finance. This is mentioned in Article 6/5 of the Capital Market law 2003 as stated:

Suspend the Exchange's activities for a period of not more than one day; and in cases where the Authority or the Minister of Finance deems it necessary to suspend the Exchange's activity for more than one day, the approval of this decision must be issued by the Minister of Finance (p.5).

## **6.4 The Support of other Saudi Regulations**

The protection of these rules must be supported by other Saudi regulations as Article 1 stipulates:

These Rules shall be read in conjunction with and in addition to the Capital Market Law and its Implementing Regulations, including, the Listing Rules, the Market Conduct Regulations, the Authorised Persons Regulations, the Merger and Acquisition Regulations and the Anti-Money Laundering and Counter-Terrorist Financing Rules (p.2).

To demonstrate consistency and integration between the qualified foreign investments rules and the other Saudi regulations, there are some examples that can be divided in three categories, based in the CMA data and Argaam's report (2015c):

First of all, at the present there are some companies on the Saudi listed market that do not permit foreigners to own shares because of company law. For example, foreign investors cannot own shares in the National Shipping Company of Saudi Arabia (Trading name: Albahri). Based on Article 8 of the Company Statute the owners of its shares must be citizens and non-Saudis are only allowed to own shares in the case of inheritance. Similarly, the Saudi Real Estate Co (Trading name: Akaria) does not allow foreign investors to own shares as stated in the statutes of the company Article (9): The nominal stock may not be owned by a non-Saudi. Moreover, Saudi Pharmaceutical Industries and Medical Appliances Corp prevent foreign investors owning shares in accordance with the provisions of Article 10 of its Statute.

Secondly, there are also some companies that have conditions in their rules to restrict foreign investment. For instance, the SABIC Company has stated that one person is not allowed to own more than 1% of the company's capital. Another example is the Saudi

Investment Bank (Trading name: SAIB) which states in its statute, Article 13, that the stocks held by Saudi persons must not be less than 65% of the total bank's shares.

Finally, companies that are subject to trading restrictions based on the foreign investment law, regulations and instructions of the competent authorities in Saudi Arabia. There are three examples of such companies: Makkah Construction and Development Co, Taiba Holding Co, and Jabal Omar Development Co.

Looking at other countries in the GCC, there are some companies that restrict the percentage of foreign ownership for example, Salam international, Ooredoo, and VodaFone of the Qatar listed companies (QSE 2016) and 19 out of the 73 companies listed on the Abu Dhabi Securities Market did not allow foreign investors to own shares (ADSE 2016).

#### **6.4.1 Does Islamic law provide enough Attraction and Protection for Investors?**

As mentioned in chapter 3, all Saudi regulations have been derived from Islamic Sharia law. To highlight this, the current regulations state the right to appeal in Article 4: “Any person subject to these Rules may appeal to the Committee in respect of any decision or action that the Authority takes under these Rules” (p.3).

Sharia' law which is based on the Koran and Sunnah has cared about the protection and the rights for all people whether Muslims or non-Muslims (Habachy 1962). However, there are some concerns that may arise when analysing the protection provided by the Sharia' law. For instance, it can be argued that the sharia law has uncodified form in Saudi Arabia and other countries in the region which resulted from uncertainty about the scope of the law (Karl 1992; PWC 2015). Although, this is partly true, it is noted that other related regulations have been written by royal decrees, such as the foreign

investment law and company law (Asherman 1982). These regulations equally protect the rights of local shareholders and foreign investors. In order to analyse the level of protection in the current regulations it is necessary to clarify the power of Islamic law and other regulations. Therefore, it is appropriate to start with what might be considered the strengths of the Saudi legislation.

First of all, the judges are required to follow sharia law no matter was the case in order to administer justice (Asherman 1982). Secondly, all investors whether local or foreign have to be controlled by the Saudi regulations. However, foreign investors can be exempted from Saudi law when the contract has a clause requiring dispute resolution through international arbitration (Asherman 1982). But even with this case, in accordance with Law of Procedure before Sharia Courts 2013 Article 1, the Saudi court will not accept foreign judgments that contravene Islamic law. By comparison, in other GCC countries foreign investors can resort to international arbitration for disputes in accordance with investment agreements (OECD 2011). Although, it appears complicated, it appears that the Saudi court is keen to follow Sharia law. Finally, while preserving its foundations, Saudi law has recently become more open toward international commerce and more rapprochement with Western law (Karl 1992).

In recent years the Islamic finance model has been questioned, particularly after the weakening of the Gulf real estate market (Jones 2009). However, it could be argued that Islamic finance became a boon for the Kingdom of Saudi Arabia and helped to protect the Saudi economy. This is proven by the deliverance from the global credit crunch in 2007-2008 (Austrade, D & Trends 2010). Thus it could be said that Islamic finance has helped to improve the security of the market (Parker 2006). One of the most important aspects of Islamic finance is that its “maysir”, “gharar” principles prevent speculation which conflicts with Sharia law (Schmith 2010). Islamic finance requires urgent reports

in the event of an violation of trading in stock exchange markets (Girard & Hassan 2008).

As the current rules of foreign investment in the local stock exchange market are built on Islamic law which the Kingdom of Saudi Arabia has followed in all its regulations, the aim of this discussion is to show how Islamic finance may help to attract and protect foreign and local investors. This overview rely on the Islamic assets that confirmed the rights of each person whether is Muslim or non-Muslim.

The stock exchange market which follows Islamic law has been assumed to reflect the actual stock prices and provide relevant information to all shareholders (Guyot 2011). Transparency must also include providing information about market liquidity, stock price resilience, and transaction costs (Guyot 2011). It has been noted that, all the trading characteristics of the Saudi Stock Exchange Market have been provided by the Capital Market Authority.

In summary, it should be noted that the moral values of Islamic law insisted on protecting investors' rights. The application of Shariah law criteria can provide efficient investment and protect all types of investors (Guyot 2011).

## **6.5 The Support of other Government Entities**

A review of Saudi entities and their regulations indicates that apart from the Capital Market Authority there are several relevant regularity and supervisory bodies. These entities are the Saudi Arabian Monetary Agency (SAMA), Ministry of Commerce and Industry (MOCI), and Saudi Arabian General Investment Authority (SAGIA). In order to protect the local economy, including the stock exchange, all these entities above share the responsibilities for the following:

- A. Protecting investors and dealers from illegal acts in the market;
- B. Regulating the banking, insurance, and financing sector;
- C. Regulating trade and its development;
- D. Proposing and implementing relevant laws and rules including the Companies Law;
- E. Formalizing the process of economic liberalization; and
- F. Providing services to foreign investors and fostering investment opportunities (CMA 2016e).

In other words, the level of protection based on the Saudi regulations cannot be achieved unless other Saudi entities work together. Article 10 of the QFI Assessment Agreement also confirms that the other government entities in the Kingdom have the right to require such disclosure about any information and documents that are related to foreign investors and state:

A confirmation by the applicant of its consent that the assessing authorised person may disclose to the Authority or the Exchange information or documents which the assessing authorised person receives under these Rules or the Capital Market Law and its Implementing Regulations, and that such information may also be disclosed to other government agencies of the Kingdom in accordance with the relevant laws; and

-An undertaking by the applicant to abide by the Capital Market Law and its Implementing Regulations and the rules of the Exchange and other relevant laws (p.6).

The Saudi Arabian General Investment Authority (SAGIA) also indicated that it has responsibility to investigate such regulations and procedures that are related to foreign investment activities (Al Mehdar et al. 2015).

Furthermore, Article (XX/7) of the Implementing Regulation for the Foreign Investment Law 2000 explains the power of government staff:

The staff of the authority in charge, who are assigned by the Governor in writing or by his representative, the right to follow up the implementation of the provisions of the rules and regulations, for that purpose, they have the right to access books, documents and all papers relating to the activities and detect the violations and prepare records and provide the necessary reports to the Governor or his representative. And the mentioned staff in charge of these tasks should maintain the confidentiality of information and documents which they have accessed (p.20).

This Article may interpret what the CMA notes in the Rules of foreign investment institutions as Article 23/8 state: “Any other event that the Authority believes necessitates its intervention in order to protect investors or safeguard the functioning of the capital market within the Kingdom” (p.16).

In 2012 two Saudi Arabian entities the CMA and SAMA signed a Memorandum of Cooperation to improve data sharing and increase oversight of the Saudi stock exchange market in order to increase the level of protection for local shareholders investors (FSB 2015). It could be noted that in recent years SAMA has put capital flows of foreign investors and their operations at the top of its agenda (FSB 2015). The Draft Law on the Resolution of Financial Institutions (DLR) has given SAMA explicit powers to disclose information to other domestic authorities (FSB 2015).

## **6.6 Protection in the CRSD and Corporate Governance**

The next sections will discuss substantive areas of CRSD and corporate governance. In order to increase the level of protection, the regulators in Saudi Arabia have amended the following regulations:

1. Resolution of Securities Disputes
2. Corporate Governance

### **6.6.1 Resolution of Securities Disputes “CRSD”**

In order to identify the competent authority responsible for the resolution of disputes resulting from trading, the Capital Market Law Article 25 states that the committee for the Resolution of Securities Disputes are the only entity to settle disputes among members of the Exchange and between members and their clients. This has been also confirmed in the Frequently Asked Questions on the Rules for Qualified Foreign Financial Institutions Investment in Listed Shares 2015 states:

The Committee for the Resolution of Securities Disputes “CRSD” has the jurisdiction over the disputes falling under the provisions of the Capital Market Law, its “Implementing Regulations, and the regulations, rules and instructions issued by the CMA and the Exchange, with respect to the public and private actions, including any trading disputes that may arise among all parties subject to the Rules. The CRSD’s decision may be appealed before the Appeal Panel that is formed by a Council of Ministers’ resolution. The Appeal Panel shall have the discretion to refuse to review the decisions of the CRSD, to affirm such decisions, to undertake a de novo review of the complaint or suit based on the record developed at the hearing before the Committee and to issue such decision as it deems appropriate in relation to the complaint or the suit. The decisions of the Appeal Panel shall be final (p.10).

According to Article 25 of the Capital Market Law 2003, the committee members must consist of experts and have the following responsibilities:

- b. The Committee will consist of legal advisors specialized in the doctrine of transactions and capital markets, and experts in commercial and financial affairs and

Securities. The members of the Committee shall be appointed by a Board decision for a three-year term renewable. The members of the Committee must not have any direct or indirect financial or commercial interest or have a family relationship up to the fourth degree with the parties to the complaint or the suit brought before the Committee. The Committee must start considering the complaint or the suit within a period not to exceed fourteen days from the date of filing of the complaint or the suit with the Committee.

c. The Committee's jurisdiction shall include claims against decisions and actions taken by the Authority or the Exchange and the Committee shall have the right to issue a decision awarding damages and request to revert to the original status or issue another decision as appropriate and that would guarantee the rights of the aggrieved (p.28).

In the case of the parties or their representatives against the decisions then they have the right to appeal before the Appeal Panel within thirty days from the date of their notification. It can be noticed that members of the Appeal Panel are appointed by the council of Ministers while members of the Committee are appointed by the Board. Article 25 of the capital market law has also provides more details as follows:

1. The members must consist of three members representing the Ministry of Finance, the Ministry of Commerce and Industry and the Bureau of Experts of the Council of Ministers;
2. The Appeal Panel may overturn the decision of the Committee and review the case again;
3. The Appeal Panel decision shall be final; and
4. The final decisions must be enforced through the relevant government agency in accordance with the procedure for enforcement of judicial judgment in civil proceedings.

In 2016, the Capital Market Authority Board amended Articles 10, 32, 34 and 35 of the Resolution of Securities Disputes Proceedings Regulations. The most important amendment was related to the decision which should be made unanimously or by majority opinion. Based on the CMA (2016), the amendments will regulate proceedings of the Resolution of Securities Disputes and the Appeal Committee to ensure the rights of all market participants. These amendments aimed to develop the legislative environment of the capital market in the Kingdom as well as to increase the protection of local investors (CMA 2016c). However, in comparing other GCC countries, Kuwait has a special independent tribunal of its stock exchange market called the “Capital Markets Court”(Coleby 2011). Chapter 11 of the Capital Markets Authority Law 2010 has interpreted the jurisdiction and procedures in articles 108 to 117. The aim of this court is to adjudicate disputes between stock exchange market investors. Investors also have the right of appeal to the Kuwait court of appeal in accordance with Article 112 which is considered to be final.

### **6.6.2 Corporate Governance**

According to Du Plessis et al. (2010) corporate governance can be defined as:

The process of controlling management and of balancing the interests of all internal stakeholders and other parties (external stakeholders, governments and local communities) who can be affected by the corporation’s conduct in order to ensure responsible behaviour by corporations and to achieve the maximum level of efficiency and profitability for a corporation (p.10).

Corporate governance is important when countries are experiencing financial instability (Johnson, S et al. 2000). It is also appearing in protecting the local economy and investors from such an economic crisis. Evidence suggests that countries with weak

corporate governance particularly in regard to minority shareholder rights provide little protection for their economy (Johnson, S et al. 2000). Corporate governance is became a priority in many developed countries in order to increase corporate performance and attract foreign investors (Marn & Romuald 2012).

The basic corporate governance principles in Saudi Arabia are generally comparable with other principles around the world (Cliffordchance 2014). The current rules on foreign investment institutions rely basically on the functions of corporate governance in order to increase and activate the protection of local investors. It can be said that in the ongoing debate about attracting foreign investors and protecting local investors, corporate governance is one of the main considerations.

According to Khalid Al-Suwailem, the Saudi Stock Exchange will in the near future face major challenges in demonstrating the effectiveness of corporate governances and transparency as global institutions are known to avoiding taking risks with their investments. He also explained that foreign institutions usually rely on the continued evolution of the market and publish reports about the market index and its listed companies, so lack of transparency is not acceptable. This perhaps will lead to an increase in the level of local protection as well as increasing awareness about the Saudi listed companies (Hamidi 2014). In other words, FDI may benefit the local investors and strengthen the host country regulations which are still under review.

Regulators have focused on the need for legal and institutional reforms which reflect better governance of companies. Among these reforms envisaged, the Saudi government confirmed the list of Corporate Governance Regulations (CGR) issued by the CMA in resolution No. 1/212/2006 dated 12/11/2006. The CMA assumed that its corporate governance regulations were consistent with international best practice that aims to

strengthen the oversight functions in the financial market (CMA 2016e). According to Article one of Corporate Governance Regulations Amended in 2010:

These Regulations include the rules and standards that regulate the management of joint stock companies listed in the Exchange to ensure their compliance with the best governance practices that would ensure the protection of shareholders' rights as well as the rights of stakeholders (p.3).

In order to ensure the best corporate governance practices, the CMA developed a framework for corporate governance that covers the following points (CMA 2016e);

1. Shareholders' equity, which includes all the rights such as receiving a share of the dividend payments, the right to attend shareholders' associations and participate in its deliberations and voting on decisions and so on;
2. Disclosure and transparency through the development of policies, the procedures for getting information as well as the disclosure in the Board of Directors reports. The shareholders have the right to obtain any information about the company, except where it may conflict with the company interests or the financial market systems; and
3. Annual reports which must contain a description of the issuer of the shares and their activities. It also includes information about the Board of Directors, its officials and employees. The management report must contain information about current and future developments that are expected to significantly impact on the financial position of the company.

Beside the current rules for foreign investment institutions, it must indicate that corporate governance is considered one of the main ways of attracting foreign investment as well as protecting the local market including shareholders. In recent years

there have been several changes in national regulatory regimes which have led to an improvement in GCC regulations and oversight practices (Kern, S 2012).

According to the World Bank's Governance Index (WGI 2015) there has been an increase in the performance of the GCC countries in recent years. However, there are important variations in comparing GCC countries to the developed countries.

All GCC countries are members of the MENA-OECD Initiative on Governance and Investment for Development (OECD 2011). In its 2011 report, Saudi Arabia ranks fourth lowest on the OECD FDI restrictiveness index among OECD members even though it is a member of G20 countries, which indicated that Saudi Arabia has comparatively more restrictions in FDI regulations in many sectors. The restrictions can also be seen in the current rules for foreign investors in the stock exchange market.

### **6.6.2.1 Board of Directors**

The board of directors is play an essential role of the corporate governance of any company which may impact on the right of other shareholders (Santos 2015). As mentioned in chapter three some listed companies in the Saudi stock exchange market foreign chief executive officers account for about 18% of the total number of joint stock companies. Therefore, there is a need to investigate the power of corporate governance in maximizing the influence of the Board of Directors. Number of examples can be appearing on the following points:

1. The Capital Market Authority continuously provides and updates the shares owners of the Board of Directors in its website.

2. In regard to increasing the power of the Capital Market Authority and protecting the shareholders from such manipulation, Article 50/A of Listing Rules 2004 also explains the prohibition on dealings by directors and senior executives. The Article states:

The directors and senior executives of the issuer and any person related to them may not deal in any securities of the issuer during the following periods:

- 1) During the 15 calendar days preceding the end of the financial quarter and until the date of the announcement of the reviewed interim financial statements of the issuer; and
- 2) During the 30 calendar days preceding the end of the financial year and until the date of the announcement of the reviewed interim financial statements or the audited annual financial statements of the issuer (p.54).

This indicates that the regulations in Saudi Arabia limited the potential of directors and senior executives to deal in securities, which reflects the clear and strong regulations in this regard.

### **6.7 Government Institutions and Family Owners (Protection Role)**

It worth noting, government-owned entities and families play an important role as they own a significant percentage in listed companies which leads to them controlling the board of directors (Kern, S 2012). The Saudi government's public investment fund and other entities own 37% of the total stock exchange market (Azzam 1997). Rich families and individual investors owned 34% of the total stock exchange market (Al-Ghamdi 2015).

It can be stated that, a high percentage of the governments' shares can help to protect the local shareholders; otherwise these shares would be absorbed by the local institutions and foreign investors (Boubakri, Cosset & Guedhami 2005). Limited access of foreign investors and a high percentage of government and local family owner may

indicate that foreign investors may not be able to influence the local stock exchange market.

In addition, the Saudi government funds have more shares in the main effective companies in the Saudi index such as Al Rajhi with 8.5%, SABIC 7.1%, NCB 5.2%, and Jabal Omar 4.6% (Riyadh 2015). This may indicate that foreign investment institutions cannot control these companies or influence the various indexes of the stock exchange market which usually affect company performance.

Regardless of the influence of government ownership, it is considered to have a positive impact in protecting the local market from hot money. This can also be seen in other GCC countries where their government own the highest percentages of the total stock exchange market.

According to a study by KAMCO (2012) found that the GCC government institutions accounted for 38% of the total market value of the combined Gulf bourses. The study showed that the Abu Dhabi market had the highest percentage of government institutions at 46% followed by the Saudi market with 45% of total capital of the 20 largest listed companies. In contrast, the lowest percentage of government institutions was in Kuwait listed companies with 15%. The most likely reason for this is related to the privatization program stated by the Kuwait government in 1992, especially in the financial services and banking sectors. The following table summarizes the contribution of government institutions.

The Contribution of Government Institutions in the Largest 20 Companies in Terms of Market Value			
Dubai	31%	Saudi Arabia	45%
Abu Dhabi	46%	Kuwait	15%

Bahrain	41%	Qatar	35%
Amman	26%		

Source: Kamco Report (2012)

The Saudi government institutional ownership was concentrated in the petrochemicals, banking and telecommunications sectors. Based on the reports overview, the contribution of government institutions in listed companies is positive in terms of protecting the local shareholders. The positive results include the following:

1. Increasing the local and foreign investors' confidence in the stock markets;
2. Reflecting on the financial position of the company and its ability to borrow;
3. Increasing the company's credit rating particularly when the government institutions are in an excellent financial position; and
4. Assisting the company to obtain cheap materials especially in the petrochemical sector as in the case in Saudi Arabia and helping the bank sector as the government can finance its infrastructure through these banks.

Moreover, the evidence of the strength of government institutional ownership was evident during the successive crises since 2008 in the financial and real estate sector in the GCC. The KAMCO report found that during the crisis, the government institutional ownership helped to calm the market and enhance investor confidence as well as support the financial situation of companies. This led to stability during the crisis in Qatar, Abu Dhabi and Saudi Arabia through government support, while in contrast in Kuwait there was an unstable market and rapid loss of investor confidence because the private sector in the Kuwait stock exchange market is the largest shareholder in listed companies. Therefore, it could be said that high participation by state companies is

essential to the stability of the local stock exchange market as well as to the level of protection for local shareholders (KAMCO 2012).

Moreover, concentration of ownership may strengthen corporate governance in the GCC countries as well as a high percentage of the government ownership could control the firm decision because it considers as the majority of board members (Santos 2015).

However, the above points may indicate that government ownership whether in the total market or in individual firms is considered the safety valve for the local stock exchange market and ensure that foreign investors are not able to harm the local market. In other words, government ownership helps to reduce the negative affect of foreign investment.

## **6.8 The Possibility of Hot Money in the Saudi Stock Exchange**

There is no clear definition of what exactly constitutes hot money. However, based on Deardorff (2016) hot money can be described as: “Holdings of very liquid assets, which may be sold or cashed on short notice and then removed from a country, often in response to expectations of devaluation or other financial crisis”.

Hot money flows refer to capital flows moving to countries with the intention of earning short term returns. Such flows can be through (CMA 2016j):

- \* Short-term investments in the capital market; and
- \* Short-term deposits or short-term foreign bank loans (less than a year).

Foreign portfolio investment can be withdrawn for any reason without notification which cause disrupt in the domestic capital market (Abisourour 1994).

Hot money usually originates in the emerging market economies that have higher GDP growth rate, compared to developed economies. The aim of the investment is to achieve

its goals in the short term. As an example, to achieve growth rates in asset prices, including stocks (CMA 2016j).

To understand hot money in regard to capital markets, it could contribute to rapid increases in securities prices in order to gain high returns. This can attract many foreign investors to invest in the stock exchange market (CMA 2016j).

When foreign investors take a sudden decision to leave the host country that may cause volatility in the local stock exchange market. There are two reasons for the exit of foreign capital from the host country stock exchange market can be seen as follows (Aal 2013):

1. The temporary flow of hot money usually motivated by imbalances in the market or an error in policies that lead to the creation of a wide gap between domestic and foreign interest rates; and
2. The case of the negative impact accrues from unexpected political situations or taxes imposed by the state on foreign possessions including their local financial assets, which negatively affect the yield of these financial assets.

In both cases, the initial response of foreign investors is to sell their holdings of domestic securities and transfer the money outside the country. That will lead to lower prices in listed companies which in turn leads to lower price in the general index of the stock exchange (Aal 2013).

According to the Saudi CMA overview, the negative impact of foreign capital inflows or outflows on the capital market is not highly probable. Practically, when keeping in mind that there are a number of factors limited the influence of hot money (CMA 2016j). To overcome these fears, the Capital Market Authority in Saudi Arabia has

taken in advance some steps to protect the local stock exchange market. The following points highlight the most important aspects of reducing negative foreign influences:

1. The market capitalizations to the GDP and the amount of foreign investments in listed companies to the total capital account could reflect the extent and limitation of foreign investments (CMA 2016j) ;

2. With that said, the Capital Market Authority has noted that its test was conducted to measure the impact of foreign capital inflow or outflow on the capital market under specified assumptions (CMA 2016j). This test will be continued with SAMA, as it is considered one of the main parts of its responsibility to protect the local investors (CMA 2016b);

3. A further study will be conducted in collaboration with SAMA to assess the impact of foreign investments. The recommendation to amend QFI investment limits in the economy as a whole will be also under examination (CMA 2016j);

4. The authority has limited each QFI to owning up to 10% of listed companies. In considering the highest limit for all categories of foreign investors which is 49%, it should be noted that foreign investors in this case as are the minority of shareholders. This, however, may reduce the influence of their power in the total stock exchange market;

5. The Capital Market Authority only allowed portfolio investment institutions because they usually take a long time to make decisions about inflows or outflows as well as prefer to invest in the long time with shares (Alturki & Khan 2015). In addition, the registration procedures and information, and document requirements in Annex2.1 are very keen on investigating the background of foreign institutions and their clients. The

registration procedures may reflect careful selection of the quality of foreign institutional investors which in turn enhances extremely the level of protection;

6. As Saudi Arabia has strong macroeconomic, political and stimulation policies to develop the stock market, it could be assumed that foreign investors will not have the desire to leave the host country;

7. With the current ownership of foreign investors in the Saudi Stock Exchange Market which is about 4.21%, there is no uncertainty at least in the near future. This may give the Capital Market Authority in Saudi Arabia more opportunities to extend its experience and reforms;

8. Looking at other markets in the region that have less restricted regulations and have opened the door for foreign investors, there is no evidence of negative effects in their stock exchange markets. This implies that with strong and restricted regulations in Saudi Arabia, foreign investors will not have a negative impact on the local stock exchange market;

9. The Capital Market Authority has been committed to publishing on its website the percentage of foreign investors at the end of trading operation each day. This may be one of the most important steps in keeping local investors updated. Khalid Abdullah Al Hussan, Tadawul's chief executive officer in Riyadh, has confirmed that (Everington & Cronin 2016):

We are aiming to tighten back-office process to make sure that we have extra controls over activity post-trade. We want to provide a safer environment for all types of investor. Over the last two years we have been working closely with stakeholders to ensure the changes we introduce are the changes that the Saudi capital market needs.

10. The Capital Market Authority in its rules has limited the highest and lowest rate in the stock to 10% in every day of trading operations (CMA 2016b). Therefore, foreign investors and others are not able to sell more than this percentage in every business day;

11. The Capital Market Authority insists in its rules Article 14 that the QFI and their clients are obliged to obtain approval before entering the stock exchange market. In addition, they are required in Annex2.1 to disclose ownership details to the CMA and update any change that might occurred; and

12. One of the reasons behind the Asia crisis is that there was a higher capacity to control a company which could lead to control of decision-making including profits (Mañas 2005). In addition, vulnerable regulations especially corporate governance that have generally limitations of protection and implementation can lead to lose confidence which caused the stock exchange market collapse in 1997-98 (Johnson, S et al. 2000). As previously mentioned the Kingdom of Saudi Arabia is one of the emerging markets; these markets are usually more volatile than other developed markets (Harvey 1995). However, Alshammary (2014) showed that during the Asian crisis of 1997, there were no immediate effects on the Saudi Stock Exchange Market. This evidence indicates the stability of Saudi income, politics and regulations. It can be argued that at that time the Saudi regulations have not allowing foreign investors, which may not reflect on the current situation on the Saudi Stock Exchange Market. Not being affected by financial crises may be considered a plus for Saudi Arabia as global finances play a role in influencing such emerging markets. This may imply that with the recent reforms in the Saudi regulations and economy, the Kingdom of Saudi Arabia is able to avoid negative impacts from the movement of foreign investment.

It could be said that with the current excessive rules and strong monitoring of foreign investors' activity, these fears are largely unfounded.

In order to control hot money, the Capital Market Authority must decrease the number of foreign directors on corporate boards. In addition, it should maximize the number of votes by individual shareholders (Abisourour 1994). The Capital Market Authority can also offer investment instruments for foreign investors such as special shares or convertible debt issues as these types will not affect the stock exchange market (Abisourour 1994).

## **6.9 The GCC Countries in International Institutions**

The GCC countries have been members of the most important international organisations such as the IMF, the World Bank and UNCTAD. The oversight and assessments from these organizations have benefited these markets and helped them to achieve more stability in the recent years (Kern, S 2012).

The securities markets in all GCC countries except Kuwait are full members of International Organization of Securities Commissions (IOSCO). Based on that, the GCC countries are committed to following the standard of this legislation particularly in the objectives and principles of securities regulations (Kern, S 2012).

According to Gary Watts & Hasnani (2016), all GCC countries have put the protection of national investors at the top of their regulations and limited foreign investors in order to control full ownership of companies and protect the local stock exchange market.

## 6.10 Australia Regulations

The main objective of this chapter is to highlight some aspects of the strength of the Australian regulations and to explain the relative strength of the Australian regulations compared to the Saudi regulations.

Foreign investors in according to Australian regulations include a natural person who is not ordinarily resident in Australia, or a foreign corporation that has a controlling (substantial) interest (Government 2011).

Chapter 6 of the Corporations Act 2001 prohibits the acquisition of a relevant interest in voting shares beyond 20%:

*Acquisition of relevant interests in voting shares through transaction entered into by or on behalf of person acquiring relevant interest*

- 1) A person must not acquire a relevant interest in issued voting shares in a company if:
  - (a) the company is:
    - (i) a listed company; or
    - (ii) an unlisted company with more than 50 members; and
  - (b) the person acquiring the interest does so through a transaction in relation to securities entered into by or on behalf of the person; and
  - (c) because of the transaction, that person's or someone else's voting power in the company increases:
    - (i) from 20% or below to more than 20%; or
    - (ii) from a starting point that is above 20% and below 90% (p.97).

The Article has anticipated some situations through a limited number of exceptions that require immediate disclosure of substantial holdings to the market (Winter & Slattery 2014). Chapter 6/C also outlines the authority of ASX in relation to the notification requirements of these regulations and informing the shareholders about any investors who intend to make a takeover bid for securities of the company.

It can be noted that investor protection by the ASX have been more effective compared to protection offered by other international counterparts (Bradraniaa et al. 2006).

The ASX regulations have allowed entities established outside of Australia (foreign entities) to join the ASX. Thus, the ASX has published its Guidance Note 4 2000 amended on 1 May 2013 to assist listed entities to understand and comply with their obligations under the Listing Rules. This may distinguish the ASX from the Saudi stock exchange market which has not yet allowed these types of entities.

Farrar (2015) argues that shareholders are controlled by state-owned enterprises, sovereign wealth and hedge funds. Based on this view, an undeveloped area of Australian law is in not permitting insider control rather than outsider control in Australian listed companies. This may reflect a strong power of the Australian government in controlling its listed companies especially those that influence its economy. As an example, the AusNet Services is listed on the Australian Securities Exchange. According to the AusNet Services Annual Report (Taylor 2015), the company is controlled by its two largest shareholders, the Grid Corporation of China, a Chinese government state-owned enterprise with 19.9%, and Singapore Power International, wholly owned by Singapore's sovereign wealth fund, Temasek with 31.1%. In its annual general meeting (AGM), the use of two shareholders votes have helped to move the general mandate from the company board to raise the capital and re-

electing a failed director to the board (Macdonald-Smith 2015). This situation has led the Australian Securities and Investments Commission (ASIC) to investigate the abuse of using the power to vote at the AGM of the company in contravention of the Corporate Governance Principles of the ASX. Foreign investors using such power in the AGM may reflect the risk of foreign investors to the local market when they control the board of company. This situation, underline the importance of reviewing the regulations as well as implementing rules in order to protect the local stock exchange market.

The Australian regulations FATA Act 1975 Article 16 also noted that the Australian government could reject investment that was considered contrary to the national interest. As an example in 2016 the Australian Department of the Treasury made a final ruling to block the sale of electricity distributor Ausgrid to China's State Grid and the Hong Kong-listed Cheung Kong Infrastructure Holdings (Xinhua 2016). These companies have offered to buy 50.4 percent of Ausgrid shares owned by the New South Wales government (Xinhua 2016). Citing Australia's national interests, the Australian government also prevented the sale of a cattle company to Chinese investors (Xinhua 2016).

In comparison under the Saudi regulations, allow entities to reject investment that might influence its national interest. This is in accordance with Saudi Foreign Investment Law 2000 Article 3 that gives the Supreme Economic Council the right to exclude some activities from foreign investors.

One of the most strong points of the ASX regulations that distinguish it from the Saudi rules is the explanation of foreign ownership exceeded percentage. The ASX settlement operating rules 2.18.3 state that in the case of percentage being exceeded the issuer must

move the excess financial profits from the relevant CHES<sup>1</sup> holding before the start of the next business day. In the case of the issuer fails to do so, the Guidance Note 13 notes that based on the ASX settlement operating rules 5.18.4 (ASX 2015):

The financial products on the CHES subregister with a foreign residency indicator become “confirmed FOR financial products” and the issuer must accord them that status”. And;

“The designation is important because it means that a foreign person can then acquire the confirmed FOR financial products by a foreign to foreign allocation”<sup>2</sup> without being taken to breach the foreign ownership percentage level for that products (p.3).

### **6.10.1 Powers in Australian Regulations**

The Australian Securities Commission (ASC) Act 1989 has explained its power in order to protect local shareholders investors (Tomasic 1993). According to Menzies & Adviser (1992) in regard to Part 3 of these regulations, the ASC has the right to gather, investigate information and exercise its power. One of the most important powers of the ASC is to investigate takeovers when it is suspected that these are occurring in unacceptable circumstances such as market manipulation and serious offences under the Corporations Law that should be referred to the Corporations and Securities Panel (Menzies & Adviser 1992; Tomasic 1993).

The Corporations Law 2001 has various rules that allow persons to request compensation from those who have contravened the Law. In some situations, the Corporations Law permits the ASX to sue the violators in the court on behalf of these

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<sup>1</sup> It stands for the Clearing House Electronic Subregister System. CHES is completely owned by ASX Settlement Pty Limited. See ASX, [http://www.asx.com.au/documents/research/ches\\_brochure.pdf](http://www.asx.com.au/documents/research/ches_brochure.pdf).

<sup>2</sup> It means, transfer or conversion of financial products in accordance with the operating rules. ASX settlement operating rules 2.13.1. See <http://www.asx.com.au/regulation/rules/asx-settlement-operating-rules.htm>.

who have been affected (Menzies & Adviser 1992). Comparing this with the Saudi regulations, there is no evidence that the CMA could sue on behalf of the complainants.

In addition, the ASX has the power to require any related information and documents for the purpose of ensuring compliance with the law (Menzies & Adviser 1992). It seems there is no limitation on the ASX's power to investigate companies or licensed brokers (Menzies & Adviser 1992). To compare this power to the Saudi rules, it has been mentioned that in accordance with Article 23 the CMA has the right to require any documents and related information.

### **6.10.2 Corporate Governance**

Shareholders protection in Australian corporate law is considered one of the strongest regulations in common law countries (Mitchell et al. 2014).

The Australia's foreign investment policy states that the Government will consider the corporate governance practices of foreign investors as well as local investors. It also indicates that foreign investors are required to act in good faith and abide to any conditions that imposed by the Government.

To highlight the power of Australian corporate governance in regard to the foreign investments some examples of the ASX Corporate Governance Principles and Recommendations with 2010 Amendments in Australian regulations are listed below:

1. In accordance with Principle 6, the annual report statement should include any such entity as foreign incorporated entities;
2. Principle 5 requires senior management to provide written policies and procedures in order to ensure compliance with disclosure requirements;

3. Principle 7 requires the chief executive officer to provide information in writing to the board about any risk management policies and systems; and

4. Finally, in Principle 4 the audit committee is responsible to ensure the level of protection of shareholders in the financial report.

The first principle is compatible with other Corporate Governance Principles in Saudi Arabia. To the best of the researcher knowledge, the other principles have not been mentioned in the Saudi regulations in relation to foreign investments. It seems that these ASX principles share the responsibility between the senior management, chief executive officer, and audit committee. This may reflect more strength in the Australian regulations to share the control of foreign investors' activities.

## **6.11 Conclusion**

This chapter explained the level of protecting local shareholders in the articles of Qualified Foreign Investment Institutions Rules. As the purpose of these rules is to provide level of protection and avoid financial crises resulting from weak regulation, the chapter highlighted the power of the Capital Market Authority. The process of the Capital Market Authority in reducing capital flight in sudden escape of foreign investment was also discussed in the chapter. The analysis of these rules was supported by other regulations as well as by the perspective of Islamic law. The role of other Saudi government entities in protecting the local market was explained. The procedure for the resolution of disputes resulting from trading was clarified during the chapter and more explanation in corporate governance power was provided. The chapter also examined the possibility of hot money in the Saudi Stock Exchange Market and how its regulations would deal with this. Finally, the regulations in selected countries were analysed and compared with the Saudi protection rules in order to clarify how these

rules may assist the Capital Market Authority in reviewing and revising its regulations in the future.

## **Chapter 7**

### **Results and Discussion**

#### **7.1 Introduction**

This chapter reviews the results in the light of the above analysis. The discussion of the outcomes supported with the outcomes in previous researches that mentioned in the literature review. It also debates the results related to the core issues of the research inquiry. The chapter highlights the strengths and weaknesses in the Rules of Foreign Investment Institutions in the Saudi Stock Exchange Market. In addition, it examines the positive influences of FDI in the local regulations reforms. Finally, the chapter presents an evaluation of the flow of FDI in the near future, based on the amended rules.

The chapter is divided into 6 sections. The significant findings are addressed in the section 7.2 and strengths and weaknesses in the Qualified Foreign Investment Rules are outlined in the section 7.3. Section 7.4 examines some positive effects of FDI in the Saudi regulations reforms. The discussion of foreign investors flow after the amendment of these rules is offered in section 7.5. Section 7.6 is the conclusion of this chapter.

#### **7.2 Significant Finding**

This thesis has paid considerable attention to attraction and protection in the recent rules of foreign investments. It confirmed that foreign investment flow and influences are correlated with regulations based on the Maceen Capital Annual Report (2015) that mentioned in the dissection. Stronger and more effective regulations will lead to positive effects on foreign investors and contribute to the protection of local shareholders. Through investigating Qualified Foreign Investment Rules in the Saudi

Stock Exchange Market, there are a number of arguments that have been discussed to clarify the finding. However, the considerable findings in this study can be summarised as follows:

1. This research found that the Capital Market Authority of Saudi Arabia has adopted a gradual opening of the market to foreign investments. This has been seen through the recent reforms that amended the foreign limitation ownership from 5% to 10% in any listed company and reduced the assets under management of foreign institutions from \$5 billion to \$1 billion.

2. Although the above percentage seems to be low at first glance, it is considered the first step in the desired gradient. This may give the Capital Market Authority a chance to increase the foreign limitations and support stock exchange market stability.

3. The research has shown that the rules and regulations play a significant role in attracting and protecting investors as well as impacting on economic and political factors.

4. In essence, this thesis found that the Saudi regulations are sufficiently clear and compatible with the other regulations in the Kingdom of Saudi Arabia.

5. The thesis found that the foreign investment regulations are organised and easy enough to find and understand in comparison with the other countries. This is obvious in the verbal expressions in each article. Moreover, the Saudi rules have been published in a separate document while the other countries include foreign investment regulations in the stock exchange market in other related regulations such as company law and foreign investment law.

6. Effective regulations with oversight of the local market's trading operations will lead to the stability of Stock Exchange in the Kingdom of Saudi Arabia.

7. The research found that the procedures for entrance into the Saudi stock exchange are quite easy to follow. However, it confirmed that although the procedures contribute to attract or not attract foreign investors, they play an essential role in protecting the local stock exchange market.

8. The research found that the current rules to some extent are not attractive enough based on the evidence that have been provided. As a consequence, foreign investment is only a small part of the Saudi Stock Exchange market. Based on recent statistics, it appears that there is a need for continued review of the Saudi rules and regulations. However, the amended rules may play a significant role in attracting more foreign investors. The finding confirmed the strong relationship between the increase and decrease of foreign flow to the local stock exchange market and the efficiency of its rules. A strong legal system has a positive impact on the local stock exchange market. This correlated relationship has been observed by numerous studies (e.g. Abu Amsha 2013; Bekaert, Harvey & Lundblad 2005; Durham 2002; Dutta & Roy 2009; Gupta & Yuan 2009; Jeffus 2004; Mohammed 2012; Naceur, Ghazouani & Omran 2008).

9. The other related regulations in the Kingdom seem to be consistent with the rules of foreign investment in the stock exchange market. All these regulations are consistent with the main aim to attract and facilitate the investment of foreign investments in listed securities as well as to protect its local stock exchange market.

10. It seems that the current rules are strict and able to achieve the protection of the local stock exchange market and its investors as well as to achieve justice in the trading systems.

11. It appears that with the current situation of Government funds and local family ownership in the Saudi stock exchange market and government ownership in affective listed companies in the index, foreign investment is not able to negatively impact the local stock exchange market.

12. The research found that the qualified foreign investment rules are close enough to these of the GCC countries that are keen on attracting foreign investors and protecting the local stock exchange. In terms of comparison with Australia, the research found that the Australian regulations are more attractive, based on statistics of foreign investment flow and strong protection offered by this developed country that followed the common law. The results rely on classification of the most important organizational reports such as MSCI.

13. Unlike the Saudi rules, the research found that Qatar and UAE regulations are considered to be well-developed and less restricted on foreign ownership limitations. This evidence has been provided by the classification of the international organizations indexes such as MSCI, FTSE Group and Russell Investments.

14. Although Saudi corporate governance is not strong based on the OECD report, it could be assumed that with an improvement of the amended rules and amended corporate governance, the near future might be brighter for the country.

### **7.3 Strengths and Weaknesses in the QFI Rules**

In terms of the level of protection for investors, the above review of the current rules indicates that foreign investors are not able to have complete control of local companies. The research found that there are some strengths and weaknesses that must be highlighted and discussed. The following points summarise the strengths and weaknesses in the QFI rules:

- The regulator only allowed foreign institutions not individuals to invest in the stock exchange market.

The regulations have allowed only foreign institutions which does not include individuals. In the opinion of some experts, this is considered a positive aspect of the current regulations. The institutional investors are valuable because they prefer to invest for long terms and act as a conduit for individual savings (Alturki & Khan 2016). Moreover, they study in the market depth, rules, efficiency and liquidity all of which contribute to stock exchange market stability (Dabbas 2015). The behaviour of foreign institutions is deemed to be conservative and is similar to other countries such as India and China in previous regulations (Argaam 2015a).

- Restricted percentage of the ownership of foreign investors.

It could be said that limiting the foreign percentage to 10% and 49% is considered a strong point of the Saudi Stock Exchange Market. Moreover, opening the limitations to foreign investors up to 100% as it implemented in some countries in the GCC such as Qatar, UAE, and Oman may cause a huge risk to the local market. From international experience, opening the limitation up to 100% has posed a threat to the host country. For instance, the experience of AIPAC and the stock exchange market in the United States which did not specify ceiling for buying and selling shares in companies led to foreign investors controlling the decision-making of most market companies. Bernard Lawrence provided another example when over three decades he defrauded hundreds of companies on the stock exchange of United States (n.a. 2015). Given these examples, the limitation under the amended rules appears to be satisfactory and is consistent with the current situation of the Saudi Stock Exchange Market. However, if one assumes that the limitation might be a weak point in terms of reducing foreign investment flow, it

could be argued that most of the GCC countries have the similar percentages and there is very little fundamental difference. Furthermore, it is important to balance the support of foreign investors with protection of local shareholders; otherwise negative inflow may increase. The limitation in this regard has been supported by previous studies like Sherean (2003-2004) and Taher and Hassen (2013) in order to protect the local market and its shareholders from foreign investors suddenly exiting the market stock exchange.

Strong rules for foreign investment in the local stock exchange market, may conflict with the theory of La Porta et al. (1998) that civil law countries usually are not able to protect shareholders. Based on the evidence that has been provided, the foreign investments rules in the Saudi Stock Exchange are sufficiently restrictive. However, this thesis has only been focused on examining these rules not their enforcement. The implementation of these rules needs to be examined as strong rules without implementation are worthless.

The results of this research are supported by the economic fundamentals in the Kingdom as it is in a better position compared with most emerging market economies. In addition, the Saudi Arabia market is not linked to a large extent with most emerging markets because Saudi economy engines differ from the economies of emerging markets (Alshammary 2014). Therefore, from the above points, it should be noticed that the phenomenon of hot money does not have a strong potential at least in the current situation. This result is consistent with Alsudary et al.'s (2015) findings as the entry and exit of funds in addition to the limited percentage of ownership will protect the Saudi stock exchange market from such crisis.

However, one of the most telling points of weakness is that requiring more information and documents in annex 2.1 which might not be preferable to FDI. In addition, there are

some points that have not been clarified such as whether or not QFI clients should be classified as a QFI and allow them to appoint asset multiple managers.

#### **7.4 Positive Effects of FDI in Local Regulations Reforms**

It is obvious that there was weakness in the foreign investment flow into the Saudi stock exchange market. Notwithstanding, it should be noted that FDI participation led to reform of the regulations and regulatory aspects which is considered a positive influence on the local stock market. Some examples can be seen in the Saudi corporate governance, Resolution of Securities Disputes Proceedings Regulations, and adopting the International Financial Reporting Standards (IFRS). It must also be noticed that foreign flow usually needs time to increase and realize its influence (Heshmaty 2015). In addition, there is evidence that foreign investment institutions have influenced reforms in the settlement cycle T+2 and short-selling. These reforms indicate that foreign investors have a positive effect in liberalizing the stock exchange market. The CMA's chairman, Mohammed Al Jadaan in Euromoney at a Conference in Riyadh in 2016 said there was a positive effect of foreign institutional flow in the past year. This can be seen in the increased corporate transparency in Saudi listed companies that are looking to attract foreign investment (Everington & Cronin 2016). Mr Al Jadaan added (Everington & Cronin 2016):

In the last 18 months there has been a big improvement in research about the market and individual equities. There has also been a noticeable improvement in governance and communications, companies holding press conferences and talking about their results.

This result also consistent with global evidence that foreign investment institutions participate positively in the development of the local stock exchange market (Alkhabeer

2015). This result was anticipated by many experts because policymakers and listed companies will aim to improve corporate governance, disclosure and transparency to attract foreign investors (Alkhareif 2015; Khan 2012). A positive relationship was reported by several scholars, (e.g. Abu Amsha 2013; Acheampong & Wiafe 2013; Alsultan 2014; Arčabić, Globan & Raguž 2013; Babatunde 2011; Henry 2000a).

## **7.5 Are Foreign Investors Willing to Take Steps toward the Saudi Stock Exchange?**

In considering the rules for foreign investors to invest in the Saudi stock exchange market these were not sufficient to attract investors. Given the recent reforms in the foreign investors' rules 2016 and others reform such as the corporate governance, company law, and the Saudi stock exchange market reforms included the increase of numbers of listed companies and dividing the market into two markets in the first half of 2017. It is therefore expected that the rate of foreign investors will increase in the near future. Moreover, considering the advantage and disadvantage of these rules it could be said that based on the analysis, the amended rules 2016 are generally more attractive to foreign investors. This finding may support what mentioned in chapter 6 that most of the criticisms have been addressed in the amended rules. For example, John Sfakianakis, director of economic research at the Riyadh-based Gulf Research Centre said after the recent reforms by the CMA in 2016 (Parasie 2016),

These important steps play a crucial role in paving the way for the future inclusion of Saudi Arabia into the MSCI Emerging Market index, as a result of which Saudi Arabia will potentially amass a respectable share of flows into emerging-market equities.

It is true that the volatile political and economic situation in the Middle East has a wide influences in the GCC stock exchange market (Kern, S 2012). Therefore, without

bringing more attention to the low level of development in local financial markets, including its regulations, foreign investors may not be interested in investing in the local stock exchange markets. If there is an increase of foreign flow in a specific period, long terms investments would not be appear as such weak regulations might reflect in the local market fluctuations. On the other hand, the temporary flow may cause an unstable stock exchange market which indicates the need for long term investors and that is the likely target of the Capital Market Authority rules.

The most challenging issue the Saudi government might face is legal enforcement particularly when the regulatory and oversight frameworks have more details. Furthermore, considering the theory of common and civil law, countries that followed the civil law are the weakest in law enforcement (La Porta, de Silanes, et al. 1998). This may require more efforts and reforms such as financial reports, additional resources to regulators and supervisors in order to increase their expertise (Kern, S 2012).

The research observed that the Capital Market Authority is keen to attract foreign investment as well as protect its local stock exchange market. As this is a new experience, it might be a concern that increasing the rate of foreign investors would cause some issues for the local stock exchange market. Therefore, it should not be surprised about the limitation of the foreign investment flow.

The report issued by McCain Capital (2016) confirmed that high rates of foreign ownership are considered undesirable in many markets that are keen on protecting their local economies and investors. However, there are alternative mechanisms which could control foreign investors while increasing investment; for instance, raising the proportion of foreign ownership in non-subsidized state or third parties sectors linked to a strategic region, as the Indian stock exchange market has done. Another alternative

mechanism is providing a certain class of shares that benefit its economic value but the eligibility to vote is limited such as in Brazil, Thailand and Mexico stock exchange markets (McCain Capital Annual Report 2015).

The overall conclusion of this assessment is that the Saudi rules of foreign investment to invest in the local stock exchange market needed to be developed in order to attract more investors and for the stock exchange market to be included in the MSCI. The protection of these rules seems to be strong but it needs to be reviewed in terms of the Capital Market Authority deciding to extend the limitations of FDI, and it should be supported by enforcement. The successful experience of Qatar and the UAE should be followed by the Saudi regulators.

## **7.6 Conclusion**

This chapter has included several conclusions drawn from the analysis of chapters. It discussed the findings of the thesis investigation in the light of research questions. The chapter also examined the strengths and weaknesses in these rules in order to assist the Capital Market Authority with its revision and reforms. The chapter also has highlighted the positive effect of FDI even though their flows are quite slow. Based on the amended rules and other reforms in the Saudi stock exchange market, the chapter indicated possible outcomes in the near future. The next chapter will present the conclusion of this thesis and recommendations for further research.

## **Chapter 8**

### **Conclusion and Recommendations**

#### **8.1 Overview**

Foreign investors may benefit or harm the local stock exchange market of a host country. Thus, rules and regulations play a significant role in attracting foreign investments and protecting the local stock exchange market including shareholders. This thesis examined the recent rules of FDI in the Saudi stock exchange in terms of attracting them and protecting the local shareholders from any financial crisis. It also investigated the influence of foreign investments in the Saudi stock exchange and its regulations. Most importantly, this thesis examined weaknesses and strengths in these rules in regard to the attraction of foreign investors and protection the local stock exchange market.

The hypothesis of this research assumed that the Rules of Qualified Foreign Financial Institutions Investments are not able to attract foreign investment and protect local shareholders. Through investigation and analysis of the first and amended copies of the rules, other related regulations and stock exchange markets in Saudi Arabia and other local countries, international reports and judgments, and comparison of the regulations in the GCC countries and Australia, it could be confirmed that this thesis found these rules are partially attractive and sufficiently strong to protect the local stock exchange market. This thesis argued that there is no significant prospect for FDI to enhance the Saudi stock exchange market because of the restricted rules and the Saudi stock exchange market situation where the majority of companies are owned by the Saudi government and rich families.

This chapter presents an overview of the conclusion, summarises the previous chapters and discusses the outcomes of the thesis. It also offers recommendations and some suggestions for future research.

## **8.2 Summary of this Thesis**

### **Chapter 1**

This chapter introduced the importance of the study that is based on the recent Rules of Qualified Foreign Financial Institutions Investments and its attraction and protection. The chapter provided historical background on these rules until they were amended in 2016. Regarding the research questions, the chapter covered all questions that needed to be answered in this thesis. The reasons for doing this study were mentioned in this chapter to justify the goals of the investigation. Both the academic and practical contributions were pointed out in this chapter to fill the gap in previous studies. The chapter also mentioned the method of this investigation and the reasons behind the use of comparative analysis.

### **Chapter 2**

This chapter provided some definitions of the stock exchange market and related terminology such as securities, and local and foreign investors. The aim of the definitions is to understand the meaning of these words through the research investigations. This chapter highlighted some points about the importance of the stock exchange market and its characteristics. In addition, it discussed the main factors in attracting foreign investment as well as its possible benefit to the local stock exchange market.

This chapter discussed the influence of FDI on the stock exchange market around the world. The chapter found that the studies can be divided into; positive, negative and positive and negative aspects. As well as the effects of FDI flow, the chapter discussed previous studies that stressed the importance of protecting shareholders through regulations. In regard to the liberalization of the Saudi Kingdom toward foreign investment, this chapter explored previous empirical studies in that field. The chapter explored the hope and fear of foreign investment flow to the local stock exchange market. The importance of rules or regulations has become apparent during this academic researches investigation. The positive or negative influences of FDI have a strong relationship with host country regulations. Thus, this thesis was interested based on the Rules of Qualified Foreign Financial Institutions Investments to find out the extent of attracting foreign investment as well as the level of protection for local shareholders.

### **Chapter 3**

This chapter presented the Saudi legal system and clarified the dependency on Islamic and civil law. It also discussed the historical stage of the Saudi equity market and the strength of financial system in Saudi Arabia. The chapter confirmed on the high status of the market as its capitalization makes it the largest market in the Middle East and North Africa. The Saudi Capital Market Authority and its functions were considered in this chapter, and responsibility to improve and protect local shareholders. This chapter also covered the Saudi stock exchange (Tadawul) from various aspects; its history, Saudi listed companies, companies owned by the Saudi government or families and foreign investors' ownership. In addition, the chapter offered an historical background of the remaining countries in the GCC and Australia, focusing in foreign investments flow and regulations in their securities markets. The investigation was supported by the

recent statistics of each market. This chapter found that the more opened regulations equal more flow of foreign investors. This was evident in four countries Qatar, UAE, Oman and Australia while the other countries were less open and weaker flows.

#### **Chapter 4**

This chapter justified the reasons for choosing a qualitative methodology to analyse the Rules of Qualified Foreign Financial Institutions Investments. It also described the types of data collection and clarified what needed to be analysed. The feedback of foreign investors' institutions between the first and amended copy of these rules provided to the researcher by the Capital Market Authority was analysed and discussed. The objectives of this study and the research hypothesis were included in this chapter. It also explained and highlighted the stages of analysing the content and documents. The analysis compared stages of the Capital Market Authority rules with other Saudi, GCC and Australian regulations and their impact on foreign investors. Finally, the limitations of this study and its conceptual framework were discussed in light of their relationship with the research questions and literature review.

#### **Chapter 5**

This chapter analysed the level of attraction of foreign investments in the Saudi stock exchange market based on the current rules. The analysis relied on the feedback of foreign investors and comparison with selected countries as well as international and local organizations. From analysis in this chapter, it appeared that most of the amended rules were mentioned in the feedback provided by investors in 2014. It provided a comprehensive explanation of the content of these rules and compared them with other countries. The chapter examined a number of arguments such as the current rules limited investment and assets of foreign investment institutions. To cover all types of

attraction, this chapter investigated, short-selling, tax requirements, settlement cycle and money transfer in and out the Saudi Kingdom. In respect of the research goals, the period after opening the Saudi stock exchange market was examined based on recent statistics published by the Capital Market Authority. The results showed that foreign investment institution flow was quite weak. The comparison with the GCC countries pointed to significant differences in terms of regulations requirements. Two countries of the GCC, Qatar and the UAE were examined as they are the only countries included in the MSCI emerging markets. The aim was to explore the influence of including them in the emerging market index. The statistics showed that foreign investors increased in these markets after joining the MSCI.

## **Chapters 6**

This chapter examined the protection level of the Saudi rules and other related regulations were included the investigations. It highlighted the strong of protection through the articles of these rules; for instance, the power of Capital Market Authority to control the authorised person and QFI. In the case of sudden exit of foreign investors, this chapter analysed the procedure of the CMA to protect its local stock exchange market. It found that the possibility of hot money seemed to be unfounded in the Saudi market situation. To support this discussion, this chapter offered evidence such as Saudi government institution and family ownership and the limited ownership of foreign investments. Throughout this discussion, related regulations in Saudi Arabia and its government entities were used to analyse the level of protection as well as the Islamic law perspective. This chapter also included in its discussion, two important regulations in Saudi Arabia the CRSD and corporate governances, in terms of the level of protection of local shareholders. Finally, this chapter compared the Saudi rules with the

Australian regulations in order to highlight its power to protect the local stock exchange market from foreign investment.

## **Chapter 7**

This chapter noted the main findings of investigating in the Rules of Qualified Foreign Financial Institutions Investments. It seems that Saudi policymakers have adopted a gradual approach in its rules to opening up foreign investment as was evident between the first and amended copy of these rules. This chapter also discussed the findings in the comparison of regulations in other GCC countries and Australia. The positive aspects in these rules were highlighted during the discussions of the thesis outcomes. The research found that there was an argument that the current rules are not sufficiently attractive. However, it appeared that these rules are able to provide enough protection to the local market and its shareholders. This result was supported with evidence from the other related Saudi regulations and the cooperation between the other entities that are responsible to protect the Saudi economy. Another subject discussed in this chapter was the strengths and weaknesses in the QFI Rules. Two important points emerging from this discussion were the restricted percentages and foreign institutions. Although it was a short time since the QFI Rules has were published, foreign investors had positive effects on reform of the Saudi regulations which is considered one of the important findings in this thesis. The argument extended in this chapter to include the possibility of foreign investors moving forward investment in the Saudi stock exchange market.

## **Chapter 8**

This chapter summarized the thesis in each chapter. It also presented some recommendations and suggestions for the future research.

### **8.3 Recommendations**

In this subsection, after considering all the above summaries and findings, it makes the following recommendations:

1. Providing good and strong regulations to foreign investors will assist the Saudi stock exchange market toward competitiveness in the Middle East in particular and also internationally.
2. Better financial oversight will protect the local stock exchange market from the negative influences of foreign investment.
3. Policymakers in Saudi Arabia need to remove such impediments to encourage foreign capital flows to their stock market. Moreover, they need to increase financial disclosure to prevent cross-border manipulation which could lead to more confidence of both local and foreign investors.
4. The Arab policymakers in general and the GCC in particular have to address the issue of movement of foreign investment. There may need to be more integration of policies, procedures and regional coordination as well as involvement of regulatory authorities in the Arab stock markets. This has also been recommended by Abisourour (1994).
5. The protection of the Islamic law has become clear through the data that have been discussed. Therefore, there is a request that the Saudi government should increase foreign and local investors' confidence by implementing its regulations.
6. The Capital Market Authority should keep continue to prevent foreign institutional investors from owning in strategic sectors in order to eliminate fears about opening the local market to foreign investors.

7. To reduce the influence of the global financial crisis in such emerging markets, it should:

A. Encourage foreign investors to invest in long term rather than short term which may reduce speculation.

B. Move towards more legal reforms in the local stock exchange market.

C. Monitor the financial movement of foreign flow through the study of foreign investment behaviour in the emerging markets in order to improve policy that will achieve local market stability.

8. In addition, to avoid the effect of hot money flows it should impose high taxes that may limit the possibility of re-transfer of funds to the home country.

9. The need for full implementation of the system of corporate governance in Saudi Arabia must be ensured by the Capital Market Authority to reduce future market volatility.

10. In terms of local individual investors there is a need to educate and increase awareness about market systems as well as adjust undesirable behaviour by some individual traders. That will lead foreign institutions to trust the Capital Market Authority management which reflect on the foreign flows and market stability.

11. The Capital Market Authority should aim to convert the majority of local investors to institutional investments in the future which may reduce the negative effects of foreign investment.

12. The Capital Market Authority should increase the strength of its stock exchange through the immediate disclosure of any decisions and sanctions in relation to foreign or local investors.

13. Beside Government funds which are considered the safety valve, there is also needs to be established a stabilization fund that may deliver the optimal balance to the stock exchange market as foreign private investment flows could cause sudden exit from the local stock exchange market.

14. The Capital Market Authority and the Saudi Arabian Monetary Agency are fully responsible for any money transfer by foreign investors, as they considered the two institutions of international financial transfers. Therefore, they must tighten foreign investment flows in accordance with the requirements and standards of money laundering.

15. With the respect to taking an advantage of encouraging more foreign investments, restrictions should be imposed on such trading as it is important to protect local stock exchange market. One suggestion is to prevent foreign investors from getting out of the market before a year of entry to ensure the continuity of their investments.

16. In the case of the Saudi regulators deciding to allow foreign investors to participate in the IPOs, there is a need to limit the maximum percentage. This suggestion is consistent with the views of some experts who believe that the failure to clarify the highest limitations may threaten the national security of the Kingdom (n.a. 2015).

17. There is a need for constant communication with market researchers and specialists in the field of financial markets in order to take advantage of academic research. This continued cooperation shall attempt to improve market development activities and contribute to attracting more local and foreign investors.

18. The Capital Market Authority should extend its horizon by looking at the experiences of other countries regarding foreign investments and learn from this in

order to avoid similar risks, particularly, those financial markets that have suffered from crises that are caused by foreign investment.

19. There is an argument that rising rates of foreign ownership are desirable in many markets. However, there are alternative strategies that will control foreign investors, such as raising the proportion of foreign ownership in non-subsidized companies, as the Indian authority did previously in their own Stock exchange market. Another strategy is providing certain shares which are fully available to foreign investors with full access to rights, except for the voting eligibility that must be limited to local investors. This strategy is applied in Brazil, Thailand and Mexico Stock Exchanges markets (Salah 2010).

20. Although, the regulations prevent foreign investors owning in some companies, some of them still have foreign owners such as National Shipping Company of Saudi Arabia which was in according to Capital Market Authority data before publishing these rules. However, at the time of writing this thesis, there was no change in foreign ownership, thus the CMA must remove the foreign percentage to show the compliance with its rules.

21. The belief that the Qualified Foreign Investments Institutions Rules seemed to be strong enough should indicate that the extent of law enforcement will be evident in the future. Moreover, the challenge of management manipulation will also be under examination in the future. Thus, there is a need to examine the performance of the Capital Market Authority and other authorities in dealing with foreign investment rules.

22. In the case of including the Saudi Stock Exchange into the MSCI or others organizations in the future, it is highly recommended that researchers examine the extent of benefits after Saudi Arabia has been included in the MSCI and other indexes.

23. In spite of the rules attraction, other reforms in Saudi entities must keep continue to improve the investment environment, particularly, given certain headwinds such as geopolitical tensions in the region that are disturbing foreign investment flow.

24. It can be said that more than half of the GCC listed companies do not provide annual reporting in English language (Kern, S 2012); thus there is a need to encourage its listed companies to have more active management in order to narrow the gap with developed countries.

25. Local investors should pay attention to the foreign investment movements as they usually make the right decision in their investments.

#### **8.4 Future Research**

This study can be extended in various ways to improve the expansion of the investor base and regulations. There are some suggestions for future researches in order to extend knowledge of the Saudi stock exchange market and its rules. Firstly, the effects of foreign ownership on the performance of companies listed on the Saudi stock exchange market, and increased trading and market volume.

Secondly, there is a need to examine the influence of foreign investors on the price volatility after opening the stock exchange market, which directly impacts on the stock exchange market and economy.

Thirdly, it is advisable to examine companies that have higher or lower ownership of foreign investors and find out the causes and impacts and investigate any positive or negative effects on the company and investors. It is especially important if there are a number of local investors to follow foreign investors' trends and decide to purchase

shares because these foreign institutions are buying for the long term and their decisions are based on very accurate studies.

Finally, another important area, the CMA obligations must be examined in order to find out the extent of its achievement in protecting local investors and improving its stock exchange market.

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