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Enforcement of Foreign Judgments and Arbitral Awards in the Kingdom of Saudi Arabia

Background

In 2012, the Kingdom of Saudi Arabia introduced a new Arbitration Law (the “**Arbitration Law**”) which replaced the previous Arbitration Law of 1983. The Arbitration Law is largely based on the 1985 UNCITRAL Model Law on International Commercial Arbitration and introduced a number of promising changes to arbitration as a method of dispute resolution in the Kingdom. However, presently it is difficult to assess the degree of change in practice. It remains to be seen how Saudi courts will apply the law going forward. The implementing regulations of the Arbitration Law are yet to be enacted.

The Kingdom is a party to the following international arbitration treaties and conventions:

- **1952 Arab League Convention:** The Kingdom is party to the Convention of the Arab League on the Enforcement of Judgments and Arbitral Awards of 1952. The 1952 Convention deals with the enforcement of judgments and arbitral awards in the Kingdom and the other Member States of the Arab League who have ratified the Convention, namely Egypt, Iraq, Jordan, Kuwait, Libya, Syria and the United Arab Emirates.
- **1983 Riyadh Convention:** The Kingdom signed the Convention on Judicial Cooperation between States of the Arab League in Riyadh in April 1983 and it was ratified on 11 May 2000. The Riyadh Convention deals with the recognition and enforcement of foreign judgments and arbitral awards, without reviewing the subject matter of the underlying dispute, provided that such judgments or arbitral awards do not violate public order, morality or the constitution of the State in which enforcement is being sought, or the overriding principles of Shariah law.
- **1958 New York Convention:** In 1993, the Kingdom acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. The Kingdom made the reciprocity reservation limiting recognition and enforcement of awards under the 1958 New York Convention to those rendered in the territory of another contracting State which in turn accepts the recognition and enforcement of Saudi awards.

In addition, in 2013 the Kingdom adopted an Enforcement Law (the “**Enforcement Law**”) which created specialised Enforcement Courts for the purpose of enforcing “executory instruments” such as cheques, promissory notes, court judgments and arbitral awards (including judgments and awards obtained in foreign jurisdictions).

Enforcement Conditions

Article 11 of the Enforcement Law sets out the requirements for enforcing foreign judgments and arbitral awards. Article 11 provides that the execution judge may not enforce any court judgment/arbitral award passed in any foreign country except on the basis of reciprocity and after verifying the following:

- the Saudi courts are not competent to hear the case in respect of which the court judgment/arbitral award was passed and that the foreign court/arbitration tribunal which passed it is competent in accordance with its conflict of law rules;
- the litigants to the case in respect of which the judgment/award was issued were duly summoned, properly represented and were able to legally represent themselves;
- the court judgment/arbitral award has become final in accordance with the law of the court/arbitration tribunal that issued it;
- the court judgment/arbitral award is in no way inconsistent with any judgment or order previously passed by the Saudi courts; and
- the court judgment/award does not provide for anything which constitutes a violation of Saudi public policy (i.e. Shariah law).

As of today, the Kingdom has not entered into any bilateral treaty with any Western country regarding mutual recognition and enforcement of foreign judgments. Therefore, in absence of such a treaty, the party seeking to enforce a foreign court judgment in the Kingdom faces a rather difficult task of satisfying the reciprocity condition referred to above. In the case of foreign arbitral awards, it was recently reported¹ that the reciprocity condition was satisfied by the country of origin of the award being a signatory to the 1958 New York Convention.

The condition that the judgment/award must not be in violation of Shariah law is arguably the most difficult one to satisfy. Saudi judges have wide discretion to issue rulings according to their own interpretation of Sharia law, and the judiciary has long resisted the codification of laws or the reliance on precedent when making rulings. In practice, establishing whether or not the judgment/award complies with Shariah law may result in the enforcement judge examining the case on its merits.

If all of the above conditions are satisfied, the enforcement judge will issue an enforcement order. Article 6 of the Enforcement Law makes the decisions of the enforcement judge final save granting the right of appeal for judgments on execution disputes and claims of insolvency, which may be appealed to the Court of Appeal whose ruling is final.

¹ <https://www.dlapiper.com/en/saudi-arabia/insights/publications/2016/05/landmark-enforcement-decision>

Enforcement Powers

The enforcement judge has significant powers under Articles 46 and 47 of the Enforcement Law to enforce his decisions. If the judgment/award debtor fails to pay the sum owed or fails to disclose property sufficient to satisfy the award within five days of notification of the execution order, the enforcement judge may:

- impose travel bans;
- suspend the debtor's ability to issue powers of attorney;
- order a freeze on the debtor's bank accounts and any finance dealings;
- order the disclosure and seizing of assets; and
- order the disclosure of the licenses and records of the commercial and professional activities of the debtor.

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