

Introduction to the Legal System of the Kingdom of Saudi Arabia

IN THIS ISSUE:

Shariah Law

General Principles of Contract

Interest and Fairness in Contract Dealings

Power of Attorney

Awards of Damages

Conflict of Laws

Arbitration

Enforcement of Foreign Judgments and Arbitral Awards

Real Property

Retention of Title Clauses

Patents

Trademarks

Trade Names

This article sets out a brief overview of the legal system in the Kingdom of Saudi Arabia and should be treated only as a general guide and not as legal advice. If you require advice on a matter relating to Saudi Arabian law, you may wish to contact one of the lawyers listed at the end of this article.

Shariah Law

Shariah law underpins the legal framework of the Kingdom. Shariah law is a set of principles derived from the Quran, the Sunnah (sayings and actions of the Prophet Mohammed) and the works of jurists and Shariah scholars. In addition to Shariah law, the Kingdom's legal framework includes laws promulgated by Royal Orders and Decrees, various ministerial resolutions and circulars.

The judicial system of the Kingdom comprises a number of courts and adjudicatory bodies. These include the General Courts, the Board of Grievances and various specialised committees, such as the Committee for the Settlement of Banking Disputes and the Committee for Resolution of Securities Disputes.

Shariah law does not have a doctrine of precedent and each judge has the power to decide the matter that comes before him at his sole discretion based on his understanding of Shariah law. Furthermore, court reports are not published and the application of Shariah law is not uniform throughout the court system.

General Principles of Contract

Contracting parties are free to negotiate the terms of their contracts unless those terms are prohibited and/or relate to activities that are prohibited under Shariah law. There must be no element of deception or uncertainty in contracts. Where there is uncertainty as to the fundamental terms of a contract, such as the subject matter or price, such contracts may be considered void. Contracts that involve speculation are not permissible and are therefore considered void. The speculation prohibited under Shariah law is not general business speculation, but speculation akin to gambling, particularly gaining something by chance rather than by a productive effort.

Interest and Fairness in Contract Dealings

According to Shariah law, the payment or receipt of sums in the nature of interest is not enforceable. It follows that contractual provisions relating to payment or receipt of interest on sums loaned or borrowed, even when worded to avoid specific “interest” terminology, are unenforceable in the Kingdom. While the interest provisions are commonly found in contracts between parties in practice, they will not be enforced by the Saudi courts in case of disputes.

Even though interest-related transactions are unenforceable before the Saudi courts, they are not illegal and are, in certain cases such as banking related agreements, enforceable before certain statutory tribunals, such as the Banking Disputes Committee (see below). As per the Negotiable Instruments Regulation, the interest on the amount of promissory notes is considered to be null and void.

The Banking Disputes Committee of the Saudi Arabian Monetary Agency, which deals with disputes between banks and their customers, may, in practice, uphold payments in the nature of interest (which are typically called commission in Saudi lending transactions) by ordering debtors to pay gross sums which include interest/commission elements.

Clauses addressing the consequences of delayed performance are permitted to be structured on “a percentage of contract value” basis, but such amounts must not be excessive, which is determined on a case-by-case basis, if a dispute arises.

Contracting parties must maintain principles of fairness and equity in their dealings. Contracts where one party gains unjustly at the expense of the other party may be considered void especially if the party gaining unjustly has a monopoly or market dominance in the subject matter of the contract. In each contract, the commercial substance of the transaction must be analysed to evaluate whether or not the party’s actions would amount to unjust enrichment under Shariah law.

Power of Attorney

Shariah law does not ordinarily recognise an irrevocable power of attorney. Under Saudi law, and as a matter of public policy, a power of attorney is revocable at will by the grantor thereof even if the grantor has expressed a contrary position in writing at the time of granting the power of attorney. It is possible to grant a revocable power of attorney within the Kingdom to carry out almost any activity, bearing in mind that the grantor can revoke the same at will. A power of attorney must be notarised to be valid in the Kingdom.

Awards of Damages

Saudi courts and judicial committees generally do not award damages representing loss of profits, indirect losses or other forms of consequential loss. Foreign judgments awarding such damages are at risk of not being enforced. Only direct, proven economic losses can be recovered. Any contract provision for liquidated damages should be considered in this context. If challenged by the party responsible for the payment of liquidated damages, a Saudi court or judicial committee may not enforce a contract provision for the payment of liquidated damages where the agreed liquidated damages are excessive so as to amount to a penalty, notwithstanding the fact that the parties agreed to such a provision.

Conflict of Laws

Shariah law does not recognise the concept of conflict of laws. Furthermore, Shariah law does not accept the concept of absence of jurisdiction to rule on a matter that has come before the court. Therefore, a Saudi court will apply Saudi law to any dispute before it irrespective of the disputing parties' choice of foreign law in their contract.

Arbitration

The Arbitration Law of 2012 acknowledges the right of parties to arbitrate under an institutional set of arbitration rules such as the ICC or the LCIA rules. The Arbitration Law applies to any arbitration that takes place in the Kingdom or any international commercial arbitration that takes place outside the Kingdom and the parties thereof have agreed that the arbitration be subject to the provisions of the Arbitration Law. The Arbitration Law also recognises the parties' choice of governing law, language and arbitrators—as long as the sole arbitrator or president of an arbitration panel holds a degree in Shariah law. The Arbitration Law provides for a default procedural provisions to be applied in case the parties fail to agree on a specific procedural rules.

Enforcement of Foreign Judgments and Arbitral Awards

The Kingdom is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention") and, accordingly, a foreign arbitral award should generally be recognised and enforceable in the Kingdom under the New York Convention, provided the conditions to enforcement set out in the New

York Convention and the rules of the Enforcement Law are met. The Enforcement Law provides that a foreign judgment or award may only be enforced in the Kingdom on the basis of reciprocity¹ and provided that:

- the Saudi Arabian courts do not have jurisdiction over the subject matter of the judgment or award and that the foreign award or judgment was issued by a competent authority having jurisdiction under applicable law;
- the litigants to the case in respect of which the judgment or award was issued were given due notice, were properly represented and were permitted to present their own defense;
- the court judgment or award has become final in accordance with the law of the court or tribunal that passed it;
- the court judgment is in no way inconsistent with any judgment or order previously issued by the Saudi Arabian courts; and
- the judgment does not provide for anything which constitutes a breach of Saudi Arabian public order, including Shariah law.

For example, Shariah law does not allow for payment of interest, so a judgment or award referring to payment of interest would not be enforceable in the Kingdom. As a result, it will not be possible to obtain recognition or enforcement in the Kingdom of a foreign judgment in respect of interest payments. Saudi law recognizes the principle of partial enforcement of foreign judgment or award, meaning that if a part of the judgment or award contradicts Saudi law (e.g. contains payment of interest) that part would not be enforced, while the rest of the judgment or award would be enforceable in accordance with the Enforcement Law.

Real Property

Ownership of real estate is evidenced by title deeds. Title ownership records are administered by designated public notaries who also register ownership and record transfers of real property.

Ownership and investment in real property by non-GCC nationals is governed by the Regulations on Ownership of and Investment in Property by Foreigners. A non-GCC investor in possession of a foreign investment licence from SAGIA may own real estate in the Kingdom (excluding land

¹ In the case of a foreign arbitral award, the reciprocity requirement is satisfied if the country in which the arbitral award is issued is a signatory to the New York Convention. Currently, the Kingdom does not have any bilateral treaty with any western country regarding the recognition and enforcement of court judgments.

and buildings located within the limits of the two holy cities of Makkah and Al-Madinah) that is necessary to its investment project, including real property necessary to house the employees.

Retention of Title Clauses

Retention of title clauses, although common in most contracts, are not legally enforceable within the Kingdom. Additionally, one of the features of Shariah law is that the owner of an item bears the risk of loss or damage in relation to that particular item. Accordingly, it should be noted that risk of loss or damage cannot pass unless ownership passes. That said, risk may actually pass without ownership passing where either:

- a person is in the business of looking after/protecting/maintaining the asset left in his care; or
- the asset is lost or damaged by a negligent/wrongful act.

Patents

The Patent Law, enacted by Royal Decree in 2004 and amended by a Decree of the Council of Ministers in 2018, is overseen by the Saudi Authority for Intellectual Property. The law provides protection within the Kingdom for industrial designs, inventions, layout designs of integrated circuits and plant varieties. A Saudi patent is valid for 20 years. As a signatory to several international conventions, the Kingdom extends patent protections to foreigners from any World Intellectual Property Organisation member state.

Trademarks

Trademarks are governed by the Gulf Cooperation Council Trademark Law ("the Trademark Law"), enacted by Royal Decree in 2014. Under the Trademark Law, protected trademarks include names of distinct shapes, signatures, words, letters, numbers, drawings, symbols, stamps and prominent inscriptions or any other sign or combination thereof that are suitable to distinguish industrial, commercial, vocational or agricultural products, or projects to exploit forests or natural resources or to indicate that the item on which the mark is carried belongs to the owner of the mark on the grounds of manufacture, selection and invention thereof or trading therewith or to indicate the rendering of a certain service.

Items that may not be registered as trademarks include, among others, public emblems, flags, misleading geographic names, signs without any specific distinction, signs or drawings violating Islamic law or those that are inconsistent with public morality.

Trademark protection in the Kingdom lasts for ten years and may be renewed. The Saudi Authority for Intellectual Property is responsible for trademark registration.

Trade Names

The Trade Names Law protects registered trade names in the Kingdom by requiring every business operating in the Kingdom to register its trade name with the Commercial Register at the Ministry of Commerce (MOC) and proscribing any other business or individual from using registered trade names. Only Arabic or “Arabised” trade names may be registered, except for companies with foreign shareholders whose names are registered outside of the Kingdom or foreign companies seeking to trade under the names registered in their countries of origin or variations thereof. A process of pre-registration or name reservation is done via an online submission of the website of MOC.

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This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

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