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Saudi Arabia

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A. Legislation and rules

A.1 Legislation

There have been two main legislative developments recently that have had an impact on arbitration practice in the Kingdom of Saudi Arabia (KSA).

A.1.1 New Arbitration Law

On 16 April 2012, a new set of arbitration rules was issued in KSA by Royal Decree No. 34/M (“New Arbitration Law”). The New Arbitration Law replaced the arbitration law issued by Royal Decree No. 46/M, dating from 1983. The New Arbitration Law was published in *Umm Al Qurra*, the official Saudi gazette, on 8 June 2012 and became effective 30 days after publication. The Council of Ministers has not yet issued the implementing regulations for the new law.

The New Arbitration Law contains many changes and improvements over the old regime. Under the new rules, the competent court (ie, the court with original jurisdiction over the dispute) retains its supervisory role over the arbitration process; however, the role it plays is significantly reduced, with many of its former tasks being delegated to the arbitration tribunal and the litigants. Furthermore, under the New Arbitration Law, the parties are granted broad discretion to determine many aspects of the arbitration process, such as the language to be used in the arbitral proceeding and the substantive law and procedures to be applied, as long as such law and procedures do not contravene Sharia (Islamic) law.

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to be applied, as long as such law and procedures do not contravene Sharia (Islamic) law.

Moreover, appeals based on the merits are no longer permitted under the new regime; the new rules only allow appeals (called “nullification” petitions) based on enumerated procedural or jurisdictional grounds. However, as in the old regime, the competent court still retains the authority to re-examine, *sua sponte*, the merits of the underlying case to determine if the arbitration decision is contrary to Islamic law. This implies that the competent court, on appeal, must reexamine the merits of the case at least to the extent necessary to make such a determination. It remains to be seen how the courts will apply this provision in practice and how much of an impact this will have on the arbitration process.

The changes to the Saudi arbitration rules should be a welcome development to clients contemplating the use of arbitration to resolve their disputes. The New Arbitration Law certainly aims to streamline the arbitration process and reduce its cost and duration by minimizing the judiciary’s role in it. However, it remains to be seen to what extent the courts’ authority to review, *sua sponte*, the merits of a case to determine if arbitral decisions comply with Islamic law may undermine the positive modifications implemented in the new rules.

A.1.2 New Enforcement Law

Previously, enforcement of court judgments and arbitral awards had been relegated to the Board of Grievances, which is a statutory tribunal distinct from the General (Sharia) Courts. However, a new Enforcement Law, which was issued under Royal Decree No. M/53, in 2012, abandons the old system of enforcement proceedings before the Board and entrusts enforcement of foreign judgments and arbitral awards to a relatively new jurisdiction, the Enforcement Courts. In our experience, it remains possible to challenge awards issued outside of KSA, on procedural or jurisdictional grounds, before the Appellate Tribunal of the competent court.



As in the case of the New Arbitration Law, the Enforcement Law is relatively recent, but there have been some successful enforcements of arbitration awards, both domestic and international.

A.2 Institutions, rules and infrastructure

Until recently, there had not been any institutions regulating arbitration in KSA. However, following the issuance of a Council of Ministers' decree in 2014 to form an arbitration center to work under the auspices of the Council of Saudi Chambers, the Saudi Center for Commercial Arbitration (SCCA) was established to supervise domestic and international commercial arbitrations in the Kingdom. The SCCA is the first institution of its kind in KSA and sets forth rules for conducting arbitrations in KSA in accordance with international arbitration standards. Participation in the SCCA is voluntary, and *ad hoc* arbitrations remain the norm. The New Arbitration Law also permits arbitrations in the Kingdom to be conducted in accordance with the rules of international arbitration bodies, such as the International Chamber of Commerce.

B. Cases

B.1 *Jadawel International v. Emaar Property*

In 2004, Jadawel International, a Saudi developer, filed a case with the Board of Grievances in Riyadh, claiming that Emaar Property, a Dubai-based developer, had breached a joint venture agreement. The Board of Grievances held that it had no jurisdiction to hear the dispute and the matter was referred to arbitration.

In 2006, Jadawel commenced arbitration against Emaar. The arbitration was before a three-member tribunal seated in Saudi Arabia. Jadawel claimed damages in the amount of USD 1.2 billion as a result of the alleged breach.

In 2008, the arbitration panel dismissed Jadawel's claims and ordered Jadawel to pay legal costs. The award was submitted to the Board of Grievances for enforcement. The Board re-examined the merits to

ensure compliance with Islamic law, and then proceeded to reverse the award. The damages awarded to Emaar were annulled, and Emaar was ordered to pay more than USD 250 million of damages to Jadawel. Emaar appealed the ruling. Eventually, the parties settled their dispute amicably.

The case was significant because the possibility of review on the merits created great uncertainty as to the outcome of arbitral proceedings in the Kingdom.

B.2 *Etihad Etisalat (Mobily) v. Mobile Telecommunication Company Saudi Arabia (Zain)*

In December 2014, Mobily commenced arbitration against Zain, claiming SAR 2.2 billion (approximately USD 586 million) in damages arising from the services agreement signed between the two parties on 6 May 2008. Although acknowledging that it owed Mobily a modest amount, Zain rejected the claim, stating that it arose from Mobily's unilateral revocation of amendments to the services agreement to which the parties had agreed.

After about two years of hearings, the arbitration panel awarded Mobily SAR 219 million, amounting to less than 10% of Mobily's claim. Mobily has indicated that it will not appeal the award.

The arbitration was conducted under the New Arbitration Law. Mobily's decision not to appeal the case was probably due to the fact that appeals on the merits are not allowed under the New Arbitration Law. The case is significant, both in the Saudi telecommunications sector and in the arbitration arena, as it demonstrates the positive developments brought about by the New Arbitration Law, particularly the finality of arbitral awards.

C. Trends and observations

The recent issuance of the New Arbitration Law and the New Enforcement Law is evidence of a serious commitment by the Saudi government to reform the practice of arbitration and enforcement in



KSA and to bring them in line with international standards. The recent establishment of the SCCA, which is entrusted with regulating the practice of arbitration along internationally accepted rules, also bodes well for the arbitration climate in the Kingdom.

These developments, however, are new and largely untested. It remains to be seen, particularly in appeals of arbitral awards and in enforcement actions, how the courts will use their authority to re-examine, *sua sponte*, the merits of a case to determine if arbitral decisions comply with Islamic law.