

Arbitration in Saudi Arabia – meeting the goals of Vision 2030

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With Saudi Arabia's dependence on hydrocarbons accounting for roughly 87% of government revenue, Crown Prince Muhammed bin Salman has recognised the need to diversify the Kingdom's economic interests and alleviate the Kingdom of its oil dependency.

Through the Vision 2030 initiative, the Crown Prince has promoted the development of new infrastructure, manufacturing hubs, housing, transport and commercial spaces.

With some significant developments in the project pipeline, including the King Abdullah Economic City (US \$103 billion), King Khaled International Airport, Terminal 5, Riyadh (US \$400 million), Jeddah Corniche, Riyadh Metro (US \$22.5 billion), and Jeddah Metro (US \$12 billion), the Kingdom is actively encouraging foreign investment in the region.

Our clients are certainly very active in the Kingdom, as they seek to take advantage of the opportunities these projects are offering to those in the construction industry. However, despite the attractive commercial offering that KSA provides, many in the market appear to be taking a cautious approach when it comes to doing business in the region citing concerns regarding payment, the uncertain judicial landscape, and whether there is an effective and robust commercial arbitration regime in place.

With these questions presenting potential impediment to the Kingdom's push for foreign investment, we look at how the Kingdom of Saudi Arabia's Ministry of Justice has tried to ease these concerns and build confidence in KSA's commercial dispute framework.

Old and New Arbitration Law

Notwithstanding the Kingdom of Saudi Arabia acceding to the New York Convention, the Saudi Arbitration Law of 1983 (**Old Law**) was widely criticised for its inconsistency with regards to the enforcement of arbitral awards.

To enforce an award under the Old Law, an application first had to be made to the administrative judicial committee responsible for administering arbitration, the Saudi Board of Grievances (**BoG**).

The BoG often scrutinized awards for compliance with the laws of Islamic *Shari'a* which frequently resulted in a refusal to enforce the award or which led to a retrial of the merits of the dispute.

The New Saudi Arbitration Law (**New Law**) was issued by Royal Decree No. M/34 and came into force on 09 July 2012.

The New Law was modelled on the UNCITRAL Model Law, embracing international standards and lending greater independence to the arbitral process. Additionally, the New Law provides the arbitral tribunal with enhanced procedural powers and importantly clarifies the process surrounding the enforcement of arbitration agreements and awards.

New Enforcement Law

To supplement the New Law, a new enforcement law came into effect in March 2013 by issue of Royal Decree No. M/53 (**Enforcement Law**).

The Enforcement Law provides for the enforcement of awards before an Execution Judge, eliminating the requirement to bring enforcement proceedings before the

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BoG. The result of which has reduced the case load on the local courts, led to a reduction in the invasive revision of awards and to a more consistent approach in the enforcement of foreign arbitral awards.

However, parties should still remain cautious with regards to enforcement as, despite the creation of the Enforcement Law and consistency in the ratification of arbitral awards, the New Law does provide specific grounds for challenge, including the ability for a state court to annul an award if it includes reasoning that violates Islamic *Shari'a* and public policy in the Kingdom.

Parties should be particularly aware of how this may impact enforcement proceedings in respect of claims for interest where that portion of a claim cannot be separated from other elements of the award.

Consistency

The Ministry of Justice and Chairman of the Supreme Judicial Council have published a book setting out the judicial principles and legal jurisprudence developed in the Kingdom from over 20,000 judicial rulings from commercial, civil, administrative and criminal cases.

This provides judges and lawyers with valuable knowledge about how the local legislation and laws of Islamic *Shari'a* have been applied in past proceedings. While the published judgments are considered as guidelines and not as binding precedents as in common law legal systems, in practice, judges follow these judgments where they are relevant and applicable.

Saudi Center for Commercial Arbitration

Another step forward and a demonstration of the Saudi government's commitment to arbitration in the region is the establishment of the Saudi Center for Commercial Arbitration (**SCCA**) in Riyadh.

The SCCA is an independent body, established by a cabinet decision in 2014 and inaugurated in October 2016. A board of directors from the private sector govern the SCCA and none of the directors are allowed to hold government positions at the time they sit on the board.

The SCCA and its accompanying rules have been largely modelled of the UNCITRAL Rules, and have been drafted in accordance with the New Law.

While it remains to be seen whether the SCCA will gain traction in the already competitive Middle East arbitration market, it will be interesting to see the extent to which the Saudi government and related businesses move away from their reliance on the local courts and embrace arbitration under the SCCA as an alternative dispute resolution option.

Arbitration in KSA

Over the last 15 years the Kingdom of Saudi Arabia has taken some positive strides towards developing a reliable and robust arbitration regime.

It will be with interest how or if the Kingdom embraces arbitration as a reliable and flexible dispute resolution mechanism, a mechanism that is well suited to handling disputes that may arise out of the ambitious Vision 2030 initiative.

If you do have ongoing projects in the Kingdom of Saudi Arabia and would like advice on them, then please call Claire Miller on +971 (0) 4 356 3905 or Scott Lambert on +971 (0) 4 356 3904 for further information.



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