

The Law and the Regulations

The Saudi Commercial Courts Law was enacted by Royal Decree No. M/93 dated 15/08/1441H (corresponding to April 8, 2020). The Law was officially published on 24/08/1441H (corresponding to April 17, 2020) in the Saudi Official gazette ("Um Al-Qura Gazette"). The Ministry of Justice issued the Implementing Regulations of the Commercial Courts Law and it was officially published on 05/11/1441H (corresponding to June 26, 2020) in Um Al-Qura Gazette.

The New Commercial Courts Law and its Implementing Regulations: A Legislative Reform to Enhance Doing Business in Saudi Arabia

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An effective dispute resolution system is essential for local and foreign companies undertaking business in the kingdom. As a step to enhance the business environment, the Saudi Commercial Courts Law (the "Law") its Implementing Regulations (the "Regulations") have been enacted. According to the Law and the Regulations, Commercial Courts have subject matter jurisdiction to hear:

- 1) Disputes arising between merchants due to their original or ancillary business.
- 2) Cases brought against a merchant over commercial contract disputes when the original claim's value exceeds 500,000 Saudi Riyals.
- 3) Disputes between partners of a *Mudaraba* company. (*Mudaraba* company is a partnership in profit whereby one party provides capital and the other party provides skill and labor.)
- 4) Claims and violations arising under the application of the provisions of the Companies Law, the Bankruptcy Law, and other intellectual property and commercial laws.

Unless the parties agree otherwise in writing, a court where the defendant resides within its jurisdiction will be competent to hear the case. If, however, the defendant does not have a place of residence in the Kingdom, then a court where the plaintiff resides within its jurisdiction will have the competency to hear it. A complaint may be filed in the court where the disputed contract has been executed or was to be performed within its jurisdiction.

A company's headquarters is considered its domicile. However, a complaint can be filed with a court, within which the branch of the company is located to hear disputes arising from contracting with that branch.

The most important development features in the Law are as follow:

- A. Accelerating and simplifying adjudication and enforcement processes, considering the fast-paced nature of the modern world of business.
- B. Encouraging alternative dispute resolution methods and the utilization of the private sector.
- C. Enabling commercial parties to agree on procedural rules.
- D. Considering commercial norms and practices.
- E. Expanding and modernizing evidence and testimony procedures.
- F. Enhancing the role of modern technology.
- G. Regulating class-action cases.
- H. Enhancing the role of lawyers.
- I. Strengthening the role of law principles and precedents.

A. Accelerating and simplifying adjudication and enforcement processes, considering the fast-paced nature of the modern world of business.

Among the important features of the Law and the Regulations is accelerating the adjudication of cases through: 1) developing several methods of service; 2) imposing fines on those who fail to comply with what has been requested within the specified time without valid excuse; 3) reducing the length of litigation; and 4) developing a speedy consideration system for urgent requests and performance orders.

To address service issues and undue delays, the Law includes many methods of service of process, including:

- 1) Service by electronic address authenticated by authorities or chosen by the parties, such as cell phone text messages, emails or governmental electronic accounts.
- 2) Service to residential addresses of natural or legal persons unless the person chooses another address.
- 3) Service by mail to the address registered with the competent post authority.
- 4) Service to the address recorded in the commercial registration or the person authorized to receive service in the commercial registration of a legal person.
- 5) Service to the address that a person includes in its filings to the court in the case itself.
- 6) Service to the address recorded in a contract for all disputes arising from the contract.
- 7) Service to the address chosen by a foreigner in the Kingdom.

A natural or legal person may choose the address of a lawyer to receive service of process on the person's behalf. The same rules regarding the person's address would apply to the lawyer. Before the hearing, the court will hold a preparatory session with all parties attending and the following will take place:

- 1) Determining the court's jurisdiction to hear the case and the conditions to accept the case.
- 2) Offering reconciliation between the parties.
- 3) Determining the requests and defenses, the dispute between the parties, and the level of complexity of the case.
- 4) Determining the scope of the evidence and the list of witnesses.
- 5) Adopting the case management plan.

The parties may not submit any requests, evidence or defenses that were not introduced before the end of the preparatory session.

Most Important Development Features

- A. Accelerating and simplifying adjudication and enforcement.
- B. processes, considering the fast-paced nature of the modern world of business.
- C. Encouraging alternative dispute resolution and the utilization of the private sector.
- D. Enabling commercial parties to agree on procedural rules.
- E. Considering commercial norms and practices.
- F. Expanding and modernizing evidence and testimony procedures.
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Accelerating Adjudication and Enforcement

Before the hearing, the court will hold a preparatory session with all parties attending. The parties may not submit any requests, evidence or defenses that were not introduced before the end of the preparatory session.

There are two types of cases under the law: small claim cases in which the claim does not exceed 1 million Saudi Riyals and cases in which the claim exceeds 1 million Saudi Riyals.

The period for hearing a small claim case must not exceed 90 days from its registration date.

The period for hearing a non-small claim case in the first instance court must not exceed 180 days from its registration date.

Broadly, there are two types of cases under the law: small claim cases in which the claim does not exceed 1 million Saudi Riyals and cases in which the claim exceeds 1 million Saudi Riyals.

- Small Claim Cases Timeline

Before filing the case, the parties must resort to reconciliation and mediation, the duration of which may not exceed 15 days. The parties may also hold a meeting to determine requests, defenses and evidence, and exchange memorandums and briefs before filing the case. The case is then filed electronically and shall be registered on the same day submitted if it fulfills filing requirements. The parties shall be notified within one day of its registration of the date of the preparatory session, which shall be within 20 days from the date of the case's registration.

After verifying the preliminary requirements in the preparatory session, the court has the right to postpone the hearing for no more than 15 days. The hearing must be a one session hearing, except in exceptional emergency circumstances. The judgment must be rendered within five days after closing the hearing. The period for hearing the case must not exceed 90 days from its registration date. In cases where the filing of the case is preceded by the exchange of notes or a meeting between the parties, the period for consideration must not exceed 30 days. The period for appeals in the appellate court is 15 days unless the court of appeals decides to rehear the case. Judgments issued in small claim cases where the claim does not exceed 50,000 Saudi Riyals are not appealable.

- Non-Small Claim Cases Timeline

Before filing the case, the parties may resort to reconciliation and mediation, and may also hold a meeting to determine requests, defenses and evidence, and exchange memorandums and briefs before filing the case. The case is then filed electronically and shall be registered on the same day submitted if it fulfills filing requirements. The parties shall be notified within one day of its registration of the date of the preparatory session, which shall be within 20 days from the date of the case's registration.

After verifying the preliminary requirements in the preparatory session, the court has the right to postpone the session by no more than 60 days. If a second postponement is needed, it must not exceed 30 days provided that the reason for the postponement is stated in the minutes of the hearing. There must be no more than two hearings, except in exceptional emergency circumstances. It is not permissible to postpone for the same reason more than once. The judgment must be rendered within five days after closing the hearing. The period for hearing the case in the first instance court must not exceed 180 days from its registration date. The period for appeals in the appellate court is 20 days for review with no hearing and 90 days if rehearing by the court of appeals is required.

- Urgent Requests and Performance Orders Timeline

Upon its submission, an urgent request is referred to a specialized one judge circuit. The circuit must decide the case within three business days. The circuit may decide the case without the presence of the other party and before notifying the other party when necessary, provided that the other party is notified with a copy of the judgment upon its issuance.

Limitation Period and Alternative Dispute Resolution

The Law provides a limitation period whereby a claim may not be heard after the lapse of five years from the date at which the claimed rights arise unless the defendant admits the right or the plaintiff provides an acceptable excuse for the delay in filing the claim.

It is mandatory that parties resort to conciliation and mediation before filing some cases.

Performance order requests are referred to the same specialized one judge circuit where: 1) the debtor's right is fixed in writing, 2) the debt is due and specific, 3) the court has no authority to estimate the debt, and 4) the creditor has issued to the debtor a written demand to pay at least five days prior to applying for the performance order. The circuit must issue its order within ten days of the case's registration. Judgments and orders of urgent requests and performance order requests would include expedited enforcement.

In a new initiative, the Law provides a limitation period whereby a claim may not be heard after the lapse of five years from the date at which the claimed rights arise unless the defendant admits the right or the plaintiff provides an acceptable excuse for the delay in filing the claim.

When a party violates any of the case procedures or court order, the court may impose a fine of up to 10,000 Saudi Riyals, and the court order in this regard is final.

B. Encouraging alternative dispute resolution methods and the utilization of the private sector.

The Law encourages parties to resort to alternative dispute resolution methods. The Regulations make it mandatory that parties resort to conciliation and mediation before filing some cases, including:

- 1) Disputes arising between merchants due to their original or ancillary business if the original claim is not more than one million Saudi Riyals.
- 2) Cases brought against a merchant over commercial contract disputes when the original claim's value is not more than one million Saudi Riyals.
- 3) Disputes between partners of a *Mudaraba* company.
- 4) All cases related to contracts that include agreement, in writing, to resort to conciliation, mediation and amicable settlement before resorting to litigation.

Unless stated otherwise in the Law and the Regulations, and unless the parties agree on special procedures, the reconciliation and mediation will be governed by the procedural rules adopted by the center where the reconciliation and meditation will be implemented.

The Law expands the use of the private sector. In addition to reconciliation and mediation, the Law authorizes the use of the private sector in the following:

- 1) Notification and service of process.
- 2) Registration of cases and requests filings, and delivery service of judgements.
- 3) Managing hearing rooms.
- 4) Exchange of memorandums and briefs.
- 5) Procedures for using expertise.
- 6) Documenting the evidence procedures.
- 7) Managing the specialized departments in the court.

Agreeing on Procedural Rules

Parties may now agree that a judgment of the first instance court is to be final, not subject to appeal.

Commercial parties entering into new agreements should consider these changes in the law and take them into account while drafting their contracts' dispute resolution clauses.

The court may consider the opinion of specialists to clarify technical issues in laws, international trade or investment agreements, and related activities.

C. Enabling commercial parties to agree on procedural rules.

The Law enables commercial parties to agree on specific procedures to govern their dispute resolution process, as long as they do not contradict other provisions under the Law, the Civil Procedure Law and Saudi law and public policy (Islamic Sharia law). The Regulations clarify that such agreement must be in writing and it can be on:

- 1) Number of briefs to be submitted.
- 2) Service of process procedures.
- 3) Time limits for submitting documents.
- 4) Appointing experts or expert procedures including agreeing to adopt the expert's opinion of a technical issue.
- 5) The hearing process plan.
- 6) Reducing any procedural periods stipulated in the Law or Regulations other than those related to the court.

Among these developments, the parties may now agree that a judgment from the first instance court is to be final, not subject to appeal.

The parties to commercial activities may, before filing the case, perform reconciliation and mediation procedures. They may also exchange memorandums and briefs, and hold a meeting to determine requests, defenses and evidence. This can be done in Arabic or in a foreign language under the supervision of the court or under the supervision of the private sector, provided that the parties inform the court when they start the process.

Accordingly, commercial parties entering into new agreements should consider these changes in the law and take them into account while drafting their contracts' dispute resolution clauses.

D. Considering commercial norms and practices.

In the absence of a special provision or agreement between the parties, it is permitted reliance on the rules of commercial practices and custom between parties. The party claiming a practice or a custom must prove its existence. In assessing compensation, the court must consider the custom or established practice, and the expert's opinion - when necessary. The parties may agree to adopt an expert's opinion on a technical issue. If one party relies on an expert report, the other party may rely on that report as a means of evidence. The court may seek advice from the commercial practitioners practicing the activity in question if the dispute is between two merchants. The court may also consider the opinion of specialists to clarify technical issues in laws, international trade or investment agreements, and related activities.

E. Expanding and modernizing evidence and testimony procedures.

The Law has expanded the accepted methods of evidence, stipulating that no special method is required for evidence. Without prejudice to public policy, the court has the right to invoke evidentiary procedures that took place in a foreign country. And if the parties agree to specific rules of evidence, then the court must implement them. The parties may also agree to shift the burden of proof. Testimony can be given through modern technologies. Testimony can also be taken before filing the case by documenting it with a licensed notary who does not have a potential conflict of interest in certifying it, taking into account the procedures for hearing as required by the laws and stating the reason for its authentication before filing the case.

In addition to the court's right to ask witnesses, the Law gave the parties the right to cross-examine the witnesses. The court may not prevent the party from questioning the witness directly, and no prior approval from the court on the questions to be asked is needed.

The Law also permits the submission of written testimony, without prejudice to the other party's right to request the presence and interrogation of the witness. The Regulations stipulated that a testimony is not accepted as evidence in some cases, such as when the testimony contradicts a written evidence or a stable commercial custom, or when the Law states that a written document is required.

F. Enhancing the role of modern technology.

In addition to the electronic means of service, other procedures stipulated in the Law may be done through the electronic communications and systems approved by the Ministry of Justice, including the procedures for filing, registration and remote hearing, without prejudice to the publicity of the hearing. Written pleadings include submitting notes and directing court questions via the electronic system.

Accepted methods of evidence include electronic evidence (such as the electronic editor, electronic media, electronic communications, email and electronic records). With the spread of electronic copies, the system referred to the authenticity of the copies and stated that a copy of the document is considered identical to its original unless contested by any of the concerned parties. Also, signed or attributed to the sender correspondence (including electronic correspondence) is regarded as authentic as ordinary paper, unless the sender proves that he did not send the correspondence and did not assign anyone to send it.

G. Regulating class-action cases.

Among the important updates in the Law is regulating the filing of class action cases. To file a class action case, the following conditions must be fulfilled:

- 1) The existence of a common claim issue, cause, and defendant.
- 2) The claims must be under a common objective that affects the class members' interests.
- 3) The class size must be no fewer than ten.

Class action cases must be filed by a lawyer acting as a representative of the plaintiffs. After the lawyer submits the filing of the class action request to the court, the court's chief must issue a decision granting or denying class action status within ten days.

Evidence & Testimony and Class-action Cases

The court may not prevent the party from questioning the witness directly, and no prior approval from the court on the questions to be asked is needed.

A copy of the document is considered identical to its original unless contested by any of the concerned parties.

Among the important updates in the Law is regulating the filing of class action cases.

Lawyers' Role & Law Principles and Precedents

The Law enhances the role of lawyers in Saudi Arabia and recognizes the importance of the involvement of the legal profession in the commercial sector.

The court must undertake a comprehensive legal study of the case that includes the relevant law principles and precedents.

The information provided in this article is intended as guidance only and should not be considered as legal advice.

H. Enhancing Lawyers' Role

The Law and Regulations enhance and strengthen the role of lawyers. Other than in some exceptional cases, only qualified lawyers, not the plaintiffs, may plead before commercial courts and on all appeals. The filing of petitions of nullification or rehearing must also be made by a lawyer. Pleading and submitting any documents to the commercial department of the Saudi Supreme Court must be by a lawyer in all cases. As an exception, representatives of administrative bodies and inhouse legal counsels of the private entities can be licensed by the Ministry of Justice to perform the lawyers' exclusive roles. Parties may also authorize their lawyers to accept services of court notices. These are all major changes in the traditional rules of civil procedure. This significant improvement in the Law enhances the role of lawyers in Saudi Arabia and recognizes the importance of the involvement of the legal profession in the commercial sector.

I. Strengthening the role of law principles and precedents.

The importance of the law principles and precedents lies in enhancing clarity and stability and raising awareness and expectation of the interpretation of the law by the courts. For companies and investors, the clarity of the law and raising the level of expectation for the results of the law's interpretation by the courts is one of the very important factors to raise commercial legal security and attract investment.

The regulation confirmed the importance of this matter, as it obligated the competent department in the court to prepare the case before considering it and draft a final report that includes a summary of the procedures that took place in the case, in addition to a comprehensive legal study of the case that includes the relevant law principles and precedents and a proposal of the judgment. The Minister of Justice stated that the new Judicial Code would be binding, not just a guide. This is an unprecedented new step in the Saudi judiciary system. The Law and the Regulations came as a confirmation that all final rulings issued by first instance and appellate commercial courts and the commercial department in the Supreme Court will be published and publicly available.

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