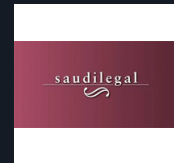


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Saudi Arabia Litigation

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This country-specific Q&A provides an overview of litigation laws and regulations applicable in Saudi Arabia.

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Saudi Arabia: Litigation

1. What are the main methods of resolving disputes in your jurisdiction?

The main method of resolving commercial disputes in Saudi Arabia is litigation. Arbitration is also becoming increasingly popular as a result of the Arbitration Regulation of 2012, which is based on the UNCITRAL model. Article 6 of the Commercial Courts Regulation of 2020 gives two merchants who are parties to a commercial transaction the option to agree on specific procedures for dispute resolution. This opens the door, for example, for binding expert determination, which previously was not an enforceable means of dispute resolution under Saudi Arabian law.

2. What are the main procedural rules governing litigation in your jurisdiction?

The main procedural rules governing commercial litigation are set out in the Commercial Courts Regulation of 2020. Statutory tribunals have their own procedural rules. Issues which are not addressed in the Commercial Courts Regulation or the procedural rules of a statutory tribunal are governed by the Civil Procedure Rules of the General Courts of 2013. Arbitrations are governed by the Arbitration Regulation of 2012.

3. What is the structure and organisation of local courts dealing with claims in your jurisdiction? What is the final court of appeal?

Most types of commercial disputes come under the jurisdiction of the Commercial Courts, whose decisions can be appealed to the Court of Appeal, with further, limited rights of appeal to the Supreme Court. Banking disputes are adjudicated by the Committee for Banking Disputes, whose decisions can be appealed to the Appeal Committee for Banking Disputes and Violations. Securities disputes come under the jurisdiction of the Committee for the Resolution of Securities Disputes, whose decisions can be appealed to the Appeal Committee for the Resolution of Securities Disputes. Disputes involving contracts of insurance are heard by the Committee for the Settlement of Insurance Disputes and Violations, whose decisions can be appealed to the Appeal Committee for the Settlement of Insurance Disputes and Violations.

4. How long does it typically take from commencing proceedings to get to trial in your jurisdiction?

Saudi Arabian legal proceedings take place in a series of short hearings spread over six months to two years to reach a final judgment, but may take longer.

5. Are hearings held in public and are documents filed at court available to the public in your jurisdiction? Are there any exceptions?

Most procedures before the Commercial Court take place online. Physical hearings are open to the public. Under the Commercial Courts Regulation of 2020, public access to the particulars of a commercial case and the documents filed in it is possible upon payment of a fee. This is a new development, since previously all details of disputes were kept confidential. A party with an interest may apply for an order that proceedings or parts thereof are kept confidential. However, an application for inspection must state the case number, so that one cannot make a search whether proceedings involving a particular party are in progress.

6. What, if any, are the relevant limitation periods in your jurisdiction?

Claims before the Commercial Courts, in banking disputes and in insurance disputes become time barred after five years from the date on which the right of action accrued, although the claimant may get an extension if they have a valid excuse. Special time bars apply in securities disputes and shipping cases. The Civil Transactions Regulation of 2023 has introduced multiple new time bars in relation to certain types of claims such as three years for general claims for harm (*darar*), which applies to losses resulting from breach of contract or duty, and claims for unjust enrichment and unjustified payment. Time periods are calculated with reference to Hejra years, which are shorter than Gregorian calendar years.

7. What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any,

are the consequences of non-compliance?

In most commercial cases, the claimant must give at least 15 days' notice before action, details of which must be supplied with the statement of claim. A party who has failed to give the notice before action cannot file the statement of claim. There are no pre-action requirements for proceedings before the statutory tribunals.

8. How are proceedings commenced in your jurisdiction? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?

Proceedings before the Commercial Courts are commenced by filing a statement of claim electronically. The statement of claim must set out particulars of the parties and their representatives, their capacities, an exhaustive statement of the applications, and a statement of all documents relied on in the action. Service is made in most cases on the defendant's registered mobile number through the electronic Absher system. Service is usually made by the court but can also be made by the claimant.

9. How does the court determine whether it has jurisdiction over a claim in your jurisdiction?

Article 16 of the Commercial Courts Regulation sets out details of the disputes under the Commercial Courts' jurisdiction. Likewise, the regulations governing the Committee for Banking Disputes, the Committee for the Resolution of Securities Disputes, and the Committee for the Settlement of Insurance Disputes and Violations set out each tribunal's jurisdiction. When two courts or tribunals have declined jurisdiction in a case, the claimant can apply to the Committee for the Determination of Jurisdictional Disputes at the Supreme Council of the Judiciary, who will determine which court or tribunal must hear the case, and whose decisions cannot be appealed. Agreements to submit disputes to the courts of another jurisdiction, or to arbitration, are given effect by Saudi Arabian courts but a challenge to jurisdiction must be made before filing a defence or other motions, failing which the defendant is deemed to have submitted to the court.

10. How does the court determine which law governs the claims in your jurisdiction?

Saudi Arabian courts apply only Saudi Arabian law, namely Islamic Law as interpreted in Saudi Arabia, and

Saudi Arabian legislation. Although it is permissible for private sector parties to agree to have contracts governed by a law other than Saudi Arabian law, whenever a Saudi Arabian court or tribunal is properly seized of a dispute, the case will be decided only in accordance with Saudi Arabian law, even if a contract is expressed to be governed by the laws of a country other than Saudi Arabia. On the other hand, arbitrations in Saudi Arabia may be conducted under a law other than Saudi Arabian law, if chosen by the parties.

11. In what circumstances, if any, can claims be disposed of without a full trial in your jurisdiction?

The concept of summary judgment does not exist under Saudi Arabian law. Claimants can apply for certain applications to be dealt with on an expedited basis, but these must be combined with full proceedings. Claims under cheques, promissory notes and notarized contracts can be enforced without having a trial.

12. What, if any, are the main types of interim remedies available in your jurisdiction?

Expedited applications can be made in connection with a survey for proof of status; prohibition of travel; stay of new works; judicial custodianship; preservatory attachment; obtaining a product sample; preservation of specific documents; prohibition on disposal or permitting the same; and applications having the status of urgency in commercial regulations.

13. After a claim has been commenced, what written documents must (or can) the parties submit in your jurisdiction? What is the usual timetable?

The parties must submit copies of the documents on which they wish to rely in the proceedings. There is no automatic disclosure of documents, and each party must proceed on the basis of the documents in its possession, unless an application for specific disclosure succeeds.

14. What, if any, are the rules for disclosure of documents in your jurisdiction? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?

A party may request the other party to disclose documents that are connected with the claim. Such

documents must be particularised by specific identity or by type; they must have a connection with the commercial transaction, or result in a fact therein being brought to light; and they must not be of a confidential character. A plea of confidentiality must be supported by reasons why the documents are confidential. Failure to disclose documents as ordered by the court may be treated as circumstantial evidence by the court.

15. How is witness evidence dealt with in your jurisdiction (and in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?

A new Evidence Regulation entered into force in July 2022. The evidence of the parties or their employees or agents has little probative force. As a general rule, witnesses should be independent and have no interest in the outcome of the case. This limits the extent to which witness evidence is used in commercial proceedings in Saudi Arabian proceedings. When witness evidence is introduced, the court must have regard to their probity, behaviour and conduct, and the witness must disclose their relationship with the parties. Witnesses may be cross-examined. An important feature of Saudi Arabian legal proceedings is the taking of an oath. If the claimant has failed to prove his case either through witnesses or documentary evidence, he may challenge the defendant to deny their liability on oath, which may also be ordered by the judge. Likewise, the defendant may in circumstances require the claimant to take the oath. If the party so challenged accepts and denies or affirms the claim on oath, the case is closed without further means of appeal. It is a prerequisite for the taking of an oath that the evidence is not conclusive. When the judge has formed the view that the facts of the case are proven, he must reject the application for a party to take the oath. The oath cannot be taken on behalf of juristic persons.

16. Is expert evidence permitted in your jurisdiction? If so, how is it dealt with (and in particular, are experts appointed by the court or the parties, and what duties do they owe)?

The evidence of court-appointed experts is an important feature of Saudi Arabian legal proceedings. In most cases involving technical or financial issues, or trade custom, the court will appoint an expert. An expert is appointed by the court of its own motion or on the application of a party to the litigation. Usually, the court asks both parties to each nominate three candidates, and if one name is on

both parties' lists, that expert is chosen. If there is no agreement on an expert, the court will choose the expert from lists kept by the court. The expert's findings may be questioned by the parties or by the court, and it is not uncommon for the process to go through several stages, with revisions to the expert's draft report. The court is free to disregard all or part of the expert's findings, but this is unusual.

17. Can final and interim decisions be appealed in your jurisdiction? If so, to which court(s) and within what timescale?

All first-instance judgments and interim decisions of Saudi Arabian courts and tribunals, other than small claims with a value below US\$ 13,350, can be appealed. The appellate courts and tribunals are listed in 3, above. The rules of all courts and tribunals require the application for an appeal from a judgment to be filed within 30 days from receipt of the written judgment. Appeals against expedited judgments or orders must be filed within 10 days from receipt of the judgment or order. Appeals are very common, and in most cases the appellate tribunal reviews the appeal application, the judgment and case file without further argument from the parties, and issues a decision making the judgment final and enforceable. Where the appellate tribunal considers that the application has merit, it may refer the case back to the court or tribunal of first instance, with a request to adduce additional evidence or reconsider the facts in light of directions given by the appellate tribunal. In such situations, the court or tribunal of first instance usually invites further argument from the parties and issues a new judgment. We have been involved in several cases where the process was repeated three times before a final and enforceable judgment was issued. The appellate tribunal can also take over the handling of the case and make its own ruling. A final and enforceable judgment of the Court of Appeal can be appealed to the Supreme Court, on the basis of errors of law, mischaracterisation or mis-description of facts, lack of jurisdiction and *res judicata*. An appeal to the Supreme Court does not result in a stay of enforcement. Lastly, it is possible to object to a final and enforceable judgment by way of review on the basis of narrow grounds such as fraud or forgery, lack of representation, and the like.

18. What are the rules governing enforcement of foreign judgments in your jurisdiction?

The enforcement of foreign judgments in Saudi Arabia is governed by the Enforcement Regulation of 2012, Article 11 of which makes enforcement of foreign judgments

conditional on reciprocity. The only international treaties and conventions on the reciprocal enforcement of judgments to which Saudi Arabia is a party are the Arab League Treaty on the Enforcement of Judgments of 1983 and the Arab Gulf Cooperation Council Convention on the Enforcement of Judgments of 1995. Since 1992, the Saudi Arabian courts have ruled that the only judgments which are enforceable in Saudi Arabia on the basis of reciprocity are judgments of countries who (a) are party to a treaty or convention for the reciprocal enforcement of judgments to which Saudi Arabia is also a party, or (b) whose authorities would give executive force to judgments of the courts of Saudi Arabia without the requirement of instituting an action on the judgment. Specific cases dismissed applications to enforce judgments issued in the United Kingdom and the USA, most recently in 2018.

19. Can the costs of litigation (e.g. court costs, as well as the parties' costs of instructing lawyers, experts and other professionals) be recovered from the other side in your jurisdiction?

Under a new Regulation that entered into force in March 2022, court fees have become payable for the first time in Saudi Arabia. The fees are calculated on a downward sliding scale from 5% to 3% for claims up to SAR 1 million (US\$ 266,668), and at 2% of claims from SAR 1 million to SAR 50 million (US\$ 13,333,333), with a flat charge of US\$ 266,668 for claims above SAR 50 million. These fees must be borne by the losing party. Courts and tribunals can award attorney fees and other costs to a successful litigant, in their discretion. Factors which may be taken into consideration include the amount of the award and whether the defendant has delayed the proceedings unnecessarily.

20. What, if any, are the collective redress (e.g. class action) mechanisms in your jurisdiction?

Class action were first introduced in 2017 before the Committee for the Resolution of Securities Disputes. The Commercial Courts Regulation of 2020 has introduced class actions in commercial disputes. A class action before the Commercial Court requires not less than ten claimants with the same claim and cause, and against the same defendant. The claimants must be represented by the same advocate and the claims must be consolidated into a single statement of claim. It is possible to consolidate claims with an ongoing class action. Before a class action proceeds to trial, a

settlement offer must be made to, and considered by, the claimants.

21. What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings in your jurisdiction?

Other than in class actions, there are no mechanisms to join parties to ongoing proceedings or to consolidate two sets of proceedings.

22. Are third parties allowed to fund litigation in your jurisdiction? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

There are no rules prohibiting third party funding of litigation. There is no requirement to disclose who funds litigation. Third party funders cannot be made liable for the costs incurred by a party.

23. What has been the impact of the COVID-19 pandemic on litigation in your jurisdiction?

Over the last decade, government services in Saudi Arabia, including court proceedings, have gradually been moved to digital platforms. This ongoing evolutionary process was turbo-charged as a result of the COVID-19 crisis in 2020, when all initial court proceedings and interim applications were moved online in a matter of weeks. When court services resumed after the end of the initial lockdown, most hearings were moved to digital platforms. Although there were teething problems, these have been overcome, and remote proceedings will remain the norm, with few procedures requiring physical attendance.

24. What is the main advantage and the main disadvantage of litigating international commercial disputes in your jurisdiction?

Saudi Arabian courts and judicial tribunals may not award judgment interest, nor can they issue judgments in respect of interest. The Civil Transactions Regulation of 2023 has removed several shortcomings of the Saudi Arabian legal system. For example, until now Saudi Arabian courts have not awarded damages for loss of anticipated profit, loss of business opportunity or loss of reputation, but this changed when the new Regulation

entered into force on 20th December 2023. Another advantage of the Saudi Arabian system is that the cost of litigating uncomplicated claims has gone down considerably as a result of proceedings being conducted online.

25. What is the most likely growth area for commercial disputes in your jurisdiction for the next 5 years?

The Civil Transactions Regulation of 2023 has made it possible to bring claims which could not be brought until now, such as loss of profit claims. Also, vicarious liability

has been expanded. Therefore, we may see an increase in commercial disputes generally in areas where bringing such claims were not previously feasible.

26. What, if any, will be the impact of technology on commercial litigation in your jurisdiction in the next 5 years?

Saudi Arabia already has made a successful transition to electronic dispute resolution services. Most glitches in the system have been eliminated already, and one can be confident that the system will become more efficient through continued use.

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