

SAUDI ARABIA

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# Saudi Arbitration Law 2012 – an update

By Ben Cowling



In April 2012, Saudi Arabia enacted a new Arbitration Law (2012 Law), which was a major step forward for commerce in the Kingdom. Two years later, it is timely to consider steps taken since and the impact of the law.

The Saudi Arabian legal system is unfamiliar to many foreign investors as the substantive law is based on Shariah (Islamic law) and the local courts have broad discretions to decide disputes in the absence of a binding precedent system. In order to mitigate these risks, foreign investors commonly opt to include arbitration clauses in their contracts.

The 2012 Law significantly improved the legal landscape for arbitration in Saudi Arabia, which was previously governed by the 1983 Arbitration Law. Since 1983, Saudi Arabia acceded to the New York Convention (in 1994) and UNCITRAL created the Model Law on International Commercial Arbitration (in 1985, with amendments in 2006). The 2012 Law is based on the UNCITRAL Model Law but with significant localisation. The Law applies to both domestic and international commercial arbitration with a Saudi seat but not to foreign arbitral awards.

**Application by local courts:** Local courts have generally been supportive of the 2012 Law and on numerous occasions the courts have declined to hear claims themselves in the face of binding arbitration clauses. One of the features of the 2012 Law is recognition that parties may agree to adopt the rules of arbitration centres located outside the Kingdom as their agreed procedures. The courts have recognised this and in one recent case concerning arbitration governed by the ICC Rules, the Dammam Court of Appeal required the claimant to file its Request for Arbitration with the ICC as the first step and therefore declined the claimant’s application that the court appoint the arbitrators.

That said there are still examples of the courts heavily involving themselves in arbitration cases, contrary to the intention of the 2012 Law.

**Enforcement Law:** In 2013, a new Enforcement Law which defined the process for converting an arbitral award into a recovery was enacted. As arbitral awards made under the 2012 Law have the same status as court decisions after they are ratified, this is a positive development.

One of the most interesting aspects of the Enforcement Law concerns foreign arbitral awards. As the 2012 Law applies only to domestic arbitration and international commercial arbitration with a Saudi seat, it does not apply to the recognition and enforcement of foreign arbitral awards - this is a significant modification of the UNCITRAL Model Law.

However, with the creation of the 2013 Enforcement Law and its Implementing Regulations, this process has been clarified. It has long been necessary when attempting to enforce foreign awards in Saudi Arabia that the arbitral award be both consistent with Shari’ah and made in a place that reciprocally enforces Saudi judgments and awards. According to the 2013 Enforcement Law the reciprocity requirement can be satisfied by the Ministry of Justice issuing an official statement to include the issuing jurisdiction on the approved list. This is a great step forward in overcoming practical obstacles to the recognition and enforcement of foreign arbitral awards in Saudi Arabia.

**No Implementing Regulations:** As is common with Saudi legislation, the 2012 Law states that implementing regulations shall be enacted to set out further detail in relation to the Law. This has not happened to date, which has resulted in some uncertainty with respect to certain aspects of the Law.

For example, as per the Implementing Regulations of the 1983 Law, a sole arbitrator or chairman of an arbitral tribunal must be a Saudi national or a Muslim foreigner. The 2012 Law does not contain this requirement but does say that a sole arbitrator or chairman must be “of full capacity, of good conduct and reputation and the holder of at least a university degree in legal science”. Accordingly, it is unclear whether an arbitral award made on the basis of the 2012 Law could be challenged if the sole arbitrator or chairman is not a Saudi national or a Muslim foreigner. It is hoped that the Implementing Regulations for the 2012 Law will be released soon to resolve this and other issues.

**Announcement of new Saudi arbitration centre:** Finally, the Council of Ministers has announced that a new Saudi arbitration centre will be established in Riyadh. While, final details have not been released, this important development demonstrates the Saudi government’s commitment to fostering arbitration as a key dispute resolution process. It will also result in the creation of a set of local arbitration rules tailored to the requirements of the 2012 Law and will avoid the need to rely on international arbitration centres and their respective rules.

In conclusion, since enactment, the 2012 Law has been implemented successfully. There remain relatively few Saudi arbitrations but this is likely due to the inevitable lead time after parties began to write the 2012 Law into arbitration clauses in their contracts. It is hoped that in two years, a strong track record of arbitration will be established in the Kingdom giving foreign investors further confidence in Saudi Arabia as a positive place to do business.

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