

An overview of dispute resolution

By Jerome Martin



580,000,000,000.00. That's the amount of expenditure in Saudi Riyals estimated in the 2011 Saudi Budget. It's a good reason for contractors and consultants to take notice; much of that expenditure is earmarked for development projects in the Kingdom.

Provided proper advice is taken early on when setting up in Saudi and when negotiating contracts, risks, such as disputes over payment or in regard to political unrest, need not be deterrents.

If disputes do arise then you have a number of options, as below.

The Saudi Courts

There are three types of court:

- (i) *Shari'ah Courts* – general jurisdiction on all matters. In practice they handle criminal, family and civil disputes;
- (ii) *Board of Grievances* – the main court for commercial disputes, including those involving the Government. The principal court for dealing with the enforcement of foreign court judgments and arbitration awards;
- (iii) *Quasi Judicial Committees* – limited to specific industry sectors; eg. the SAMA Committee deals with banking disputes, the CSID Committee with insurance disputes.

The judges apply a combination of Shari'ah and Statute Law and recognise the principle of Freedom of Contract, provided the contract does not violate the laws of the State. Two levels of appeal are possible on points of law.

Saudi arbitration

Arbitration in the Kingdom is governed by the *Saudi Arbitration Act 1983* and *Arbitration Regulations 1985*.

An important feature of the Arbitration Act is a general prohibition on arbitration in matters involving:

- The Government (Art 3);
- Disputes which cannot be the subject of conciliation (eg. criminal matters or, potentially, cases involving non-Shari'ah compliant funding) (Art 2).

As the entire arbitration process is supervised by a court, all proceedings must be conducted in Arabic. There is significant value therefore in ensuring that where contracts will be produced in more than one language, care is taken to ensure that the translations are accurate.

Enforcement of foreign judgments and arbitration awards

Saudi Arabia has ratified the 1983 Riyadh Convention, 1995 GCC Convention and 1958 New York Convention. Procedures therefore exist to enforce foreign awards and judgments within Saudi.

Obtaining a foreign judgment or award outside the Kingdom can make it easier to predict the outcome, duration and cost, but care needs to be taken to ensure enforceability within the Kingdom if you intend to pursue assets that are located within Saudi:

- The foreign Judgment cannot be contrary to Saudi Law;
- The enforcing party must satisfy the Saudi court that the country in which the judgment or award was originally rendered would enforce a Saudi judgment or award.

Alternative Dispute Resolution

While newer ADR methods such as dispute adjudication are not legally binding in Saudi, the Kingdom does use other forms of ADR such as conciliation and mediation to resolve disputes. These procedures have a part to play in preserving long term business relationships with local partners.

As an alternative to dispute resolution within Saudi it may be possible, in contracts being carried out in Saudi that do not involve the Government, to agree to a foreign dispute resolution mechanism with a view to enforcing against assets located in a foreign jurisdiction.

It is vital that careful planning is done at the contract negotiation stage as to how your commercial, and long term business interests in the Kingdom, can best be protected if disputes do arise.

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