

The Saudi Legal System

Saudi Arabia is a key trade and investment partner for Japan. The combination of Saudi Arabia's enormous wealth and King Abdullah bin Abdul Aziz Al Saud's commitment to a far-reaching programme of investment throughout the country means that Saudi Arabia offers excellent opportunities for overseas companies seeking to invest in the Middle East.

However, relatively little is known or understood about the Saudi Arabian legal system by non-Saudis. In this month's newsletter we provide an introduction to Saudi Arabia's rapidly evolving legal and regulatory environment.

The basis of the Saudi legal system

The Saudi legal system relies on Islamic jurisprudence and Shari'ah law underpins the system.

Sources of law

The two pillars of the Saudi legal system are:

- the Quran (the central religious text of Islam); and
- the Sunnah (the teachings, practices and actions of the Prophet).

The Saudi government draws its authority from these two pillars, as confirmed by the Basic Law of Governance of 1992.

After the Quran and the Sunnah, the following are the main sources law, in order of importance:

- the Ijmaa or scholarly consensus;
- the customs and traditions of Saudi Arabia;
- statutory codes; and
- executive regulations, rules, procedures, international treaties and ministerial resolutions.

Dispute resolution in Saudi Arabia

The court system

In brief, Saudi Arabia has a dual system of courts, the Shari'ah Courts and the Board of Grievances¹.

The Board of Grievances was set up for cases involving the government or governmental entities and, in certain circumstances, commercial parties. The Board of Grievances also handles disputes involving administrative decisions and, importantly for foreign investors, the execution of foreign judgments and arbitral awards.

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Should you wish to discuss any of the issues outlined in this newsletter, or any other legal issues that may be relevant to your business, please do not hesitate to contact us.

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¹ On 1 October 2007 King Abdullah bin Abdul Aziz issued a Royal Decree approving a new body of laws to regulate the judiciary and the Board of Grievances. The Royal Decree was partly designed to introduce safeguards into the legal system including the introduction of an appellate level in the form of the Courts of Appeal. A full description of the structure of the courts and the Board of Grievances is outside the scope of this newsletter, but further detailed information about the court system can be found in our Saudi Arabia Investment Guide 2009, copies of which are available upon request.

The approach of the Saudi Courts

The approach of the Shari'ah courts is often complex to outsiders, but it is usually consistent. The judges apply the statutory codes and regulations, but only so long as they do not conflict with the Shari'ah.

Appealing a judgment in Saudi Arabia is complex. The first stage is to review the judgment in accordance with the facts in front of the judge who heard the case at first instance. In this way the appellant is able to challenge the judgment against documents previously submitted. Consequently if the judge has ignored or overlooked a fact, there is an opportunity for him to rectify the judgment. If he does not do so, the case can be sent to the Court of Appeal, where five judges will consider the evidence on the merits. They can confirm the judgment or send it back to the judge at first instance with their comments.

Arbitration in Saudi Arabia

Domestic arbitrations conducted in accordance with Saudi Arabian law are supervised by the competent court. For a commercial dispute, this would be the commercial court. The party seeking arbitration must file an arbitration application (which would include a summary of the claim and would exhibit or attach the arbitration agreement). The court will then summon the other party to appear. The arbitral tribunal is then appointed by the parties. Each party appoints an arbitrator and the two chosen then appoint the chairman. The court then asks both parties to prepare the Terms of Reference, which is stamped and approved by the court. The court has to approve the appointment of the arbitrators as the arbitrators are listed in the Terms of Reference. When this is done, the court passes an order for the arbitral tribunal to look into the case.

Enforcement of foreign judgments and foreign arbitral awards

Enforcement of foreign judgments

In theory, judgment against a Saudi Arabian party obtained outside the Kingdom of Saudi Arabia may be enforced in the Kingdom of Saudi Arabia by submitting it to the Board of Grievances. However it is rare for the Board of Grievances or any other court of the Kingdom of Saudi Arabia to enforce a judgment rendered by a foreign court, except for a small number of judgments from countries which are members of the League of Arab States.

As a result, even if a party obtains a foreign judgment against a Saudi Arabian entity, usually the only way in which the claim can be enforced in Saudi Arabia is to commence a new action on the merits before the Shari'ah courts or the Board of Grievances.

Enforcement of foreign arbitral awards

Many foreign investors prefer to conduct dispute resolution proceedings outside Saudi Arabia, with common options being ICC and LCIA arbitrations conducted overseas. Where a foreign arbitration is not conducted under Saudi law but one of the parties may ultimately want to enforce the award in Saudi Arabia, the parties are strongly advised to appoint an all-male, Muslim panel. If not, enforcement may be prevented on the basis that the award does not comply with the principles of Shari'ah.

Since 1994 Saudi Arabia has been a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the "Convention"). However, enforcement in Saudi Arabia remains problematic. The Board of Grievances, which has jurisdiction to enforce foreign judgments (including judgments on arbitral awards), has refused to enforce awards on public policy

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grounds for not complying with the principles of Shari'ah. However, in theory, their role is to check that the award is compliant with the principles of Shari'ah, strike out those elements that are not and approve it so that it may be enforced by the Civil Rights Authority or a Specialist Judge for the enforcement of judgments.

Herbert Smith's experience in Saudi Arabia and the Middle East

It will be apparent from this brief introduction that the Saudi legal system is complex and represents unfamiliar territory for many foreigners. It is highly recommended that any company seeking to do business in Saudi Arabia seeks the advice of both local and international counsel with expertise and experience of working within the Saudi legal system. For its part, Herbert Smith has a formal and exclusive association in Saudi Arabia with the Al-Ghazzawi Professional Association ("GPA"), one of the Kingdom's largest and leading law firms. Herbert Smith's formal association with GPA in Saudi Arabia allows it to offer a combined international/local law service in this all-important market. GPA is a full-service firm with a strong international profile which has approximately 30 lawyers spread across offices in Jeddah, Riyadh and Dammam.

The content of this article does not constitute legal advice and should not be relied on as such. Specific advice should be sought about your specific circumstances.

Herbert Smith, Gleiss Lutz and Stibbe are three independent firms that have a formal alliance.

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