

## Saudi Arabia Commercial Court Law

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| <i>Type</i>            | Legislative Insight  |
| <i>Date</i>            | 13 avr. 2020   |
| <i>Jurisdiction</i>    | Saudi Arabia   |
| <i>Copyright</i>       | LexisNexis   |
| <i>Legal reference</i> | Saudi Arabia Cabinet Decision No. 511/1441; Saudi Arabia Royal Decree No. M93/1441 |

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Document link: [https://www.lexismiddleeast.com/legislativeInsight/SaudiArabia/Saudi\\_Arabia\\_Commercial\\_Court\\_Law](https://www.lexismiddleeast.com/legislativeInsight/SaudiArabia/Saudi_Arabia_Commercial_Court_Law)



On the 7 April 2020, the Saudi Council of Ministers approved the new Commercial Courts Law, Saudi Arabia Royal Decree No. M93/1441 on the Commercial Courts Law (Saudi Arabia Cabinet Decision No. 511/1441 Approving the Commercial Courts Law). Saudi Arabia Royal Decree No. M93/1441 (Saudi Arabia Cabinet Decision No. 511/1441) replaces those few sections of Saudi Arabia Royal Decree No. M32/1350 Commercial Court Law that had not yet been repealed by other legislation over the past nine decades. Saudi Arabia Royal Decree No. M32/1350 was indeed the oldest statute still (partially) in force in the Kingdom. It was heavily rooted in basic Sharia principles. Saudi Arabia Royal Decree No. M93/1441 (Saudi Arabia Cabinet Decision No. 511/1441) has brought quite revolutionary changes to the judicial scene in Saudi Arabia by enhancing quality and transparency of the judicial process, by facilitating and speeding up procedures, and by expanding the role of the private sector.

## Analysis

### Mediation

First, preceding the phase of litigation itself, Saudi Arabia Royal Decree No. M93/1441 (Saudi Arabia Cabinet Decision No. 511/1441) encourages mediation as a means of dispute resolution, by establishing mediation offices within certain courts such as the Family Courts and the Labour Courts. However, the Ministry of Justice still obliges the litigating parties to attend mandatory settlement hearings before the Labour Office, which aims to reduce the load of cases in the courts and mitigate the effects of disputes. Following in the same footsteps, Article 8 of Saudi Arabia Royal Decree No. M93/1441 (Article 8 of Saudi Arabia Cabinet Decision No. 511/1441) establishes a mechanism to compel the parties to a commercial dispute to mediate before filing the case, in accordance with the still-to-be issued implementing regulations of Saudi Arabia Royal Decree No. M93/1441 (Saudi Arabia Cabinet Decision No. 511/1441).

### Competency of the Commercial Courts

Second, Article 15 of Saudi Arabia Royal Decree No. M93/1441 (Article 15 of Saudi Arabia Cabinet Decision No. 511/1441) delimits much more clearly the competency of the Commercial Courts, which resolves positively conflicts of jurisdiction. In the past indeed, matters concerning commercial transactions involving hybrid contracts (containing some commercial and some non-commercial features) had to be referred to the Supreme Judicial Council, as Article 35 of Saudi Arabia Royal Decree No. M1/1435 Civil Procedure Law had expanded the competency of the Commercial Courts to some types of non-commercial transactions. Article 15 of Saudi Arabia Royal Decree No. M93/1441 (Article 15 of Saudi Arabia Cabinet Decision No. 511/1441) has removed this confusion, which revokes Article 35 of Saudi Arabia Royal Decree No. M1/1435 and specifies one-by-one the types of disputes that fall into the competency of the Commercial Courts.

Furthermore, Article 16 of Saudi Arabia Royal Decree No. M93/1441 (Article 16 of Saudi Arabia Cabinet Decision No. 511/1441) expressly limits the competency of the Commercial Courts regarding the hearing of disputes between partners in companies rooted in Islamic jurisprudence by singling out *mudarabah* companies (passive partnership or 'trustee finance') and not mentioning any other Islamic jurisprudence vehicles such as *alanan* companies, *amlak* companies and *alabdan* companies. Therefore, the new limitation is a waiver of the jurisdiction of the Commercial Courts to hear the disputes related to companies that are known from Islamic jurisprudence.

### Quality enhancing changes

Third, Saudi Arabia Royal Decree No. M93/1441 (Saudi Arabia Cabinet Decision No. 511/1441) brings about many quality-enhancing changes. Most importantly, it greatly supports the lawyers' profession as the filing of cases and initiating them is now restricted to licensed lawyers only, as per Article 20 of Saudi Arabia Royal Decree No. M93/1441 (Article 20 of Saudi Arabia Cabinet Decision No. 511/1441). This stands in stark contrast to the old regulations under which individuals could represent themselves and plead their cases directly before the court. This very fundamental change proves the keenness of the Ministry of Justice to make sure that the commercial judiciary is in the hands of specialists and thus guarantees that both plaintiffs and defendants are able to fully benefit from the justice system and thus avoid any loss of rights, if they do not understand the type and form of a business transaction.

Also, Article 5 of Saudi Arabia Royal Decree No. M93/1441 (Article 5 of Saudi Arabia Cabinet Decision No. 511/1441) introduces a Case Management Department that will be outsourced to the private sector. Saudi Arabia Royal Decree No. M93/1441 (Saudi Arabia Cabinet Decision No. 511/1441) expressly permits to employ the private sector to conduct mediation ahead of the litigation process, to manage the courtroom, to register case filings, to hand over judgments, to notify and to serve notices, to manage the relevant departments in the court, and to document evidence.

Other enhancement of quality, Article 50 of Saudi Arabia Royal Decree No. M93/1441 (Article 50 of Saudi Arabia Cabinet Decision No. 511/1441) authorizes the litigating parties to cross-examine witnesses under the supervision of the Commercial Court. This approach is new as the court regulations did not allow it before because the power to accept the testimony of a witness has always been reserved to the judge, which was deemed extended to the power to question them.

Furthermore, under the old system, witnesses could be rejected for reasons related to their lack of Islamic discipline, whereas this rule has now been waived by Article 48 of Saudi Arabia Royal Decree No. M93/1441 (Article 48 of Saudi Arabia Cabinet Decision No. 511/1441), which provides that the factors influencing the acceptance of witnesses are moderation, good behaviour and familiarity with the case.

Moreover, the Saudi judiciary has now adopted the concept of class action cases in litigation. Consequently, when a group of claimants in Saudi Arabia have identical claims that arise from different sources of obligation against the same defendant, they must present several separate cases. In practice, the lawyer can coordinate keeping all relevant cases at the same time and transfer them to one single circuit. Saudi Arabia Royal Decree No. M93/1441 (Saudi Arabia Cabinet Decision No. 511/1441)

allows class actions. In accordance with Article 8 of Saudi Arabia Royal Decree No. M93/1441 (Article 8 of Saudi Arabia Cabinet Decision No. 511/1441), the implementing regulations will identify the process of hearing such type of cases.

## Speed factor

Fourth, it appears that the Ministry has been extremely concerned to acknowledge more efficiently the principle that trade is based on the speed factor, and by that, protect the economy from faltering. Article 19 to 24 of Saudi Arabia Royal Decree No. M93/1441 (Article 19 to 24 of Saudi Arabia Cabinet Decision No. 511/1441) therefore provided that the claimants must submit their complete case file electronically before attending any session, and the judge may rule, according to his discretion and depending on the circumstances of the case, that there may be no sessions at all. The changes will result in shorter litigation periods, address the lack of seriousness of parties who resort to delay tactics, and prevent timeout excuses as the submissions will be transferred immediately to the opponent who must respond within a fixed period and, upon completing the reply, the case will be raised directly to the judge for review, then a ruling will be issued.

Also, Saudi Arabia Royal Decree No. M93/1441 (Saudi Arabia Cabinet Decision No. 511/1441) has removed doubts regarding the value of proof of electronic documents and as to whether these can be used as a means of proof, by admitting them explicitly as a significant means of evidence.

Article 24 of Saudi Arabia Royal Decree No. M93/1441 (Article 24 of Saudi Arabia Cabinet Decision No. 511/1441) has introduced a time-bar by setting the period in which the Commercial Courts will hear a matter to five Hijri years (i.e., approximately four years and ten months) as of the date on which the right came into existence, which is an exception to the Sharia principle according to which “rights are not subject to statutes of limitations.”

Furthermore, since Saudi Arabia Royal Decree No. M1/1435 gives the right to object against the judgment to both parties (i.e., loser and winner alike), which has led to delay tactics to avoid the execution, Article 74 of Saudi Arabia Royal Decree No. M93/1441 (Article 74 of Saudi Arabia Cabinet Decision No. 511/1441) provides that the right to appeal is reserved to the losing party only.

In addition, it is now also permissible for the parties to agree that there is no appeal and that the ruling of the first instance court is final. This agreement can be made in the contract or during the lawsuit.

Following the example of civil law countries, Saudi Arabia Royal Decree No. M93/1441 (Saudi Arabia Cabinet Decision No. 511/1441) permits the issuing of a payment order by the judge for debentures. As regular debt bonds cannot be executed directly by the execution judge, the creditor must follow a lengthy two-step procedure before the court and the execution court, in the event of non-payment: first, proving the debt, and second, executing the judgment that proves the debt. This lengthy procedure has often caused severe damage due to the length of the procedures and the failure to prove the debt. Therefore, Chapter 9 of Saudi Arabia Royal Decree No. M93/1441 (Chapter 9 of Saudi Arabia Cabinet Decision No. 511/1441) addresses the issue of payment orders and the period of notice.

## Costs of the procedure

Fifth and last, in terms of costs of the procedure and diversification of state revenues, Saudi Arabia Royal Decree No. M93/1441 (Saudi Arabia Cabinet Decision No. 511/1441) hints at the possibility that the adjudication of claims will not be a free Government service anymore. In that perspective, Article 13 of Saudi Arabia Royal Decree No. M93/1441 (Article 13 of Saudi Arabia Cabinet Decision No. 511/1441) has recognized the possibility for the judge to impose a fine not exceeding SAR 10,000 for time-overruns or procrastination of the judicial process, and to allow, with some largesse, compensation claims relating to court cases before the Commercial Courts.

## Conclusion

Saudi Arabia Royal Decree No. M93/1441 (Saudi Arabia Cabinet Decision No. 511/1441) aims to keep pace with the latest international practices related to commercial disputes by facilitating the procedures and raising their quality, along with reducing the duration of litigation. These measures have been taken in order to support the current stage which Saudi Arabia has currently entered, especially to reach the goals of the Kingdom's Vision 2030.

Saudi Arabia Royal Decree No. M93/1441 (Saudi Arabia Cabinet Decision No. 511/1441) will be an important legislative tool in order to achieve the highest quality of results, efficient performance, superior organization of judicial procedures, and completion of the digital transformation process. This will result in a speedier resolution of commercial disputes in an area where time is always of the essence. Saudi Arabia Royal Decree No. M93/1441 (Saudi Arabia Cabinet Decision No. 511/1441) will also help the methodology of institutional justice by providing flexibility for commercial agreements and with regard to the adjudication and the rules of evidence, as required by the specific nature of commercial contracts, always provided that it does not violate public order and the fundamental rules of justice.

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