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Saudi Arabia





Saudi Arabia

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A. Legislation and rules

A.1 Legislation

There has been one significant development to the arbitration landscape in Saudi Arabia in 2017, namely the introduction of the much-anticipated Implementing Regulations of the New Arbitration Law (the “Implementing Regulations”). The Implementing Regulations were issued in May 2017 and came into effect the following month. The Implementing Regulations serve as an explanatory guide to the Arbitration Law³ and expand on the scope and interpretations of the provisions of the Arbitration Law, covering topics ranging from the composition of the panel and appointment of arbitrators to the invalidation of an arbitration award.

A notable provision in terms of service relates to approving the use of electronic means to notify the parties of matters relevant to the arbitration. This is an expansion of the Arbitration Law, which stipulated personal delivery or regular mail delivery.

Moreover, the Implementing Regulations have clarified the scope of the term “competent court,” which was mentioned in the Arbitration Law without specification.

Furthermore, Article 13 of the Implementing Regulations includes an important clarification in the Arbitration Law. It allows joinder of other parties to the proceeding, but only after the other parties to the proceeding and the party being joined consent. Therefore, unlike

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³ Issued by virtue of Royal Decree No. 34/M dated 24/5/1433 H – 16 April 2012.

joinder in Saudi courts, joinder in arbitration proceedings is not compulsory.

A.2 Institutions, rules and infrastructure

Until recently, there had not been any institutions regulating arbitration in KSA. However, following the issuance of a Council of Ministers' decree in 2014 to form an arbitration center to work under the auspices of the Council of Saudi Chambers, the Saudi Center for Commercial Arbitration (SCCA) was established to supervise domestic and international commercial arbitrations in the Kingdom. The SCCA is the first institution of its kind in KSA and sets forth rules for conducting arbitrations in KSA in accordance with international arbitration standards. Participation in the SCCA is voluntary, and ad hoc arbitrations remain the norm. The New Arbitration Law also permits arbitrations in the Kingdom to be conducted in accordance with the rules of international arbitration bodies, such as the ICC.

B. Cases

B.1 *Jadawel International v. Emaar Property*

In 2004, Jadawel International, a Saudi developer, filed a case with the Board of Grievances in Riyadh, claiming that Emaar Property, a Dubai-based developer, had breached a joint-venture agreement. The Board of Grievances held that it had no jurisdiction to hear the dispute and the matter was referred to arbitration.

In 2006, Jadawel commenced arbitration against Emaar. The arbitration was before a three-member tribunal seated in Saudi Arabia. Jadawel claimed damages in the amount of USD 1.2 billion as a result of the alleged breach.

In 2008, the arbitration panel dismissed Jadawel's claims and ordered Jadawel to pay legal costs. The award was submitted to the Board of Grievances for enforcement. The Board re-examined the merits to ensure compliance with Islamic law, and then proceeded to reverse the



award. The damages awarded to Emaar were annulled, and Emaar was ordered to pay more than USD 250 million in damages to Jadawel. Emaar appealed the ruling. Eventually, the parties settled their dispute.

The case was significant because the possibility of review on the merits created great uncertainty as to the outcome of arbitral proceedings in the Kingdom.

B.2 *Etihad Etisalat (“Mobily”) v. Mobile Telecommunication Company Saudi Arabia (“Zain”)*

In December 2014, Mobily commenced arbitration against Zain, claiming SAR 2.2 billion (approximately USD 586 million) in damages arising from a services agreement signed between the two parties in May 2008. Although acknowledging that it owed Mobily a modest amount, Zain rejected the claim, stating that it arose from Mobily’s unilateral revocation of amendments to the services agreement to which the parties had agreed.

After about two years of hearings, the arbitration panel awarded Mobily SAR 219 million, amounting to less than 10% of Mobily’s claim. Mobily has indicated that it will not appeal the award.

The arbitration was conducted under the New Arbitration Law. Mobily’s decision not to appeal the case was probably due to the fact that appeals on the merits are not allowed under the New Arbitration Law. The case is significant, both in the Saudi telecommunications sector and in the arbitration arena, as it demonstrates the positive developments brought about by the New Arbitration Law, particularly the finality of arbitral awards.

C. Funding in international arbitration

Funding of arbitration in Saudi Arabia is not a topic for which the regulating authorities have stipulated any rules. Parties are neither prohibited nor encouraged to seek funding for the arbitration process, nor is the disclosure thereof a regulatory requirement. Fees charged by

the arbitral panel and related fees and charges have customarily been borne by the parties themselves.

In the case of institutional arbitration in Saudi Arabia, the SCCA has set rules for administrative fees and arbitral panel charges, based on the amount in dispute. Where the amount in dispute is not fixed, the SCCA charges a set amount of SAR 309,448 (USD 82,500) in administration fees and a fixed fee of SAR 897,760 (USD 239,400). The arbitration fees set out by the SCCA are based on a single-arbitrator panel, where fees are multiplied according to the ultimate number of arbitrators sitting on the panel.

On the other hand, fees for ad hoc arbitration are left to the parties' agreement. It is customary in Saudi Arabia that each party bears its own costs and fees. There is no published database of historic data or record of past arrangements.

Contingency fees are customary throughout legal practice in Saudi Arabia, including arbitration.