

New arbitration law in the Kingdom of Saudi Arabia

By Ben Cowling



The new Arbitration Law – enacted on April 16th, 2012 – has wide-ranging implications for businesses (both local and international) trading in the domestic market. In particular, the new Law removes many of the negative aspects of the previous Arbitration Law such that businesses can have much greater confidence in arbitration as an effective means of dispute resolution.

The new Arbitration Law entirely replaces the 1983 Arbitration Law. The law will come into effect 30 days after it has been published in the Official Gazette, which has not happened yet. Areas of substantive change between the old and the new Laws include the following:

- Under the new Law, arbitration need not be conducted in the Arabic language, if the parties or the arbitral tribunal have decided to use other languages. In addition, the arbitral tribunal is bound to apply the substantive law chosen by the parties in the relevant contract (even when the choice of law is not Saudi Arabian law).
- In addition to the existing requirements for arbitrators set out in the 1983 Law, the new Law requires that sole arbitrators or chairmen of panels of multiple arbitrators be holders of at least a university degree in Shari'ah science.
- Arbitrators have a positive obligation to keep parties informed of circumstances that may give rise to conflicts of interest.
- The new Law sets out a defined process for challenges to the arbitral tribunal to be made (e.g. due to bias or conflict of interest), including time limits for complaining parties to lodge objections in the relevant court. This removes the ability of parties to object to the enforcement of arbitral awards on the basis of such grounds when they have not been raised previously within the time limit.
- Where the parties have not agreed that particular arbitration rules apply (e.g. ICC), the new Law sets out a detailed arbitration procedure that applies by default.
- The arbitral award must be issued within 12 months from the

date that arbitration was commenced, subject to the arbitral tribunal's power to extend this by a further 6 months and the parties' ability to agree longer extensions. This gives the arbitral tribunal a much more realistic timeframe to decide major commercial disputes than under the 1983 Law.

- Upon the arbitral award being issued, any party seeking to invalidate the award must issue such an application within 60 days. As such, the onus is on the aggrieved party to raise any objection within a defined time frame, rather than waiting until the successful party seeks to enforce the award.
- Upon issuing such an application within the 60-day period, the parties have limited grounds upon which they can argue that the award should be invalidated. In addition, arguments that the award violates Shari'ah, public order or the arbitration agreement may only be heard if the relevant court raises such issues on its own initiative. The new Law provides that the relevant court may not examine the subject matter and facts of the dispute in considering whether the award should be invalidated. This is a major improvement from the 1983 Law, which gave the courts a broad discretion to revisit the merits of the dispute in the course of the enforcement process and undermined the arbitration process.
- Subject to the invalidation process, arbitral awards made under the new Law acquire the force of *res judicata* and become enforceable.

In summary, the new Arbitration Law sets out a sophisticated regime that parties to commercial contracts can rely on to effectively govern the resolution of their disputes. While the 1983 Arbitration was supportive of arbitration in the Kingdom, it lacked sufficient detail to give commercial parties confidence in the process and also gave rise to significant practical risks. Accordingly, the new Law constitutes a significant step forward in the development in the law of the Kingdom.

**Abdulaziz A. Al-Bosaily Law Office
in association with Clyde & Co LLP**

PO Box 16560, Riyadh 11474, Kingdom of Saudi Arabia

Tel: (966) 1 200 8817

Fax: (966) 1 200 8558

Email: ben.cowling@albosailylawoffice.com

www.clydeco.com