

# Insight: International Arbitration

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## Reform of the Saudi Arbitration Law

On 16 April 2012, the Council of Ministers of the Kingdom of Saudi Arabia ("**Saudi Arabia**") approved the text of a new arbitration law (the "**2012 Law**") intended to supersede the existing 1983 law (the "**1983 Law**"). The 2012 Law was published in the Official Gazette (Um al Qura) on 8 June 2012 and came into force 30 days thereafter, on 8 July 2012. The reforms it introduces are expected to overhaul the arbitration regime in Saudi Arabia, in the broader context of the long-awaited reform of arbitration laws in other Gulf countries such as the United Arab Emirates and Qatar.

Traditionally, arbitration in Saudi Arabia has been challenging for non-Saudi parties. The 1983 Law – as supplemented by the corresponding implementing regulations issued in 1985 – was not adapted to reflect developments elsewhere in the practice of international arbitration or Saudi Arabia's ratification on 19 April 1994 of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Award (the "**NY Convention**"). The 1983 Law was thus characterised by the heavy limitations it placed on party autonomy and its call for the intervention of the Saudi courts throughout the arbitral process. Under the 1983 Law, arbitration in Saudi Arabia was difficult for parties with limited knowledge of Arabic or Islamic *Shari'a*.

The 2012 Law – which is largely based on the UNCITRAL Model Law – addresses many of the shortcomings of the 1983 Law: it increases party autonomy, grants arbitrators wider powers, and curbs court intervention in the arbitral process. The full extent of these reforms remains subject to the implementing regulations, which have not yet been issued and will probably clarify some of the ambiguities and uncertainties in the 2012 Law. Nevertheless, the 2012 Law represents a significant step in the direction of a more mainstream arbitration regime in Saudi Arabia.

Below is a description of some of the key features of the 2012 Law, most of which are in sharp contrast with the 1983 Law:

- **Scope of Application:** The 2012 Law applies to all arbitrations – domestic and international – wherein the parties have agreed to subject their dispute to that law (Article 2). The 2012 Law defines an international arbitration along the lines of the definition in Article 1(3) of the UNCITRAL Model Law (Article 3), but does not otherwise distinguish between domestic and international arbitration.
- **Substantive / Procedural Law:** Parties are free to designate the substantive law applicable to their dispute (Article 38(1)(a)). Failing such designation, the tribunal is required to apply the law that is most closely connected to the dispute (Article 38(1)(b)). Parties are similarly free to choose a foreign seat of arbitration (Article 28). Absent the parties' agreement on the seat, the tribunal is required to select the seat taking into account the circumstances of the case and the convenience to the parties (Article 28).



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- **Rules of Procedure:** The 2012 Law allows parties to select the rules applicable to the arbitral proceedings by, for example, incorporating institutional rules such as ICC, IDRC, DIAC, or LCIA. The provisions of these rules will prevail to the extent that they do not contravene the principles of *Shari'a* (Article 25(1)). If the parties fail to agree on the applicable rules of procedure, the default provisions of the 2012 Law will apply.
- **Appointment of Arbitrators:** The 2012 Law requires that the sole arbitrator (or the chairperson where the tribunal is a panel) hold a degree in law or *Shari'a*, whereas the 1983 Law required a "working knowledge of *Shari'a* tenets, business regulations and of the customs and traditions of the Kingdom" (Article 14).
- **Language:** The arbitration no longer needs to be conducted in Arabic. Both the parties and the tribunal can choose the language of the proceedings (Article 29).
- **Power of the Arbitrators / Competence-Competence Principle:** Under the 2012 Law, the tribunal has the power to determine its own jurisdiction (Article 20) and to rule on challenges to arbitrators (Article 17(1)).
- **Court Intervention:** A direct result of the wider range of powers granted to the arbitrators is a curb in the Saudi courts' involvement in the arbitral process. The competent Saudi court thus participates in the constitution of the tribunal only to the extent that it is called upon to make an appointment by the parties or where the appointed arbitrators are unable to jointly appoint a chairperson (Article 15). After the tribunal is appointed, the court retains a subsidiary role in the conduct of the proceedings.
- **Duration of the Proceedings:** The 2012 Law has relaxed the timelines for arbitration under the 1983 law. The new default rule is that the arbitrators must render their award within 12 months of the start of the proceedings (Article 40(1)). This time period can be extended by a further six months at the tribunal's discretion, or longer if the parties so agree.
- **Finality of Arbitral Awards:** Under the prior law, an arbitral award was neither final nor binding until approved by the Saudi Board of Grievances – a process which could take several months. The 2012 Law now recognises the final and binding effect of arbitral awards without requiring any further approval by the competent court (Article 52).
- **Annulment of Arbitral Awards:** Under the prior law, parties had an almost unfettered right to challenge the award before the competent Saudi court, including on the merits. The 2012 Law, by contrast, provides limited grounds for annulment, largely based on the NY Convention. These include the invalidity of the arbitration agreement, an irregularity in the constitution of the tribunal, and the tribunal's non-compliance with the mandate given to it by the parties (Article 50(1)(a)-(g)). A party may file a request for annulment within 60 days of receipt of the arbitral award (Article 51(1)). A court can on its own motion annul an award if it is contrary to public policy or *Shari'a*, if the parties' agreement was not respected, or if the subject-matter of the dispute was not arbitrable (Article 50(2)). In deciding the application, the court must not re-examine the facts or merits of the case (Article 50(4)).
- **Recognition and Enforcement:** Parties can apply for the recognition and enforcement of an arbitral award after the expiry of the 60-day annulment period (Article 55(1)). The competent Saudi court can refuse enforcement where the award is contrary to an existing court decision or order, public policy or *Shari'a* (Article 55(2)(a)-(c)). To the extent that infringing portions can be separated from the remaining part of the award, an order shall be issued for the enforcement of the non-infringing part of the award (Article 55(2)(b)). Thus, for instance, an award that directs a party to pay interest on principal sums awarded would not necessarily be entirely void as is the case under the 1983 Law.

The 2012 Law is certainly a welcomed development in the practice of international arbitration in Saudi Arabia. However, the success of the 2012 Law will eventually depend on the anticipated implementing regulations as well as the interpretation and application of this law by the Saudi courts.