Saudi Modernizes Its Arbitration Law[1]

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Arbitration has always been an extremely important method of alternative dispute resolution when it comes to international commercial disputes. It guarantees a high degree of confidentiality and it is often a lot faster than ordinary litigation. The parties may choose their own arbitrators, a major advantage over having any judge appointed, especially where certain technical knowledge may be necessary in order to better understand the dispute. In Sharia law, which constitutes the basis of all legislation in Saudi Arabia, arbitration goes back to an inherent principle that encourages the settlement of disputes (*sulh*).

Notwithstanding the many benefits of arbitration over litigation, foreign exporters and multi-nationals setting up in Saudi have always been reluctant to resort to local arbitration. An often cited reason being that the 1983 Saudi Arbitration Law contained too little to gain the confidence of international companies. The 1983 Law indeed imposed a number of restrictions, such as a tight control of the procedure by the normally competent court, and omitted several vital provisions, all of which have now been codified in the new Saudi Arbitration Law which was enacted by Royal Decree M/34 for the year 1433H and came into force on 8 July 2012. The following points may be cited as examples of the advancements of the new Saudi Arbitration Law:

International trade disputes

The New Regulations explicitly provide that the arbitration is considered international where the dispute is over international trade (Art.3). Article 3 also goes further in listing down several tests in order to determine whether a particular dispute concerns 'international trade' as such. Whilst the old law did not exclude international trade from its ambit, codifying it under the new regulations in an extensive manner gives foreign companies comfort in its inclusion.

Rights of the disputing parties

Moreover, the new law appears to grant the disputing parties a whole set of newly-regulated rights throughout the arbitral proceedings. Whereas the 1985 Implementing Regulations to the old law were more concerned in providing for various deadlines relating to the submission of documents and procedures during the arbitral hearing, the new law seems to codify a complete set of rights, similar to the entrenched common law principles of due process and fair trial (further details can be expected from the implementing regulations to the new law, which have not yet been enacted). Whilst under the regime of the old law it could be argued that these rights always existed since they were part of the Islamic Sharia, their codification in 2012 gives Western companies a lot more confidence in the new arbitral system. These rights are as follows:

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- Both disputing parties are entitled to be treated with equality. This includes an equal chance to present/defend the case (Art.27).

- The parties must agree on the language to be used during the arbitral proceedings (Art.29). Under the 1983 Law, only Arabic could be the official language of the proceedings.

- Both parties are entitled to receive the other party's notes of evidence. This helps parties prepare their submissions and prevents introducing evidence without the knowledge of the other party (Art. 31).

- The right to receive the minutes of proceedings (Art. 33(3)).

- The right to amend demands/aspects of defence (Art. 32).

Challenging an arbitral finding

The most important development under the new law is that, contrary to the situation under the old statute, arbitral findings cannot be appealed against in the regular courts and can only be challenged on very narrow grounds. If the findings are being challenged and the competent court finds that the arbitration agreement must be enforced then such a decision would be considered final and no further challenge will be allowed (Art. 51(2)). On the other hand, if the court finds the arbitral finding to be null, the parties may still choose to enforce it provided the arbitration agreement is valid (Art. 50(3)).

Despite these significant developments in the new law, it is also pleasing to note the retention of some of the characteristics of the previous law which, coupled with the improvements, make the new law a comprehensive set of rules designed to cater for the resolution of most sorts of commercial disputes. An example of this retention is the following:

The new law along with the old law requires the arbitrator to 'have at least a university degree in the legal or regulatory sciences'. This option is noteworthy since it allows Muslims qualified in the West to arbitrate and not only Saudi nationals possessing Sharia degrees.