



## THE NEW COMMERCIAL COURT LAW HIGHLIGHTS OF THE NEW LAW

The new Commercial Court Law (the Law) issued by Royal Decree No. (M / 93) dated 15/08/1441 AH is considered a “quantum leap” in the development of the commercial judiciary in the Kingdom. It includes provisions that concern investors, traders and their counterparts in commercial transactions, as well as keeping pace with the Kingdom’s 2030 vision, which aims to build a strong and diversified economy for the Kingdom.

The new law consists of 96 articles divided into eleven chapters and published in the Official Gazette, "Umm Al-Qura", on 14/08/1441 (corresponding to 07/04/2020). It will come into effect after a period of 60 days has elapsed from the date of its publication in the official gazette (18 June 2020). During this period, the Shari'a Pleadings Law will apply to pending cases before the Commercial Courts.

This Law is based on many principles, the most important of which are, but not limited to, the speed of adjudication in claims and encouraging the use of peaceful means to resolve disputes (mediation and conciliation). The Law permits the Court to use the private sector in serving notices, serving judgments, exchanging statements, documenting evidentiary procedures and administering specific circuits of the Court.

Other advantages include merging between graduates of Shari'a and secular law when forming judicial circuits, use of electronic platforms in line with the Saudi Ministry of Justice's approach to a fully digital transformation and encouraging the role of lawyers and protecting the KSA Bar from those with no professional licences.

In order to speed the process of adjudication, communication and coordination between the circuits has been facilitated through the formation of Commercial Courts from the First Instance and Appellate Court and the permissibility of forming circuits with one judge instead of three. The impact of this is that, in essence, the number of Courts available to hear cases will increase, improving court efficiency.

It is now possible to serve notices via the verified digital address indicated in the disputed contract, or the digital address registered in the Commercial Register or address verified by the postal office. The parties can also choose the address of a lawyer to receive notices. The Law also describes procedures for serving notices to verified digital addresses via a text message to a verified mobile phone number, or via authenticated email addresses.

The Law states that the jurisdiction of the Commercial Court is to consider disputes arising between traders connected with their original or ancillary business. Claims can be filed against a trader as a commercial contract dispute, if the claimed amount exceeds SAR 100,000. The High Judicial Council may, if necessary, increase the jurisdictional amount. In addition to the aforesaid cases, the following will fall also within the Commercial Court's jurisdiction:

- Partners' disputes in the Mudaraba companies;
- Claims and violations arising from the application of the provisions of the Company and Bankruptcy Laws;
- Claims and violations arising from the application of intellectual property law;
- Claims and violations arising from the application of other Commercial Laws;
- Claims related to a possessor, trustee, liquidator or the appointed expert;
- If the dispute is in the Court's jurisdiction, claims for compensation for damages arising from a case previously heard by the Court.

Other developments include:

- Where an application is made by one party contesting the jurisdiction of the Commercial Court this must be adjudicated within 20 days of the application.
- The claimant is required to submit all requests and documents with the statement of claim as an alternative to having each document submitted during hearings; in return the defendant submits all his documents at least one day before the first hearing.
- Where urgent requests are concerned the matter can be heard expeditiously by one judge. The judge can also impose travel bans. Whilst the judgment can be enacted immediately, the Court is obligated to send the parties a copy of the ruling within a period

not exceeding 20 days from the date of pronouncement.

- Another advantage introduced by the Law is the prompt restoration of rights to their owners. Here, the creditor can apply to the Commercial Court requesting the issuance of a ruling to claim a debt, provided that the debt is a fixed amount in writing and due, and the debtor must be notified in writing of the request for payment at least 5 days before the Claimant applies to the Court.
- Limitation period - The new Commercial Court Law provides that no claim shall be heard after the lapse of 5 years from the date at which the claimed rights/entitlements arise; unless the defendant admits the right or the claimant provides an acceptable excuse for the delay in filing the claim.
- The Commercial Court law has adopted the concept of class actions.
- The law introduced financial fines during hearings and proceedings to urge parties to abide by their duties. The legislator gave the right to the Commercial Court when one of the parties violates the procedures or when not attending hearings to issue a fine not exceeding SAR10,000 and the Court's decision on this will be final. It may also impose the same fine in the event that one of the parties fails to submit its memorandum or fails to submit any requested document within the specified dates.
- The Law permits the parties to agree on the Court's subject jurisdiction, and also allows them to agree on specific rules to provide proofs of evidence, and the permissibility of agreeing to transfer the burden of proof. The law also permits the litigants, if they are merchants, the right to agree on pleading procedures and related matters.
- Along with the variety of advantages mentioned in the Law, a number of important Commercial Law articles have been stipulated, including

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freedom of proof, where proof can be established in commercial matters by all means including digital proof such as digital editor and digital media and means of communication, e-mail, digital registers and others determined by the soon to be published Executive Regulations.

- Whereas the Commercial Law stems from trade practices and since it is difficult to set articles to encompass all commercial transactions, the legislator has permitted reliance on the rules of commercial custom between parties, and made the burden of proving their presence on those which adhere to them. The Law permitted also the submission of written testimony as proof with no need to bring witnesses during hearings, as the Court assesses their integrity through hearing the details of the circumstances of the claim.
- Finally, the Law addresses claims regarding urgent enforceability and in the event that the judgment or ruling is for an urgent claim, the Court may, upon the request of whom the ruling is in favour, decide to include in the judgment urgent enforceability in the event that any delay with the ruling might cause serious damage.

The new Law is clearly a step forward in bringing the Saudi Legal System up to date and introducing efficiencies. Whilst it is early days, the hope is that the Commercial Courts will introduce confidence into the system thus enhancing the confidence of foreign investors.

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