

CIVIL TRANSACTIONS LAW OF SAUDI ARABIA

The Kingdom of Saudi Arabia issued the Civil Transactions Law (the "CTL"), pursuant to Royal Decree M/191 dated 29/11/1444H (corresponding to 19 June 2023G), which has come into force on 02/06/1445H (corresponding to 15 December 2023G). The CTL is intended to codify Islamic law (*Shari'ah*) principles under a single set of regulations and by doing so the CTL offers a higher level of certainty and predictability on commercial transactions in Saudi Arabia.

The CTL is a milestone in Saudi Arabia's journey towards achieving its Vision 2030 by undertaking major legal reforms which are expected to positively impact the Saudi Arabian economy and create a market that is attractive to both local and foreign investors.

In this briefing, we discuss the background to Saudi law and the legal system and summarise some of the key features of the CTL and the impact it would have on commercial transactions in Saudi Arabia.

Historical Background – Saudi Law

Saudi law is based on Islamic law (*Shari'ah*) which is extracted from two main sources - the Qur'an and the writings detailing the Prophet Mohammed's (peace be upon him) sayings and actions (known as *Sunnah*). Saudi Arabian courts and judicial committees have considerable discretion while applying basic precepts of Islamic law to a particular set of circumstances. In addition, the Saudi Arabian government issues, from time to time, rules and regulations with the objective of supplementing Islamic law.

The discretionary powers of the Saudi Arabian courts and judicial committees on the interpretation of different principles of Islamic law has created uncertainty for legal practitioners in the application and interpretation of Islamic law. This challenge is exacerbated given that previous decisions of courts and judicial committees are not considered binding precedents.

The primary objective for the introduction of the CTL is to address issues of interpretation of Islamic law. The CTL has codified numerous *Shari'ah* principles which form the basis of Saudi law in respect of commercial transactions and, as a result, provides for a higher level of certainty and predictability regarding commercial legal issues.

Key subjects covered

- Historical Background – Saudi Law
- General Overview – Civil Transactions Law
- Effective Date and Scope of Application
- Impact on Current Regulations
- Conclusion

General Overview – Civil Transactions Law

The CTL is an extensive body of law covering various concepts and principles aimed at addressing issues of uncertainty in application that have been prevalent in commercial transactions and their enforcement in Saudi Arabia. We set out below some of the key provisions of the CTL:

(a) Application of the CTL

The CTL applies to all commercial matters and contracts that are covered in the CTL (e.g. formation of contract, termination of contract, specific performance, damages, etc.). The CTL lists forty-one *Shari'ah* principles which serve as guiding principles for transactions and are to be applied to the extent the other provisions of the CTL do not cover the matter. To the extent none of the articles under the CTL, including the *Shari'ah* principles set out therein, apply to a particular scenario, the most relevant principle of *Shari'ah* not set out in the CTL shall apply. This priority scheme provides clarity and guidance on how the provisions of the CTL are intended to apply – the key improvement brought about by the CTL is the fact that the *Shari'ah* principles (which are usually open to wide interpretation) serve as a fallback rather than primary provisions of the CTL.

(b) Formation of Contracts

The CTL codifies the main elements which are required for the formation of a contract and the relevant rules relating to the same, including the requirements of an offer, acceptance and the methods by which acceptance can be made. As per the CTL and save for certain exceptions, a contract is formed based on the parties' willingness to enter into such contract, which may be manifested (either explicitly or implicitly) orally, in writing or based on previous dealings between such parties.

Further, the CTL introduces the elements required for a promise to enter into a future contract to be binding on the parties – a concept which was previously of questionable enforceability under Saudi law. The CTL provides that a promise made by a party to enter into a future contract is not binding unless: (i) the material terms of such future contract, as required by the CTL, are specified; (ii) the period within which such future contract must be entered into is determined; and (iii) the requirements of the contract exist at the time of making the promise.

(c) Termination of Contracts

The CTL has introduced certain time limitations within which a party is required to exercise its right to terminate a contract. For example, the CTL provides that a party's right to terminate a contract due to breach by a counterparty may not be enforced if the non-breaching party does not terminate the contract within one year from the date it became aware of such breach. The commencement of such time period is deferred in circumstances where the breach was due to lack of capacity or duress. It remains to be seen if and how the courts in Saudi Arabia will apply such time limitation to a continuing breach or default.

(d) **Torts**

Prior to the CTL, concepts akin to tort law were generally governed by, and enforced on the basis of, *Shari'ah* principles in Saudi Arabia. The CTL has codified various concepts of tort such as intentional and unintentional harm, causation and duty of care.

(e) **Damages**

The CTL also permits parties to recover indirect damages in the form of lost profits, which is a shift from the current practice in Saudi Arabia where the courts and judicial committees would only award actual, direct and proven damages/costs. In addition, the parties can now agree to the quantum of damages/compensation (e.g. liquidated damages) under the contract, unless the subject matter of contract relates to a cash amount.

The CTL also provides the courts with the power to increase or decrease any pre-determined compensation amount in certain circumstances and upon the request of a party. For example, the court may increase the compensation amount where the damages are higher than the predetermined amount on account of fraud or gross negligence by the non-claiming party and the court may decrease such amount where the predetermined amount is exaggerated or if the underlying obligation has been partially paid.

(f) **Mandatory Provisions**

There are certain provisions under the CTL which are mandatory and cannot be contracted out of or waived. For example, the CTL prohibits parties to waive the principle of good faith or to agree to restrict or waive liability resulting from any harmful acts.

Effective date and Scope of Application

The CTL came into force on 02/06/1445H (corresponding to 15 December 2023G), and supersedes all other laws and regulations which contradict its terms. The provisions of the CTL also apply retrospectively to all matters preceding the date on which the CTL came into effect, save for the following scenarios:

- (a) where a party has relied on a statutory provision or judicial principle that contradicts the provisions of the CTL prior to the CTL coming into effect; or
- (b) where a statutory provision provides for a statute of limitation in which legal proceedings must be commenced, which period has commenced prior to the CTL coming into effect.

Impact on Current Regulations

With the introduction of the CTL, certain amendments have been made to other laws and regulations issued in Saudi Arabia, including the Law of Civil Procedure, the Commercial Courts Law, the Law of Securing Rights in Moveable Assets and the Saudi Notarization Law. The amendments made to relevant laws and regulations should also be considered and taken into account when applying the provisions of the CTL.

Conclusion

The introduction of the CTL to the laws of Saudi Arabia brings about a higher degree of certainty to the creation, interpretation and enforcement of commercial contracts, which would no doubt enhance the confidence of all persons doing business in Saudi Arabia. Although the CTL is yet to be tested before the courts and judicial committees in Saudi Arabia, it is a big step towards addressing some of the key issues pertinent to commercial transactions in Saudi Arabia. The CTL is indeed a testament to Saudi Arabia's commitment and desire to enhance its legal system to attract global investors and to transition itself as a leading world economy, all of which is part of the Vision 2030 objectives of Saudi Arabia.

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