

## The New Saudi Commercial Courts Regulations – What Does it Mean for International Parties

Aouni Shahoud Almousa, Jonathan P. Noble, and Zoha Aseem

*This client alert discusses the new Saudi Commercial Courts Regulation that enters into force on 8 June 2020 (the “CCR”).<sup>1</sup> It brings far reaching amendments affecting the functioning of and proceedings before the Commercial Courts in Saudi-Arabia and replaces the relevant Norms of the Commercial Courts Regulation of 1931 (Royal Decree No. M/32 of 1931 (1350 hijri) and Art. 35 of the Sharia-Procedure Regulation of 2013 (Royal Decree No. M/1 of 2013 (1435 hijri) “SPR”).*

### Background

The new Regulation provides revolutionary rules regarding the jurisdiction of the Saudi Commercial Courts, notification and service of documents, and the role parties and the private sector can play in the proceedings. Although the CCR provides new developments that could be beneficial to foreign entities, international parties should still consider having their commercial contracts governed by foreign jurisdictions.

### Jurisdiction of the Commercial Courts

The jurisdiction of the Commercial Courts is regulated by Articles 15-18 CCR. Article 16 CCR limits the jurisdiction to commercial disputes such as, *inter alia*,

- (i) disputes between merchants in relation to their commercial business and
- (ii) claims against a merchant from a commercial contract.

Pursuant to Article 15 CCR, the international jurisdiction of the Commercial Courts is subject to the general rules on international jurisdiction of the Saudi Courts, regulated by Article 24-30 SPR. Accordingly, the Saudi Commercial Courts will have international jurisdiction if, for example,

- (i) the defendant is a Saudi citizen or company (Art. 24 SPR); or
- (ii) the disputes are related to assets located in Saudi Arabia or to a contractual obligation that is (partially) fulfilled or is to be fulfilled in Saudi Arabia (Art. 26 (a) SPR).

However, international parties may not be subject to the international jurisdiction of the Commercial Courts if they contractually agreed that any disputes related to the commercial transaction would be governed by a foreign jurisdiction or resolved through arbitration.

---

<sup>1</sup> According to Art. 66 CCR the regulation enters into force after 60 Days of its publication. The CCR was issued on 09. April 2020 (15.08.1441 *hijri*) based on the Royal Decree No. M/93.

## Expansion of the Commercial Courts

Perhaps the most significant impact of the CCR is to expand the jurisdiction of Commercial Courts outside of major urban centers. Commercial Courts were already well established in larger Saudi cities, and experienced judges preside over most disputes. The CCR now requires all general courts (including those in smaller cities) to develop a department for commercial disputes.

The CCR therefore allows the jurisdiction of the Commercial Courts to expand to every city in Saudi Arabia. General courts are now required to assign specific judges with relevant experience where there is not currently a separate commercial court.

Entities based in smaller cities will now be able to conveniently litigate their commercial disputes within their jurisdiction.

## Notification and Service of Documents

Saudi Arabia has already implemented technological advancements in the court procedures, such as requiring all requests and pleadings to be submitted to the Courts in electronic form. With the CCR, the government is furthering such advancements as proceedings can now be conducted by video conference.

Additionally, the CCR includes new service of process provisions that are revolutionary for civil procedure. Among other innovations, the CCR permits notification and service of documents via e-mail (Article 9 (1)(a) CCR).

Previous legislation placed onerous conditions on service of process, and it was very difficult for parties to convince the courts that service was effectuated properly.

Service of process to a **Saudi** company can now be performed by e-mail to the address of:

- (i) the official representative of the company;
- (ii) the personally liable partner;
- (iii) the manager or his representative; or
- (iv) the legal department or the manager of the concerned branch of the company (Articles 9(1)(a) and 11(2) CCR).

Service of process via email to **foreign** companies with a branch office or agent in Saudi Arabia can be made to:

- (i) the manager of the concerned branch or his representative; or
- (ii) the agent of the company or his representative (Article 11(3) and Art. 9 (1) (a) CCR).

The provisions of the CCR will be deemed to also include notice of service via SMS to registered mobile numbers.

According to Article 12 CCR these rules can also apply to service on foreign companies without a representative office in Saudi Arabia, if the parties have agreed to notification via email. Otherwise, notification must be performed through official channels.

From a practical point of view, parties will want to examine the legality of service via email from the perspective of the jurisdiction of the foreign party as issues could arise during the recognition and enforcement of Saudi judgements in the foreign country.

This loosening of restrictions can benefit and harm international companies active in Saudi Arabia. While it may make it easier to serve process on recalcitrant parties in Saudi Arabia, these new

procedural rules also make it easier to validly serve international parties that may be harmed by being forced to litigate in Saudi Arabia.

### **The Role of the Parties and the Private Sector in the New System**

According to the CCR, the parties can play a significant role in shaping the proceedings before the Commercial Courts. Article 6 CCR gives parties – provided that they are merchants – the ability to freely agree on all procedural measures to be followed by the court. Such flexibility allows companies to use international practices when litigating in Saudi Arabia, which was only previously available in arbitration proceedings.

A major part of the competence and function of the Commercial Courts can be decided by the private sector pursuant to Article 5 CCR. Accordingly, the Court can seek assistance through the private sector to decide procedures including:

- (i) notification and service of documents;
- (ii) management of the courtroom and relevant court departments;
- (iii) registration of case filings; and
- (iv) organization of the meetings and management of mediation prior to litigation.

### **Applicable Law and Derogation**

The CCR does not make any reference to the question of applicable law. This question is, therefore, still subject to the general rules of the SPR. According to Article 1 SPR, the Saudi judge must always apply the norms of the Islamic Sharia and Saudi law.

However, the parties can avoid the application of Sharia norms or Saudi law by agreeing on a jurisdiction outside Saudi Arabia or agreeing on Arbitration in or outside Saudi Arabia. In accordance with Saudi case law, it is possible to derogate the jurisdiction of Saudi courts by a jurisdiction clause agreed among the parties.<sup>2</sup> Agreements on jurisdiction outside Saudi Arabia are widely accepted in Saudi law practice.<sup>3</sup>

Given the unproven nature of the Commercial Courts and the lack of codification of many laws in Saudi Arabia, this makes the significance of choice of law and dispute resolution clauses as important as ever. Although the CCR provides revolutionary developments, international parties should still consider choosing foreign governing law and dispute resolution options when contracting in Saudi Arabia.

Where local parties are hesitant to agree to foreign jurisdictions, international parties can also consider dispute resolution by arbitration in Saudi Arabia rather than the courts, as this would not obligate the parties to follow Sharia norms or uncodified laws.

---

<sup>2</sup> For an example of permissive approaches to choice of law provisions see: Court of Cassation, Civil, Case no. 389, JY 2, 05.10.1998 (13.06.1419 *hijri*).

<sup>3</sup> Court of Cassation, Civil, Case no. 389, JY 2, 05.10.1998 (13.06.1419 *hijri*).

---

**If you would like more information about this topic, please contact us.**

**Jonathan P. Noble**

Local Partner

Dubai

noble@amereller.com

**Zoha Aseem**

Associate

Dubai

aseem@amereller.com

**BERLIN** | Amereller Rechtsanwälte PmbB | Kurfürstenhöfe | Spreuerfer 5 | 10178 | Berlin | Germany |  
t: +49.30.609.895.660

**DUBAI** | Amereller Legal Consultants | One By Omniyat, 14th Floor | Business Bay | P.O. Box 97706 | Dubai | UAE  
t: +971 4 432 3671

**This client alert is a public document for informational purposes only and should not be construed as legal advice. Readers should not act upon the information provided here without consulting professional legal counsel. This material may be considered advertising under certain rules of professional conduct.**

**Copyright © 2020**