

Enforcement (Amendment) Act 2017 to the implementation Act 2013 of Saudi Arabia: A Critical Review*

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Abstract

The current legal framework in the Kingdom of Saudi Arabia compels both court decisions and arbitration tribunal awards seeking enforcement in the kingdom to go through specialised enforcement courts and be subject to the enforcement law of 2013. This law is the first unified enforcement regulation in the kingdom's legislative history and reflects a real attempt towards modernising the kingdom's legal framework. Before the introduction of the 2013 enforcement regulation, the enforcement of foreign decisions and awards used to be subject to unnecessary complications that made the kingdom's legal system less attractive to international commerce.

However, the kingdom's authorities have realised such deficiency in its enforcement procedures and as a result the enforcement law of 2013 was issued. This regulation was followed by the issuance of a number of other regulations in different areas of law. These regulations aim to codify the Saudi legal system by creating a set of written rules that are easily accessible by both concerned parties, whether local or foreign. Such attempts to codify the kingdom's legal system has helped bring the kingdom's legal framework more in line with the developed world's practices and increased its attractiveness and reliability in concern to foreign commerce.

This is particularly important because the kingdom has suffered from a long-standing history of dissatisfying foreign commerce especially when it comes to the enforcement of foreign awards and decisions. In light of such a vision for modernisation, the kingdom has further attempted to develop its enforcement procedures by issuing a second implementation act for the 2013 enforcement regulation. This act was issued in November 2017 and introduced nine new provisions that attempt to clarify some of ambiguities embodied in the 2013 enforcement regulation. This paper aims to critically assess the 2017

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amendments and the extent to which they develop the enforcement procedure in Saudi Arabia.

Keywords: Saudi Courts, arbitration tribunal, specialised enforcement courts, modernising the Saudi's legal framework, foreign commerce.

Introduction

Unlike most Middle Eastern countries, the Kingdom of Saudi Arabia's (KSA) legal system is not based on a written constitution, but on the holy Quran and Sunnah. The Quran is Islam's holy book and the supreme source of Islamic jurisprudence, and it is believed by Muslims to be the literal word of God⁽¹⁾. Sunnah is prophet Mohammed's PBUH statements, deeds and tacit confirmation or condemnation of someone's acts or practices⁽²⁾. The kingdom has relied on these two sources as its constitution from the day the kingdom was united by King Abdulaziz in 1932⁽³⁾.

However, in recent decades the kingdom has found itself in a legal position that is incompatible with the increasing commercial demands in the region. Unlike other neighbouring countries that chose to legislate certain laws to ensure they meet these emerging changes, the KSA's movement in that direction has been very slow. The move started in 1992 when a royal decree was issued by King Fahad for the issuance of the Basic Law of Saudi Arabia in 1992. This law remains in force and it constitutes the most comprehensive legislation shaping the kingdom's legal structure.

Since that time the kingdom has issued a number of legislations in an attempt to codify its legal system and to make it more accessible and reliable for both local and international entities⁽⁴⁾. In the last five years, there have been more than seven new regulations and implementation acts covering different aspects of the Saudi legal framework⁽⁵⁾. Most remarkable was the Enforcement Law of 2013, which formed the first law of its kind in the kingdom and ushered in an era that guarantees the enforcement of both local and foreign decisions in commercial disputes. This regulation was followed by the 2013 and the 2017 implementation acts that aim to clarify the provisions of the 2013

(1) Frank E. Vogel, *Islamic law and Legal system*, (Brill., Leiden, The Netherlands, 2002), pp 3-4.

(2) Wael B. Hallaq, *An introduction to Islamic law*. Cambridge University Press, UK, 2009.

(3) *Ibid*.

(4) The Basic Law of Governance, Royal Order A/90, dated 27/8/1412H (corresponding to 1 March 1992), O.G. Umm al-Qura, 3397, dated 2/9/1412H (corresponding to 5 March 1992).

(5) This includes but is not limited to Saudi arbitration law 2012, Saudi corporate governance Regulation 2017, Saudi company law 2016.

Enforcement Law and cover areas that it did not. The aim of this paper is to engage in a critical analysis of the second Implementation Act by comparing it with the previous one and discussing the main amendments introduced by the latter act.

Enforcement Law 2013

On 3rd July 2012, royal decree No. M/53 was issued, approving the Saudi Enforcement Law, which came into force in February 2013. This was followed by the issuance of the Implementation Act of 2013 in the same month that the 2013 regulation came into force⁽⁶⁾. This Enforcement Law was the first unified Enforcement Law in the KSA's history. Before its introduction there was no single legal framework governing the enforcement of decisions and awards within the kingdom. However, there were a number of regulations dealing with the enforcement process, such as the Law of the Board of Grievances 2007 and the Law of Procedure before Sharia Courts 2007; both have been replaced by the 2013 Enforcement Law⁽⁷⁾. It is therefore considered to have made a considerable transformation in the kingdom's enforcement procedures, in addition to be an important step towards codifying the kingdom's legal system, and creating an attractive forum for enforcing both local and international awards and decisions.

This new Enforcement Law and its Implementation Acts have provisions governing the entire process of enforcing awards and decision reached inside or outside the kingdom's territory. Consequently, this law influences both corporate and personal entities operating in Saudi Arabia or conducting business with a Saudi party, by controlling the enforcement process of their dispute resolution's decisions⁽⁸⁾.

The 2013 Enforcement Law clearly describes the enforcement judge's roles and responsibilities in enforcing court judgements and arbitral awards in the kingdom. Article 2 of the Enforcement Law enables the judge to "enforce and oversee the enforcement of all judgments and awards in KSA except for judgments and decisions related to administrative and criminal cases". This article further provides that an enforcement officer should lend assistance to the enforcement judge, and it also requires judges to abide by the Sharia court

(6) Saudi Arabia's new Enforcement Law was issued through Royal Decree No. M/53 of 13 Sha'ban 1433 Hejra corresponding to July 3, 2013 Gregorian.

(7) Royal Decree No M/78 of 1st October 2007.

(8) Saudi Arabia's new Enforcement Law was issued through Royal Decree No. M/53 of 13 Sha'ban 1433 Hejra corresponding to July 3, 2013 Gregorian.

hearing's procedures, unless otherwise provided in this law⁽⁹⁾.

Before the new Enforcement Law and its Implementation Acts were issued, the competent court for enforcing both foreign awards and judgements was the Board of Grievances. This led to any parties wishing to enforce their awards or decisions being stuck in the rigidity and slow procedures of the Board of Grievances. Such procedures may even have resulted in the parties seeking enforcement being adversely disadvantaged⁽¹⁰⁾.

Such deficiency in the enforcement process was fixed by the 2013 law, which afforded enforcement courts the right to enforcing all awards within the kingdom's jurisdiction. It also prevented judges from reviewing the merits of foreign decisions and required them to enforce such decisions if they meet certain criteria, as shall be illustrated later on in this paper. This in turn has limited the scope of judges' discretion in ascertaining whether a particular foreign decision is to be enforced or not.

The 2013 enforcement regulation has also created some semblance of certainty in the kingdom enforcement procedure whereby all decisions seeking enforcement in the kingdom are to be subject to the same single enforcement framework. In addition, the legislation of the 2013 regulation forms another step taken by the Saudi legislature to codify its legal system and make it more accessible to any interested party.

The 2017 Implementation Act AND amendments To The 2013 Enforcement Law Implementation Act

Despite the successful application of the 2013 Enforcement Law in enforcing decisions and awards over the past five years, the Implementation Act of 2013 was still regarded as falling below expectations and did not provide sufficient explanation of the Enforcement Law's provisions. Therefore, there was a need for a further implementation act to clarify some of the ambiguous articles of the enforcement regulation and to regulate the areas that had not been covered by the initial regulation.

On 9th November 2017, the Minister of Justice issued decision number 526, approving amendments to the 2013 Enforcement Law Implementation Act. These amendments were introduced in accordance with Article 97 (1) of the Enforcement Law Implementation Act of 2013, which states that "this

(9) Saudi Arabia's new Enforcement Law was issued through Royal Decree No. M/53 of 13 Sha'ban 1433 Hejra corresponding to July 3, 2013 Gregorian.

(10) Shoult A, editor, Doing Business with Saudi Arabia, GMB Publishing Ltd, 2006.

Implementation Act should be revisited when required, for the purpose of updating it". These new amendments were studied by a number of senior judges in several workshops at the Ministry of Justice, followed by a survey asking for any suggested amendments to be published on the Ministry of Justice's website before being approved by the Minister of Justice [on 09/11/2017]⁽¹¹⁾. The 2017 amendment could have amended or repealed any of the 2013 enforcement's regulation provisions as well as the provisions of the 2013 implementation rule.

Although this new amendment has introduced several new provisions, nevertheless there are still 25 provisions in the Enforcement Law with no Implementation Act provision clarifying them. There are also 23 provisions of the 2013 Implementation Act left unchanged by this new amendment. Finally, the 2017 amendments introduced nine new provisions, which shall form the core of this paper's discussion. These nine provisions have been categorised by the author of this paper as follows: family disputes, provisional measures, arbitral awards and other procedural issues. Each of these categories will be considered in more detail below.

Family disputes

The legal system in the KSA is founded on Sharia principles and therefore there are Sharia courts with jurisdiction over all disputes taking place in the kingdom⁽¹²⁾. These disputes involve (but are not limited to) civil suits about marriage, divorce, child custody and inheritance, and commercial disputes involving contracts, promissory notes and banking transactions⁽¹³⁾. The 2017 amendments to the Saudi Enforcement Law Implementation Acts have introduced new provisions with regard to the enforcement of family disputes, changing by that some of the 2013 enforcement regulation provisions to reflect the new amendment.

One of the major areas covered by the 2017 amendments is child custody and visits, and where such a right should be litigated and enforced. In this regard, Article 4 (4) of the 2017 Implementation Act provides that "the Spatial jurisdiction for the enforcement of disputes involving custody or visits resides in the country of custody or visit as stipulated in the enforcement order".

(11) Saudi enforcement law implementation act amendment. No. 526, 09/11/2017. Available at: https://www.moj.gov.sa/ar/Ministry/Pages/Tanfidsystem_Update.aspx. Accessed on 07/12/2017.

(12) Jan Michiel O., *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, Leiden University Press, The Netherlands, 2016 Jan 1.

(13) F.E. Vogel, *Islamic Law and the Legal System of Saudi: Studies of Saudi Arabia*, (Vol. 8), Brill, (2000).

This has repealed the previous provision of the 2013 Implementation Act that provides that spatial jurisdiction in the enforcement of custody and visit cases to the country of the child⁽¹⁴⁾. This amendment is extremely important since it takes into account the best interests of the child and removes a major hurdle that is faced by judges when trying to enforce their issued decisions.

Prior to the 2017 amendment the child could be in country thousands of miles away from Saudi, but the adjudication process would still have to be completed in Saudi. This led to the unenforceability of some of the issued decisions in this regard because different jurisdictions have different laws and as such, the kingdom's issued decisions could, in some instances, be contrary to the applied rules of the country of the child's residence. The fact that the adjudication is now shifted to the country of the child's residence makes the enforceability of such decision much more efficient and effective, as opposed to the situation before the 2017 amendments.

The new amendment has further empowered the person seeking enforcement for child custody or visits with an immediate enforcement. This is clearly seen in the introduction of a new provision that did not exist in the previous implementation, that enables an enforcement court to expedite the enforcement of judicial judgements involving the child's handover to his custodian without being bound by Article 34 of the law. Article 34 provides a set of procedures that have to be followed by both the person seeking enforcement and the enforcement judge, before the enforcement takes place.

This is a particularly important amendment since sometimes the person against whom the enforcement is sought relies on the sluggish process of enforcement to delay handing over the children to their lawful custodian. With such an amendment in place, a child's right to be with their lawful custodian will be ensured, as well as the process of law and order⁽¹⁵⁾.

Another amendment was made with regard to the enforcement of decisions over alimony for the spouse or children. Article 73 (1) of the 2017 amendments to the Implementation Act provides that if the enforcement includes the delivery of funds that are periodically due, such as alimony, and the person against whom the enforcement is sought has a bank account, then the enforcement judge shall order the bank to deduct the amount owed by the person(s) seeking enforcement and it shall be deposited in her/their accounts without being

(14) Saudi enforcement law implementation act amendment. No. 526, 09/11/2017. Available at: https://www.moj.gov.sa/ar/Ministry/Pages/Tanfidsystem_Update.aspx. Accessed on 07/12/2017.

(15) *ibid*.

bound by the procedure stipulated under Article 34 of the law. This exemption from being subject to Article 34 is one of the new amendments introduced by the 2017 ministerial decision, in an attempt to enforce such decisions in a faster and more efficient way so as to help those in need. The beneficiaries of such expenses might be small children with no income. Therefore, Sharia obliges husbands to pay for their wives' and children's needs and to ensure their wellbeing, and the same is followed by the Saudi legal system⁽¹⁶⁾.

The fact that alimony payments were exempt from the requirements imposed by Article 34, which covers the enforcement of all matters including a payment of fund, shows a real appreciation by the legislators for the need for an effective enforcement method that protects the interests of such beneficiaries. The fact that before the 2017 amendment, Article 34 had to be complied to with prior enforcement of alimony funds was very ineffective. It was even used by some husbands as a method of extending the enforcement procedure and this has consequently disadvantaged the beneficiaries. The provision of alimony is not only Sharia-based, but it is also inserted in most of Islamic countries' domestic regulation. For instance, Article 41 (c) of the Indonesian civil law obliges the husband to pay such funds for his ex-wife and children⁽¹⁷⁾. The same is also recognised by Egypt, UAE, Jordan and many other Muslim states⁽¹⁸⁾.

Provisional measures

Enforcement judges were empowered by the 2013 Enforcement Law with full supervision over enforcement procedures (Article 2). These judges could seek assistance from the police or any other relevant authority to issue travel bans, imprisonment, disclosing asset orders and other provisional measures. In this regard the 2017 Implementation Act has, for the first time in Saudi enforcement regulation history, enabled the enforcement courts to issue travel bans before even communicating an enforcement notice to the party against whom enforcement is sought. This was evidenced in Article 25 (34) of the Implementation Act, which states: "The judicial circuit of the enforcement courts has the right to prevent the person against whom enforcement is sought from traveling before informing him of the enforcement order".

In this respect the 2017 amendment has also enabled the same circuit to require

(16) The ministry of justice. Women rights under Saudi Regulations. Available at: <https://www.moj.gov.sa/ar/Ministry/Courts/Pages/WomenRights.aspx>. Accessed on 05/01/2018.

(17) Sriro, A. I., Sriro's desk reference of Indonesian law, Equinox Publishing, Sheffield, UK, (2006).

(18) Welchman, L. (Ed.), Women's rights and Islamic family law: perspectives on reform, (Vol. 4), Zed Books, London, UK, (2004).

a financial guarantor from the enforcing party to ensure that the party against whom the enforcement is sought is well compensated for any inconvenience if the enforcement party's request is proven to be false. This is also reflected in neighbouring countries such as the UAE, which enables creditors to apply for the issuance of travel bans provided that there is a real risk of the debtor leaving the country before the issuance of an enforcement decision.

The court may also require the creditor to provide some sort of financial guarantee to help protect the debtor from any loss or liability should the creditor's claimed appeal later be unjustified⁽¹⁹⁾. Therefore, it is clear that the 2017 amendment has provided the enforcement court with more power to ensure the efficiency and effectiveness of its enforcement procedure as it ensures that enforcement claims are only made once there is a genuinely true cause for such a claim⁽²⁰⁾.

The new amendment has also introduced another amendment in relation to the imprisonment of any debtor who refuses to comply with the court of enforcement's decision. Both the 2013 and 2017 Implementation Act have exempted refusal as a result of insolvency from imprisonment and stipulated in a number of other provisions how an insolvent debtor is dealt with⁽²¹⁾. For imprisonment purposes, refusal means that the debtor refuses to pay whatever he owes the creditor, despite having the financial capacity to make such a payment. In this case the 2013 Implementation Act gives the court the discretion to either imprison the debtor or simply rely on other means to ensure that he pays, for example requiring some sort of guarantee or a personal guarantor⁽²²⁾.

This was one of the major deficiencies in the old rule, since many debtors chose not to pay and relied on the judge's discretion to make the process of enforcement lengthy. This led to the creditor being disadvantaged by the judicial process of enforcement to the extent that they would settle with only partial payment of the amount owed by the debtor as a fulfilment of all the money due.

(19) Newma, Lawrence W., and Colin Ong. *Interim measures in international arbitration*. Juris Publishing Inc., (2014).

(20) Saudi enforcement law implementation act amendment. No. 526, 09/11/2017. Available at: https://www.moj.gov.sa/ar/Ministry/Pages/Tanfidsystem_Update.aspx. Accessed on 07/12/2017.

(21) Saudi Arabia's new Enforcement Law was issued through Royal Decree No. M/53 of 13 Sha'ban 1433 Hejra corresponding to July 3, 2013 Gregorian. Art 84 (3).

(22) *Ibid.* Article 83 (2).

However, this is no longer the case since the new amendment has set criteria that results in the immediate imprisonment of the debtor, and as such has limited the scope of the judge's discretion. These criteria are set in Article 83 (1) of the 2017 Implementation Act, which states that the debtor who abstains from enforcement has to be imprisoned if the reason for the indebtedness is the investment of funds, or if the amount of the debt is 1 million SR, or if the number of creditors is five persons or more.

In these three situations, the act requires the debtor's imprisonment and prohibits his release until the enforcing party consents to such release or a judicial decision (subject to appeal) is obtained. This new amendment will help solve the above deficiency, increase people's trust in the judicial system and ensure that debtors fulfil their financial commitments to their creditors. Despite the above conditions, judges still have discretion for imprisoning debtors who do not fall within any of the above categories for any failure to comply with the enforcement decision⁽²³⁾.

Another new provision introduced by the 2017 Implementation Act was Article 86 (1), which clarified Article 86 of the Enforcement Law of 2013. Article 86 of the Enforcement Law stated that the provisions of executive detention shall apply to the legal representative of the private legal person or the one responsible for obstructing the enforcement from his or her subordinates⁽²⁴⁾.

The old Implementation Act did not clarify this and did not even have a provision related to this article of the Enforcement Law. However, the 2017 Implementation Act provided that Article 86 is only applicable against such a person in relation to whether the person actually acted or omitted to perform an act, and it does not include financial claims. Such acts or omissions are related to the judge's decision and whether the person did what he/she was required to do or did not do what he was prohibited from doing by such a judicial decision. This provision is related to all claims of enforcements that do not involve any financial dispute⁽²⁵⁾.

Foreign decisions enforcement

Both the 2013 Enforcement Law and the 2012 Saudi Arbitration Regulation of 2012 (SAR) have developed the enforcement procedures of foreign

(23) Ibid. Article 83 (1).

(24) Saudi enforcement law implementation act amendment. No. 526, 09/11/2017. Available at: https://www.moj.gov.sa/ar/Ministry/Pages/Tanfidsystem_Update.aspx. Accessed on 07/12/2017.

(25) Ibid. Article 86 (1).

awards and judgement. Therefore, it is no longer possible for Saudi courts to review the merits of the parties' disputes once an award is made⁽²⁶⁾. The 2013 Enforcement Law further states that, if certain conditions are met, only enforcement courts can enforce decisions. This is contrary to the old practice of the Board of Grievances, which was in charge of such enforcements⁽²⁷⁾.

These conditions have been stipulated in Article 11 of the 2013 Enforcement Law, which provides that an award is enforceable only if the following is established.

The principle of reciprocity, local court's lack of jurisdiction, compliance with the relevant proceedings, the award is final, the award does not clash with previous local judgements in this regard, and the award does not infringe the KSA's public policy. Once these conditions are met by an award then its enforcement is likely to succeed⁽²⁸⁾.

Such provisions have improved the enforcement of arbitration awards rendered inside and outside the kingdom and ensured that such awards are enforced with the efficiency and speed required. This was illustrated in a case that involved an ICC award rendered in London, where its enforcement was sought in the KSA. This case involved a claimant who was a UAE subsidiary of a Greek telecoms company, who succeeded in his claim against a Saudi data communication service provider. Although, the claimant was granted an ICC award for the amount of US \$18.5 million - a significant sum of money - it was enforced within a period of three months.

The speed by which such award was enforced reflected a huge development in the arbitration practice of the kingdom. It also ushered in an arbitration-friendly environment whereby arbitration awards are guaranteed an effective and efficient enforcement procedure⁽²⁹⁾.

Despite the improvement introduced by Article 11 of the 2013 Enforcement Law, there were still some issues with regard to what constitutes Saudi public policy and which party bears the burden of proving reciprocity. The 2013

(26) (Art 50 (4), Saudi Arbitration Regulation of 2012.

(27) Mohammed, A. (2016). A Critical Analysis of the Legal Problems associated with Recognition and Enforcement of Arbitral Awards in Saudi Arabia: Will the New Saudi Arbitration Law (2012) Resolve the Main Legal Problems? Available at: <http://repository.essex.ac.uk/17245/>. Accessed on 12/12/2017.

(28) Saudi Arabia's new Enforcement Law was issued through Royal Decree No. M/53 of 13 Sha'ban 1433 Hejra corresponding to July 3, 2013 Gregorian

(29) () Quinlan, H and Al Amer, A. Landmark enforcement decision in the Kingdom of Saudi Arabia, (2016). Available at: <https://www.dlapiper.com/en/saudi-arabia/insights/publications/2016/05/landmark-enforcement-decision/>. Accessed on 08/01/2018.

Implementation Act has clarified some of the law's ambiguities and also clarified that Saudi public policy refers to Islamic Sharia rules.

Nevertheless, the 2013 Implementation rule assigned the role of proving reciprocity to the Ministry of Justice. Article 11 (5) of said rule provides that "The enforcement judge shall verify that the State in which the foreign award or order was issued, reciprocates with Saudi Arabia, by an official statement from the Ministry of Justice". So, the burden of proving such evidence has been placed on the enforcement court, which had to enquire from the Ministry of Justice whether reciprocity exists between the kingdom and the country from which the award was rendered.

This was problematic because the ministry has no officially accredited list of the states that reciprocate with the kingdom's locally issued decisions. Therefore, the ministry's failure to provide an answer to the enforcement court was likely to cripple the enforcement process, unless the party seeking enforcement could establish evidence of such reciprocity himself, as the practice was before the 2013 Enforcement regulation. Al-Ammari and Martin commented on this issue by stating that if the "Saudi Ministry of Justice applies that protocol properly, arbitration awards issued by tribunals seated in countries that have ratified either of those conventions should satisfy the requirement of reciprocity since Saudi Arabia has ratified those same conventions and has acquired similar reciprocal rights"⁽³⁰⁾.

Al Ammari's view of the kingdom's appreciation of international convention is evidenced in Article 94 of the enforcement regulation. It states that "The application of this Law shall not prejudice treaties and agreements concluded between the Kingdom and countries, international institutions and organizations". This reflects the legislators of this regulation's desire to uphold the kingdom's international obligation and to rely on international conventions to support the arbitration practice in the kingdom, not the opposite. This view was further approved by the 2016 ICC award involving \$18.5 million USD in favour of a UAE subsidiary to be enforced in Saudi Arabia. Despite the award being rendered in the UK, the Saudi enforcement court has approved it and issued an enforcement order for the party seeking enforcement. In this case the requirement of reciprocity was satisfied simply by referring to the UK accession to the New York Convention⁽³¹⁾. This is a huge development in the

(30) Saud Al-Ammari and A. Timothy Martin, «Arbitration in the Kingdom of Saudi Arabia,» *Arbitration International* 30, no. 2, (2014), p. 404.

(31) Quinlan., H. 2016. Available at: <https://www.lexology.com/library/detail.aspx?g=b76552e8-5755-4965-b5bd-f39df216af7b>. Accessed on 22/02/2018.

kingdom's arbitration practice, since before the 2013 enforcement regulation the UK accession to the aforementioned convention would not satisfy the reciprocity requirement and the party had to establish further evidence.

This was evidenced in case No. 115/D/A/15 in 2008, where the Saudi Board of Grievance rejected the enforcement of a UK award for failing to establish reciprocity, in spite of the enforcing party's reference to the UK accession to the New York convention⁽³²⁾. Between the 2008 case and the 2016 case, it is clear that the kingdom's enforcement regulation in Saudi Arabia has developed, as well as the kingdom's compliance with its international commitments.

This issue was further considered by the 2017 amendments to the Enforcement Law Implementation Act. Article 6 (11) of the act states that, in the execution of foreign judgements, the burden of proving the requirement of reciprocity shall be on the party seeking enforcement⁽³³⁾. This amendment is very beneficial to the kingdom's arbitration practice since it removes the uncertainty introduced by the 2013 implementation rule. Such uncertainty is seen when trying to establish what would happen if the Ministry of Justice does not respond to the enforcement judge's query of reciprocity or simply does not have an answer.

Now the burden is on the party seeking enforcement and such burden is no longer difficult to ascertain, as was the case prior to the introduction of the 2013 enforcement regulation. This is because the party will have to simply show that the country in which the award was rendered is party to a convention that is also ratified by the KSA to establish the principle of reciprocity.

The New York Convention, the League of Arab States Convention and the Riyadh Convention are just a few examples of the conventions that would establish reciprocity between the kingdom of Saudi Arabia and these conventions member states. This major development in Saudi arbitration practice is likely to create more certainty about the parties' roles and responsibilities in the arbitration process. Such certainty will assist with increasing the reliability of the Saudi legal system, which in turn will result in attracting foreign investment. This is because the reliability of a state's legal system is one of the major drivers of investors' interest, since businesses do not wish to be subject to unreliable legal frameworks that may put their businesses at risk. The party could also show the existence of such principles by other means, such as showing evidence of the enforcement of Saudi decisions in the

(32) No. 115/D/A/15 in 2008.

(33) Saudi enforcement law implementation act amendment. No. 526, 09/11/2017. Available at: https://www.moj.gov.sa/ar/Ministry/Pages/Tanfidsystem_Update.aspx. Accessed on 07/12/2017.

country from which the decision he is trying to enforce is issued. Alternatively, the party could establish it by obtaining a letter from that country's ministry of justice showing willingness towards Saudi-issued decisions⁽³⁴⁾. These options could be considered by the party seeking enforcement if the kingdom of Saudi Arabia is not a member of a convention that is also ratified by the state from which the foreign award or decision is issued.

Other Procedural issues

The 2017 amendments to the Enforcement Law Implementation Act have further introduced two important provisions dealing with cheque disputes and pre-emption requests. Before the Enforcement Law of 2013 was issued and the enforcement courts were established, the Commercial Paper Committee was in charge of hearing and enforcing matters related to cheques⁽³⁵⁾. However, this is no longer the case, since enforcement courts are currently the competent courts for enforcing all execution instruments such as cheques, court decisions and arbitral awards.

The party wishing to seek enforcement on cheques would need to go to the enforcement court and make an application to the enforcement judge for enforcing the cheques. The enforcement judge would then rely on the Enforcement Law and its Implementation Act to issue an immediate enforcement order against the cheque issuer, accompanied by a copy of the enforcement order. This is then communicated to the party against whom the enforcement order is issued, and if such communication was not possible then the order would be published in the most famous gazette in the enforcing court's city⁽³⁶⁾.

If the cheque issuer refuses to comply with the enforcement order or does not disclose enough money to cover the amount on the cheque, then he can appeal the decision to the competent authority within ten days of being contacted for enforcement. He can then update the enforcement judge on the appeal process and decision. At the end of such an appeal, if it is unsuccessful, then he must comply with the enforcement order. Alternatively the court judge may resort to a number of measures to ensure his compliance, such as a travel

(34) J.J. Nielsen, Yearbook of Islamic and Middle Eastern Law, *British Journal of Middle Eastern Studies*, 26(2), (2002)

(35) A. Ansary Albjad, 'A brief overview of the Saudi Arabian legal system' n.d., OAIster, EBSCOhost, viewed 12 January 2016.

(36) M., The procedural protection of the cheques in the Saudi criminal procedure system (practical study), (2011). Available at: http://www.nauss.edu.sa/Ar/DigitalLibrary/ScientificTheses/Documents/m_cj_2011_01.pdf. Accessed on 12/12/2017.

ban or imprisonment⁽³⁷⁾. This process of appeal is used by the parties against whom the enforcement order is issued, to lengthen the enforcement process and disadvantage the party seeking enforcement.

Another issue raised by the old Implementation Act was provided for under Article 5 (6) of the Enforcement Law Initial Implementation Act 2013. It states that the enforcement judge has the discretion to stop the enforcement, refuse it or give an extension to the parties against whom the enforcement is sought, in order to comply with the enforcement order⁽³⁸⁾.

The judge's ability to stop the enforcement process due to the other party exercising appeal or any other reason, is again lengthy and disadvantageous for the party seeking the enforcement. This issue was addressed by the 2017 amendments to the Implementation Act, which require under Article 7 (6) that the party against whom enforcement is sought must deposit the amount of the cheque into the enforcement court's bank account before the enforcement process is stopped⁽³⁹⁾.

This will show commitment on his/her part and at the same time provide assurance to the party seeking enforcement. It will also ensure that the party seeking enforcement is well compensated for any loss or damage incurred from the appeal, especially if the appeal is later seen by the judge to be unjustifiable and merely an attempt to make the process lengthy for the party seeking enforcement.

Another procedural issue addressed by the 2017 amendment to the Implementation Act was related to pre-emption requests. Pre-emption refers to the process of combining, increasing, or fortifying since the pre-emptor combines what he owns by virtue of this right to his own property, thus increasing and fortifying it⁽⁴⁰⁾. This right of pre-emption was extensively discussed in Article 50 of the Enforcement Law and the relevant subsequent provision explaining it in the 2013 Implementation Act. However, both the law and the initial Implementation Act failed to address the pre-emptor's rights related to items or properties sold at auction. Before the introduction of the 2017 Implementation amendment, it was not clear whether the pre-emptor's

(37) Ibid.

(38) Saudi Arabia's new Enforcement Law was issued through Royal Decree No. M/53 of 13 Sha'ban 1433 Hejra corresponding to July 3, 2013 Gregorian.

(39) Saudi enforcement law implementation act amendment. No. 526, 09/11/2017. Available at: https://www.moj.gov.sa/ar/Ministry/Pages/Tanfidsystem_Update.aspx. Accessed on 07/12/2017.

(40) W. Al-Zuhayli, *Financial transactions in Islamic jurisprudence*, (E.-G. M.A, Trans. Vol. 2), Dar al-Fikr, Damascus, (2003).

request for exercising pre-emption over such items would be accepted. It was left to the enforcement judge's discretion, in the same manner as other enforcement issues that do not have any legal provisions regulating them.

This issue is no longer left to the judge's discretion, since Article 50 (12) of the 2017 Implementation Act provides that a pre-emption request will not be accepted over properties/items sold at auction, and that the pre-emptor is allowed to participate in such an auction. This amendment creates more certainty in the Saudi Enforcement Law and guarantees that pre-emptors remain knowledgeable of their rights over such items⁽⁴¹⁾.

This new development was recognised in other neighbouring countries' domestic laws, where for instance Article 1297 in UAE law prohibits the pre-emptor from excising pre-emption over goods sold at auction. A similar provision was also recognised in Article 1161 in Jordanian law, which provides that goods sold at auction are among the situations where pre-emption cannot be exercised⁽⁴²⁾. The kingdom's introduction of such a provision fills a gap in its enforcement regulation as well as develop such regulation to cope with the developments introduced by other Islamic countries.

Recommendations

It is clear from the above discussion that the 2013 enforcement regulation and its subsequent implementation acts have developed the enforcement process of court decisions and arbitral awards in Saudi Arabia. This in turn has resulted in an increase in the reliability of the Saudi legal system and in attracting more disputes to appear before the Saudi enforcement courts. This was evident in the fact that in 2013 (1435 Hejri), the first year of its existence, the enforcement court in Saudi Arabia received 81,338 enforcement requests involving both financial and other enforcement claims. The total amount of money involved in these requests was 33,328,279,134 Saudi Riyals SR, which reflects the importance of speed and efficiency when enforcing such requests, since delays may lead to great losses being placed on the party seeking enforcement⁽⁴³⁾. The number of requests increased dramatically between October 2017 and May 2018 (1439, Hejri), to 263,332 enforcement requests related to both financial and other

(41) Saudi enforcement law implementation act amendment. No. 526, 09/11/2017. Available at: https://www.moj.gov.sa/ar/Ministry/Pages/Tanfidsystem_Update.aspx. Accessed on 07/12/2017.

(42) W. Al-Zuhayli, *Named contract in the civil transactional law of Jordan and UAE*. (E.-G. M.A.), Dar al-Fikr, Cairo, (2017).

(43) The Saudi Arabian ministry of Justice. Available at: https://www.moj.gov.sa/ar/opendata/bi/biexecution/Dashboards/200_kpiAchievement/kpi200_01.aspx. Accessed on 12/05/2018.

enforcement claims, worth a total amounting to 106,755,064,701 SR⁽⁴⁴⁾.

These numbers reflect the need for the continuous development of the kingdom's enforcement regulations to ensure maximum effectiveness and efficiency. Therefore, the author of this paper proposes three main amendments for furthering the development of this important aspect of the kingdom's legal framework.

The first recommendation is related to the need for establishing a specialised enforcement court dealing with different enforcement requests. These courts may include arbitral award enforcement courts, family dispute enforcement courts, and commercial paper courts. Such specialised courts are likely to enhance the reliability of the Saudi legal system further, as well as developing the enforcement judge's ability and skills to decide on relevant enforcement claims.

The enforcement judges in such specialised settings will only hear claims that are relevant to their court's specialisation and such a practice is likely to create more consistent enforcement decisions. Such recommendation was expected to be introduced in the 2017 implementation rule, but the fact that it has failed to address it, reemphasises the need for introducing it in the upcoming amendments. The second recommendation is related to the need for removing ambiguities that are embodied in the current enforcement regulation.

Although such removal was supposed to take place in the 2017 amendment, the fact that it did not deal with some of these ambiguities makes it important to reconsider such ambiguities in upcoming amendments. Future reform should take into account all of the current vague provisions that leave scope for a variety of interpretations, and in turn make the kingdom's enforcement regulations less reliable for both local and foreign parties.

Such provision includes, for example, Article 11(3) of the 2013 enforcement regulation, which defines the kingdom's public policy as following Islamic Sharia rules. Such vagueness needs to be revisited and redrafted in a way that would make the provision less susceptible to interpretation. In addition, there is a need to amend the 2017 Implementation Act to introduce provisions to clarify some of the 2013 enforcement regulation articles that have not been clarified in either the 2013 or 2017 Implementation Acts.

(44) Ibid.

There are 25 provisions in total, and they specifically include articles 82, 85, 91 64, 61, 78, 92, as well as a number of others. This recommendation is likely to create a more comprehensive enforcement regulation to tackle most of the developing issues in this regard. Finally, the author believes that it is important to limit judges' discretion in order to have more consistent enforcement decisions for similar cases. This is particularly seen when considering the gaps that are still not addressed by the 2017 Implementation Act, which enables judges to decide on them based on their personal understanding of Sharia rules.

Most of the inconsistencies in enforcement decisions are due to judges' unlimited discretion when there is no clear legislative ruling on a particular matter, and since they are not bound by any predecessor's decisions, similar cases have received different decisions. Therefore, the author believes that if this recommendation was to be implemented, judges' discretion is likely to be regulated further to avoid any conflicting decisions in similar cases.

Conclusion

It is evident from the amendments to the Enforcement Law of 2013 and the Implementation Act of 2017 that the KSA has taken serious steps towards codifying its legal system to make it clearer and more accessible to both local and foreign entities. This in turn has made the kingdom's enforcement procedures more reliable and brought them more in line with practices seen in the developed world. This reliability has led, in the last four years, to increasing reliance on the Saudi judicial system as opposed to the case prior to the introduction of the Enforcement Law in 2013.

The 2017 amendments to the Enforcement Law and Implementation Act attempted to further develop the enforcement process before Saudi enforcement courts, in order to make it more reliable for parties in dispute. These amendments have touched upon the enforcement process of various legal matters concerning family law, arbitral award and other provisional and procedural matters. The enforcement processes of these subject matters had been vague, and such vagueness led to some parties being negatively influenced at both personal and financial levels. This unjust influence is expected to be cured by the 2017 amendments, which introduced a number of provisions to ensure that the above deficiencies are effectively dealt with. Although more provisions were expected to be introduced by the 2017 amendments, in order to deal with some provisions that remain unclear, it is nevertheless important to highlight that these 2017 amendments have considerably developed the enforcement law process in the KSA.

The issuance of such amendments removes a degree of uncertainty that surrounded the 2013 Enforcement Law. Almost five years following the enforcement regulation of 2013's introduction, the 2017 amended Implementation Act will assist in paving the way further towards developing an enforcement-friendly environment in the KSA. The author believes that such act is another positive step in the right direction, which should be followed by a number of subsequent steps to ensure a more reliable enforcement process. This being said, these new amendments remain good in theory, but it is yet to be seen how such amendments will be applied in practice.

References:

- A. Ansary, ‘A brief overview of the Saudi Arabian legal system’ n.d., OAlster, EBSCOhost, viewed 12 January 2016.
- A. I. Sriro, Sriro’s desk reference of Indonesian law, Equinox Publishing, (2006).
- Abdal-Haqq Irshad, “Islamic law-an overview of its origin and elements”, J. Islamic L. & Culture 7 (2002): 27.
- Decision No. 115/D/A/15 in 2008.
- F.E. Vogel, 2000. Islamic Law and the Legal System of Saudi: Studies of Saudi Arabia (Vol. 8). Brill.
- Frank E. Vogel, Islamic law and Legal system (Brill., Leiden, 2002), pp. 3-4
- H. Quinlan and A. Al Amer, Landmark enforcement decision in the Kingdom of Saudi Arabia. 2016. Available at: <https://www.dlapiper.com/en/saudi-arabia/insights/publications/2016/05/landmark-enforcement-decision/>. Accessed on 08/01/2018.
- Isma’il R. Al-Faruqi, Toward Islamic English, No. 3, International Institute of Islamic Thought (IIIT), (1986).
- J.J. Nielsen, 2002. Yearbook of Islamic and Middle Eastern Law. British Journal of Middle Eastern Studies, 26(2).
- Jadawel International (Saudi Arabia) vs. Emaar Property PJSC (UAE); Case No. 4713/1/G in 1425 (2004)
- Jan Michiel Otto, Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present, Leiden University Press, The Netherlands, (2016).
- L. (Ed.). Welchman, Women’s rights and Islamic family law: perspectives on reform (Vol. 4). Zed Books, (2004).
- Lawrence W. Newma, and Ong. Colin, Interim measures in international arbitration, Juris Publishing, Inc., 2014.
- M. Albjad, 2011. The procedural protection of the cheques in the Saudi criminal procedure system (practical study). Available at: http://www.nauss.edu.sa/Ar/DigitalLibrary/ScientificTheses/Documents/m_cj_2011_01.pdf. Accessed on 12/12/2017.

- Mohammed, A., A Critical Analysis of the Legal Problems associated with Recognition and Enforcement of Arbitral Awards in Saudi Arabia: Will the New Saudi Arbitration Law (2012) Resolve the Main Legal Problems?, (2016), Available at: <http://repository.essex.ac.uk/17245/>. Accessed on 12/12/2017.
- Quinlan., H. 2016. Available at: <https://www.lexology.com/library/detail.aspx?g=b76552e8-5755-4965-b5bd-f39df216af7b>. Accessed on 22/02/2018.
- R. Hedley M. Arshad, Islamic Family Law, Ecclesiastical Law Journal, 2011 Sep 1;13(3):357.
- Royal Decree No M/78 of 1st October 2007.
- Saudi Arabia's new Enforcement Law was issued through Royal Decree No. M/53 of 13 Sha'ban 1433 Hejra corresponding to July 3, 2013 Gregorian.
- Saudi enforcement law implementation act amendment. No. 526, 09/11/2017. Available at: https://www.moj.gov.sa/ar/Ministry/Pages/Tanfidsystem_Update.aspx. Accessed on 07/12/2017.
- Shoult A, editor. Doing Business with Saudi Arabia, GMB Publishing Ltd; (2006).
- The Basic Law of Governance, Royal Order A/90, dated 27/8/1412H (corresponding to 1 March 1992), O.G. Umm al-Qura, 3397, dated 2/9/1412H (corresponding to 5 March 1992).
- The Saudi Arabian ministry of Justice. Available at: https://www.moj.gov.sa/ar/opendata/bi/biexecution/Dashboards/200_kpiAchievement/kpi200_01.aspx. Accessed on 12/05/2018.
- W. Al-Zuhayli,
 - Financial transactions in Islamic jurisprudence (E.-G. M.A, Trans. Vol. 2), Dar al-Fikr, Damascus, (2003).
 - Named contract in the civil transactional law of Jordan and UAE. (E.-G. M.A), Dar al-Fikr, Cairo, (2017).
 - Wael B. Hallaq, An introduction to Islamic law, Cambridge University Press, UK, (2009).

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