SAUDI ARABIA APPROVES A NEW JUDICIAL FEES LAW

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By: Jennifer Paterson, Mohammad Rwashdeh

As part of its ongoing efforts to improve the judicial system and meet its Vision 2030 goals, Saudi Arabia has approved another new law, Royal Decree No. M16 on Judicial Fees (Judicial Fees Law), which was issued on 8 September 2021 and published in the Gazette on 17 September 2021. The Judicial Fees Law shall come into effect 180 days after its publication in the Gazette and the Cabinet shall issue the implementing regulations within 60 days from the date of issuance of the Law.

Although court filing fees are charged in most countries in the Middle East, this is a novel concept in Saudi Arabia. Since the inception of civil courts in Saudi Arabia, filing a case has been free of charge.

While the absence of filing fees may be superficially attractive and seen as enabling universal access to justice, the court system has struggled with the volume of cases and as a result, court proceedings in Saudi Arabia have historically been lengthy and inefficient. Saudi Arabia also suffers from a significant number of malicious lawsuits brought by parties abusing the ability to access free litigation without any genuine desire to achieve justice. The introduction of filing fees is intended to alleviate the financial burden on the State, improve efficiency and reduce the number of malicious cases.

SUMMARY OF THE LAW

The Judicial Fees Law sets forth a mechanism for collecting specific fees from litigants when filing lawsuits and requests. These fees apply to all lawsuits, petitions and requests filed before the courts, with the exception of a few limited categories of claims and litigants.

In civil cases, fees are calculated at 5 percent of the claim value, capped at SAR 1 million.

In case of settlement after the first hearing and before the judgment, the fees shall be discounted to 25 percent of the judicial fees and the balance shall be refunded (if paid). The entirety of the fees shall be refunded in the event of: a decision or judgment rendered in favour of the claimant, appellant or applicant; the claimant withdrawing its claim in accordance with the applicable rules before the first hearing; the parties settling the dispute before the end of the first hearing; and the settlement of civil claims raised alongside criminal proceedings regardless of the stage of the case. In the case of partial success on appeal, fees will be refunded on a pro rata basis.

The costs of seeking annulment of an arbitration award are 1 percent of the amounts awarded by the arbitral tribunal, again capped at SAR 1 million. These amounts are forfeited if the application is unsuccessful.

Pursuant to Article 2 of the Judicial Fees Law, fees are not payable in respect of: criminal and disciplinary cases and related requests; lawsuits and requests relating to bankruptcy law; lawsuits and requests within the

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jurisdiction of the personal status courts (marriage, divorce, custody etc.) with the exception of appeal and reconsideration requests; lawsuits and requests relating to dividing and distributing probate with the exception of appeal and reconsideration requests; declarations and related requests; and lawsuits and requests within the jurisdiction of the Board of Grievances.

The following individuals and entities are also exempted from paying the judicial fees: (i) individuals who are prisoners or detainees at the due date for payment in respect of non-criminal lawsuits filed by or against them; (ii) employees who are covered by the Saudi Labour law in respect of lawsuits relating to entitlements arising out of their employment contact; and (iii) ministries and governmental entities. However, in the event that a judgment is issued in favour of any of the exempted individuals or entities, the losing party shall be bound to pay the applicable fees.

ANALYSIS

In addition to improving the efficiency of the court system, by making litigation more expensive and therefore less attractive, this Law should support Saudi Arabia's wider aim of increasing the use of forms of alternative dispute resolution.

Saudi Arabia has recently taken a number of steps to enhance the legal framework required to support arbitration and mediation as viable means of resolving commercial disputes. The 2012 Arbitration Law and 2012 Enforcement Law (and corresponding executive regulations for such laws), as well as the opening of the Saudi Center for Commercial Arbitration in 2016, are well publicized measures that have already been taken towards achieving that goal. However, more recently, Saudi Arabia has ratified the United Nations Convention on International Settlement Agreements Resulting from Mediation – a mechanism for enforcing mediated settlement agreements in signatory states – and enacted the Commercial Courts Law, which introduced several new measures to improve the efficiency of the judicial system, including making certain claims subject to court-mandated conciliation or mediation.

Each of these developments brings Saudi Arabia closer to its aim of overhauling its judicial system and attracting more international investment into the country.

KEY CONTACTS



JENNIFER PATERSON
PARTNER

DUBAI
+971.4.427.2728
JENNIFER.PATERSON@KLGATES.COM



MOHAMMAD RWASHDEH
SPECIAL COUNSEL

DUBAI
+971.4.427.2742
MOHAMMAD.RWASHDEH@KLGATES.COM

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