

INTERNATIONAL BEST PRACTICES SURVEY

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Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.

KINGDOM OF SAUDI ARABIA

Responses submitted by:

Name: Saud Al-Ammari, Jassim Albuainain

Law Firm/Company: Blake, Cassels & Graydon LLP

Location: Al-Khobar, Kingdom of Saudi Arabia

1. Would your jurisdiction be described as a common law or civil code jurisdiction?

The Saudi legal system is based on *Shari'ah* principles derived from the Holy Quran and the teachings of Prophet Muhammad. However, there are attributes of civil law as many areas are governed by codified laws. In addition, there are also some attributes of the common law system as can be found in the published legal principles. These legal principles are based on judicial precedents.

2. What method of adjudication is used (adversarial, inquisitorial, or other or hybrid)?

Saudi Arabian courts apply the inquisitorial method of adjudication, where the courts are an essential part in the investigation process. Saudi judges are able to question the witnesses and gather information about all aspects of the case.

3. What are the qualifications of the adjudicator (judge-elected, appointed, jury or other)?

The qualifications required to be appointed as a judge are set forth in Article 31 of the *Law of the Judiciary*. Initially, a judge must be a Saudi national by decent and of good character and conduct. As for academic qualification, a degree in jurisprudence from one of the *Shari'ah* colleges in the Kingdom or a degree in law is required. Judges must also pass a special examination prepared by the Supreme Judicial Counsel.

4. Are there any procedures available for specialized courts (i.e. commercial court, employment, environmental)?

Yes. Courts operating under the umbrella of the Ministry of Justice include:

- General courts
- Penal courts
- Administrative courts
- Family courts
- Commercial courts

Specialized quasi-judicial committees, operating independent from the Ministry of Justice preside over certain types of disputes. Examples of quasi-judicial committees include:

- Securities disputes committee
- Insurance committee
- Labor disputes committee

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- Social insurance dispute committee
- Banking committee

Business disputes are either heard by specialized quasi-judicial committees which have jurisdiction over particular subject matters (as the ones mentioned above), or they can be heard by the Commercial Circuit of the Administrative Court that has jurisdiction over all other business disputes.

5. Is arbitration an option and when? If so, what rules are typically used?

Yes. Arbitration is an option when the parties have entered into an arbitration agreement. Arbitration agreements are governed by the *Law of Arbitration*, passed by Royal Decree No. M/34.

6. Will the Courts enforce an arbitration agreement to preclude other forms of litigation?

Yes. Under Article 11 of the *Law of Arbitration*, the court shall dismiss any dispute subject to an arbitration agreement if the respondent raises the defense that the parties have entered into such agreement before any other defense or claim. The court will also refer the case to arbitration if the parties reach an arbitration agreement while the case is being considered before the court.

7. For Court proceedings, is mediation mandatory, either before or after filing of a claim or complaint?

No. However, under *Shari'ah*, mediation between adversarial parties is always encouraged by the presiding judge. In fact, such encouragement is viewed as one of the duties of the presiding judge.

8. What is the process for pre-hearing fact discovery (if any)?

The Laws of Procedure, either before the *Shari'ah* courts or the Board of Grievances, do not provide for any pre-hearing fact discovery.

(a) Are there provisions for mandatory document disclosures?

No. There is no obligation on either party to disclose any documentation to the opposing party.

(b) Is there provision for oral examinations of the parties or others?

No.

(c) Are there limits on the length of oral examinations?

Not applicable.

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(d) Are witness statements or summaries to be provided before the hearing?

No.

9. What is the process for pre-hearing expert disclosure (if any)?

There is no pre-hearing expert disclosure. Parties are under no obligation to disclose evidence before the hearing.

10. Are there other notable discovery rules?

Not applicable.

11. Is there a prehearing conference (for trial management, settlement or other purposes)? Who conducts it? How long before the hearing?

No. Except in labor disputes, a conference is held with an inspector from the Ministry of Labor to determine if the case has merit to be heard before the court. If the case has merit, the inspector will try to reach a settlement.

12. Can a prehearing motion for judgment be brought? If so, what is the threshold test for judgment?

No. Judgments are entered only after a hearing has been conducted.

13. Is there a process for obtaining pre-hearing rulings with respect to evidence admissibility including admissibility of expert testimony? What is the process and when does it occur?

Not applicable.

14. What is the standard for admissibility of expert evidence?

Articles 128 – 138 of the *Law of Procedure* set forth the standards for admissibility of expert evidence.

Generally, the parties to Saudi Arabian legal proceedings are free to introduce expert evidence into the proceedings. Where technical or complex financial issues are raised, it is common for the judges to appoint an expert or experts as advisers to the tribunal. It is within the tribunal's discretion to choose whom it appoints as an expert and to accept or disregard all or part of the expert's findings, but ordinarily, the determination of technical or complex financial issues fall to the expert.

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15. Does the Court have the power to appoint its own experts? Under what circumstances and what type?

Yes. The court has full discretion to appoint an expert if the judge determines that an expert is needed (*Law of Procedure*, Article 128, Section 1). The court usually appoints experts listed with the Department of Experts at the Ministry of Justice. However, the court may appoint an expert who is not listed with the ministry should the need arise.

16. Does your jurisdiction protect privilege? If so, what privileges are protected from disclosure (attorney client / legal advice; documents prepared in anticipation of litigation; settlement discussions; other)?

Lawyers are barred from disclosing confidential information obtained in the course of practicing their legal profession, even after the attorney client relationship has been terminated, unless non-disclosure violates a *Shari'ah* requirement (*Code of Law Practice*, Article 23).

Generally, the law does not impose a duty to disclose. The parties may present any information relevant to the case and withhold any information that might be prejudicial. However, the judge has full discretion to order a party to disclose information that might otherwise be confidential, upon a determination that such information is essential to the administration of justice.

17. If privilege is not protected, are there other protections from disclosure (i.e. privacy) that could prevent disclosure of otherwise privileged information, and what is the basis for those protections?

Not applicable.

18. Who determines privilege disputes, or disputes with respect to other forms of protection described in 17 above?

The Disciplinary Board, a special committee set by the Ministry of Justice.

19. Briefly describe the trial process?

(a) Are there opening submissions, in what form and of what length?

There are no opening submissions. The judge will call on the parties in the case at the specified time and will ask each party to present their pleadings. Pleadings may be submitted either orally or in written form. However, the common practice is that each party will submit the pleadings in written form along with any additional evidentiary documents. In the case of oral pleadings, the judge will ask the claimant to present his/her complaint and then ask the respondent to give an answer.

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(b) What is the order of presentation of witnesses?

There is no specific order in which witnesses are presented.

(c) Who conducts examination and in what order?

The examination of witnesses is conducted by the judge who will address his own questions to the witness. Thereafter, the parties may ask the judge to address their respective questions to the witness.

(d) What is the process for closing submissions?

There are no closing submissions. Before concluding the hearing, the judge will ask the parties if there is anything else they wish to submit or say. Thereafter, the judge will rule on the case, or specify a date for the ruling.

20. Please identify any other notable trial procedures.

None.

21. Who bears the burden of proof of liability? Causation? Damages? What is the standard of proof for each?

The claimant generally bears the burden of proving all the elements of his case. The decision to award damages and the amount of damages awarded are at the discretion of the court. Unlike in the United States, Saudi law does not provide for specific standards of proof.

22. What heads of damage are recoverable (compensatory, pre-judgment interest, punitive damages, other)?

Only actual damages, which a claimant is able to prove, are recoverable.

23. If punitive damages are available, what is the threshold for recovery, and range of awards?

Punitive damages are not available. A claimant is only entitled to actual damages that a claimant is able to prove.

24. Are there time limits for bringing claims? Responding to claims? Please describe.

Generally, a party's right to claim does not seize by time (Statute of Limitations) except where the legislature deems otherwise. For example, in labor disputes, a claim has to be brought within a period of 12 months.

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25. What are the requirements to establish jurisdiction over a foreign defendant in your court? Can a foreign defendant request that the court decline jurisdiction on the basis that there is a more convenient forum?

Saudi courts have both personal and subject-matter jurisdiction in all cases over foreign defendants who are domiciles or residents of the Kingdom. Saudi courts do not have subject-matter jurisdiction, however, over domiciled or resident foreign defendants for cases where the subject matter is property located outside the Kingdom. (*Law of Procedure*, Article 25).

Saudi courts also have jurisdiction over foreign defendants who reside outside the Kingdom under following circumstances:

- (a) The subject matter was any property located within the Kingdom, obligations arising in the Kingdom or obligations where the Kingdom is the place of performance.
- (b) The case was in connection with a bankruptcy filed in the Kingdom.
- (c) The case was filed against multiple defendants, and at least one defendant resides within the Kingdom. (*Law of Procedure*, Article 26).

The common law doctrine of *forum non conveniens* is not recognized by Saudi law. Accordingly, Saudi courts will not waive jurisdiction on the basis of convenience.

26. Are there procedures for a defendant to bring other potentially responsible parties into the proceeding? Briefly describe.

Yes. A defendant may file a motion to include a third party to the proceedings, if it was proper at the time the suit was initiated to include the third party as a defendant in the complaint. The court will rule on a defendant's motion to include a third party when it issues a final ruling on the case.

Alternatively, the court may order that a third party be included in the proceeding, if the court deems it necessary for the administration of justice.

27. Are legal costs recoverable by either party? If so, under what circumstances, and how is the amount calculated? (i.e. is it a loser pays costs system).

Yes. There are no specific rules for recovering legal costs. Either party may ask the court for recovery of legal costs from the opposing party in the initial complaint by stating a specific amount of the costs sought to be recovered.

It is under the judge's discretion to grant the requested amount, decrease the amount of recoverable legal costs or deny recovery of legal costs.

28. Are contingency fees allowed?

Yes.

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29. Is third party funding of claims permitted? Under what circumstances?

There is no provision or established practice for third-party litigation funding in Saudi Arabia. Under Saudi Arabian law, a claim or defense will not be accepted where the proponent has no existing legitimate interest. (*Law of Procedure*, Article 4, before *Shari'ah* courts)

30. Are class or multi-party actions allowed? Under what circumstances? For what types of claims?

Multiple parties may jointly initiate an action against an individual or a group of individuals by filing a single claim

Class actions are not permissible in Saudi Arabia. However, recently multiparty litigation has become more prevalent through cases filed by government agencies against multiple defendants.

A case filed by **at least three citizens** in any matter involving **public interest** shall be accepted if there is no official agency in charge of that interest in the town. (*Law of Procedure*, Article 5, before *Shari'ah* courts).

31. Can claims be commenced by a consumers association or other representative organization? Under what circumstances?

Considering that a consumer association claim is a class suit, such suits are not permissible. However, if a consumer association or representative organization is registered as a not-for-profit company, it will be treated as a company or corporation and may file claims on its own behalf.

32. On average, how long does it take to get trial/final hearing, and what factors can affect that?

It is not possible to determine how long it takes to get to trial or reach a final hearing due to certain factors, such as the nature of the case, evidence presented and the court that has jurisdiction over certain types of cases (specialized courts), or if the case falls under the jurisdiction of a quasi-judicial committee

However, it is estimated that it can take seven to 24 months to get to trial or reach a final hearing, depending on the factors mentioned above.

33. Is an appeal process available (distinguish between final and interlocutory/procedural orders as needed)? Who hears the appeal? How are they appointed? What are their qualifications?

The right to appeal is available in all types of cases. The appeal is heard by the courts of appeal through circuits that are composed of three judges. However, criminal homicide cases are heard before five judges of the Court of Appeals' Criminal Division, and subsequently by the five judges of the High Court.

In order for a judge to become an appeals judge, the candidate must have spent at least two years as a chief judge, worked in a comparable judicial role for 19 years or taught the subject of Islamic jurisprudence at a college in KSA for 19 years.

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34. Are hearing rooms available for electronic trials or appeals (i.e. where documents and transcripts are presented on computer monitors; witnesses can testify by video conference)?

No. Hearing rooms are not available for electronic trials or appeals. All related documents have to be submitted in hard copies. Witnesses should also perform their testimony verbally and be physically present. If a witness is not available in the same city as the trial judge, he/she may testify in person in the courthouse where the witness is located. The judge who hears the testimony will then transmit the testimony to the presiding judge.

35. What is the practice regarding the use of graphics, computer animation, power point and the like, in trials? In appeals?

A practice for using graphics, PowerPoint, etc., is not available. All the related documents have to be presented to a court in hard copies. However, the judge may allow it if it is deemed necessary for the administration of justice.

36. Will the lawyer at trial be the same as the one responsible for pre-trial procedures? Is there a solicitor / barrister distinction?

Yes. A lawyer at trial will be the same as the one responsible for pretrial procedures. There is no solicitor/barrister distinction.

37. What are the contributory negligence laws in your jurisdiction? Is there a comparative fault assessment, joint and several or proportionate liability among tortfeasors? Does a plaintiff's negligence reduce or eliminate liability of defendants named in the litigation?

Because of the absence of a statutory law in Saudi torts law, *Shari'ah* principles take the place of the statutes. Consequently, when deciding tort cases, judges need to consider these principles by interpreting them and then apply them to each case individually.

Contributory negligence and comparative fault are recognized in *Shari'ah*. However, there are no specific guidelines as to how they are applied. Judges will assess the degree of fault for each party on a case-by-case basis.

38. Is service of a complaint issued outside your country permitted in your country by "informal" means, or must the Hague Convention be allowed?

No. Saudi Arabia is not a signatory to the Hague Convention. Thus, a foreign court or jurisdiction is not permitted to serve a complaint to the Kingdom. However, under the new law, Saudi courts are now required to recognize and enforce arbitral awards from international venues outside of the Kingdom.

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39. Do your laws prohibit export of relevant documents from your jurisdiction for the purposes of litigation outside your jurisdiction? (Consider privacy rules)

No. Export of documents to other jurisdictions is not prohibited. However, documents and evidence may not be taken outside the jurisdiction of Saudi Arabia without authorization from the relevant authorities.

40. Please point out any litigation Best Practices employed by Courts in your jurisdiction but not yet referenced in the survey?

Under *Shari'ah*, mediation between adversarial parties is always encouraged by and is viewed as one of the duties of the presiding judge.

In this regard, the Ministry of Justice is working on institutionalizing this method by creating a settlement department in every court where a judge will ask the parties to appear before this department to explore the possibility of a settlement based on mediation.

41. Are there any significant areas in which you believe the playing field between claimant and defendant is not level that you think need to be addressed?

No. *Shari'ah* is an equity-based system where the truth is always sought to achieve justice.

42. Are there legislative efforts under way that address any of the litigation practices in your country?

Definitely. The Kingdom is undergoing significant improvements of the judicial system. In this regard, the government, through the King Abdullah Project for Judicial Development, has allocated nearly US\$2 billion with the purpose of:

1. Training and increasing the number of judges
2. Creating additional specialized courts (e.g., the Traffic and Motor Vehicle Court)

Moreover, the Kingdom has signed several agreements for judicial cooperation with a number of countries such as the United Kingdom and France.