

New Saudi civil code: what impact?

Saudi Arabia has enacted a new Civil Transactions Law (CTL) – which will come into force this December – covering all aspects of contractual relations, including formation, operation, assignment, termination, enforceability, and limitation of remedies. STUART JORDAN* provides an insight into its impact on new and existing contracts.

FOR the first time, a comprehensive civil code to govern commercial transactions has been brought into force in Saudi Arabia. This is the Civil Transactions Law (CTL) enacted by Royal Decree M/191 and published in the *Official Gazette* on June 19, 2023. It will come into force 180 days after publication, so that is expected on December 16, 2023.

In contrast with the other jurisdictions in the Gulf region, Saudi Arabia has not previously had codified law to cover contractual relations. The relevant law has until now been based on the principles of Sharia, as derived from its source texts. This new Code is part of a wider overhaul of the country's laws and legal processes, intended to give more clarity and certainty of outcome to parties doing businesses in the kingdom – and thereby to make the country a more attractive place to invest. These legal developments bring the kingdom into line with other regional (and global) codified jurisdictions, and are themselves part of a wider range of measures to support Saudi Arabia's Vision 2030.

The CTL is, of course, still rooted in Sharia legal principles; and Sharia is also the basis of the default position where the Code is not specifically applicable. CTL Article 1 provides that, if the Code does not cover a situation then a set of rules shall apply to cover the gap. These are 41 principles, derived from Sharia, set out in Article 720. And if no rule is applicable, the appropriate general Sharia principles will be applied.

The CTL consists of 721 articles. It covers the expected bases, including rules on the formation of contracts, operation, assignment, termination, enforceability, limitation of remedies etc. There are provisions

specific to specialised types of contract including construction (or contracts for work) which we'll look at in another article.

The CTL enshrines the binding nature of contracts. It contains helpful rules on the conditions required for the formation of a binding contract. We should note some interesting rules on negotiations, which should act as a reminder to all in our industry to take care in clarifying the commercial basis of competitive tender negotiations, and to agree upfront the formalities required to complete a contract:

Article 41 states that parties negotiating a contract are not obliged to conclude an agreed contract but a person who negotiates, or terminates a negotiation, in bad faith might be liable to the other party for damages – but not including profits. Bad faith includes not being serious in the negotiation or deliberately not making substantial or influential statements.

Article 42 states that parties can agree the essential conditions of a contract and leave other terms for later agreement. And where they cannot agree those other terms, the court may step in and determine those non-essential terms, taking into account the nature of the transaction and custom.

Of more immediate impact, is the retrospective nature of the CTL. Once it comes into force, the CTL expressly abolishes all existing provisions that contradict it. So, the picture is clear in relation to contracts entered into after that date, and any disputes

that may arise in connection with those contracts. They are governed fully by the CTL.

However, the CTL also applies, subject to conditions, to contracts entered into on or before that date, including contracts in place before publication of the CTL in June 2023. The CTL will apply to existing contracts, except to the extent that a party to that contract seeks to rely on a pre-existing statutory provisions or judicial principles that contradicts the CTL – and that party can demonstrate the existence and applicability of the relevant provisions and principles.

So the retrospective application of the CTL is conditioned in two important ways:

- First, its application depends on decisions and actions: that is, whether a party wishes to, and can, exclude the new law by demonstrating the existence of legal provisions or principles that contradict the CTL.

- Second, the provisions relating to existing contracts will become effective only on December

16. That leads to an unusual situation in relation to disputes arising under existing contracts: an issue in dispute might be decided differently depending on whether that issue comes to be examined by Saudi courts before or after this date. This creates an element of uncertainty for parties to existing contracts governed by Saudi law, and a question: whether to progress a formal dispute now or later on.

Finally, I understand that a Commercial Transactions Code is also expected to be brought into effect, based on a draft which has been circulated for consultation. We can expect that this Commercial Code will have more impact on specialist commercial activities including construction. We'll watch out for developments on that. ■



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