

Enforcement of Arbitral Awards

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Overview

- Enforcement of arbitral awards in Saudi Arabia began in 1983, and in recent years the volume of awards enforced has increased rapidly, whether domestic or foreign.
- The basis of enforcement of arbitral awards in Saudi Arabia are:
 - Saudi Arabia Royal Decree No. M34/1433 Arbitration Law (Saudi Arabia Cabinet Decision No. 156/1433 Approving the Arbitration Law), passed in 2012, which is largely based on the UNCITRAL Model Law;
 - Saudi Arabia Royal Decree No. M53/1433 related to the Saudi Arabia Execution Law (Saudi Arabia Cabinet Decision No. 261/1433 On the Approval of the Execution Law)
 - Saudi Arabia is a signatory to the New York Convention, the foundation of enforcement of foreign arbitral awards across different states.
- As a result, despite there being no specific definition of an arbitral award in any of the issued laws, domestic and foreign arbitral awards in Saudi Arabia are subject to different laws and procedures of recognition and enforcement.
- For more information on the recognition of arbitral awards see Practice Note on Recognition of Arbitral Awards.

Saudi Centre for Commercial Arbitration

- The Saudi Centre for Commercial Arbitration (SCCA) was established by Saudi Arabia Cabinet Decision No. 257/1435 dated 14/6/1435 H (15 March 2014).
- SCCA provides alternative dispute resolution services in both arbitration and mediation. It adopts international standards in its rules and model.
- Relevant to enforcement in Saudi Arabia, SCCA mandates tribunals to apply the rules chosen by the parties "[w]ithout prejudice to the rules of Shari'ah".
- The SCCA annual report for 2021, offers the most recent statistics with respect to enforcement of arbitral awards. In accordance to the report, Saudi Arabia enforced 204 domestic and foreign awards representing a total value of USD 2.1 billion, with enforcement proceedings being concluded on average within fourteen days.

Definitions

- *Arbitration Law Implementing Regulations*: Saudi Arabia Ministerial Decision No. 541/1438 Approving the Implementing Regulation of the Arbitration.
- *Enforcement Court*: Court with jurisdiction to enforce judgments and awards, including arbitral awards under article 1 of Saudi Arabia Royal Decree No. M53/1433 (Saudi Arabia Cabinet Decision No. 261/1433).
- *New York Convention*: The New York Convention on Recognition and Enforcement of Foreign Arbitral Awards, signed in 1958. The New York Convention facilitates enforcement of foreign arbitral awards by requiring courts of signatory countries to give effect to arbitration agreements and arbitral awards issued either in other countries or otherwise considered foreign, e.g., international arbitration proceedings.
- *Seat of the arbitration*: The seat of the arbitration, *lex arbitri*, is not the physical location of the arbitration proceeding (i.e., the venue); it is the legal jurisdiction where default and mandatory procedural laws would apply to arbitral proceedings. The arbitration seat also determines the supervisory national court where court intervention is necessary.
- *Sharia*: Islamic Law based on the Holy Book (Qur'an) and Prophetic Teachings (Sunnah)
- *SCCA*: Saudi Center for Commercial Arbitration.

Practical Guidance

Legal framework

Arbitral awards, both domestic and international, are enforceable in Saudi Arabia through applications for enforcement in the Enforcement Courts.

Domestic awards must comply with the requirements of a valid award under Saudi Arabia Royal Decree No. M34/1433 (Saudi Arabia Cabinet Decision No. 156/1433).

Foreign awards must comply with Saudi Arabia Royal Decree No. M53/1433 (Saudi Arabia Cabinet Decision No. 261/1433) as well as the New York Convention for enforcement of foreign arbitral awards.

Enforcement Courts have jurisdiction to enforce domestic arbitral awards under article 9(2) of Saudi Arabia Royal Decree No. M53/1433 (article 9(2) of Saudi Arabia Cabinet Decision No. 261/1433) and foreign awards under article 12 of Saudi Arabia Royal Decree No. M53/1433 (article 12 of Saudi Arabia Cabinet Decision No. 261/1433).

Saudi Arabia signed the New York Convention on 19 April 1994 to facilitate enforcement of foreign arbitral awards. Article 11 and 94 of Saudi Arabia Royal Decree No. M53/1433 (article 11 and 94 of Saudi Arabia Cabinet Decision No. 261/1433) provides

that courts must comply with international treaties such as the New York Convention. It was declared "On the basis of reciprocity, the Kingdom declares that it shall restrict the application of the Convention to the recognition and enforcement of arbitral awards made in the territory of a Contracting State".

Saudi Arabia is also party to Riyadh Arab Agreement for Judicial Co-operation and the GCC Agreement for the Enforcement of Judgments, Rogatory, and Judicial Publication.

Enforcement of foreign arbitral awards under Saudi Arabia Royal Decree No. M53/1433 (Saudi Arabia Cabinet Decision No. 261/1433) and the New York Convention

Order of enforcement of domestic arbitral awards

Article 55 of Saudi Arabia Royal Decree No. M34/1433 (article 55 of Saudi Arabia Cabinet Decision No. 156/1433) outlines the procedural and substantive requirements of a valid arbitral award. Pursuant to this provision, the competent court must verify the following conditions to issue an order for enforcement:

- The arbitral award must not contradict other court decisions or laws on the same subject in Saudi Arabia.
- The condemned party has been duly notified of the arbitral award.
- The arbitral award must not violate Saudi public policy. Saudi Arabia Royal Decree No. M34/1433 (Saudi Arabia Cabinet Decision No. 156/1433) explicitly states that the arbitral award must not violate Sharia. Notably, if an arbitral award (whether domestic or foreign) partly violates Sharia and/or Saudi public policy, the award may still be enforced, if the award is divisible, by enforcing the compliant part of the award that does not violate the law or Sharia.

Furthermore, the arbitral award must comply with the formality requirements of article 42 of Saudi Arabia Royal Decree No. M34/1433 (article 42 of Saudi Arabia Cabinet Decision No. 156/1433):

- The arbitral award must be written, well-reasoned, and signed by the arbitral tribunal.
- If the arbitral tribunal consists of more than one arbitrator, the arbitral award is valid if signed by a majority of the arbitral tribunal. The majority must explain the reasons for the minority's absence.

Finally, the Enforcement Court would enforce the arbitral award pursuant to article 9(2) of Saudi Arabia Royal Decree No. M53 /1433 (article 9(2) of Saudi Arabia Cabinet Decision No. 261/1433). Notably, the court would verify the arbitral award is compliant with Sharia principles.

Nullification of domestic arbitral awards

Nullification of an arbitral award is only possible before the courts of the seat of arbitration. Thus, Saudi courts may have jurisdiction to annul arbitral awards issued under Saudi Arabia Royal Decree No. M34/1433 (Saudi Arabia Cabinet Decision No. 156/1433).

Article 49 of Saudi Arabia Royal Decree No. M34/1433 states that an arbitral award is not subject to appeal. However, under article 50(1) of Saudi Arabia Royal Decree No. M34/1433 (article 50(1) of Saudi Arabia Cabinet Decision No. 156/1433), a party may apply to annul an arbitral award issued only on the following grounds:

- "if no arbitration agreement exists, or if such agreement is void, voidable, or terminated due to expiry of its term;
- if either party, at the time of concluding the arbitration agreement, lacks legal capacity, pursuant to the law governing his capacity;
- if either arbitration party fails to present his defence due to lack of proper notification of the appointment of an arbitrator or of the arbitration proceedings or for any other reason beyond his control;
- if the arbitration award excludes the application of any rules which the parties to arbitration agree to apply to the subject matter of the dispute;
- if the composition of the arbitration tribunal or the appointment of the arbitrators is carried out in a manner violating this Law or the agreement of the parties;
- if the arbitration award rules on matters not included in the arbitration agreement; nevertheless, if parts of the award relating to matters subject to arbitration can be separated from those not subject there to, then nullification shall apply only to parts not subject to arbitration; and
- If the arbitration tribunal fails to observe conditions required for the award in a manner affecting its substance, or if the award is based on void arbitration proceedings that affect it."

Furthermore, under article 50(2) of Saudi Arabia Royal Decree No. M34/1433 (article 50(2) of Saudi Arabia Cabinet Decision No. 156/1433), the court may, on its own jurisdiction, nullify the arbitral award if:

- it violates Sharia or Saudi public policy; or
- the subject matter of the dispute was not arbitrable, e.g., not capable of being resolved by arbitration, under Saudi law.

The application for nullification of the arbitral award must be made 60 days after the nullifying party was notified of the award.

Effect of an application for nullification of the arbitral award on the enforcement proceedings. Under article 54 of Saudi Arabia Royal Decree No. M34/1433 (article 54 of Saudi Arabia Cabinet Decision No. 156/1433), an application for nullification of the arbitral award does not stay the enforcement proceedings unless the party requesting nullification requests a stay and has valid grounds for the request.

Under article 55 of Saudi Arabia Royal Decree No. M34/1433 (article 55 of Saudi Arabia Cabinet Decision No. 156/1433), the petition for enforcement will not be accepted until lapse of the time period to request nullification, which is 60 days. As per the Saudi Center for Commercial Arbitration (SCCA) annual report for 2021, only 6% of applications for nullifications were accepted in KSA. This percentage is in line with successful enforcement percentages of other jurisdictions in the world which are regarded as arbitration friendly. This therefore gives increased confidence in the enforceability of arbitral awards in Saudi Arabia.

In relation to the 6% of arbitral awards that have been partially or fully annulled:

- 1% were due to the composition of arbitral tribunal, and in particular conflict of interest.
- 1% were due to the award not dealing with all of the issues in dispute.
- 1% were due to the award lacking a majority vote.
- 3 % were due to a violation of Shari'ah and public policy.

For more information on the nullification and control of arbitral awards see Practice Note on Challenging an Arbitral Award.

Enforcement of foreign arbitral awards under Saudi Arabia Royal Decree No. M53/1433 (Saudi Arabia Cabinet Decision No. 261/1433) and the New York Convention

Order of enforcement of a foreign arbitral award

The Enforcement Court has jurisdiction to enforce foreign arbitral awards in accordance with the requirements of article 11 of Saudi Arabia Royal Decree No. M53/1433 (article 11 of Saudi Arabia Cabinet Decision No. 261/1433):

- Saudi courts must not have jurisdiction to decide the dispute.
- The tribunal issuing the award must have had jurisdiction over the dispute.
- The arbitral proceedings were conducted in accordance with due process, e.g., the parties had fair opportunities to present their cases.
- The arbitral award is final and not subject to appeal under the law of the seat of arbitration.
- The arbitral award must not contradict other court decisions or laws on the same subject in Saudi Arabia.
- The arbitral award must not violate Saudi public policy.

The New York Convention

The New York Convention is considered the foundation for enforcing arbitral awards in a state other than where the arbitral award was issued (i.e., foreign arbitral awards). All arbitral awards not issued under Saudi Arabia Royal Decree No. M34/1433 (Saudi Arabia Cabinet Decision No. 156/1433) are considered foreign arbitral awards.

Contracting states to the New York Convention must recognise foreign arbitral awards as binding and enforce them under their rules of procedure, and without imposing "substantially more onerous conditions or higher fees or charges" for foreign arbitral awards than the State would impose on domestic arbitral awards.

Common provisions to order for enforcement of domestic and foreign arbitral awards

Types of awards enforceable

All awards that specify a right that is due, are enforceable, subject to limited exceptions. Awards which wholly or partially may be against the Sharia are not enforceable.

Domestic arbitral awards that are enforceable include:

- monetary awards
- specific performance
- sale or delivery of tangible and intangible property

Foreign arbitral awards, in order to be enforceable must meet the following criteria

- The award must be a final award and must not contradict another judgment or court order issued on the same subject in Saudi Arabia, or contradict the public policy of Saudi Arabia.
- Reciprocity must be established between Saudi Arabia and the jurisdiction in which the award is issued. The burden on proving reciprocity is on the party requesting enforcement.
- The award must have been issued by a tribunal with jurisdiction under the relevant foreign law, and the subject matter of the award, should not be under sole jurisdiction of Saudi Arabia

- All parties must have conducted the proceedings with all procedural regularities in place, with due representation. If the respondent to the proceedings was notified, but was not represented, and this can be evidenced, such an award is still enforceable.

For a domestic arbitral award, it must be declared as enforceable by the appeal court with initial jurisdiction over the dispute. Therefore, an application is needed to the relevant appeal court for a declaration that the award is enforceable by the party seeking enforcement. The declaration is normally represented by a court stamp, after which the request for enforcement can be registered with the Enforcement Court.

For a foreign arbitral award, a party does not need a declaration that it is enforceable from the relevant domestic appeal court. Instead, the party requesting enforcement can apply directly to the Enforcement Court, with no statute of limitations applicable.

Process for enforcement

Under article 53 of Saudi Arabia Royal Decree No. M34/1433 (article 53 of Saudi Arabia Cabinet Decision No. 156/1433), the application for enforcement of arbitral awards must include:

- “the original award or an attested copy thereof;
- a true copy of the arbitration agreement;
- an Arabic translation of the arbitration award attested by an accredited authority, if the award is not issued in Arabic; and
- a proof of the deposit of the award with the competent court, pursuant to article 44 of Saudi Arabia Royal Decree No. M34/1433 (article 44 of Saudi Arabia Cabinet Decision No. 156/1433).”

Article 6 of Saudi Arabia Royal Decree No. M53/1433 (article 6 of Saudi Arabia Cabinet Decision No. 261/1433) addressing all judgments and awards, states that all judgments issued by an Enforcement Court are subject to appeal and the court of appeal's judgment would then be final.

However, for arbitral awards issued under Saudi Arabia Royal Decree No. M34/1433, article 55(3) of Saudi Arabia Royal Decree No. M34/1433 (article 55(3) of Saudi Arabia Cabinet Decision No. 156/1433) does not allow appeal of an order to enforce an arbitral award. However, an order refusing enforcement is appealable.

The enforcement procedure is as follows:

- An enforcement request is made through the Najiz application (the Ministry of Justice's online portal) is made by the applicant.
- The request is reviewed procedurally by the Enforcement Court, and is then referred to an enforcement judge. This will require up to three days.
- If the enforcement judge is satisfied, an enforcement order will be issued (Article 34 decision), ordering one party to comply within five days of the notice.

The applicant must wait twenty days for the Enforcement Court to notify the relevant party of the Article 34 decision. If this is not done, the applicant may request for the notice to be served by publication in local press, by the Enforcement Court. Although the applicant will initially pay for the publication of the notice (three to five days are required for publication from payment), the costs are able to be reimbursed from the enforcement order.

If the Article 34 decision is not adhered to, within five days of notification, the enforcement judge may be requested to enforce sanctions against the non-complying party. Such measures, under Article 46 are issued up to ten days after the expiry of the Article 34 decision or from the date of applicant's request to issue an Article 46 decision, provided that the request is made at least five days after the Article 34 decision is notified. All decisions by an enforcement judge are final, unless they relate to certain procedures or costs.

Other considerations

- Arbitral awards may also be partially executed. For instance, Saudi courts previously ordered the payment of damages pursuant to the arbitral award, but without awarding interest stipulated in the award. In the Board of Grievances (BG) SBG 28/12/1437, the Saudi court found that partially enforcing the foreign arbitral award without interest does not result in nullification of the arbitral award or render it unenforceable.
- The public policy exception to enforcing foreign arbitral awards has traditionally been very broad. An award that contradicts Sharia law or public policy will not be enforced by the Enforcement Court, as per article 55 of Saudi Arabia Royal Decree No. M34/1433 (article 55 of Saudi Arabia Cabinet Decision No. 156/1433). However, if the part that contradicts public policy can be separated from the rest of the award, only that part should not be enforced. Article 11 of Saudi Arabia Royal Decree No. M53/1433 (article 11 of Saudi Arabia Cabinet Decision No. 261/1433) sets out that the enforcement judge cannot enforce a foreign arbitral award if it includes what is contradictory to public policy. The implementing regulations of Saudi Arabia Royal Decree No. M53/1433 (Saudi Arabia Cabinet Decision No. 261/1433) defines "public policy" as the Islamic Sharia.
- Saudi Arabia Royal Decree No. 44682/1443 dated 28 August 2021 limits the definition of public policy to general rules of Islamic law based on the Quran and the Sunnah. Recently successful grounds were:

- Late payment charges were found to amount to usury.
- Compensation for holding back money was found to amount to usury.
- The award involved the sale of property which the purported seller did not own.
- The public policy is not limited to procedural deficiencies. The court could ex officio refuse to enforce an award that contradicts Sharia, including any of the evidence relied on by the tribunal that is not acceptable under Sharia (for example, if the tribunal relied on the testimony of a person with a mental impairment). The court could also refuse enforcement if the award itself contradicts Sharia (for example, an award of interest).

Related Content

Legislation

- Saudi Arabia Royal Decree No. M34/1433 Arbitration Law
- Saudi Arabia Cabinet Decision No. 156/1433 Approving the Arbitration Law
- Saudi Arabia Royal Decree No. M53/1433 Related to the Saudi Arabia Execution Law
- Saudi Arabia Cabinet Decision No. 261/1433 on the Approval of the Execution Law
- Saudi Arabia Cabinet Decision No. 257/1435 dated 14/6/1435 H (15 March 2014)
- Saudi Arabia Ministerial Decision No. 541/1438 Approving the Implementing Regulation of the Arbitration Law
- Saudi Arabia Ministerial Decision No. 9892/1434 Approving the Implementing Regulation of the Execution Law

Case decision

- SBG 28/12/1437 by the Board of Grievances of Jeddah (28 September 2016)

International Conventions

- [New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards](#)^[1 p.8]
- [UNCITRAL Model Law on International Commercial Arbitration](#)^[2 p.8]

SCCA Links

- [SCCA](#)^[3 p.8]
- [Saudi Centre for Commercial Arbitration Institutional Arbitration Rules 2018 \(SCCA Rules\)](#)^[4 p.8]

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Education

- Mini MBA, Kings College London, UK
- Doctor of Legal Practice, Nottingham Law School, Nottingham, UK
- BA (Equiv.) Arabic and Foundations of Islamic Sharia, Umm Al-Qura University, Makkah, KSA
- LPC, College of Law, Birmingham, UK
- LL.B (Hons.), Law with Business, University of Birmingham, Birmingham, UK

Memberships

- Admitted as a Solicitor of the Senior Courts of England and Wales
- Admitted as a Member of the Chartered Institute of Arbitrators (MCIArb)
- Admitted as an Associate of the International Compliance Association (AICA)
- Admitted as a Member of the Association of Corporate Counsel (ACC)
- Member of the British Association of Islamic Studies (BRAIS), International Chamber of Commerce- Young Arbitrators Forum (ICC-YAF), International Society for Islamic Legal Studies (ISILS), Legal Education Research Network (LERN) and The Society of Legal Scholars (SLS)

Biography

Dr. Sairah Narmah-Alqasim is a British lawyer and academic with over 15 years of professional experience in the United Kingdom (UK) and the Kingdom of Saudi Arabia (KSA). Dr. Narmah-Alqasim has trained at top 20 international law firms in the UK and acted as in-house counsel in the dispute resolution department at one of the world's largest international banks. Dr. Narmah-Alqasim is a former Vice Dean of one of the largest law schools in Saudi Arabia and holds a Doctorate in Legal Practice. She is currently based in KSA as a Senior Legal Consultant at Dentons KSA. She advises clients on a range of corporate, commercial and litigation matters. She also leads Knowledge Management for Dentons KSA and provides managerial support in the Jeddah KSA office.

Notes

1. ^{^ [p.6]} <https://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/New-York-Convention-E.pdf>
2. ^{^ [p.6]} https://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/06-54671_Ebook.pdf
3. ^{^ [p.6]} <https://www.sadr.org/>
4. ^{^ [p.6]} https://drive.google.com/file/d/100NLqTesQi0lBBBkaV00DU9eTb8bFED_/view
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