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## Saudi Arabia

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the enactment of Decree No. 727, the acquisition would have been subject to the prior approval of the Office of the Superintendent of Foreign Investments.

#### B. LICENSORS/SUPPLIERS OF TECHNOLOGY

Trademark and patent licenses, and technical know-how and technical assistance agreements, may now be entered into between nondomiciled foreign companies and Venezuelan companies without approval from the Office of the Superintendent of Foreign Investments. The single exception is for royalty-bearing agreements between a Venezuelan company characterized as a foreign enterprise and its nondomiciled foreign parent, or an affiliate thereof. This exception applies, however, only if the royalty exceeds 5 percent of net technological sales.

A Venezuelan company classified as a foreign enterprise may now pay a royalty to its nondomiciled foreign parent or its affiliate. This truly is an extraordinary regulatory change. No such royalty payments have been allowed under Venezuelan law since January 1, 1974.

#### C. FOREIGN BORROWINGS AND BORROWINGS BY "FOREIGN ENTERPRISES"

Decree No. 727 expressly permits Venezuelan companies characterized as foreign enterprises to borrow domestically without restriction. Furthermore, such companies are now entitled to make public offerings of any form of securities, on or off the Venezuelan Stock Exchange.

## Saudi Arabia\*

The Saudi Arabian Board of Grievances has decided that three foreign judgments issued by the courts of a non-Arab League State should be enforced. Saudi Arabia has enacted new rules of civil procedure for courts hearing administrative cases as well as two new intellectual property regimes, a patent law and a copyright law. The Ministry of Commerce has shifted policy in two areas of importance to foreign companies doing or proposing to do business in Saudi Arabia.

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## I. Enforcement of Foreign Judgments

The Board of Grievances<sup>1</sup> is the Saudi Arabian court that has jurisdiction over, among other matters, applications for the enforcement of foreign judgments. The Board of Grievances operated without formalized rules of civil procedure until mid-1989, when such rules were officially adopted.<sup>2</sup> (See Section III below.) The Rules of Civil Procedure now specify *inter alia* the manner in which applications for enforcement of foreign judgments should be filed and heard by the Board of Grievances. The Rules also specifically empower the Board to issue its judgment enforcing the foreign judgment if the foreign State where such judgment was issued would afford reciprocal treatment to the judgments of Saudi courts and provided nothing in the foreign judgment contravenes the *Shari'ah* (Islamic law).<sup>3</sup>

Both prior and subsequent to the promulgation of the Board of Grievances Law in 1982, Saudi Arabian courts would not enforce the judgments of non-Saudi courts absent a specific treaty providing otherwise. This was primarily on account of what were perceived to be certain *Shari'ah* constraints. Saudi Arabia is a party to one such treaty signed in 1952 with six other original members of the Arab League, namely, Jordan, Lebanon, Syria, Egypt, Iraq, and Yemen.<sup>4</sup> In rare instances foreign judgments have been enforced in Saudi Arabia under the terms of the Arab League Treaty.

In October–November 1989 the Board of Grievances sitting in Jeddah handed down three decisions, each enforcing a foreign judgment issued by the court of a State not a party to the Arab League Treaty.<sup>5</sup> The Board's decisions accord domestic enforcement against the same Saudi judgment debtor of three judgments issued in England by the High Court of Justice, Queen's Bench Division–Commercial Court, in favor of three different foreign judgment creditors. These decisions are believed to be novel in Saudi Arabia. The High Court proceedings had been brought by three shipowners seeking demurrage, dead-freight, and interest in respect of charters of their vessels. After appearing and

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1. See Board of Grievances Law, Royal Decree No. M/51 dated 17/7/1402 A.H. (corresponding to May 10, 1982) [hereinafter Board of Grievances Law], art. 8(1)(G). For a detailed view of the Board of Grievances, see Mahassni & Grenley, *Public Sector Dispute Resolution in Saudi Arabia: Procedures and Practices of Saudi Arabia's Administrative Court*, 21 INT'L LAW. 827 (1987).

2. See Rules of Civil Procedure before the Board of Grievances, Council of Ministers Resolution No. 190 dated 16/11/1409 A.H. (corresponding to June 20, 1989), which became effective on August 6, 1989 [hereinafter Rules of Civil Procedure].

3. See Rules of Civil Procedure, *supra* note 2, art. 6.

4. See Agreement for the Execution of Court Decrees, executed in Cairo on 22/2/1372 A.H. (corresponding to November 10, 1952) [hereinafter Arab League Treaty]. The Arab League Treaty enables judgments of a signatory state (including arbitration awards and judgments thereon) to be enforced by the courts of another signatory state, subject to certain limitations.

5. The opinions were issued in December 1989 and January 1990, and are as yet unreported. The Board of Grievances operates on a circuit system, with most matters being heard by three-judge panels. The proceedings for enforcement of the judgments at issue were assigned to a subcircuit, i.e., one judge sitting alone. See Rules of Civil Procedure, *supra* note 2, art. 14.

asserting its defenses in the English proceedings, the Saudi defendant withdrew and allowed the three suits to be determined by trial *ex parte*. The enforcement proceedings before the Board of Grievances in Jeddah were contested. Each of the Board's decisions (which were reasoned and virtually identical) is remarkable not only for the outcome but also because of the Board's thorough and thoughtful analysis of the issues presented. The Board was satisfied that under applicable English rules of judicial procedure a Saudi or other foreign judgment could be enforced in the United Kingdom,<sup>6</sup> that the Saudi judgment debtor had adequate opportunity to defend the High Court proceedings, and that the judgments sought to be enforced (comprised of the principal sums claimed together with costs awarded by the High Court) contained nothing that would contravene the *Shari'ah* as construed and applied in Saudi Arabia.<sup>7</sup>

The Board's decisions enforcing the English judgments are subject to appellate review and have been appealed. Although Saudi courts are not bound by precedent, experience with the Board of Grievances indicates that the judges thereof are interested in such precedents and these can be cited by litigants to support substantive legal argument. Thus, subject to the outcome of the appeals, decisions enforcing foreign judgments may become more commonplace in Saudi Arabia. The actual implementation of such judgments, like other domestic judgments in civil commercial cases, rests with the Civil Rights Department of the Ministry of Interior.<sup>8</sup>

## II. Intellectual Property Protection

### A. PATENT LAW

In January 1989 Saudi Arabia enacted a patent law, which became effective in May 1989.<sup>9</sup> The Patent Law contemplates the recognition of foreign patents. Owners of foreign patents may be entitled to obtain a confirmatory or reciprocal patent under the terms of article 18 of the Patent Law. Article 18 authorizes the King Abdul Aziz City for Science and Technology (KAACST) to decide whether to grant confirmatory patents that recognize the priority of a foreign patent pursuant to the terms of any relevant international treaty to which Saudi Arabia

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6. The affidavit on English law submitted to the Board in support of the applications for enforcement averred that a Saudi judgment creditor could commence a fresh action in the High Court of Justice in London on the debt evidenced by the judgment and apply for summary judgment pursuant to Order 14 of the Rules of the Supreme Court.

7. In view of the *Shari'ah* proscription against interest (*see, e.g., the Quran, sura 2, aya'h 275-281, and sura 3, aya'h 130*), each judgment creditor filed an amended statement of claim with the Board of Grievances expressly disclaiming the interest component included in the English High Court's judgment, which the Board deemed to be a sufficient disclaimer.

8. *See* Ministry of Interior Resolution No. 20 dated 21/1/1406 A.H. (corresponding to October 5, 1985).

9. *See* Patent Regulations, Royal Decree No. M/38 dated 10/6/1409 A.H. (corresponding to January 17, 1989).

is a party. At present, Saudi Arabia is not a party to any major international patent treaties and, as a result, it is not clear yet whether KACST will actually grant confirmatory patents, or if so, on what basis.

Once issued, a confirmatory patent is valid for fifteen years from the date of issue provided that the holder has undertaken full industrial exploitation of the invention within two years of that date.<sup>10</sup> If a patent holder fails so to exploit the invention within this period, KACST has the authority to license the patent to another party if that party can establish that it would use the patent.<sup>11</sup> Holders of Saudi patents have the right to file a claim with the Patent Committee of KACST against any person or juristic entity infringing on their patent. The Patent Committee is empowered to order cessation of the infringing activities, to fine the infringer, and to award damages to the patent holder.<sup>12</sup>

In early 1990 KACST issued application forms and related instructions for obtaining a patent in Saudi Arabia. As of April 1990, however, no Saudi patents are reported to have been issued by KACST and it thus remains to be seen how effectively in practice KACST will accord recognition and protection to proprietary technology in Saudi Arabia.

## B. COPYRIGHT LAW

In December 1989 Saudi Arabia enacted a copyright law, which became effective in January 1990.<sup>13</sup> The Copyright Law replaces the largely ineffectual protections contained in the Printing and Publishing Regulations,<sup>14</sup> and has been viewed as a positive response to the May 1989 National Trade Estimate Report that placed Saudi Arabia on the U.S. Trade Representative's "Priority Watch List."<sup>15</sup>

The Copyright Law provides that all scientific, literary, or artistic works expressed in writing, sound, painting, photography, or motion are covered by the law.<sup>16</sup> Of particular interest, however, is the noticeable absence of specific mention of motion pictures and sound recordings. While these media are referred to in other sections of the Copyright Law,<sup>17</sup> they are omitted in article 3, which

10. *Id.* arts. 25, 27.

11. *Id.* art. 34.

12. *Id.* art. 47.

13. See Law for the Protection of the Rights of Authors, Royal Decree No. M/11 dated 19/5/1410 A.H. (corresponding to December 17, 1989) [hereinafter the Copyright Law].

14. See Printing and Publishing Regulations, Royal Decree No. M/17 dated 13/4/1402 A.H. (corresponding to February 7, 1982).

15. USTR, Fact Sheet: Special 301 on Intellectual Property (May 25, 1989), issued pursuant to § 182 of the Trade Act of 1974 (as amended).

16. This listing specifically includes books and all written materials, oral presentations, theatrical performances, architectural designs, video and still photography, graphic designs, maps, and computer software. See Copyright Law, *supra* note 13, art. 3.

17. *Id.* art. 24(2) and art. 1, definition of reproduction.

describes the types of works to be protected. This omission may have been an oversight that could be rectified in the rules for implementation of the law, which are expected to be issued in due course pursuant to article 33 thereof.

Article 23 of the Copyright Law states that works of foreign and Saudi authors are to be protected if they are published, acted, or shown for the first time in Saudi Arabia. Read literally, the Copyright Law would appear not to extend protection, in any practical sense, to the works of foreign authors, since virtually no foreign works are published for the first time in Saudi Arabia. Clarification of this provision will, hopefully, be covered in such rules for implementation.

A Saudi copyright will in most cases be valid for the lifetime of the author plus fifty years from the date of his death.<sup>18</sup> However, protection of sound and audiovisual works, photographic works, and works in the applied arts is limited to twenty-five years from the date of publication.<sup>19</sup> This is an unusual variation from international norms, which usually provide for a minimum period of protection of fifty years for all works. In addition, the duration of protection afforded to computer software is not specifically mentioned. For works owned and copyrighted by a juristic entity, protection begins on the date of publication, but the duration of such protection is not clear.<sup>20</sup>

Violators of a Saudi copyright are subject to fines and, if a business, to closure for up to fifteen days. The infringing works are subject to confiscation and destruction.<sup>21</sup>

### III. New Rules of Civil Procedure

In June 1989 the Council of Ministers approved new procedural rules governing practice before the Board of Grievances in administrative cases.<sup>22</sup> Such cases include civil service disputes,<sup>23</sup> claims for compensation against the Saudi Government or its instrumentalities,<sup>24</sup> public sector contract disputes,<sup>25</sup> and official corruption disputes.<sup>26</sup> Many provisions thereof codify what had been the de facto rules of practice before the Board of Grievances for some years.<sup>27</sup>

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18. *Id.* art. 24(1).

19. *Id.* art. 24(2).

20. *Id.* art. 24(4).

21. *Id.* art. 28(1) and (3).

22. See Rules of Civil Procedure, *supra* note 2.

23. See Board of Grievances Law, *supra* note 1, art. 8(1)(A).

24. *Id.* art. 8(1)(C).

25. *Id.* art. 8(1)(D).

26. *Id.* art. 8(1)(F).

27. Effective from the beginning of 1988, the Board of Grievances was also vested with jurisdiction in respect of private sector commercial disputes filed after that date. *Al Madinah*, 27/10/1407 A.H. (corresponding to June 24, 1987) issue; see also Royal Decree No. M/63 dated 26/11/1407 A.H. (corresponding to July 22, 1987). The Rules of Civil Procedure do not apply to such commercial disputes. In the absence of more formalized rules, the procedures applicable to such cases appear to remain those outlined in Circular No. 12 of the President of the Board of Grievances dated

One of the most noteworthy features of the Rules of Civil Procedure is the inclusion of a five-year statute of limitation for bringing claims against the Saudi Government under public sector contracts or for compensation claimed to be due as a consequence of official action or inaction.<sup>28</sup> The five-year period runs from the date on which the cause of action first arose. In accordance with *Shari'ah* notions of equity, the Board is granted the discretion to waive the limitation for justifiable cause.

The new rules became effective thirty days after their publication in the Official Gazette, or on August 6, 1989.<sup>29</sup> With respect to causes of action that arose prior to the effective date of the rules, the five-year period runs from such effective date.<sup>30</sup>

Another important feature of the new rules is the formalization of the requirement that at the inception of every administrative case the head of the competent Board of Grievances circuit notify the Ministry of Finance and National Economy as well as the Public Audit Bureau of the scheduling of the first hearing date. The Ministry of Finance and the Public Audit Bureau have the right to intervene in the proceedings<sup>31</sup> and the right to request the review of all Board decisions before they become final.<sup>32</sup> Experience to date under the rules has shown that the Ministry of Finance and the Public Audit Bureau have been slow to intervene in new cases or to make known their intention to do so or not. This inaction has had the practical effect of providing yet another ground for further delaying proceedings against the Government in cases involving public sector contracts, as the relevant Board circuits grant hearing postponements until such time as the potential intervenors declare their intentions.

#### IV. Distributorship and Commercial Agency Agreements

No person may act as a commercial agent or distributor in Saudi Arabia unless such person is registered with the Ministry of Commerce.<sup>33</sup> As a part of such registration process, the relevant agency or distributorship agreement between the Saudi agent and the non-Saudi principal is also required to be registered with

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19/6/1408 A.H. (corresponding to February 7, 1988). A noteworthy feature of Circular No. 12 is its provisions for appellate review of decisions in commercial disputes. Such decisions were not previously appealable.

28. See Rules of Civil Procedure, *supra* note 2, art. 4; see also Board of Grievances Law, *supra* note 1, arts. 8(1)(C) and 8(1)(D).

29. See Rules of Civil Procedure, *supra* note 2, art. 17; see also *Umm Al-Qura*, 4/12/1409 A.H. (corresponding to July 7, 1989), issue No. 3266.

30. See Rules of Civil Procedure, *supra* note 2, art. 4.

31. *Id.* art. 5.

32. *Id.* art. 35.

33. See Commercial Agencies Regulations, Royal Decree No. M/11 dated 20/2/1382 A.H. (corresponding to July 22, 1962), as amended, art. 3; Rules for Implementation of the Commercial Agencies Regulations, Ministry of Commerce Resolution No. 1897 dated 24/5/1401 A.H. (corresponding to March 30, 1981), arts. 6-12.

that Ministry. It has been the Ministry of Commerce's practice for a number of years to deny registration to any agreement where the parties' choice of law therein was any law other than Saudi law. It was also the practice to deny registration to any agreement providing for adjudication or arbitration of disputes thereunder in a forum other than Saudi Arabia or providing for arbitration pursuant to rules other than those contained in the Saudi Arbitration Regulations.<sup>34</sup> As a consequence of such practice, disputes under such agreements (which have been a traditional feature of the local legal landscape) have been adjudicated before the Saudi courts or, more rarely, determined by arbitration in Saudi Arabia pursuant to the Arbitration Regulations and Arbitration Rules.

Starting sometime in early 1988, in an unannounced shift in policy, the Ministry of Commerce began accepting for registration distributorship and commercial agency agreements containing clauses providing for arbitration in a forum other than Saudi Arabia under the relevant rules of the International Chamber of Commerce. (The Ministry's requirement that governing law clauses of such agreements stipulates Saudi law remains unchanged.) The Ministry's new policy should be encouraging both to foreign companies wary of local dispute resolution generally and to all those, principals and agents alike, familiar with certain drawbacks of arbitrating under the Saudi Arbitration Regulations and Rules. However, there is as yet no significant experience as regards the practical consequences of the Ministry's new policy. For example, it is uncertain whether the Saudi Board of Grievances would stay an action in Saudi Arabia and compel arbitration based upon the foreign arbitration clause in the parties' agreement, or whether the Board would enforce a foreign award rendered in proceedings conducted under the ICC's Arbitration Rules or the rules of any other non-Saudi arbitration authority.

## V. Branch Office Licensing by the Ministry of Commerce

A foreign company is not permitted to establish a branch office in Saudi Arabia except pursuant to a license issued by the Ministry of Commerce,<sup>35</sup> or to a license issued by the Minister of Industry and Electricity under the Foreign Capital Investment Code.<sup>36</sup> For many foreign contractors executing work in Saudi Arabia, Resolution No. 680 of the Ministry of Commerce<sup>37</sup> has

34. See Arbitration Regulations, Royal Decree No. M/46 dated 12/7/1403 A.H. (corresponding to April 25, 1983)[hereinafter Arbitration Regulations]; Rules for Implementation of the Arbitration Regulations, Council of Ministers Resolution No. 7/2021/M dated 8/9/1405 A.H. (corresponding to May 27, 1985)[hereinafter Arbitration Rules]. The Ministry of Commerce's practice of requiring that any arbitration be conducted in Saudi Arabia in fact predated the promulgation of the Arbitration Regulations.

35. Regulations for Companies, Royal Decree No. M/6 dated 22/3/1385 A.H. (corresponding to July 20, 1965), as amended, art. 228.

36. Royal Decree No. M/4 dated 2/2/1399 A.H. (corresponding to January 1, 1979). Such branch licenses have been granted in the past but are rare.

37. Dated 9/11/1398 A.H. (corresponding to October 10, 1978).