

The New Saudi Civil Transaction Act and its Potential Impact on Private International Law in Saudi Arabia

The Kingdom of Saudi Arabia (KSA) has recently enacted a new Civil Transactions Law (Royal Decree No. M/199, dated June 16, 2023). The law will enter into force on December 16, 2023, 180 days after its enactment (hereinafter referred to as “the new law”). This law has been rightly described as “groundbreaking” because, prior to the enactment of the new law, there has been no codification of civil law in the Kingdom, and civil law issues have traditionally been governed by the classical rules of Islamic Sharia according to the teachings of the prevailing school of *fiqh* (religio-legal jurisprudence) in the Kingdom (Hanbali School). Like most of the civil law codifications in the region, the new law focuses mainly on the so-called “patrimonial law,” i.e., property rights and obligations (contractual and non-contractual). Family relations and successions are dealt with in a separate law, which was previously enacted in 2022 and entered into force the same year (Personal Status Act, Royal Decree No. M/73 of 9 March 2022, entered into force on June 18, 2022).

From a private international law perspective, one particular aspect of the new law compared to other civil law codifications in the region is that, unlike most of the Arab civil law codifications, the new law does not contain rules on the choice of the applicable law. In other neighboring countries (namely Egypt, Jordan, Syria, Iraq, Qatar, Oman, and Yemen) as well as in other Arab jurisdictions (including Libya and Algeria), the civil law codifications include at the beginning of their respective Civil Code/Civil Transactions Act a chapter dealing with the “application of the law in space”. These choice-of-law codifications generally contain provisions on characterization, choice of law in family law and succession, property, contractual and non-contractual obligations, and some general rules such as *renvoi* (or its prohibition) and public policy, etc. Only a few Arab states have chosen to codify choice-of-law rules outside of their Civil Code (Kuwait and Bahrain) or Code of Obligations and Contracts (Morocco and Tunisia). Lebanon is

the only country where choice-of-law principles have been developed mainly through case law. Thus, Saudi Arabia remains the only Arab jurisdiction where conflict of laws rules are *almost* non-existent and where the courts have not been able to develop a body of principles dealing with choice-of-law issues. This is because, in general, Saudi courts apply Saudi law when they assume jurisdiction, regardless of whether or not the dispute has a connection with another legal system or not. Whether there will be a codification of choice-of-law rules in the same way that rules on international jurisdiction and enforcement of foreign judgments have been codified remains to be seen.

Interestingly, however, the new law may affect the assessment of public policy in the context of the enforcement of foreign judgments. Indeed, based on the traditional Sharia rules and principles recognized in the Kingdom, Saudi courts have often relied on public policy and inconsistency with Sharia to refuse enforcement of foreign judgments. For example, in a case decided in 1996, the Saudi court refused to enforce a Dubai judgment on the ground that the said judgment allowed for compensation for lost profits and payment of moral damages (*Board of Grievances, Case No. 1783/1/Q of 30/12/1417 Hegira [November 12, 1996]*). The court cited Sharia rules and principles on compensation, according to which only real and quantifiable losses can be compensated. The new law departed from this traditional principle by clearly allowing compensation for both lost profits (article 137) and moral damages (article 138). Therefore, the traditional position of the Saudi court is no longer tenable under the new rules, as compensation for lost profits and moral damages are now available under the newly adopted rules.

Another important issue concerns interest. It is well known that the payment of interest is prohibited under Sharia rules and principles. Saudi courts have been particularly eager to refuse enforcement of those parts of the foreign judgments that order the payment of interest, including legal interest available under the laws of other Arab and Islamic states (see, for example, *Board of Grievances, Case No. 2114/Q of 21/8/1436 Hegira [June 9, 2015]* refusing enforcement of legal interests ordered by Bahraini courts but allowed partial enforcement of the main award). However, unlike lost of profits and moral damages, the new law's position

on interest is less clear. Several indicators in the new law suggest that the legislature did not wish to depart from the traditionally prevailing position. For example, the prohibition on agreeing to repay amounts that “exceed” the capital in loan agreements, either at the time of the conclusion of the agreement or at the time of the deferment of payment, is clearly stated in article 385 of the new law. Moreover, article 1 of the new law clearly refers to the “rules [*al-ahkam*] derived from the Islamic Sharia which are most consistent with the present law” as the source of law in the absence of an applicable provision of the new law or a rule of general principles contained in its last chapter. Accordingly, it can be expected that Saudi courts will continue to refuse to enforce the portion of the foreign judgments awarding interests on the ground of public policy and the inconsistency of interests with the principles of the Sharia as understood in the Kingdom.