



NEW ZEALAND
FOREIGN AFFAIRS & TRADE
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New law offers greater certainty in Saudi business environment

MARKET INTELLIGENCE REPORT

Summary

- Saudi Arabia's new Civil Transactions Law (the CTL) was enacted on 19 June 2023, and will enter into force on 16 December 2023. The law is a significant and historical piece of legislation for Saudi Arabia, as it marks the first time the Kingdom has codified contract law; moving away from judicial discretion in applying Shari'a law maxims.
- Importantly, the CTL has retrospective effect – almost all contracts in Saudi Arabia will be captured (except where a party can prove the application of the Law to their pre-December 2023 contract would be contrary to a Shari'a principle). New Zealanders interested in entering business arrangements in Saudi Arabia may therefore need to seek advice on the CTL, particularly in relation to drafting contracts.
- The CTL is expected to bring Saudi Arabia in line with regional practice, and remove uncertainty and speculation on how contractual obligations are created, and how disputes are to be resolved. While it remains to be seen how the CTL will be implemented in practice, it has the potential to pave the way for an improved business operating environment – and increased international investment – in a modern Saudi Arabia.

Report

What you need to know

Saudi Arabia is undertaking a transformational reform of its legal system. Four major pieces of legislation were announced in 2021, which (alongside regulatory reform) will create the fundamental building blocks of a new, codified legal system. These are: the Personal Status Law, the Law of Evidence, the Civil Transactions Law, and the Penal Code for Discretionary Sentences.

The Civil Transactions Law (the CTL) is the third to be enacted, and will arguably have the greatest impact for businesses. Once it enters into force, it will codify the foundational aspects of contract law in Saudi Arabia, including but not limited to: the formation of a contract via offer and acceptance; liability; damages; the good faith principle; deceit; and duress.

Previously, a court considering a civil matter would rely on the uncodified (and numerous) Shari'a law maxims, with broad discretion employed by Judges. There are reports of parties to a contract specifying that any disputes would be subject to mediation or arbitration in a named foreign country, given a lack of guidelines and certainty. This reportedly triggered enforcement issues, as one party would then seek to have a foreign outcome or ruling implemented in Saudi Arabia. With the entry into force of the CTL, companies will likely enjoy a greater level of certainty in drafting contracts and enforcing them, given the strong guidelines set out by the Government.

Of course, while this is a welcome development, it remains to be seen how it will be implemented in practice. New Zealand Trade and Enterprise (NZTE) advisers expect the CTL to prompt further change elsewhere – particularly as test cases occur, or gaps are identified by the Government.

Does Shari'a still apply to contracts in Saudi Arabia?

If the language of a contract is clear, the CTL sets out that it must be followed. If there is any ambiguity, however, the Court can consider the will of the parties, customary practice, the circumstances involved, the nature of the contract, and the relationship between the parties (including evidence from correspondence between them). Where there is doubt, the terms of the contract will be interpreted in the interest of the party who bears the burden of the obligation or condition.

This process of interpretation (and the overall intent of the CTL) is guided by the CTL's final section, which sets out 41 Shari'a law maxims. These are fundamental Islamic principles, used to guide Muslims in everyday life and in the resolution of legal disputes. For example, the principle that 'matters will be determined in accordance with intentions,' would allow a Judge to consider the will of the parties involved when interpreting a contractual term.

Likely impact

The CTL is expected to have a positive impact on the business environment in Saudi Arabia. Legal commentary has universally noted the uncontroversial nature of the provisions relating to contract formation, consistency between most of the Gulf states, and improved certainty in dispute resolution and risk management. There will be significant interest in how the CTL is interpreted post-December 2023, its applicability to any contracts captured by its retrospective nature, and any announcements of further reform to existing legislation.

NZTE has a range of tools available to support New Zealand exporters looking to enter the Saudi Arabian market. These include the Saudi Market Guide on the myNZTE portal, which covers the most frequently asked questions by New Zealand companies to NZTE legal beachhead advisors. For more information, please visit: [Saudi Arabia Market Guide - myNZTE](#).

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