

Kluwer Arbitration Blog

Countdown to RIDW24: Scope of Arbitration Agreement in the Saudi Arbitration Law and Related Judicial Practice

Mostafa Abdelghaffar (Majed Alrsheed Law Firm) · Tuesday, February 20th, 2024

This post will discuss the scope of arbitration agreements and arbitrability issues under the arbitration law of the Kingdom of Saudi Arabia (“KSA”), as interpreted by the Saudi Judiciary. Some of the principles that have been established by the Saudi judiciary in this regard include the following.

Arbitration agreements bind the successors

Arbitration agreements are binding on the parties and their successors. Article 41/2 of the Saudi Arbitration Law provides that arbitration proceedings do not terminate if one of the parties dies, unless parties otherwise agree. The Saudi judiciary confirmed that arbitration clauses are binding on the successors. (Board of Grievance, case 269/3/J, dated: 6/4/1409 H).

Third parties are not bound by arbitration clauses

It has been decided that a third party cannot be bound by an arbitration agreement¹⁾ and that a joinder of a new party to the dispute is inadmissible without its consent (Board of Grievance, case 290/3/J, dated 2/1/1420 H). The implementing regulations of the Saudi Arbitration Law provided, in article 13, that the joinder of a new party to arbitration is possible if parties to arbitration and the new party agree. Therefore, Joinder of third party who is not party to arbitration agreement requires his consent and the consent of all parties to arbitration .

Severability of arbitration clauses

The Saudi Arbitration Law provides the principles of severability of arbitration clauses and *Kompetenz Kompetenz* in articles 20 and 21. An arbitration clause contained in a contract is considered a separate agreement from the other clauses of the contract and the invalidity of the contract, its revocation or termination shall not result in the invalidity of the arbitration clause.

The Saudi courts have decided that the dissociation of a partner from the company does not affect

the arbitration clause contained in the contract of incorporation of the company. The court also decided that the arbitral tribunal has jurisdiction to decide whether it has jurisdiction over the dispute, thus echoing what is provided for in the first paragraph of article 20 of the Saudi Arbitration Law (Board of Grievance, Case Number 881/2/J/1432, dated 11/6/1434 H). In another case, the court ruled that arbitration clauses are independent and should therefore not be interpreted to limit their scope in the light of other substantive terms of the contract (Riyadh General Court, Case Number 32328746, dated 23/2/1434 H).

The extinction of arbitration agreements

The Saudi courts had the opportunity to discuss to what extent the arbitration agreement may be extinguished. The Board of Grievance has decided that the arbitration agreement is binding and could not expire or be extinguished by non-use even if the parties had not invoked the arbitration clause in a previous dispute arising out of the same contract (Board of Grievance, case 250/2/J, dated: 14/4/1409 H).



We look forward to attending the SCCA24 Conference!

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References

- ?1 No reference in Saudi courts' precedents or Saudi law related to the group of companies or group of contracts.

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