

The Most Prominent Features of the Commercial Courts Law

Promulgated by Royal Decree No. (M/93) dated 15 /08 /1441 A.H. (08 /04 /2020 A.D.)

Introduction The Commercial Courts Law ("Law"), which consists of (96) articles, was promulgated for the purpose of organising the work of commercial courts in a manner that serves and balances efficiency and effectiveness in light of the qualitative and quantitative flow of commercial cases. It was published in Umm Al-Qura newspaper under No. (4827) on 27 Shaban 1441 A.H. [2020/04/20 A.D.], and it will go into effect sixty days after its publication date.

The law has been divided into (11) sections, containing a set of general provisions related to litigation before commercial courts specifically, such as subject matter jurisdiction and territorial jurisdiction, case filing procedures, the types of evidence and evidence presented in these cases, and the mechanisms for objecting to judgements.

However, in addition to these general provisions, the law sets out special provisions that can be classified into two phases: Pre- and post-arrival at the commercial court, in order to reduce the length of litigation and adapt to the fast-paced commercial reality. We present the most important of these provisions as follows:

Pre-commercial court phase



Serving Notices

The law made it possible to serve notices on companies at the agreed upon official addresses. Accordingly, text messages, emails, correspondence at postal addresses, and the addresses registered in contracts or registered in the Commercial Register are valid when undertaking all procedures, including serving notices through the court. In other words, it can be said that the address is an effective and influential factor in all procedures and throughout the transaction even until the commercial court phase, and it is no longer merely a piece of information about the commercial transactions.



Settlement and Mediation

The law has provided a number of options that the parties to a dispute can resort to before the litigation phase, including commercial mediation, which will be mandatory in some cases, a pre-trial meeting, the exchange of documents and memoranda, and most importantly having the litigation and conflict resolution proceed according to procedures and mechanisms that the parties have agreed upon, whether said agreement and specificity are set forth in the contract or [are formulated] after the conflict has arisen. Accordingly, the terms of the settlement must be taken seriously and are no longer optional like they were before.



Evidence and Proof

The law established an important exception in the provisions related to the evidence and proof submitted in the case. Indeed, the parties can agree to transfer the burden of proof. The general rule is that the claimant has the burden of proof, and so the one who makes a claim about money or an obligation and the like must submit evidence and proof of its validity. However, the exception here is that it is possible for the parties to agree, at the time the contract is concluded or thereafter, that one of them has the burden of proving a specific matter and that this applies regardless of whether the party that has the burden of proof is the claimant or the respondent in the case. Accordingly, caution must be exercised in contracts because drafting that clause is a material matter in contracting.



Notices

The law required notice before moving to the phase of litigation before the commercial court. In other words, the party that intends to initiate a commercial case must send a legal notice to the other party, seeking enforcement or payment and the like, before filing a commercial case.



Payment Orders

As an exception to the litigation rules, the law provided for the possibility to obtain an order to pay a certain debt, whereby the creditor asks that another party be compelled to pay a debt and submits written proof of the validity and immediate payability of this debt, such as the contract, and if it is proven then the court issues the payment order without having the request turn into a commercial case according to the usual general procedures.



Publicity of the Data

The law established the possibility of access by parties who wish to the evidence related to commercial cases for a fee, i.e. without being a party to these cases, and this matter gives contractors more ease and room to find out the legal status of the other parties, including the commercial cases brought against them.

Commercial court phase



Seeking the assistance of the private sector

The law has authorised the commercial court to seek the assistance of the private sector more extensively in professional consulting fields such as commercial mediation and reconciliation, courtroom management, and the exchange of memoranda, which will contribute in the future to the speed and accuracy of case completion.



Statute of Limitations

The law established a statute of limitations for commercial cases, i.e. the law stipulated a certain period for filing a commercial case, and the right to file the commercial case lapses if this five-year period elapses from the date the claimed right arose. This is set up to ensure the stability of commercial transactions.



Fines for procrastination

The law established the judge's authority to impose fines on the party that violates or neglects the litigation procedures at the commercial court, in order to limit prolongation of the case and ensure its expeditious completion.



Swearing the Oath

The law established an important exception to the rulings related to the oath, because refusal to take the oath before the commercial court no longer authorizes the party to request oath taking later on. In other words, issuance of a ruling in a commercial case that is based upon the party's refusal to take the oath results in dismissal of the request for oath taking and the inability to take the oath during the appellate phase. This is in order to limit prolongation of the case and ensure its expeditious completion.



Business norm

The law established business norms as a means of proving a right. The law also required the party claiming the existence of a business norm to submit proof thereof. This is in order to keep pace with the rapid development in business and the new norms and principles that may arise in business.



Requirement for there to be an attorney

The law established a requirement that a commercial case or objection to the judgement issued in a commercial case be filed through an attorney in some types of cases to be specified by the executive regulations of the law. This is in order to facilitate the ability for the parties concerned to understand the legal requirements and quickly fulfil them.

How does this law affect the business sector?

The law will undoubtedly affect the mechanism and drafting of commercial contracts because the law set out a broad area for adding a number of clauses regarding various topics, including the aforementioned. It also designated some clauses and imbued them with legitimacy, such as transferring the burden of proof, etc.

The law may also affect the negotiation process when a dispute occurs, because the law specified mechanisms, set out avenues and imposed mandatory provisions when petitioning the commercial court. We believe they encourage alternative legal options to resolve the dispute before reaching the commercial court.

Finally, the law clearly aims to reduce the duration of a case before the commercial court, because business reality necessarily requires that, and the goal is consistent with the requirements of justice as these cases are related to money and what may happen to it.

(Note)
The executive regulations for the law, which are expected to interpret, detail and explain many of its provisions and implementation mechanisms, have not been issued yet.

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