

Review of the Saudi Judicial Costs Law

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The Kingdom of Saudi Arabia has taken a new step in the project of reforming the judicial system by issuing a new framework for judicial costs. Royal Decree No. Meem/16 dated 30/01/1443H (corresponding to 07/09/2021) of approving the law of judicial costs (the '**Law**') provides that it will enter into force after 180 days from the date of its publication in the Official Gazette, but it has not yet been published, although it is expected to be published soon. The Law consists of twenty-eight articles dealing with the definitions provided in the Law, lawsuits and requests that are excluded from the application of the Law, and maximum judicial costs. The Law clarifies the requests and their associated maximum fees that are subject to the Law and the cases exempted from the Law. In this article, we will touch base upon the highlights of the Law and present our view in this regard.

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Objectives of the Law

The Ministry of Justice clarified that the Law aims to reduce malicious lawsuits, upgrade the quality of the judicial work and the quality of litigation procedures, as well as urge litigation parties to fulfil their obligations before resorting to the court – considering that the judicial fees will be an additional cost that the defaulting party will bear in case of not fulfilling his obligations. By reviewing the Law, and its consideration of excluded groups, we find that it is compatible with the other steps taken by the Kingdom in the judicial reformation of the Commercial Court Law. From a procedural point of view, many judicial procedures are now carried out using modern technology to enhance efficiency, save time and effort, and improve the beneficiaries' experience, noting that all these infrastructures require considerable financial expenses. It is conceivable that the collection of judicial costs by the state will directly contribute to ensuring the continuous development of the judicial system. Accordingly, this Law should be read in light of the Kingdom's vision in developing laws and courts of law as one of the pillars of the state and the national economy.

Lawsuits and Cases Excluded from the Law

In Article 2, the Law excludes lawsuits and requests related to: criminal and disciplinary lawsuits against public officials, lawsuits regarding family issues and estate distribution, terminations related to proof of determination of inheritance, proof of divorce, proof of wills, and other requests related to social and family matters, as well as administrative lawsuits filed in against governmental bodies.

The Law also identifies, in Article 17, the categories of persons on which judicial costs are not imposed, namely: prisoners and detainees at the time of the judicial costs accrual in non-criminal financial cases and lawsuits filed, whether by them or against them; and workers, employees and their heirs to claim their entitlements arising from the employment contracts.

These exceptions indicate that the Law took into account the categories of individuals that may not be

able to make the payments, and the state bears these costs or postpones their payment in order to achieve justice and fairness to the needy. This is further confirmed in Article 12 of the Law, which stipulates that with the exception of the petition for reconsideration and the request for cassation, the failure to pay the prescribed judicial costs does not preclude the filing of the lawsuit or the request, the judicial decision made by the court therein, and the subsequent process to collect the judicial costs owned, as collecting the judicial costs will become the responsibility of the concerned department, without impacting the judicial proceedings. The Law also stipulates that the court shall give the petitioner a period of thirty days to petition for the reconsideration or cassation from the date that the request is registered with the court. In case that the petitioner fails to make the payment within this period, the court shall rule for the forfeiture of his right of the request, and the judgment shall be final and irrevocable in this case.

Determination of Judicial Costs

The Law determined the highest ceiling of judicial costs but left to the executive regulations the determination of the exact fees. The Ministry of Justice issued a draft of the Law's Executive Regulations for the consideration and feedback of relevant persons, including judges, lawyers and the public (the '**Draft Regulations**'). It is expected that the final version of the Draft Regulations will be issued within 60 days of the Law being published in the Official Gazette. The maximum fees are as follows:

- In new lawsuits, no more than 5% of the claim value and a maximum amount of one million Saudi riyals, as determined in accordance with the assessment criteria (Article 3 of the Law);
- A charge of 1% of the amount of the arbitral award shall be charged to the Claimant in an annulment lawsuit of an arbitral award (Article 5 of the Law);
- In the event that the court decides to dismiss the lawsuit if the Claimant fails to be present or the lawsuit is inadmissible due to the Claimant having not filed his lawsuit in the appropriate manner, additional charge shall be imposed at the rate of 25% of the fees prescribed for the original lawsuit when it is filed again, and the Claimant shall bear such fees, even if a ruling is issued in his favour in the subject of the case (Article 4 of the Law);
- An amount not exceeding ten thousand Saudi riyals shall be charged to the party requesting an appeal, cassation, reconsideration, interlocutory requests, request to join the litigants, request for the judge recusal, request for correction or interpretation of the judgment, or any other request specified by the executive regulations (Article 7 of the Draft Regulations); and
- Requests for delivering a certified copy of the lawsuit papers, paper or electronic records, papers under the Court's possession, or requesting an alternative copy shall be charged to the requesting party at an amount not exceeding one thousand Saudi riyals (Article 8 of the Draft Regulations).

The competent department determines the amount of judicial costs in relation to the lawsuit or request submitted to the court, in accordance with the applicable laws and regulations. It is permissible to object to the department's decision on judicial costs by submitting an objection to the court, whereby the president of the court, within 15 days from the date of receiving the request for payment, shall make a decision. The decision of the president of the court in this regard is final (Article 11 of the Draft Regulations).

While the aforementioned fees are the ceiling set by the Law, there is flexibility in amending those fees if necessary, as it is left to the Draft Regulations to determine the exact rates. It is conceivable that the upper limit is somewhat cumbersome, and we believe that these fees must be gradually imposed.

Who Shall Bear the Legal Costs

The Law stipulates that the losing party shall bear the value of the judicial costs prescribed for the case and related requests, or a part thereof, unless the Law or Regulations stipulates otherwise. The aggrieved party is also entitled to request compensation for the additional expenses or other damages that resulted

from the lawsuit. This is considered important to reduce procrastination in the performance of rights and obligations, as it will inform the defaulting party that he will bear the judicial costs and damages incurred by the Claimant in addition to the original obligation if the Claimant wins the claim. If the Claimant does not win the lawsuit, then he would not be reimbursed as to judicial fees.

The Law also clarifies that in the event that the case for judgment ends without collection of the judicial costs due, the competent department issues a final report, and this report is considered an executive bond against the person responsible for paying the judicial costs and collects the same, in the manner prescribed in the Regulations.

The Law encourages both parties to the dispute to reconcile. The Law specifies that in the event of amicable settlement between the two parties before attending the first hearing session, the judicial costs are waived and the payer recovers them. In the event that the reconciliation takes place after the first hearing session and before the issuance of the judgment, the costs of litigation will be up to 25% of the claim amount. The parties to the settlement shall bear the judicial costs on a *pari-passu* basis in such case, unless they agree otherwise

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Recovery of Judicial Costs

The Law, in Article 16, specifies cases of recovery of judicial costs, including:

1. If the judgment is in favour of the cost payer;
2. If the judge’s recusal request is accepted, and the judge is recused;
3. A request for interpretation or correction of the judgment, and the judgment was interpreted or corrected;
4. If the judgment is reversed by the Court of Appeal; and
5. If the claimant leaves his case before holding the first session.

From this Article, we find that the Law has set these costs to ensure the seriousness of the claim or request. In the event that the claim or request is accepted whereby a judicial decision is issued in favour of the Claimant, he will recover what he spent on the request or lawsuit; therefore the principle of seriousness is achieved in lawsuits and requests and not for those who would be perverting the course of justice. The Law did not link the recovery of judicial costs to the other party’s payment thereof.

Furthermore, the process of collecting costs, identifying and recovering them, may increase the burdens of the courts and Ministry of Justice; however, it is expected that the Ministry of Justice will provide quick electronic solutions to ensure the facilitation and effectiveness of cost collection procedures. To date, the Ministry has already invested in and undertaken great efforts in developing the electronic infrastructure of the judicial system in the Kingdom.

“The Law of Judicial Costs has set the judicial costs at a level to ensure the seriousness of the claim or request submitted to Court.”

Conclusion

The new Law is a significant change in the judicial system, which previously did not charge fees for the filing of claims or requests, yet it is a critical step in enhancing the Saudi's legal system by helping to reduce malicious lawsuits, encouraging reconciliation between litigants, and promoting parties to uphold their obligations. The anticipated finalisation of the Draft Regulations, will add further details concerning the Law's implementation. The approved executive regulations are also expected to specify the exact costs (whereas the Law sets the maximum amounts), the method of payment and recovery, and other details; which we will cover in the next article immediately after the issuance of the Law's approved executive regulations. Choosing a reputable and specialized law firm, and obtaining legal assistance from the beginning of legal dealings through to filing a lawsuit will have a fundamental and important role in helping to avoid the costs of litigation.

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