

# Guide on New Civil Law in Kingdom of Saudi Arabia



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On June 19, 2023, the Kingdom of Saudi Arabia enacted the *Civil Transactions Law* proclaimed by *Royal Decree M/191 dated 18 June 2023* (Dhul-Qi'dah 29 1444 AH). The Code, which goes into force on *December 16, 2023* (Jumada II 3, 1445 AH), marks a significant step to integrate Islamic standards into modern legal concepts, aiming to smooth out transactions and promote economic growth. The KSA Common Code also provides a positive impact on the business environment by increasing its attractiveness, regulating economic movement, and the stability of financial rights. The KSA Civil Code reflects Saudi Arabia's desire to draw in investment and encourage more business action as a component of its wider Vision 2030. The Code will in this way be at the core of the change of Saudi Arabia's economy.

## Prior to KSA Civil Code

Before the order of the KSA Civil Code, the regulations in Saudi Arabia are established in view of the Basic Law of Governance, declared by *Royal Decree A/90 dated March 2, 1992 (Sha'ban 27, 1412 AH)*, as amended. The Basic Law states that Sharia law governs the legal sphere in Saudi Arabia, as educated by the Quran and Sunna. The translation of Sharia law in Saudi Arabia is thus dependent upon the four schools of Islamic Jurisprudence, of which the Hanbali school is the most prevailing.

The ongoing framework is largely uncodified and doesn't depend on legal precedent. All things considered, texts composed by, for instance, the Hanbali school are prevalently depended upon to determine legitimate positions. Subsequently, Sharia law, as applied in Saudi Arabia according to commercial contracts, could be said to have the following characteristics:

**Absence of codification:** Sharia law is derived from religious texts and customs instead of classified laws and guidelines.

**Interpretation and application:** The understanding of Islamic standards in Sharia law can vary among researchers and law specialists which can make vulnerability about the outcome of specific business situations.

**Limited Precedent:** Sharia law doesn't depend on the system of binding of precedent. This permits future legal decisions to diverge from past decisions in similar cases. By codifying a large number of the key principles overseeing civil transactions in Saudi Arabia, the Code gives more clarity over legal positions, and should also in turn support consistency of interpretation and application and limit the scope of statute that can impact legal decisions. Then again, the Code doesn't modify the position regarding judicial precedent, thus there remains scope for divergent decisions in the future.



## Key changes and Impact of New Law

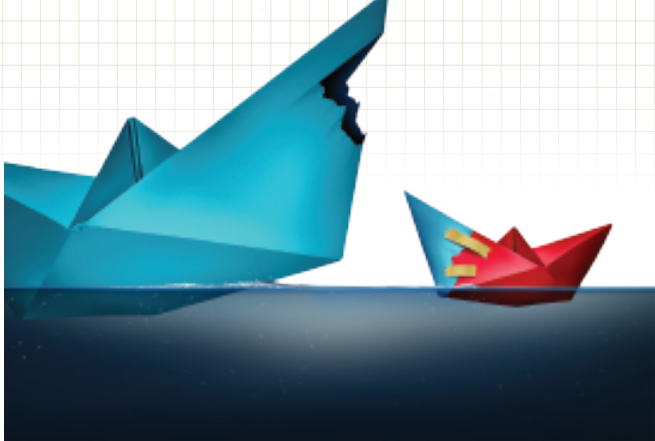
### Impediment of Liability

The usual practice in the Saudi Courts didn't favour the enforcement of limitation of liability provisos assuming the losses being referred to surpass the expressed limit of liability. In other words, the Saudi Courts interpret limitation of liability provisions barely and are more disposed to grant damages that are proportionate with the loss actually endured, regardless of whether or how much such loss surpassed the cap on liability.

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*"Ignorance of the law is no excuse in civil society, where justice thrives on the clarity and application of its established principles."*

*– Unknown*



In any case, under the Saudi Civil Law, limitation of liability provisos will be enforceable, regardless of loss endured, to the degree that the defaulting party has not committed deceit or gross negligence.

**Statute of limitation**

The time bar isn't managed under Saudi regulation. According to the Sharia, privileges are not smothered due to any lapse in time. While Saudi Civil law affirms this principle, it sets out limitation periods that will apply only to the individual against whom an action is denied the claim or the right being questioned. As such, a time bar may not work as a sole defense to release a respondent from a claim, yet the respondent should deny the claim or right on the principal instance. The general limitation period is 10 years however, there are other shorter periods that will apply to specific explicit cases as specified in the law.

**Liquidated damages (LDs)**

Along these lines, the Saudi Courts had the ability to either decrease or increase the amount of LDs, in accordance with the case, assuming the affected party can demonstrate that the amount of LDs is exaggerated, or disproportionate to the amount of the actual loss. Nonetheless, under the Saudi Civil Law, the Saudi Courts' ability to increase the LDs will be limited to situations where the defaulting party is found liable for misrepresentation or gross negligence.



**Solutions for Moral Damages**

The Saudi Courts granted moral damages in rare occurrences, under the discretion of the Court's prudence. The Saudi Civil Law characterizes moral damages and orders that these be incorporated within the amount of compensation awarded to the affected party. In any case, it appears from the relevant provisions of the Saudi Civil Law that such remedy will be accessible to regular people only, to the exclusion of legitimate entities.

**Compensation**

Under the current system, the Saudi Courts granted only genuine and direct losses. Any indirect or significant loss, including loss of profit, were not compensable. Under the Saudi Civil Law, loss of profits can be granted in a legally binding setting to the extent that it can be established that such loss is a direct consequence of the breach in question and might have been sensibly anticipated at the time of contracting.

**Conclusion**

The KSA Civil Code is a welcome improvement in Saudi law which will promote increased certainty for businesses and give a steady operating environment. Be that as it may, while it is feasible to gather potential interpretations of key provisions in light of how other GCC civil codes have been interpreted, it is not yet clear how Saudi courts and arbitral tribunals will apply the provisions. Ahead of December 16, 2023, parties should familiarize themselves with key provisions in the Code, noticing their retrospective impact on pre-existing contracts. Of specific significance in this regard are the compulsory provisions within the Code, which take precedence over legally binding terms.

STA Law Firm's offices across GCC

Abu Dhabi Office

Advocates and Legal Consultants  
23 A, Level 23 Tamouh Towers  
Marina Square, Reem Island  
Abu Dhabi, United Arab Emirates  
Tel: +971 2 644 4330  
Fax +971 2 644 4919

ADGM Office

3517, Al Maqam Tower  
Abu Dhabi Global Markets Square  
Abu Dhabi  
United Arab Emirates  
Tel: +971 2 644 4330  
Fax +971 2 644 4919

Dubai Office

Advocates and Legal Consultants  
Office 1904, Level 19, Boulevard Plaza,  
Opposite Burj Khalifa  
Dubai, United Arab Emirates  
Tel: +971 4 368 9727  
Fax +971 4 368 5194

Sharjah Office

48-1F, Next to Abu Dhabi Islamic Bank  
Near Hamriyah Free Zone Headquarters,  
Hamriyah  
Sharjah, United Arab Emirates  
Tel: +971 6 513 4270  
Fax: +971 6 526 4027

Bahrain

Advocates and Legal Consultants  
Level 22, West Tower  
Bahrain Financial Harbour  
King Faisal Highway  
Manama  
Kingdom of Bahrain  
Tel: +973 1750 3045

Qatar

Level 22, Tornado Tower  
West Bay, Doha  
Qatar  
PO Box – 27774  
Tel: +974 44294827

RAK Office

Office 501-A, Level 5, Building 4  
Ras Al Khaimah Free Trade Zone  
Ras Al Khaimah,  
United Arab Emirates  
Tel: +971 7 204 2180  
Fax: +971 7 204 2181

Fujairah Office

Creative Tower  
Creative City - Media free zone  
Fujairah,  
United Arab Emirates  
Tel: +971 7 204 2180  
Fax: +971 7 204 2181

For a free subscription request, you can e-mail us at:  
corporate@stalawfirm.com  
with your name and address.  
www.stalawfirm.com

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Office 1904, Level 19,  
Boulevard Plaza, Tower 1,  
Opp. Burj Khalifa, Dubai  
United Arab Emirates  
Tel: +971 4 368 9727  
corporate@stalawfirm.com  
www.stalawfirm.com

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