

SAMA Committee restructuring

Helpful developments for banks looking to enforce in the Kingdom? – changes to the former committee for the settlement of banking disputes.

A new royal order helpfully removes certain areas of doubt, including as to appeals and enforcement, but be aware of the new limitation period!

The Committee for the Settlement of Banking Disputes (the "**Committee**"), operating under the aegis of the Saudi Arabian Monetary Agency has been, for the three decades it has been in existence, a critical element in the Kingdom's judicial landscape for banks needing to enforce against defaulting customers. With its jurisdiction over banking disputes and its application of its own particular principles to disputes (which include giving effect to the transaction agreed between the parties and the upholding of recognised, international banking practices), it allows banking claims to be enforced in a way which would not be possible were the cases to be heard in the general court system of the Kingdom.

There has however been an element of ambiguity around the Committee's exact status and the parameters of its mandate. Can it properly be considered a court for example? In practice it has always borne many of the characteristics of a court, but the market was surprised in 2011 when the Board of Grievances, petitioned by a bank customer seeking to prevent enforcement of a judgment from the Committee against him, took the view that the Committee

judgments were not those of a court and therefore should not be enforced by the relevant executive authorities. A subsequent Royal Order helped by clarifying that the Committee's judgments should be considered final and preventing any court from hearing disputes relating to them without prior, specific royal approval, but these underlying ambiguities remained.

A further, new Royal Order (number 37441 dated 1 July 2012) will we hope be a welcome development in clarifying the status of the Committee along with its powers and processes.

Banks should take care however that they aren't caught out by the introduction of a limitation period for the bringing of claims.

A change of name

The "Committee for the Settlement of Banking Disputes" is to become simply the "Committee for Banking Disputes". A seemingly minor change, but one which makes it clear that the Committee should not be regarded as mediation forum but a real court, which was at the root of previous legal attacks on its competence.

The new Royal Order further states that the Committee shall have jurisdiction over "pure" and "ancillary" banking disputes, which we understand to be an indication that its mandate should be construed broadly to include, for example, treasury transactions and Islamic financing transactions (such as *murabaha* and *ijara*, which could on their face be

characterised as a trading or other commercial arrangement rather than a financing; this had always been the hope and expectation, but a lingering technical doubt remained).

Establishing circuits

Circuits are to be established for the Committee as needed which should one hopes expand the capacity of the system to progress cases. Each circuit/Committee will sit as three members but have an additional alternate member, so there is capacity to rotate members. All members must have a legal qualification and experience and be familiar with banking transactions. One member is also to be *Shari'ah* qualified (as is currently the practice), and appointment is for four years by Royal Order.

Basic procedure

The Committee shall hear disputes based on the information and evidence provided in the claim file and the agreements entered into between the parties (reaffirming, in effect, that the Committee will continue to uphold banking agreements).

Decisions are by majority and there are 30 days to appeal to the new appellate committee (below). The decision shall be non-appealable before any other authority.

Appeals

The Royal Order has provided that there shall be an appellate committee

(Committee of Appeal for Banking Disputes and Violations (the "**Appeal Committee**")). The Appeal Committee shall be the appellate authority in respect of both the Committee and the Committee for the Resolution of Violations of the Banking Control Law, which deals with violations of the Banking Control Law (beyond the scope of this briefing). The Appeal Committee may also comprise circuits and there shall be no appeal from its decisions.

A new limitation period

For the first time however, a limitation period has been introduced. The Committee will not hear claims that are filed more than five years after the due date of the claimed amount, or from the date of the claimant becoming aware of the event which is the subject of the claim, unless there is a justification which is acceptable to the Committee¹.

Sanctions and powers

The Committee is expressly given the powers to freeze a debtor's bank and investment accounts, entitlements at governmental authorities, restrict such debtor from dealing with governmental bodies and banks, and to issue travel bans, following its final judgment. In the existing rules, it only had the power to make recommendations.

The Committee may also include "immediate enforcement" in its decisions in specific cases which may be specified in the procedural rules discussed further below (ie require the judgment to be immediately

enforced, notwithstanding that it may be subject to appeal).

Competent authorities, acting within their respective jurisdictions, are required to implement the Committee's decisions as well as the above administrative sanctions.

Further procedural rules and coming into force

The Appeal Committee is to prepare procedural rules for the Committee and the Appeal Committee. These procedural rules are to be issued by way of a Royal Order not later than sixty days from the naming of the members appointed to the Appeal Committee. We informally understand from the Committee that the procedural rules will set out the type of claim which will only be subject to auditing by the Appeal Committee, without reopening the matter and without the attendance of the disputing parties, as opposed to other types of claim which will be subject to a complete appeal process where the matter will be reopened as to its merits with the attendance of the two disputing parties. We further understand that the latter may be applicable in relation to appeals from the Committee for Resolution of Violations of the Banking Control law, where sanctions may include imprisonment as per the Banking Control Law.

The Committee shall continue to hear claims on its current basis until the new rules are implemented, and its decisions shall be final save to the extent the new rules come into force during the appeal period for such decision, in which case the new rules would apply to the appeal (unless the Committee has already heard and decided on such appeal).

To the extent the procedural rules do not cover a particular matter, the Shari'ah Procedural Code and the Criminal Procedure Code (as relevant) shall apply.

Conclusions

Collectively, the above provisions make it eminently clear that the Committee is truly a court, and it is to be hoped the introduction of circuits will expand the capacity of the system across the country and therefore the speed with which cases progress. There are no implementing regulations as such, but the procedural rules effectively constitute these in all practical respects, so will have to be analysed carefully.

Overall, the new Royal Order comprises strong backing for the work of the Committee, which will certainly be welcomed by the banking market.

¹ This should also be a welcome development for banks as it will provide certainty and avoid claims filed by clients many years after the event which makes it difficult for the bank to retrieve data and recall information.

Authors



Abdulaziz Al-Abduljabbar
Partner

T: +966 11481 9750
E: abdulaziz.alabduljabbar@cliffordchance.com



Mohammed Al-Jadaan
Managing Partner, Al-Jadaan

T: +966 1 250 6555
E: mohammed@aljadaan.com



Paul Latto
Partner

T: +966 11481 9730
E: paul.latto@cliffordchance.com



Tim Plews
Partner

T: +966 11481 9770
E: tim.plews@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

Clifford Chance Law Firm, Building 15, The Business Gate, King Khaled International Airport Road, Cordoba District, Riyadh, P.O. Box: 90239, Riyadh 11613, Kingdom of Saudi Arabia

© Clifford Chance 2014

Clifford Chance Law Firm is a registered Professional Company No. 323/12/511, Commercial Registration No. 1010380646, Chamber of Commerce and Industry Membership No. 36650.

www.cliffordchance.com

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Jakarta* ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh ■ Rome ■ São Paulo ■ Seoul ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

*Linda Widyati & Partners in association with Clifford Chance.