

Saudi Arabian mortgage, finance and court reform

Mortgages, new courts, encouragement for securitisation, and new kinds of finance provider. What are the implications of a battery of new Saudi Arabian laws?

After a long period of waiting, the much anticipated Saudi Arabian finance law reforms (including the widely reported new mortgage law) have been enacted.

But what do these laws do and what is the practical impact likely to be?

Detailed commentary on the new laws remains elusive. In part, this is due to the breadth of reform; five complementary laws have in fact been enacted¹, only one of which specifically relates to mortgages², two of which address financing beyond just real estate³ and a further

¹ Each was passed by royal decree on 13/8/1433H (equivalent to 3/7/2012G), and they were published in *Um Al-Qura* (the Official Gazette) on 6/10/1433 (mortgage law) and 13/10/1433H (others) (equivalent to 24 and 31 August 2012 respectively).

² Strictly, a *rahn*, which is also translated as pledge or lien; the technical differences between mortgage (or charge) and pledge in some common law systems (one applying to ownership and one to possession) is not drawn for these purposes.

one of which deals with the enforcement of judgments and other instruments in the court system generally. In part it is due to depth; until implementing regulations are passed, key details remain hidden.

The laws also mix some new developments with a consolidation of existing principles, so context needs to be given to distinguish one from the other.

Our “at a glance” table overleaf highlights some of the more significant features.

Why?

Though it may take time for the market to digest what has been enacted, the reasons why the government has sought to make changes to the regulatory environment are clear, particularly as far as real estate aspects are concerned. Given current demographics, at least 1.5 million new housing units are needed in coming years by some estimates⁴.

Housing cost inflation is a significant issue⁵. The proportion of homes

⁴ “Saudi Arabia approves first mortgage law”, *Financial Times* (London), 2 July 2012.

⁵ 7.7% for 2011 according to the Jadwa

which are financed remains small, and the absence of finance options puts home ownership beyond the reach of many Saudis. Enforceable collateral for financiers, and ultimately the development of a securitisation market would, it is hoped, help to address these issues, at least in part.

Systemically, reforming one area of the law frequently involves implementing changes elsewhere. Court process is key to enforceability for example, and beneficial liberalisation in one sector may also be helpful in others with a view to encouragement of economic growth and diversification. Hence the wide-ranging package which has been enacted.

Investment inflation report for July 2012. Interestingly, Jadwa note that, for July, the “monthly rental inflation dropped to just 0.2 percent, the lowest level since September 2006. It is possible that the passage of the mortgage law may have impacted on the willingness of landlords to raise rents.”

At a glance

What are the new laws?	
The package comprises the following:	
The Real Estate Finance Law	provides for the authorisation and licensing of banks and finance companies to enter the real estate finance market, for the dissemination of information within the market, and for enhancing liquidity with measures to promote a secondary market (both through mortgage refinance companies and securitisation) and new methods for government financial support.
The Finance Companies Control Law	<p>provides a framework for Shari'ah compliant finance companies to enter the market alongside banks as providers of finance for real estate and other assets, including alternative forms of finance such as lease finance and micro finance.</p> <p>The royal decree passing the law also provides for the establishment of a new committee (the Committee for the Resolution of Financing Violations and Disputes) to hear disputes under the Finance Companies Control Law and the Financing Lease Law (excluding real estate ownership and securities disputes).</p>
The Registered Real Estate Mortgage Law	the main focus of attention in the media, which provides a new framework for security over real estate, including, for the first time, provision for second ranking mortgages.
The Finance Lease Law	codifies the rules surrounding finance leasing (including of real estate) as an alternative product to secured debt.
The Enforcement (Execution) Law	provides for a new cadre of dedicated enforcement judges and defines categories of "enforcement instrument" in a way which potentially broadens the kind of enforcement actions which can be brought.
Separately, there is an amendment to the Capital Market Law to facilitate the licensing and regulation of special purpose vehicles by the Capital Market Authority, paving the way for their use as securitisation vehicles (and possibly for other uses).	
Each of the laws is expressed to become effective 90 days after publication in the Official Gazette other than the enforcement law for which the period is 180 days, and implementing regulations are required to promulgated in 90 days to become effective at the same time as the relevant law.	

How do the new laws change the existing system?

The Real Estate Finance Law

- Promotion of secondary market
- Better market information
- Indications of government liquidity support

This law provides the regulatory architecture for an expanded real estate finance market, under the aegis of the Saudi Arabian Monetary Agency (“SAMA”), which is empowered to authorise:

- banks to own real estate for the purposes of real estate finance as an exemption to current legal restrictions⁶, and real estate finance companies⁷ to provide real estate finance;
- “one or more joint stock companies to practice mortgage refinance according to the needs of the market ” (i.e. secondary market participants who can acquire real estate finance assets from the banks and real estate companies) in which the Public Investment Fund (“PIF”) and “authorised financiers” may own a stake, and which may publicly list part of their shares; and

⁶ Article 10(4) of the Banking Control Law, which restricts banks from owning real estate other than their own business premises.

⁷ Whether existing or under the new Finance Companies Law, below.

- licensed cooperative insurance companies to cover risks related to real estate financing according to the Cooperative Insurance Companies Control Law⁸.

SAMA is further empowered to issue standards and procedures relating to real estate financing (including reviewing the forms of real estate lease contracts).

Various provisions are made to improve the market through better information flow. Industry participants will benefit from requirements for government to make public activity relating to the real estate market⁹, and for real estate financiers being granted access to courts’ and notaries’ registers¹⁰. However SAMA may define the principles whereby institutions may be required to disclose the finance of costs of their real estate finance products.

Concern with asset quality (doubtless with an eye to the sub-prime crisis of 2007-2008) is indicated as real estate finance beneficiaries are required to have a credit record with one of the authorised credit providers under the Credit Information Law¹¹ (the requirements surrounding this to be

⁸ Real estate financiers and mortgage refinance companies are further expressly authorised to cover their risks associated with real estate finance, subject to regulation to follow.

⁹ SAMA is empowered to publish information regarding the real estate market and to foster information flow between the primary and secondary markets, and the Ministry of Commerce and Industry, Ministry of Justice and Ministry of Housing are required to publish information in relation to the real estate market within their respective competences.

¹⁰ According to regulations in agreement with the Ministry of Justice.

¹¹ Currently SIMAH (the Saudi credit bureau).

governed by further regulation and SAMA instruction).

Liquidity enhancement is provided by way of allocation of part of the Real Estate Development Fund’s approved budget to support persons eligible for subsidy or housing associations (to be covered by regulation) through Government guarantee. The Council of Ministers is further empowered to allow for tax incentives.

It is expressly stated -a recurrent theme in the new laws- that real estate financiers shall have the right to refinance through mortgage refinance companies (as mentioned above) and through securities under the Capital Market Law. It is also specified that there shall be no fees for real estate registration in the secondary market.

The Finance Companies Control Law

- SAMA to regulate
- Not just real estate
- Shari’ah compliant
- May need to IPO

Finance Companies already exist in Saudi Arabia¹²; the Finance Companies Control Law sets out a new regulatory system to govern them, again under the aegis of SAMA as licensing, regulatory and supervisory agency.

The law extends beyond just real estate finance companies as SAMA may also grant licences to productive

¹² Though SAMA had previously registered two of these, oversight seems to have migrated to MOCI pending the passage of the new law. There is a two-year grace period for existing companies to comply with the new law.

asset financing, small and medium business financing, lease financing, credit cards, consumer finance, microfinance and any other financing activity approved by SAMA.

Requirements are given for new licence applications¹³. Founding shares are blocked from transfer without SAMA approval, and under the law new finance companies may be expected to publicly list at least a percentage of their shareholding (to be specified) after two years. The finance companies are required to be Shari'ah compliant pursuant to the requirements of Shari'ah boards appointed by the companies.

Parameters are set around permitted business activities (essentially limited to providing financing, and expressly excluding real estate trading and non-financing banking activities such as demand deposit taking¹⁴) and lays down various governance and management requirements. In-keeping with the general thrust of the other laws, debt capital markets issuances are expressly permitted for finance companies.

SAMA is given additional supervisory powers, including the investigation, prosecution before a "competent court" and the imposition of fines in connection with violation of the law.

Further regulations are to follow containing key information such as capital adequacy requirements, the maximum amount of financing that can be offered, special conditions for

¹³ Following SAMA approval, applications are transferred to the Ministry of Commerce and Industry ("MOCI") for the company incorporation and registration, and a five-year licence is issued by SAMA upon incorporation and issuance of commercial registration.

¹⁴ Certain types of time deposit may be prescribed by SAMA and are permitted.

certain kinds of transactions, minimum collateral requirements, principles for setting out finance costs, and consumer rights and other fairness controls and "principles regulating the fair distribution of financing profits over the entitlement period" (in other words, provisions governing termination sums to prevent finance companies profiting unfairly from early terminations).

Committee for the Resolution of Financing Violations and Disputes

- New forum for finance company and finance lease related disputes
- Similar structure to SAMA Committee

The royal decree passing the Finance Companies Control Law also provides for the formation of a Committee for the Resolution of Financing Violations and Disputes (and an appellate committee above it) with jurisdiction:

- to hear public and private matter arising out of the Finance Companies Control Law and the Finance Lease Law;
- to hear complaints from interested parties in relation to relevant resolutions from SAMA;
- to have "all the powers and responsibilities necessary to conduct investigations and resolve cases" (e.g. to call witnesses and evidence and to impose penalties).

However its jurisdiction does not extend to hearing disputes between real estate financiers and their customers relating to the ownership rights (including ownership of the property or ownership of the right to

use)¹⁵ or relating to securities disputes resulting from financing activity¹⁶.

The structure of the new committee¹⁷ is similar in certain respects to the SAMA Committee¹⁸.

The Registered Real Estate Mortgage Law

- Real estate mortgages registrable
- Second ranking allowed
- Other bank friendly rights
- Pro-securitisation provisions

In theory, it has never been impossible to take a *rahn* over real estate in Saudi Arabia. In reality, the general refusal of notaries to register pledges of real estate in favour of financiers has provided a practical block. Local banks have developed different methods for taking unperfected security over land or title deeds in different contexts, sometimes involving subsidiary entities, but these solutions have been inadequate for the development of a

¹⁵ Jurisdiction over which is for the general court.

¹⁶ Jurisdiction over which is for the Securities Disputes Resolution Committee. (CMA Committee).

¹⁷ To comprise one or more circuits each (along with the appellate committee) of three members, plus one alternative member, all with regulatory experience and at least one to be qualified in Shari'ah; decisions by majority and subject to a 30-day appeal period; appellate committee decisions final; appellate committee to establish work rules for the committee within 60 days of the nomination of its members; five-year limitation period for bringing claims from the date of indebtedness becoming due and payable or from the date of knowledge of the dispute, absent a justifiable reason.

¹⁸ See our client briefing "SAMA Committee Restructuring" (July 2012).

home finance market on a scale comparable to other jurisdictions.

The mortgage law for the first time legislates for the creation and registration of real estate mortgages along with provisions regarding the rights of parties, and other matters such as ranking, assignment and termination. To the extent that property is registered in accordance with the real estate registration law, then the mortgage is to be registered through that system. To the extent that the property has not been registered the interest is to be endorsed on the title deeds and associated register by the relevant court or notary.

The mortgage is effective from the time of registration.

Basic requirements for the mortgage contract are set out, including that the mortgaged property be fully described to avoid uncertainty or fraud. Usufruct (i.e. rights of use and enjoyment) may be mortgaged separately from the rest of the asset.

There are a number of significant innovations which wouldn't previously have been available to real estate financiers including:

- the ability to have second ranking (and further successive) mortgages;
- the ability to have a mortgage over a partner's undivided share in a title deed, coupled with provisions whereupon, on division of the title deed, the mortgagee's rights attach to the divided property, and for the mortgagee to call for the division and sale of the divided property when the mortgagee's right of enforcement over the secured property is established;

- an express obligation on the mortgagor to safeguard the property with a right for the mortgagee to object to any matters which may reduce the value of the property and to take "regular precautionary measures" to protect his rights at the mortgagor's cost;
- a "top-up" provision whereby, if the value of the mortgaged property falls below the debt due to the misuse of the mortgagor, the mortgagee has the right to call for further security to secure the outstanding debt and to accelerate¹⁹ if this is not provided; and
- a right for mortgagees to apply to court for a summary judgment to prevent works that are damaging the collateral, effectively giving access to a form of injunctive relief.

Certain provisions however are not permitted and will be null and void if written into the contract: a right for the mortgagee to foreclose by taking outright ownership of the property in extinguishment of the debt or a right for the mortgagee to take the right of use (benefit) of the property for its own account (however the parties may agree that the income generated from the secured property, including income from the right of use, can be received/collected by the mortgagee and utilised to settle part of the secured debt).

Unless otherwise agreed upon, the mortgagee may transfer the debt and mortgage to a third party, though

¹⁹ Subject to the early termination standards to be provided under the Finance Companies Control Law.

these must be registered to be effective²⁰.

Provisions specifically state that the mortgagee shall "have priority over other creditors in receiving his debt from the value of the sold real estate in accordance with his ranking" (subject to certain mandatorily preferred claims). The mortgagee is also expressly entitled to trace the mortgage real estate into the hands of third parties, and to survive the death of the mortgagor.

Enforcement (though sale by way of auction) is to be under the new Enforcement Law²¹. Further provisions deal with termination of the mortgage, including on repayment of the debt.

The Finance Lease Law

- Lessors to take asset risk
- Leases may be electronic
- Registration against third parties
- Pro-securitisation provisions

This law addresses "finance lease contracts" which are defined to include leases of fixed or movable assets, utilities, services or intellectual property rights, provided the asset has been acquired by the lessor for the

²⁰ Article 17. Again, as per other aspects of the laws, seeking to facilitate securitisation as, in this case, the security is potentially transferable with the assets but without the need for a new agreement with the mortgagor. Note the words at the beginning of this provision ("Without prejudice to debt transferring rules") may be interpreted as express subordination of this provision to Shari'ah, though the practical effect of doing this is not clear.

²¹ As a general principle, self-help against pledged assets is not permitted under Saudi law.

purposes of leasing “as a profession”, subject to regulations to follow²².

It sets out the responsibilities of lessor and lessee in a way which, consistent with the Shari’ah approach of general Saudi courts, places asset risk on the lessor during the lease term but makes the lessee responsible for their use of the relevant asset²³, but also provides a framework around this with provisions for registration, enforcement and rights with respect to third parties. Lessors are expressly permitted to securitise their rights.

It is specifically permitted²⁴ that the ownership of leased assets may be transferred at the end of the lease period to the lessee in accordance with the terms of the lease (uncertainty regarding enforceability here would clearly be unhelpful for the product where the ultimate aim is for the lessee to acquire), subject to restrictions on foreign ownership. The law specifies that the contract may be

²² We assume the intention is not to alter parties’ rights and outcomes before the SAMA Committee for the resolution of banking disputes where banks are lessors -for example in *ijara* structures used in project financing - but, as with the laws generally, the regulations will have to be carefully assessed for their impact.

²³ Lessees are responsible for operative (running) maintenance with lessors responsible for basic maintenance (unless specified to the contrary in the contract); lessee not to alter without lessor consent; destruction/damage is the lessor’s risk unless the lessee is responsible; the lessor may add identification and is entitled to inspect (subject to regulations); the lessee is responsible for license renewal in connection with licences required for the leased asset; if the lessor sells the leased asset to a third party, ownership and the lease contract shall be transferred; liens over the asset are not permitted without lessor consent.

²⁴ Previously an area of doubt, in that the courts might disallow the lessee’s right on the basis of two subject matters in one agreement.

in written or electronic form, but must be registered, and specifies the data which must be included. Various provisions govern acceptance issues in relation to the acceptance by the lessor or the lessee on its behalf of the asset to be leased from a third party supplier.

As for specific provisions for finance leases, the lessor is permitted to require payments of future rentals if the lessee is in payment default, provided the number of such payments does not exceed the number of late payments. Part of the rental may be required in advance, but is refundable if the leased asset is not delivered or the lessee is unable to use it.

SAMA is to establish one or more companies for the purpose of registering contracts and data relating to the leased assets (without prejudice to the real estate registration rule). The contracts are to be searchable by licensed finance bodies, subject to lessor consent and (again without prejudice to the real estate registration rules), the lessor’s title is to be valid against third parties through registration. Securitisation of assets is to be endorsed at the contracts registry and amendments are effective from the date of endorsement on the register.

At termination, the asset reverts to the lessor unless the contract provides to the contrary. The lessor may include provisions that grant it the right to terminate the contract and retrieve the leased asset if the lessee defaults on certain payments in accordance with the principles to be established under the regulations “so as to ensure justice between the contractual parties”. The contract terminates on destruction, partial destruction where the lessor does not reinstate (with or

reduced rentals payable during the period of repair) and governmental intervention preventing use.

Regulation is to determine the amounts payable in such circumstances “in a way which does justice between the parties”, taking into account Shari’ah principles and insurance compensation received.

With regard to enforcement, the lessor may submit a request to the competent court if the leased asset is not redelivered in accordance with the principles established under the law, which must be settled in 30 days. The lessor may recover movable assets in accordance with the contract, subject to the supervision of specialised companies licensed by the Ministry of Justice.

The Enforcement Law

- New enforcement judges
- Direct enforcement procedures for certain instruments
- Foreign judgments/awards very hard to enforce
- Attachment provisions

This law provides for the creation of a new cadre of dedicated enforcement judges empowered to order the enforcement of judgments and to hear enforcement disputes and insolvency actions.

The new enforcement judges will apply the Shari’ah Procedural Law (as the existing Shari’ah courts and Board of Grievances, which currently deal with enforcement, do)²⁵, will be

²⁵ This is principally to cover procedural issues (e.g. the circumstances in which a judge should be considered conflicted) rather than being an indication that matters

arranged in territorial circuits, and their decisions will be final subject to a right of appeal in respect of judgments on enforcement disputes²⁶ and insolvency actions (in which case the appeal will be final).

Enforcement instruments

One of the most novel aspects of the new law (along with the empowerment of the judges themselves) is the breadth of “enforcement instruments” which can be placed before an enforcement judge:

- judgments and court orders²⁷ (provided final, unless the judge’s order is for immediate enforcement);
- arbitral awards appended with an enforcement order under the new Arbitration Law;
- reconciliation papers issued by the competent authorities or endorsed by the court (i.e. settlement orders);
- commercial papers²⁸;

judged by a competent court are likely to be re-opened to examine Shari’ah compliance, though the primacy of Shari’ah as the source of Saudi law means that this cannot be fully ruled in all circumstances, any more than prior to the new law. The approach of individual judges therefore remains very important.

²⁶ The exact distinction between decision and judgment will doubtless be tested, but the sense would appear to be that decisions would encompass directions enforcing court judgments (e.g. relating to the auction process), whereas judgments on disputes would relate more to whether a given instrument should be enforced (see further below).

²⁷ Note our client briefing on “SAMA Committee Restructuring” (July 2012) in relation to the new Royal Order which makes it clear that the SAMA Committee is to be considered a competent court.

²⁸ i.e. negotiable instruments under the

- officially certified²⁹ contracts and documents;
- foreign judgments and arbitral awards and officially certified foreign contracts and documents;
- ordinary papers, the content of which is admitted to be wholly or partly due; and
- other contracts and instruments designated as such by law.

The category of enforcement instrument affects the process applied by the judge. The law contemplates the enforcement of the first three categories in a straightforward manner³⁰.

Foreign judgments and arbitral awards remain hard to enforce - indeed potentially harder than before. The existing tests applied by the Board of Grievances of reciprocity (i.e. the foreign tribunal would have to enforce Saudi judgments/awards) and compliance with public policy (i.e. Shari’ah) are effectively restated, meaning Western judgments are likely to remain, as now, effectively unenforceable as they would be likely to fail both the first (reciprocity) and second³¹ tests. There is now an

Negotiable Instruments Law: promissory notes, bills of exchange and cheques.

²⁹ In Arabic, *muathaqa*; in some translations this is given as “notarised”, but this may be too narrow.

³⁰ Article 34(1)(b)(1), provided relevant regulations provide for such enforcement order (Article 10). Others are also enforceable but are subject to additional requirements.

³¹ Clearly judgments in respect of conventional financings would fail the second test (and not all Islamic finance products accepted outside the Kingdom would necessarily be upheld), but note other frequently seen features in out of Kingdom contracts may contravene Saudi legal principles e.g. service through a

additional test, which is that a Saudi court should not be competent to hear the matter and the foreign court competent, which erects another significant barrier (given the inherent jurisdiction of Saudi courts in relation to cases involving Saudis or Saudi domiciled persons). Additionally, the foreign judgment must be final, not conflict with any competent Saudi judgment and the litigants in the foreign lawsuit must have been summoned, represented and given the chance to defend themselves.

Interesting considerations may arise in relation to enforcement of commercial papers, and certified contracts and documents. In the case of the former, it may raise tactical questions for litigants as to whether to seek the judgment of the Negotiable Instruments Committee in the usual way and then to seek enforcement under the Enforcement Law on the basis of the judgment obtained, or whether to go direct to the enforcement court. Similar questions may arise in relation to the “officially certified” contracts and documents, though it is unclear as yet what kinds of instruments would be susceptible to such certification and what processes would be needed³².

Even the “ordinary papers” category creates some intriguing possibilities. They will not be enforced if the alleged debtor denies that the indebtedness is due, and the creditor would instead have to bring his claim

process agent.

³² Foreign certified documents are enforceable subject to same principles as apply to Saudi ones, subject to the principle of equality and reciprocity (which, as with judgments and awards, is likely to be a difficult test to satisfy).

before the relevant competent court for a trial on the merits. However, the debtor would be required to sign an acknowledgement of the denial and criminal penalties are specified for doing so falsely³³. Forcing an evasive debtor defendant to concede or lie at the outset of proceedings may prove a powerful litigation tool. Again, exactly what kind of document could constitute “ordinary papers” for these purposes is not fully clear (documents directly evidencing indebtedness, for example, or would facilities suffice)?

Asset disclosure, attachment and sale

The law goes on to deal with the rights of the enforcement judge to require disclosure of assets of debtors, and to order attachment against assets³⁴ (with further provisions regarding the recording of attachments in registers). Precautionary (interim) attachments are available where ordered by courts under their relevant summary jurisdictions or in certain circumstances where the debt is established but there is no enforcement instrument yet³⁵. Various provisions cover the preservation of attached property, including by appointment of a receiver where the debtor cannot or will not provide a guarantee that the attached property will be safeguarded.

Attachment may not apply to government-owned properties, a

³³ Up to seven years imprisonment: Articles 15(b) and 88.

³⁴ Consistent with the general position in Shari’ah, under Article 20 a debtor’s property is considered security for his debts.

³⁵ The writ of attachment must be served on the debtor and any relevant garnishee (third party holder) within 10 days and a claim filed within this time; a guarantee will be required from the creditor to cover damages should the claim later be found to be baseless.

house inhabited by the debtor and his dependants (unless the house is mortgaged to the creditor), necessary means of transport (unless mortgaged), or against salary in excess of half the total salary in respect of alimony and one third in the case of other debt.

The enforcement judge may decide on the order of enforcement “in a way which guarantees promptness of repayment”. Extensive provisions cover methods of sale for attached assets (generally by auction, but with special provisions for other asset classes such as listed securities, unlisted shares, negotiable instruments, bank accounts and investment products).

The enforcement judges’ powers extend (as well as imprisonment in the case of specified violations) to administrative sanctions in common with other judges such as travel bans, suspension of the right to issue powers of attorney and prevention of government entities and financial institutions from dealing with the debtor. Certain third parties, such as accountants and employees, may be examined by the judge.

Generally, though the fundamental concepts of attachment and judicial sale are not new (though now to be exercised via enforcement judges), the new law goes into significantly greater degree of detail regarding processes than was previously the case³⁶.

Insolvency-related and other provisions

Further provisions³⁷ deal with the actions of the enforcement judge in

³⁶ Articles 196 to 232 of the Shari’ah Procedural Law, repealed by the new law.
³⁷ As well as certain family law matters

circumstances of insolvency (including provision for imprisonment in the case of a false declaration of insolvency) and penalties which may be imposed by the court in the case of offences such as concealment, false declarations and “intentionally suspending enforcement by instituting a legal action for the sole purpose of impeding the enforcement.”³⁸

The Ministry of Justice is to establish an enforcement agency with the power to licence various service providers such as process/summons servers, sales agents, receivers and custodians (including specialist private sector companies).

Amendment to the Capital Market Law

- SPVs permitted
- Wider uses than securitisation?
- CMA governed, further rules to follow

An amendment to Article 5 of the Capital Market Law provides the Capital Market Authority (“CMA”) with the authority to regulate and license the establishment of special purpose vehicles (“SPVs”) which will have separate legal personalities from their founders.

Though it is anticipated that these SPVs will be utilised as a securitisation vehicle by real estate

beyond the scope of this briefing.

³⁸ Penalties to be imposed by the criminal courts following referral, though the enforcement judge also has separate powers to imprison a debtor who simply refuses to pay.

financiers, the legislative amendment does not provide guidance as to the possible uses of such SPVs. The CMA will therefore, at least in theory, have the discretion to specify the permitted uses of SPVs which could be wider than a securitisation vehicle to include, for example, vehicles to establish investment funds or acquisition vehicles for private equity and venture capital funds. The CMA will also need to prescribe the applicable incorporation requirements such as the minimum number of shareholders and foreign ownership restrictions. It should be noted that these SPVs will not be subject to the Companies Law, and will be rather governed by the implementing rules that the CMA will have to issue as a result of the amendment. There is no time frame as to when the CMA will issue such rules.

Conclusions and questions to be answered

- Implementing regulations key
- Needs testing with real cases
- Impact of differing Shari'ah interpretations?
- Usable registers required

As can be seen from the above summary, the legislative sweep of what has been enacted is nothing if not impressive. The fact of enactment is a major landmark after several years of consideration and debate.

Whether the new laws ultimately create a legal environment which attracts private capital investment of a different order to the hitherto comparatively limited real estate finance market (and other sectors) will take time to establish. The consensus reaction seems to be not to expect an overnight revolution as far as markets are concerned, but that the new laws are an important evolutionary step in the right direction.

The principal questions market participants and observers will be asking include the following:

- in practice, how quickly and reliably will courts allow enforcement of collateral? How will Shari'ah compliance issues affect processes?
- how operable and searchable will the registers be, and will they be genuinely conclusive against third parties? In particular, how effective will the system be in connection with unregistered land? How will notaries respond to the new laws in practice?
- from a real estate perspective, will the reforms be sufficient to increase private investment in the supply side? Off-plan financing for developers is subject to restrictions which constitute the understandable response to

failures elsewhere in the Gulf, and the impact of the new laws focusses on completed properties. How effectively can the gap be bridged?

- will the market be able to supply financing on much longer tenors (so we see 20 or 30 year mortgages like other countries)? Will a genuinely liquid secondary capital market develop to support on-going origination of assets?
- what level of government support is to be expected?

As already observed, a huge amount remains to be dealt with through subordinate regulation, as well as administratively (with matters such as the setting up of registers), so continuing momentum will be needed to achieve legislative aims.

However, even if the new laws are ultimately part of a broader work in progress, they do represent a clear statement of intent which is likely to be welcomed by financial institutions and aspiring Saudi home owners alike.

Authors



Abdulaziz Al-Abduljabbar
Partner, Al-Jadaan
Joint head of banking and
finance group

T: +966 1 250 6543
E: abdulaziz@aljadaan.com



Mohammed Al-Jadaan
Managing Partner,
Al-Jadaan

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



Paul Latto
Counsel, Clifford Chance
Joint head of banking and
finance group, Al-Jadaan

T: +966 1 250 6577
E: paul.latto@cliffordchance.com
paul.latto@aljadaan.com



Tim Plews
Partner, Clifford Chance

T: +966 1 250 6588
E: tim.plews@cliffordchance.com
tim.plews@aljadaan.com

Please note our new office address and contact details

Al-Jadaan & Partners Law Firm

Building 15, The Business Gate, King Khaled International Airport Road
Cordoba District, Riyadh, KSA.
P.O.BOX: 3515, Riyadh 11481, Kingdom of Saudi Arabia
Tel +966 1 250 6500
Fax +966 1 400 4201 / 400 3641

For more information, please visit <http://www.aljadaan.com/>

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