

The new Commercial Courts Law

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The new Commercial Courts Law: another welcome development to boost confidence in commercial transactions and investment.

A recent drive in new legislation has created a clearer and more transparent legal regime on a range of aspects relevant to commercial transactions, aimed at delivering wider economic impetus.

The Ministry of Justice is now focusing on creating the culture of excellence and raising the standards of the judges and practitioners implementing these new laws, to fully realise the value of these legal developments.

Over the page, we summarise the highest impact changes of the new Commercial Courts Law and key actions for commercial parties to take now.

Major new laws have been issued recently on a range of commercial matters, including:



The highest impact changes of the new Commercial Courts Law and its Regulations.



Key actions for commercial parties to take now include:

- Consider imposing pre-claim conciliation provisions within existing or new commercial contracts.
- Consider the need to contractually agree adjusted rules of procedure for court proceedings that may arise from commercial disputes, including relating to matters such as:
 - Number of written submissions and timings to submit
 - Notification procedures
 - Expert appointment procedures
 - Case management procedures

01 Limitation period

A new limitation period is set, meaning claimants have a deadline of **five years** to bring claims (unless the claimant can show reasonable excuse, or the defendant has already conceded the relevant right from which the claim arises) is imposed, meaning a much lower risk of claims arising many years after the relevant event.

02 Pre-claim conciliation

Mandatory pre-claim conciliation and pre-claim notification for certain types of claim, including disputes for a value of between SAR100,000 and SAR1million arising out of commercial contracts, and for all disputes to which contractually agreed pre-claim conciliation provisions are applicable.

03 Debt-recovery

A new debt-recovery mechanism allows claimants in straightforward debt actions to obtain a **Performance Order** within 10 days of application, subject to certain evidential conditions being met, including that the claimant has issued to the defendant a demand to pay at least five days prior to applying for a Performance Order.

04 Urgent applications

The law provides for new urgent applications, including **protective seizure, injunctions, and permission to act**, to be heard and dealt with in three business days.

The court may require applicants to submit a **guarantee to compensate the defendant** in the event it transpires that the claimant was not entitled to the urgent application, to ensure equitable balance between the claimant's need for urgent protection, and the defendant's risk of harm.

05 Penalties

The new Court power to **impose fines up to SAR10,000** for breach of procedural requirements means a lower likelihood that counter-parties (whether claimant or defendant) will waste time in failing to turn up to hearings or file submissions as ordered.

06 Case management

The law raises the standard in terms of streamlining litigation, and introduces a number of new measures as outlined below.

A key aspect is the new right to request **disclosure of all relevant documents**, which may mark a shift away from prolonged and uncertain litigation arising from drip-fed disclosure of documents at intervals.

New measures include:

- the use of **electronic procedures**
- the ability to use **private-sector providers** for some procedural services
- the setting of **specified hearing numbers and timings** for different types of claim, with most claims intended to reach first instance judgment within 180 days
- provision for subject-matter **jurisdiction disputes** to be heard within **20 days** of such jurisdiction defence being raised
- **simpler service on overseas parties.**

Commercial parties may also agree their own procedural rules (although it remains to be tested how far this can be taken to depart from the rules set by the law and regulations) and can agree to shift the default burden of proof. Dispute-resolution clauses in commercial contracts should, from now on, take this flexibility into account.

07 Public access

The law provides for:

- **court judgments to be published**, a requirement that had not previously existed. This may ultimately enable the development of a system of precedent, enabling litigating parties to have a greater degree of certainty in terms of the eventual likely outcome of a judgment.
- **public access to case documents**, subject to payment of a fee, allowing greater transparency of judicial processes.

The Commercial Courts Law applies to cases filed prior to the date that the new law came into force, save for certain exceptions.

