

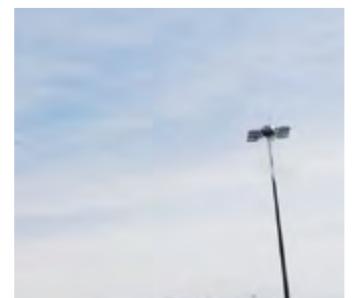
# Collection Profile Saudi Arabia



## Collecting in Saudi Arabia

- As with all GCC states, late payment is common in Saudi Arabia. In practice, the law does not regulate late payment, while late payment interest is prohibited and collection costs cannot be recovered from the debtor unless a specific agreement has been concluded by the parties. As a result, debtors will often try to negotiate discounts in exchange for prompt payment.
- Local legal action is very slow, costly and uncertain overall, since the courts are not bound by a system of precedent and have considerable discretion in applying Shari'ah principles to specific circumstances. In addition, several weeks or months may separate each hearing and the courts hardly abide by time management requirements.
- Insolvency laws in the Middle East are not as sophisticated as in other regions and the nonexistent company rescue culture in Saudi Arabia illustrates this point.

## Collection complexity



## Complexity relating to

Notable → Severe

	Notable	High	Very High	Severe
Payments	\$	\$	\$	\$
Court proceedings	⚖️	⚖️	⚖️	⚖️
Insolvency proceedings	↘️	↘️	↘️	↘️



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## General information

### Availability of financial information

Save for companies listed on the stock exchange (Tadawul), financial information on private companies is not publicly available in Saudi Arabia and there are no third-party providers that can give access to such information. Furthermore, record-keeping at Saudi companies is generally poor by international standards and limited reliance should therefore be placed on financial information received from such companies, unless they have been verified by an international accountancy firm as being in accordance with international accounting standards. Euler Hermes allocates each company a grade reflecting its financial health and how it conducts business. Grades represent a core of Euler Hermes' knowledge and analyses, and help clients identify and avoid risk. Data is continuously monitored to offer the most up-to-date information to support management decisions.

### Main corporate structures

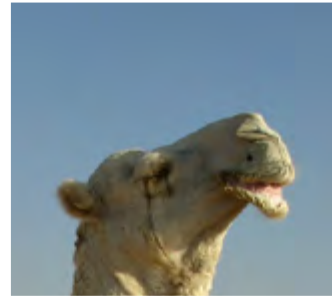
Saudi Arabia is a heavily regulated trade environment where the business' activity would dictate which structure is to be relied upon. Where one of the parties is a foreign investor, the activity will furthermore influence whether the new business can be 100% foreign-owned or whether a Saudi partner is required, while some activities are prohibited entirely from foreign investment. Subject to the above, corporate structures in Saudi Arabia include the following:

- Limited Liability Companies (LLCs), where the shareholders' liability is limited to the value of their capital contribution.
- Branch Offices of foreign companies, where the debts of the local entity can be enforced against the foreign company directly.
- General Liability Partnerships (including professional companies), where all partners are jointly and severally liable to third parties.
- Establishments, which are in effect sole traders where the debts of the establishment can be enforced directly against the owner.

## Regulatory environment

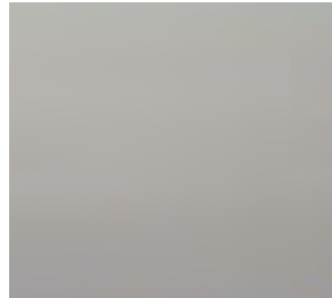
Saudi Arabia is a Sunni Islamic State based on Shari'ah law. Significantly, unlike other GCC states, Saudi Arabia does not have a civil code that states the rights and obligations governing relationships between parties in their commercial dealings. As such, such rights and obligations are determined by reference to Shari'ah directly. In particular, the law of Saudi Arabia is derived from the major Islamic religious texts (the Qu'ran and the Sunnah) and to a lesser extent, interpretations and subsequent writings concerning those texts. Four schools of jurisprudence can be applied to decide cases before the courts, however the most dominant is the Hanbali school. By this school, parties to commercial contracts will generally be held to the terms that they have agreed, unless such terms offend Shari'ah principles. The legal system is built upon Shari'ah Courts acting in first instance, Courts of Cassation and a Supreme Judicial Council. Since 2007, reforms have established a Supreme Court as well as a specialized court (Board of Grievances) dealing with government-related claims as well as with specific commercial, administrative, insurance and employment disputes. Having said this, the Board ought to soon lose competence to deal with commercial matters, which should fall under the jurisdiction of Shari'ah Courts.

Local legal action is overall very slow, costly and uncertain because the courts are not bound by a system of precedent and have considerable discretion in applying Shari'ah principles to specific circumstances.



**Days Sales Outstanding (DSO):** Payment terms are 30 days on average, but large secured contracts may reach 60 days, while certain sectors would normally work on a 120-day basis.





#### Late payment interest:

Interest for late payment is simply prohibited in Saudi Arabia as it is against Shari'ah law so is not recoverable.



## Getting Paid

### Days Sales Outstanding (DSO)

Payment terms are 30 days on average, but large secured contracts may reach 60 days, while certain sectors would normally work on a 120-day basis.

Having said this, as with all GCC states, late payment is common in Saudi Arabia where administrative obstacles are often put in the way of prompt payment (such as requirements for original invoices bearing the company stamp or multiple levels of approval of invoices within the debtor's organization).

As a result, payments tend to occur within 90 days on average and debtors will often try to negotiate discounts of debts in exchange for prompt payment. Constant follow up by creditors and reliance on personal relationships are thus required to manage cash flow.

### Late payment interest

The very notion of interest is contrary to Islamic law (Shari'ah). Therefore, interest for late payment is simply prohibited in Saudi Arabia and is not recoverable.

### Debt collection costs

Unless otherwise agreed, legal and other costs relating to enforcement proceedings are generally not recoverable in Saudi Arabia. Such clauses need to be carefully drafted to be enforceable under Shari'ah law.

### Ownership protection

Recourse to Retention of Title (RoT) agreements aiming at preserving ownership over goods until the related invoice is paid in full is not recognized and would thus not be effective in protecting creditors' interests.

## Payments

Bank transfers are among the most popular payment means for international transactions as they are fast, secured, and supported by an increasingly developed banking network internationally and domestically. Export transactions are usually guaranteed through Export Credit Insurance, which helps minimize the risk of sudden or unexpected customer insolvency. Euler Hermes' worldwide network of risk offices monitors the financial well-being of customers and grants them a specific credit limit up to which clients may trade and claim should something go wrong. Alternatively, Standby Letters of Credit (a bank guarantees the debtor's credit quality and repayment abilities) are often used in relation to export shipment transactions since they constitute reliable guarantees which can be triggered as a 'payment of last resort' if the client fails to fulfil a contractual commitment. Also, recourse to irrevocable and confirmed Documentary Letters of Credit (a debtor guarantees that a certain amount of money is made available to a beneficiary through a bank once certain terms, specifically agreed by the parties, have been met) are increasingly relied upon.

Checks are commonly used for payment purposes, but unlike other GCC states, post-dated checks are illegal. Also, by contrast with many countries, checks would not be considered as debt recognition titles enforceable in court. Bills of exchange and promissory notes would however be admitted as such. Overall, it is advisable to negotiate down payments of up to 50% of the amount at stake. About 20% of transactions are furthermore paid in advance. Payment by public entities may suffer important delays of up to one year.

## Collecting overdues

### Amicable action

#### Negotiating

Assuming that there is no genuine dispute concerning the debt, negotiation and follow up work conducted by local specialists can be an effective means of achieving payment without going to court. When negotiating discounts in exchange for prompt payment, care should be taken to ensure that such discounts are conditional on payment being effectively made on time, otherwise the full liability will remain enforceable.

### Legal action

#### Ordinary proceedings

Formal litigation should only be considered once all amicable settlement opportunities have been exhausted. The creditor would file a claim with the Board of Grievances, which would then invite the parties to a hearing and consider the parties' arguments and evidence prior to making a decision.

There are no fast track proceedings for general debts but, where checks have bounced, or late payments were secured by a promissory note, a fast-track procedure is available through the Enforcement Law. In this case, creditors can apply directly to the enforcement judge for a remedy without having to file a claim seeking a decision on the merits of the dispute in the Board of Grievances.

#### Necessary documents

- Copy of the commercial registration of the creditor and the debtor
- Power of attorney
- Evidence of the contract
- Evidence of the authority of the individuals that signed the contract
- Evidence of the debt (e.g. invoices)
- Correspondence relating to the debt (including demands for payment)

#### Time limitations

There is no Statute of Limitations that applies to claims generally. There are some time limitations on some specific types of claims (e.g. cargo damage), however no such time limits apply to debts arising from contracts.

#### Provisional measures

Arbitral tribunals cannot award such orders.

#### Lodging an appeal

The decision rendered in first instance may be appealed against within 30 days with the Court of Appeal. A further appeal is also available, however special leave is required for this and ordinary disputes are unlikely to be granted such leave.

#### Enforcing court decisions

Enforcement may be a challenging task, since the applicable

enforcement law has only been passed relatively recently, therefore it remains largely untested so far.

#### How long could legal action take?

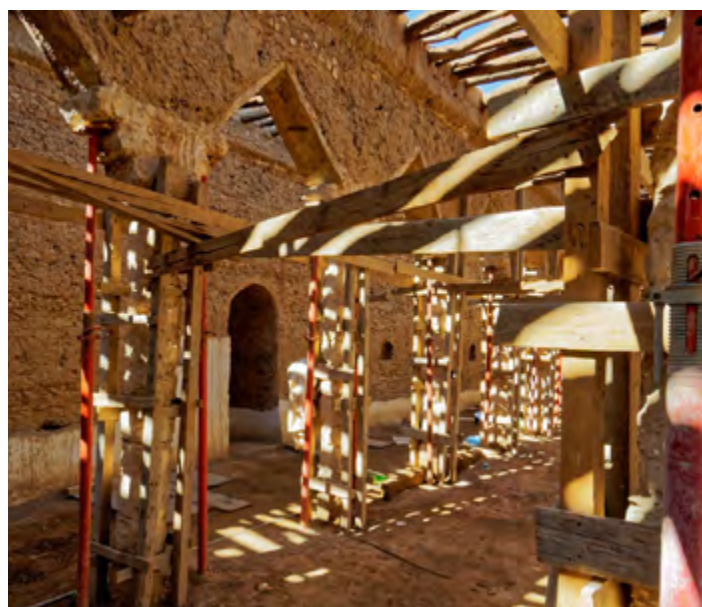
Proceedings in the Board of Grievances take a minimum of 12 months to complete and usually longer, while enforcement ought to be completed within six months.

Having said that, formal proceedings in Saudi Arabia may be time consuming because several weeks or months may separate each hearing while the courts hardly abide by time management requirements.

Arbitral tribunals ought to render decisions within a maximum of 18 months, but this time constraint may be extended with the parties' approval.

#### How much could this cost?

A creditor can ask the court to order repayment of its costs by the debtor, but a court would not require a debtor to pay the collection or enforcement costs.



#### Collection @ Euler Hermes

It is always advised to attempt collection prior to any legal action in order to maximize chances of successful recovery and avoid legal costs and delays. Our key principle is to collect in close proximity to the debtor, using a series of letters, emails and phone calls in the local debtor language. Our World Collection Network of Euler Hermes offices and external providers are experts in professional trade debt collection and negotiation, ensuring positive outcomes while retaining important client relationships. Euler Hermes can handle the complete collections process from amicable, pre-legal action through to judgement and enforcement.



## Alternatives to legal action

### Alternative Dispute Resolution methods (ADR)

The Saudi Arbitration Law M/34 of 2012, based on the UNCITRAL Model Law, has introduced a strong alternative to ordinary legal proceedings. Arbitration is indeed a more straightforward means of settling a dispute insofar as the parties agree to rely on an independent and impartial third-party arbitrator, who is given authority to settle their dispute on their behalf. As an out-of-court settlement method, arbitration is very cost-effective, generally reduces delays, allows preserving confidentiality and offers a binding decision which may then be enforced before the courts if necessary. Awards issued under the Saudi Arbitration Law are immediately enforceable.

### Foreign forums

Saudi courts would normally assume that any agreement that is the subject of a proceeding before them is subject to Saudi law. They will ignore a governing law clause that refers to any other law in this circumstance. As a result, seeking a decision abroad in order to avoid domestic courts would have no impact.

### Enforcing foreign awards

Since February 2013 (under Royal Decree M/53 of 2012), enforcement proceedings fall under the jurisdiction of the Execution Courts. Although it is theoretically possible to enforce a foreign court

judgment in Saudi Arabia, in practice foreign decisions remain difficult to execute in the country. In particular, domestic courts will not enforce any foreign judgment to the extent that it is inconsistent with Shari'ah.

Saudi Arabia is otherwise a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, subject to the reciprocity reservation. As such, foreign arbitral awards obtained in countries that have also signed the New York Convention can be enforced in Saudi Arabia pursuant to the Enforcement Law and a number of regional treaties may also assist with enforcement of foreign arbitral awards obtained in other GCC states. It is also theoretically possible to enforce foreign arbitral awards obtained in countries where no treaty applies, however this will be much more difficult. As for court judgments, the Saudi courts will not enforce any foreign arbitral award to the extent that it is inconsistent with Shari'ah.

### Litigation @ Euler Hermes

Should legal action be necessary Euler Hermes can provide support throughout the legal process from judgment to enforcement via our World Collection Network of Euler Hermes offices and external providers. Legal action can often be complicated and expensive, so you will be informed of all costs prior to any action and advised on which route is best to take.

## Handling insolvent debtors

Traditionally, Saudi Arabia has lacked a single, comprehensive insolvency code. Instead, there is an ad hoc layering of different sources, which are not always easy to reconcile, and which leave some of the most basic questions which insolvency laws tend to address difficult to answer clearly (e.g. the lookback period over which a liquidator may challenge transactions prior to the declaration of insolvency and the criteria for doing so). The basic guiding principles are of course Shari'ah ones, as is generally the case in Saudi Arabia. On top of that, there is a civil law influenced by the archaic Commercial Court Law (CCL) of 1931, dealing with the insolvency of traders. There are then bankruptcy protection settlement regulations, similar in some respects to what English lawyers would call a 'voluntary arrangement,' but rarely (if ever) used because, unlike a true voluntary arrangement, they effectively involve handing over the company to the court – this is possibly the one thing that the debtor and the creditors can agree that they do not want. In addition, there are other pieces of legislation which affect specific factors, such as the State Revenue Act which alters the insolvency waterfall by preferring state debts, and the Companies Law which covers certain aspects of corporate liquidation. In practice, formal insolvency processes are very rare. To initiate the process is difficult; the CCL posits a hybrid balance sheet (negative equity) and cash flow (inability to pay debts) test to determine insolvency, but to satisfy that test a creditor generally requires an admission or a final court judgment against the debtor. Thus, a long and tough court battle may await an unpaid creditor in order to unlock a procedure which itself is then very uncertain. Legal enforcement tends to be on a first come, first served basis with creditors seeking to identify and attach assets through Saudi Arabia's powerful enforcement judges. Outside of litigation, local banks also have powerful leverage against debt delinquency through, among other things, the Saudi Arabian Monetary Agency's (SAMA) B-listing process, which can effectively shut defaulters out from the banking system. The SAMA Committee has proved a sensible forum for resolving banking claims – including for foreign banks – and for getting to the stamped judgment stage prior to enforcement (or proof in a notional insolvency), albeit it takes time.

### Insolvency proceedings

#### Out-of-Court proceedings

Out-of-court workouts may be set up, provided that an agreement allows doing so, but there is no established position concerning what such agreements must say. As noted above, the courts will generally hold commercial parties to the terms of their agreements, unless such terms offend Shari'ah principles. As such, these agreements should be carefully drafted.

#### Restructuring the debt:

No debt restructuring proceedings are available.



#### Winding up proceedings

Liquidation proceedings may always be commenced by the debtor or by its creditors. A council is appointed by the court and the creditors to list the claims, identify the company's assets, sell them and distribute the proceeds to the creditors.

#### Priority rules

Priority rules normally apply while distributing the proceeds of a debtor's assets. Housing debts and employees' claims would be considered as preferential debts superseding other creditors. Importantly, creditors to whom debt remains due may litigate against the debtor personally for 15 years, until the debt has been paid in full.

#### Necessary documents

- Copy of the commercial registration of the creditor and the debtor
- Power of attorney
- Evidence of the contract
- Evidence of the authority of the individuals that signed the contract
- Evidence of the debt (e.g. invoices)
- Correspondence relating to the debt (including demands for payment)

#### Insolvency @ Euler Hermes

Euler Hermes works closely with debtors, creditors and lawyers to provide support during insolvency and restructuring processes. With many options available when it comes to insolvency action, we can offer advice on which option is most suitable.

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