commerce in what came to be known as Saudi Arabia.[99] The long-lasting Code of Commercial Courts of 1931 was inspired extensively by the Ottoman Code of 1850. With many amendments since that time, the Code is still in existence today and still includes a lot of Turkish terms. The Code might even be a direct translation from the Turkish Code, bearing in mind that the Turkish had just left the country after many centuries of occupation. In 1946 the regulation of the Jeddah Chamber of Commerce was issued, but it was not until 1953 that Royal Decree No. 10/22/5/5703 provided for founding a Ministry of Commerce in Saudi Arabia. The Ministry was competent for the settlement of commercial disputes until 1987, when this competence was transferred to Diwan Almazalim and remained there for 20 years. The following section will give an overview of the codes that are mostly connected with commercial disputes in Saudi Arabia.

The Law of Trademarks

In accordance with international standards, the Law of Trademarks provides protection to the owner of the trademark by ensuring the exclusive right to use it to identify goods or services, or to authorize another to use it in return for payment. It can be said that the long-awaited reform provides relatively poor protection, mainly for two reasons. One may argue that the weakness is owing to the vast scope of public policy restrictions, but, in reality, it is owing to the great degree of misconduct in different public entities, including the customs authorities, the Ministry of Commerce and the local municipal authorities, or so-called Baladiyah. The Law came into effect to replace the Trademarks Law issued by Royal Decree No. M/5, dated 4/5/1404 H. (1984), which was ineffective. The Act excludes different kinds of signs, flags and emblems from being registered or considered as trademarks because that would violate public policy.[100]

Although the same law provides for some fairly strict disciplinary actions, the enforcement mechanism is weak. The Ministry of Commerce usually argues that it lacks manpower and the technical infrastructure needed to enforce the law. Questions may arise here about how counterfeit goods enter into the country in the first place and then how they are marketed publicly on such a huge scale. It has been reported in one of the daily newspapers that the competent department in the Ministry of Commerce has only seven members of staff who are responsible for inspecting hundreds of thousands of shops, warehouses and factories in the kingdom.[101] This enabled the counterfeit brands market in Saudi Arabia to reach several billion US dollars in 2008. With the exception of articles 2 b, c, d and e, the

---

99 Ministry of Commerce of Saudi Arabia <http://www.commerce.gov.sa/aboutus/history.asp> [accessed 5 March 2009].

100 Please see article 2 of the Law of Trademarks of Saudi Arabia, issued by Royal Decree No. M/21 dated 28/05/1423 H./07/08/2002.

101 *Okaz Saudi Newspaper*, issue No. 2881 dated 07/05/2009.

Ministry is not doing all it could to counter a violation costing the world economy, including the Saudi economy itself, billions of dollars every year.

The Law of Copyright

The Saudi Law of Copyright of 2003 came into effect to protect intellectual works and meet Saudi obligations towards the WTO. However, there is a big issue with the enforcement of this law. People are regularly offered copies of Hollywood movies yet to be shown in US cinemas, or unlicensed, normally expensive computer software for less than £3. In fact, most small computer shops will offer an illegal copy to their customers as a first choice. The lack of enforcement of the Law of Copyright has led to the black market spilling into high street stores. According to article 24 of the Act, officers at the Ministry shall investigate all violations, visiting media and commercial facilities, warehouses, public institutions and private establishments that use intellectual works in their activities. They shall have the power of judicial investigation and protection of proofs.[102] However, in real life the picture is totally different, as illegal copies of movies, software in particular and books to a lesser degree are sold in public. For instance, the printing shops around King Abdul-Aziz University in Jeddah offer ready photocopies of a wide variety of academic books, without any respect for copyright law. Moreover, the printing shop inside the central library of the same University also photocopies whole books, completely ignoring the copyright law notice posted on its door, which states clearly the limits for photocopying books for academic use.

In the context of Islamic law, such practice violates many principles of Shari′a, notably the following Quranic verse:

> O you who believe! Obey Allah and obey the Messenger, and those of you who are in authority.[103]

Violation of copyright is a prohibited practice under Shari′a because it breaches the law imposed by the authorities and can be considered an unlawful acquisition of other peoples' property. This also violates the teachings of another Quranic verse:

> O you who believe! Eat not up your property among yourselves unjustly except it be a trade amongst you, by mutual consent.[104]

The issue of enforcing the Law of Copyright is complicated, because the Ministry of Culture and Media, which has jurisdiction, blames the weakness of enforcement

102 The Law of Copyright of Saudi Arabia, issued by Royal Decree No. M/41 dated 02/07/1424 H./30/08/2003.

103 The Quran 3: 59.

104 The Quran 4: 29.

on lack of available facilities and manpower. One of the main causes of the problem is the limited working hours of the supervisory department responsible for performing the duties quoted in article 24, which are only from 8 a.m. to 2 p.m., Saturday to Wednesday.

Initially, the law provides for five stages of penalty for infringing copyright. Article 22 puts the penalties in the following order:

- a warning;
- a fine not exceeding 250,000 riyals;
- closing the violating establishment or the one participating in the violation of copyright, for a period not exceeding two months;
- confiscating all copies of the work along with the materials used or intended for use for the infringement of the copyright;
- imprisonment for a period not exceeding six months.[105]

It should be noted that the Ministry of Culture and Media is the competent authority for the execution of this law, through a committee that has among its competence the settlement of copyright disputes. The decisions of the committee can be appealed to Diwan Almazalim within 60 days from the date of the notification of the decision.[106]

Competition Law

The unlawfulness of anti-competitive practice is a known concept within the four schools of Islamic jurisprudence. The legal basis of the prohibition of anti-competitive practice comes from the principle established by the Hadeeth of Prophet Muhammad, which reads: ‘La Dharar wa La Dhirar.’ This translates as ‘There shall be neither unfair loss nor the causing of such loss.’ It also means that a person should not harm others, either directly or indirectly, and should not be harmed by others in return. In order to implement the principle of ‘La Dharar wa La Dhirar’, the Quran prohibits riba and any practice entailing harmful effects on others, including all sorts of anti-competitive behaviour. The Quran clearly states: ‘[D]o not undervalue properties and goods that belong to others.’[107] The Sunna also prohibits many types of sale contract and unethical practice. In addition, Prophet Muhammad was the first person ever to talk about the idea of ‘fair trade’. Such rules include the prohibition of prejudicing the original producers and sellers, as the Prophet said: ‘You should not try to cancel the purchases of one another and do not go ahead to meet the caravan but wait till it reaches the market.’ However, the Hadeeth does allow for a margin not exceeding 33 per cent of the market value

105 Supra n. 102, article 22.

106 Ibid., article 23.

107 See, generally, S. Alsadlan, *Alqawaid Alfiqhiyah Alkubra wa Matafarra' Minha* (1st edn., Dar Balancia, 1997), especially Chapter 5. See also the Quran 7: 85.

– if it exceeds that, the affected party have the right to claim either compensation or the annulment of the contract.

In recent years, Saudi markets have suffered severely, particularly from the absence of the application of these laws and principles. In 2008 there were two main supply crises: the first one increased the price of reinforced steel; and the second resulted in a shortage of wheat flour supply. In the case of the reinforced steel, the producers all had their own fixed price, which they agreed to increase, in many instances with different percentages. The producers took advantage of the construction boom in GCC countries and channelled most of their production towards neighbouring countries such as Qatar and the UAE, blaming the condition of the global markets for the increase in prices and absence of products. Before the Saudi Government imposed measures to reduce prices, like allowing the import and banning the export of reinforced steel, the prices reached a high peak of something like SR 5,000 per ton, up from an average of SR 1,830 per ton in 2006.[108] The reinforced steel situation was identically repeated with wheat flour, where some distributors hid the subsidized wheat and others illegally exported it to neighbouring countries.[109] These practices are contrary to parts of article 4 of the Competition Law, which does not allow controlling the price of commodities and services meant for sale by increasing, decreasing or fixing their price or acting in any other manner detrimental to lawful competition. The law also prohibits restricting the free flow of commodities and services within markets, or removing them, wholly or partially by hiding, unlawfully storing or refraining from dealing in them. Under the Competition Law, the Ministry of Commerce established a Council of Competition Protection to supervise enforcement. The decisions of the council can be appealed before Diwan Almazalim.[110] Yet a brief glance at the Saudi market shows that, as with other regulations, this law has little notable effect in real life, with many people not even aware that such a law exists.

Company Law

The first Company Law of Saudi Arabia was issued by Royal Decree No. M/6, dated 20/07/1965 and has undergone many amendments throughout its life. The Act might be subject to more slight amendments in the coming years, to cope with the expected expansion of the Saudi economy. The following section will examine the main aspects of the existing company regulations in Saudi Arabia, with reference to Shari'a law as it prevails over all laws and man-made regulations. The Act deals generally with the organization of companies created by mutual agreement, where one or more partners agree to conduct business for profit with a view to sharing profits and losses as agreed. Compared to the company regulations

108 *Alriyadh Saudi Newspaper*. Issue No. 14686 dated 8 September 2008.

109 *Okaz Saudi Newspaper*. Issue No. 2447 dated 28 February 2008.

110 See, generally, the Competition Law of Saudi Arabia, issued by Royal Decree No. M/25 dated 04/05/1425 H. (2005).

of other countries, the Saudi Act is brief, even seen against the Egyptian law that was taken as its source.

When talking about companies in their general contexts, Shari′a treatises do not really distinguish between commercial partnership and partnership formed for any other purpose. However, Shari′a sources do distinguish between different kinds of commercial partnership according to capital ratio, type of business activities, partners' contributions and management of the company.

The law defines a company as a contract under which two or more persons undertake to participate in an enterprise for profit, with each contributing a share in the form of money or services, with a view to dividing any profits (realized) or losses (incurred) as a result of such enterprise.[111] The definition of the Act is more precise than that quoted in the classical Shari′a texts, which merely describes a company as a partnership in liability and management.

The types of company permissible under Shari′a vary in accordance with the different schools of jurisprudence. Generally speaking, companies under Shari′a can be classified into two main categories according to their main purpose: Sharikat Amlak and Sharikat Oqoud.

Sharikat Amlak is the result of joint ownership of a property, through purchase, gift, inheritance or other source. Sharikat Oqoud is the result of a contract wherein two or more parties stipulate on sharing the liabilities and management of their property, labour and/or expertise for commercial purposes.

Sharikat Oqoud is the one concerned with commercial activities and it can take one of the following forms:

- Sharikat Inan applies when partners provide money or assets for trading, and share gains and liabilities in accordance with the portion of capital provided by each of them. All the parties usually contribute to the effort of managing the company.
- Sharikat Mofawadah applies when all the partners are jointly liable for each other's actions. As a commercial partnership it is recognized only by the Hanafi sSchool; the other three schools rejected it owing to its high degree of gharar, or risk – the Mofawadah contract contains two major elements in one, i.e., partnership and a guarantee.
- Sharikat Wojouh has its roots in the word Wajh, which means 'face'. In this type of company, parties use their liabilities or creditworthiness to buy goods or acquire services in order to make a profit. The division of profits is subject to an agreement between the parties and, if losses occur, they are measured by the percentage of ownership or liability.
- Sharikat Abdan is the simplest sort of partnership and the most primitive one. The word Abdan means 'bodies', and, in this type of company, parties

111 Article 1 of the Company Law of Saudi Arabia Royal Decree No. M/6 dated 20/07/1965.

share the gains of their physical effort, such as a group of labourers sharing both the work and gains in accordance with the agreement.

- The form of company most commonly used by big corporations is Sharikat Modarabah. Here, some partners provide capital or assets while others provide management, i.e., some contribute assets while others contribute knowledge and expertise. Profits are shared according to the agreement of the parties.

The types of company available under Saudi Company Law are exactly those available under Egyptian law, which is a translation of the French Company Code. According to article 2 of the Company Law of Saudi Arabia, without prejudice to the types of companies available under Shari′a law, companies should take one of the following eight forms:

1. general partnerships – Sharikah Tadamoniyah
2. limited partnerships – Sharikat Tawsiyah Basitah
3. joint ventures – Sharikat Mohassah
4. corporations – Sharikat Mosahamah
5. partnerships limited by shares – Sharikat Altaosiyah Belas′hom
6. limited liability partnerships – Sharikah That Mas′oliyah Mahdodah
7. companies with variable capital – Sharikah That Ra′as Maal Qabil Liltagier
8. cooperative companies – Sharikah Tawouniah.[112]

Article 2 adds that, in the case of setting up a company that does not take one of the above eight forms or one of the recognized forms under Shari′a, the contract will be considered null and void and the persons who have made contracts in its name shall be personally and jointly liable for the obligations arising from such contracts.

Islamic law is flexible when it comes to partner contributions to a company. A partner’s contribution may consist of a certain sum of money, i.e., a contribution in cash, or a capital asset, i.e., a contribution in kind. The contribution may also take the form of manpower or skills and expertise; however, it may not consist solely of the partner’s reputation or influence.[113]

There are only a few events upon which a company may dissolve where the Company Law shares Shari′a teachings. A company may dissolve upon the expiration of the term fixed for the company. A company may dissolve when realizing the objective of its establishment, as in the case of a company formed to serve a particular purpose or upon finding it impossible to perform its objectives. In the latter case, Shari′a rules relating to the frustration of a contract apply. Article 15 of the Law adds that the company may dissolve all assets and transfer interests to one partner. The transfer will change the legal character of the company from a

112 Royal Decree No. M/23 dated 28/06/1402 H. (1982).

113 The Company Law of Saudi Arabia, article 3.

company, or Sharika, to a sole trader, or Moassasa Fardiyah. Such a change means a lot, especially with regard to issues such as corporate governance and zakat. A company may dissolve if all the company assets are lost and the remaining assets cannot be utilized effectively. A company can also dissolve if it merges with another company or if the partners agree to dissolve it before the expiry of its term, except when the memorandum of association does not enable them to do so. Finally, a company may dissolve by legal injunction from a Shari′a court or by order from the Minister of Commerce.

The Law of Procedure before Shari'a Courts

As another form of codification, the Law of Procedure before Shari′a Courts can be described as a codification of the daily practice on which Shari′a might have some kind of influence; however, the reality is different. The committee who drafted this law merely summarized the equivalent Egyptian law, reducing it from more than a thousand articles to just 266.[114] However, it does combine hundreds of ministerial decisions and internal circulars in one piece of regulation that, in its simplicity, covers most of the issues related to the procedural rules. This law is of vital importance to arbitration proceedings in Saudi Arabia, as it fills the gaps in the Arbitration Act and in cases where the law of arbitration is silent, as will be demonstrated later in this book. It is proposed to redraft the Law of Procedure, possibly by 2010/11.

The Capital Market Law

Although Saudi Arabia issued its first Capital Market Law in 2003, the stock market had existed for more than 70 years prior to that. The first IPO in Saudi Arabia took place in 1935, when the Arab Automobile Company was established as the first joint stock company in Saudi Arabia, trading in shares that remained unregulated until 1984. By 1973 there were 14 share companies in the kingdom and shares, as with government bonds nowadays, were traded mainly by major banks and wealthy individuals. Thus there were very few disclosure requirements regarding companies' financial position. After 1973 and the first oil boom, known in the West as the oil crisis, Saudi Arabia and other members of the GCC accumulated a relatively large cash reserve in a very short period of time.

This wealth had to be channelled and invested in various economic and social sectors; however, the small population of some countries and overall lack of opportunities led the oil wealth to be either invested in real estate and construction or reinvested in US Treasury securities, a process dubbed 'petrodollar recycling'. In this way a secondary market started to develop, not as a tool for enhancing

114 See the Law of Procedure before Shari′a Courts issued by Royal Decree No. M/21 dated 15/09/2000.

economic activities, but as a wealth-recycling mechanism, adding no real value to the economy.

The stock market continued to develop under a strange supervisory structure consisting of the Saudi Arabian Monetary Agency, the Ministry of Finance and the Ministry of Commerce and Industry. Royal Decree No. M/3 dated 31/07/2003 enacted the long-awaited Capital Market Law. The law established the Capital Market Authority and a few implementing rules of issues, such as listing rules, corporate governance rules, merger and acquisition rules, market conduct regulations, etc. Moreover, the Capital Market Authority established the Committee for the Settlement of Securities Disputes, which functions in a similar way to the Committee for the Settlement of Banking Disputes of the Saudi Arabian Monetary Agency.

The Commercial Mortgage Law

The Commercial Mortgage Law of Saudi Arabia can be considered as a codification of Shari′a teachings on mortgages. Issued by Royal Decree No. M/75 dated 13/01/2004, the Law and its implementing rules require a security pledged to a debt of a commercial nature to be tradable, i.e., it should be legal under the law of Saudi Arabia, requiring that the amount of the debt be fixed in the contract, and thus excluding the possibility of recovering interest. Apart from that, the recovery of interest is not foreseeable, because the law names Diwan Almazalim as the competent authority for the implementation of this Law, which functions in the same way as the Shari′a courts.

The Economy of Saudi Arabia

The development of the Saudi economy is tightly linked to the development of the oil industry and the increase of oil prices in global markets. Prior to the discovery of oil and the flow of hard currencies, the Saudi economy was fairly primitive. With the exception of the Hejaz province, the rest of the country was either self-sustained or starved. By the time of the collapse of the Ottoman Empire and the ruling regime of the Sharif of Mecca or the Sharif of Hejaz in 1924, the country was entering a new economic era. When Ibn Saud assumed power over Hejaz, he started a comprehensive reform movement with the purpose of modernizing his people's lifestyles in general. All the measures adopted by the King at that time in all aspects of life concerned with improving the economy. The King started by improving education, security and health care, before paying a great deal of attention to the judiciary and justice. Most importantly, King Abdul-Aziz built a good relationship with his neighbours and with the important economic and political superpowers, notably the United States. This proved to be the right decision, as adopting socialist ideas contradicts the teachings of Islam and would have gone against the public interest of the new kingdom. Since the 1930s, the

Saudi economy has experienced many ups and downs, which were coupled mostly with political events in the region affecting the prices of oil and petrochemicals.

The economies of Saudi Arabia and other GCC countries can be described as 'oil rentier' economies, because they are economies that depend on the revenue generated from non-renewable natural resources, in this case, oil and gas. Almost no taxes are paid by the public to help the economy to sustain itself. The main disadvantage of this type of economy is the slow and even declining level of economic growth, which is owing primarily to the relatively stable levels of oil production and flat oil revenues, combined with an unanticipated rapid increase in population.[115]

In the financial crisis of 2008/09, the world looked at Saudi Arabia, already a member of the G20, as a major capital-exporter, along with other GCC countries, Russia, China, etc. However, Saudi Arabia had its own agenda for diversifying its economy – to reduce the short-term risks associated with oil dependence and to meet the needs of its growing population.[116]

The Saudi economy is going through a phase of reform and diversification to reduce the dependence on oil exports and to build a service-based economy in the coming years, with the idea of moving towards a high-tech economy at a later stage. This book is not concerned with economic theories and predictions; however, to give the reader a general idea, the next few paragraphs will give an overview of some important economic opportunities in Saudi Arabia.

Saudi Arabia accumulated great cash reserves from what can be called the second oil boom of 2005–2008. Compared to the 1970s, the Saudis are now using their cash more wisely, reducing dependence on oil exports and investing in new technologies, tourism, financial services and education. There were some speculations that the Saudi Government would follow the other GCC governments and increase the portfolio of its Sovereign Fund, although this can now be seen as investing for someone else's future!

It can be said that Saudi Arabia is among the very few countries in the world where the credit crisis of 2008/09 did not have significant impact either on private or public sectors. During the crisis, the Saudi Government continued its ambitious development plans, with new economic cities rising in almost every region in the kingdom and daily announcements of new projects and developments. The Government is also financing some advanced academic research projects, sending thousands of postgraduate students to universities in the West and the Far East, and the banking sector is considerably strong. This is all thanks to tight governmental supervision over almost all economic activities, although the inherent increase in the levels of bureaucracy and misconduct could be criticized. The Saudis will

---

115 R. Looney, 'Development Strategies for Saudi Arabia: Escaping the Rentier State Syndrome', *Strategic Insights*, 3/3 (March 2004). Available online at <http://www.ccc.nps.navy.mil/si/2004/mar/looneyMar04.pdf> [accessed 10 May 2009].

116 Saudi Arabia has one of the fastest growing rates for population in the world, as more than half of all Saudis are younger than 20 years old.

need decades to reach the stage of having a stable economy not based purely on the export of crude oil.

Privatization and Restructure

The word 'privatization' is an elastic term that has many definitions and interpretations, which vary according to place and circumstances. The definition mostly closely describing Saudi practice is 'the partial transfer of state-owned enterprises to the private sector first and then to the public through the IPO'.[117]

The Saudi public sector has been in need of a major restructure in order to be able to function properly in this rapidly changing world. In pursuance of the kingdom's efforts, aimed at reducing the burden on the government sector and providing public utilities to citizens through appropriate economic means in the private sector, the Council of Ministers issued Resolution No. (219) dated 6/9/1423 H. (11/11/2002), approving a list of utilities targeted for restructuring and privatization. The reform of such public bodies not only covers the economic side, but includes even some political issues that are not otherwise attracting much public attention. The list of targeted public entities is huge in terms of size and number, entailing a great opportunity for almost everyone, because the accomplishment of these plans will reduce the burden of subsidizing and funding such services by the Government, increase the participation of the private sector in the GDP, create jobs and provide higher quality services to normal people. The plans include privatizing and restructuring the following public entities:

- Allegiance Authority
- Department of Zakat and Income Tax
- Saline Water Conversion Corporation
- Saudi Electricity Company
- Saudi Arabian Airlines
- Saudi Railways Organization
- General Authority of Civil Aviation
- Grain Silos and Flour Mills Organization
- Centennial Fund
- roads
- agricultural services
- water and sewage
- General Ports Authority
- health services
- Saudi Arabian Mining Company
- sports clubs
- social services

117 B. El-Dean, *Privatisation and the Creation of a Market-Based Legal System: The Case of Egypt* (1st edn., Brill, 2002), p. 2.

- industrial cities
- mail service.

Economic Cities

The General Investment Authority supervises a number of economic cities that aim at achieving balanced economic development throughout the regions of the kingdom and at creating job opportunities for citizens. The development of these cities will take place throughout a period of more than two decades, which should guarantee better results than building everything at once and struggling to attract investors and maintain growth. These cities are discussed below.

King Abdullah Economic City King Abdullah Economic City is located 150 kilometres to the north of the city of Jeddah, near a small town call Rabigh on the western coast of the kingdom, and it has an area of 168 square kilometres. This economic city, to be established by the Emirate Emaar Company, is one of the private sector's biggest projects in the GCC region. The city is expected to create one million job opportunities and provide two million housing units. The city consists of several major facilities including the industrial port, the business centre, the industrial zone and the resorts area, as well as the supporting areas, such as education facilities, hospitals and residences for workers in the city.

Prince Abdul-Aziz Ben Mosaed Economic City Prince Abdul-Aziz Ben Mosaed Economic City is located in Ha′il and has an area of 156 square kilometres. The city is expected to be one of the most important economic cities in the Middle East in terms of logistic supplies and services, owing to its distinguished geographical location. The city has a dry port with a capacity of 1.5 million tons a year for shipping goods. The city also has an industrial zone and an area for supporting services.

Economic Knowledge City Economic Knowledge City is located in the Medina region and has an area of 48 square kilometres. The city is expected to attract investments of SR 25 billion and to create about 20,000 job opportunities. The city consists of several facilities, including the Taibah Complex for Sciences and Knowledge, the College of Administration and Technology, an Islamic centre and a business centre.

Jazan Economic City Jazan Economic City is located on the western coast of the kingdom and has an area of 100 square kilometres. It is expected to draw investments of SR 100 billion and to create 50,000 job opportunities. The city consists of several facilities, including the sea port, the energy and desalination plant, the industrial zone, the business centre, logistic services and facilities to support services and training.