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Establishing Specialized Economic Courts in Saudi Arabia to Boost Investments

Establecimiento de tribunales económicos especializados en Arabia Saudita para impulsar las

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RESUMEN

Este documento busca un mecanismo efectivo para resolver disputas económicas y crímenes económicos destacando primero la ausencia de una plataforma legal efectiva para resolver tales disputas y luego sugiriendo medidas correctivas a través del establecimiento de tribunales económicos especializados. El autor afirma que esto ofrecerá un nuevo mecanismo para resolver disputas económicas, además de los nuevos tribunales comerciales y los medios alternativos que ya existen en el sistema. Tal paso también demostrará un cambio cultural que facilitará a los litigantes y los mantendrá al tanto de los desafíos internos y externos que enfrentan para impulsar las inversiones extranjeras y nacionales.

Palabras clave: Arabia Saudita, Inversiones, Jurisdicción, Tribunales económicos, Visión 2030. |

ABSTRACT

This paper seeks an effective mechanism to resolve economic disputes and economic crimes by first highlighting the absence of an effective legal platform to resolve such disputes and then suggesting remedial measures through the establishment of specialized economic courts. The author claims that this will offer a new mechanism for resolving economic disputes, in addition to the new commercial courts and the alternatives that already exists in the system. Such a step will also prove a cultural shift facilitating litigants and keeping them abreast with internal and external challenges faced in boosting foreign and domestic investments.

Keywords: 2030 vision, Economic courts, Investments, Jurisdiction, Saudi Arabia.

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INTRODUCTION

The prosperity of an investment climate and the development of the economic sector in any country are linked to many factors that support and promote this prosperity and development. One of these factors is the existence of an effective, specialized and independent judiciary whose institutions are flexible and fast in resolving both domestic and international economic disputes. Economic disputes derive their economic character from the fact that they emit from a legal conflict of an economic nature like an investment dispute, business conflict or a capital market issue. Moreover, in order to encourage a favourable climate for investment, a country must provide an appropriate judicial environment too. This is required to resolve disputes that may arise from the practices of economic activities effectively and in the shortest possible time (Sharaf aldeen, 2002). The success and effectiveness of this judicial environment are possible by creating specialized judicial bodies in economic, financial and commercial fields and which can resolve any type of disputes of economic nature that may arise in a country.

The term 'specialized' in any judicial system is an attempt to keep pace with the rapid developments in societies in all areas, including the economic fields. The importance of having a specialized judiciary to deal with disputes of an economic nature is a strong encouragement for attracting foreign investments. The investor realizes that there is a specialized judiciary that is responsible for the consideration of economic disputes. The advocates of economic courts, although emphasize upon the establishment of economic courts but have avoided defining the concept of economic conflict. Instead, they draw attention to the standards set by the law to determine the jurisdiction of economic courts. This may be because of the difficulty in defining the type of conflict as well as due to the varying law branches that deal with economic disputes. Hence, the concept of specialized courts never received any attention in previous studies. This study attempts to fill this literature gap.

The judicial system has passed through different historical stages in Saudi Arabia. The foundation of the judicial system in Saudi Arabia was laid by King Abdulaziz- the founder of the modern Kingdom of Saudi Arabia, which passes through different historical stages. The main first step was taken in this path was 1927. A royal decree was issued to establish a number of courts in different cities, under the title "Law of Formation of the Shari'ah Courts." The courts were at different levels and jurisdictions, and this Law considers as the first written regulation related to organizing the courts and judges' affairs.

In addition to these courts, there was a special court called Commercial Court/Council which established by the Law of Commercial Court of 1931. However, this court was work for until its disbanding in 1955. (Jeerah: 1988). In 1975, an important step was taken in the Saudi judiciary system was taken by issued the Judiciary Law, which organized the Court structure as following:

- The Supreme Judicial Council
- The Appellate Court
- First Instance Courts, which include; General Courts, and Summary Courts

The last regulation steps the path to develop the judiciary system was made in 2007. a Royal Decree approved the new Law of Judiciary, which created a new specialized court; moreover, a new level of litigation by creating the Supreme Court. The new Law organized the Court structure as following:

- The Supreme Court
- Courts of Appeals
- First Instance Courts, which include; General Courts, Criminal Courts, Family Courts, Commercial Courts, and Labor Courts (Ansary: 2015).

Under the current judicial system, all economic and business disputes are entrusted to the Courts of First Instance or General Courts which include Business Courts, to deal with all major business claims, and labour disputes (Fadi: 2014).

In the current circumstances, such as unspecialized courts or "General Courts" are not entitled to deal with economic cases and business disputes unless they are granted specific jurisdiction. The need of the hour

is to establish more specialized courts that are flexible, more comprehensive and specific, and which follow courts' procedures clearly and are also run by trained judges in dealing with economic cases. Such specialized courts should be in addition to the General or First Instance Courts of the Saudi Judiciary and must get the status of Economic or Financial Courts. They shall be assigned to hear disputes of economic nature. The establishment of these specialized courts will be an important factor in alleviating the burden on the existing courts of the Saudi judiciary. This will also be an important factor in attracting and encouraging investments in the Kingdom of Saudi Arabia (Hanson: 1987; Otto: 2010). The establishment of the specialized courts is also important in light of the great competition in the Middle East region. In order to attract domestic and foreign investments in the region, international bodies such as World Bank are also emphasizing the importance of an efficient judiciary.

A very good example of the establishment of economic courts as specialized courts was set by Egypt in 2008 within the ordinary court system. Under this system, ordinary courts would act as competent economic courts and hear all kinds of commercial disputes related to capital markets, investment, intellectual property, financial leases, transfer of technology, unfair competition, commercial agency, and insolvency and banking laws. The establishment of these Economic Courts further proved more effective and efficient as it resolved several outstanding disputes pending in civil and commercial courts. It also resolved the chronic problem of delays in litigation procedures which the Egyptian judicial system had always suffered from. The new courts also promoted mediation and conciliation at preparatory phases of proceedings, before the case is referred to a bench judge. Under this new system, the disputed parties may refer their dispute to the 'conciliation department' instead of filing a case in order to reach an out-of-court settlement.

Looking at the success of the new system, in July 2019, Egypt's parliament added a new feature to the Economic Courts by introducing Law no. 146 of 2019 (Enterprise: 2019), allowing cases to be filed electronically through an online mechanism. This amendment expanded the jurisdiction of the Economic Courts to cover such cases like money laundering and bankruptcy, insurance control, the joint-stock company disputes, financial crimes on leasing, investment, real estate, intellectual property, maritime trade, IT and air transport regulations. The new amendment was also seen as a step towards modernizing the legal system through digitalization. Egypt thus became one of the pioneer jurisdictions in the MENA region to adopt an electronic litigation system to resolve disputes in a timely manner. Under its current form, it is now clear that these specialized courts are capable of a speedy settlement of disputes related to all types of economic activities by competent judges who understand the accuracy and complexity of economic issues and who will facilitate the resolution of such disputes.

This study has thus been inspired by the experience of the Egyptian Economic Courts, their structure, organization and mechanism as it has evolved in recent times and seeks to apply this experience in Saudi Arabia. The study will explore how to lay the foundations of such specialized economic courts in the Kingdom along with lines of the existing Egyptian model and in addition highlight the importance of such a judicial step for Saudi Arabia.

Problem statement

Michael Lindsey (quoted in Elsaman: 2011) has observed the existence of weak judiciaries in Middle Eastern countries, due to the pressures of the executive and administrative machinery. The judges are often former bureaucrats working under an executive through the Ministry Of Justice. The executive thus has the power to interfere in judicial matters. Countries like Egypt and Lebanon are no exception where though they have highly developed judiciaries but are under the pressure of the government's executive machinery. Several studies (Baamir: 2013) have justified the dominance of executive and administrative machinery over the judiciary. According to these studies, the judiciary with all its modern manifestations must follow the Islamic Sharia, which is a requirement to establish a legal environment in Islamic countries, including Saudi Arabia. It is also asserted that economic issues such as protecting property and implementing contracts require a judiciary formulated under constitutional provisions and parliamentary legislation. However, it has also been

pointed out that a compromise between Sharia and economic interest of the litigation parties is also specified in such cases where judges face a religious dilemma in deciding disputes, particularly related to banking and the interest they should charge on the loans to their customers as stipulated in their agreement though the transaction is unacceptable under the Sharia law (Baamir: 2013).

Though Saudi Arabia has established several agencies (judicial committees) such as The Committee of Banking Disputes, Committee for Financial Disputes and Violations, Committee for the Resolution of Securities Disputes, The Committee of Tax Dispute Settlement, the Copyright Committee and like which are responsible for supervising all litigations, however, though these committees are functioning under the directions of the administrative machinery, there are elements of ambiguity regarding their procedural rules and their enforcement. In practice, sometimes these Committees do demonstrate the characteristics of a court, but they are entirely dependent upon the government bodies such as the Ministry of the Interior for the enforcement of its judgment (Karl:1991; Vogel: 2000; Baamir: 2013) Besides, another issue of concern is that Saudi judges do not have the training required to deal with these types of specialized disputes. Had felt that "the judges were trained only in Sharia and often had no technical background to understand a complicated, highly technical case."

Despite these shortcomings, the Saudi judiciary has greatly contributed to the global ranking. According to the Global Competitiveness Report 2019 by World Economic Forum, Saudi Arabia jumped eight positions in "judicial independence" reaching the 16th rank globally. The report highlights that Saudi Arabia is taking significant steps "to diversify its economy" outside the oil and mineral sector in the coming years. (The Global Competitiveness Report: 2019) Similarly, the World Bank's Business Report 2020 has applauded the Saudi system for it features in areas such: contract enforcement, the property ownership registration, and resolving insolvency (Asharq Al-Awsat: 2020) The World Bank Group's Doing Business 2020 report included the Saudi Arabia as one of the improved economies in the year (Doing Business Report, 2020). Looking at the Egyptian model, and recognizing the rapid changes and recognition given to the Saudi judiciary in this era of modernization, steps need to be taken to facilitate the Saudi judiciary to implement the benefits of such modernization in its legal environment. This study is an attempt to explore the viability and feasibility of replicating and introducing some of the features of the Egyptian model in the Saudi context.

LITERATURE REVIEW

Economic disputes

In several countries, the prevailing laws hesitate to discuss a definition for Economic disputes even if they are involved in settling disputes of economic nature. However, exceptionally, in Lao People's Democratic Republic, the Law on the Resolution of Economic Disputes, published on the World Trade Organization (WTO) official website, defined an economic dispute as a "dispute between two legal entities, or between a legal entity and an individual, or between individuals whether domestic or foreign that may arise from the breach of a contract, or [from a dispute related] to production or business operations. (WTO, 2019).

Disputes are termed as "economic disputes," when they arise from economic-oriented laws, such as money market laws, central bank laws, and intellectual property protection laws (Sharaf aldeen, 2002). Out of the several standards to identify, in the Egyptian context, one of the standards is accepting a dispute as economical if it arises because of the application of an economically oriented law. This criterion was clearly adopted by the Egyptian Economic Courts Law of 2008, which defined a number of laws of economic nature. The Law of 2008 gave the Economic Courts the jurisdiction to decide the disputes and violations that may be arising from applying these laws. Moreover, there is the "qualitative standard," which relies on considering a dispute to be of an economic nature if it arises because of a legal relationship associated with economic activity, for example, disputes related to legal relations linked to money, trading, production, and exchange.

Economic courts as specialized judiciary

A 69-country World Bank survey of 3,600 firms concluded that 70 percent of respondents found it difficult to do business in a country with an unpredictable judiciary. On the other hand, the Bank finds that a positive business climate attracts additional investment and promotes growth. This World Bank report (World Bank: 2006; Malik: 2007; Villalobos & Ramirez: 2018) observes that "courts serve businesses best when they are fast, fair and affordable." The report also mentions that "introducing specialized courts or specialized commercial sections in the general court is one of the most successful pilot reforms. These reforms simplify procedures to allow "mass production" (World Bank: 2020). The report further added that the rationale behind accomplishing efficiency by these specialized courts is the expertise of the judges in handling commercial disputes. Moreover, these courts have fewer formal procedures and do not stretch written procedures. As a result, countries that have embedded specialized courts within the general courts resolve their disputes about 40% faster than other countries (World Bank: 2006). The report shared that these specialized courts also reduce delays in a number of countries in terms of the time of contract enforcement. For example, in the Gambia, the enforcement of contract before established the specialized courts was around 766 days, while after establishing these courts, the days total fell down to 247 days only.

Owing to these advantages, many countries have tended to establish specialized courts to look into disputes related to commercial and financial issues. The evolution and spread of the creation of these specialized bodies support the opinions which believe "that commercial and business courts are necessary components of a region's economic health and that their absence creates a competitive disadvantage with other regions" (Sherwood et al.: 1994; Applebaum: 2011). Moreover, the multiple advantages of the specialized judicial bodies have encouraged various countries in the Middle East, including the Gulf Cooperation Council (GCC: 2020) to include such entities into their judicial system structure. The GCC established in 1981 as regional international alliance organization for the economic and political cooperation among the Arab states in the Arabian Peninsula area: Saudi Arabia, Oman, United Arab Emirates, Kuwait, Qatar and Bahrain (Encyclopædia Britannica: 2019). It is anticipated that if such entities like GCC work effectively, they can add a lot of efficiency and flexibility to the dispute resolution system and improve the business environment as well as the judicial system (GCC: 2020).

METHODS

This study aims to examine how to lay the foundation of new specialized economic courts in Saudi Arabia in line with the Egyptian model of Economic Courts. The study highlights the structure, organization and mechanism of the specialized economic courts in Egypt. The specialized judiciary in Egypt ensures a speedy settlement of investment disputes and other similar economic conflicts. The judges in these courts are competent and who understand the accuracy and complexity of economic disputes and facilitate their resolution. With the help of documentary research and content analysis of the Egyptian laws and the empirical studies, this paper will strongly recommend the adoption of the Economic court model as specialized courts in the Saudi judiciary as well.

RESULTS

Economic courts in Egypt as a model

The Egyptian legal system is a civil codified law system based on the French model which adopts the arbitration methods for resolving any kind of contractual disputes. Following a written commercial and contractual law, the Egyptian economic courts act as an independent branch of the government. They are

separated from any kind of intervention from the administrative or the executive machinery, except in exceptional political matters (Abdel Wahab: 2019).

The objective behind the establishment of the new Law of Economic Courts of 2008 was to create a specialized court to consider the dispute that has economic and commercial nature, including business and investment dispute cases. The Law of 2008 also aimed to resolve the chronic problem of facing delays in litigation procedures. Therefore, it granted the economic courts the status of specialized courts, stretching their jurisdiction to all types of economic disputes, whether commercial or criminal. The new jurisdiction also included the handling of all disputes related to Capital Market Law, the Companies Law, the Investment Law and the Intellectual Property Rights Law.

Judges in Egypt enjoy a high degree of public trust and are skilled, trained and efficient. They have proved a great asset and facilitated greatly in implementing and enforcing the prevailing Egyptian law (Library of Congress: 2017). Abdel Shahid (2002) observes that having well-trained judges with expertise in economic matters are a major advantage in the implementation of any legislation. Trained and skilled judges are specialized in all sorts of legal matters; therefore, they can resolve all types of economic disputes in a professional manner. Presently, an overview of the Egyptian Judiciary reveals that a few judges have been either president of courts of First Instance or Chief Appellate Courts. By the time, new economic courts were established in Egypt in 2008, and these judges had accumulated a very high level of expertise and exposure of all sorts of technical aspects of economic and financial disputes.

The creation of the Egyptian Economic Courts in accordance with the Law no. 120 of 2008 was an initiative that reflected the evolution of a legislative mechanism in Egypt targeting conflict resolution. This initiative has so far reaped rich dividends by supporting and developing the level of investments and economic life in the country resulting in strengthening "the governing structure," as well as the social and economic life (Ghanem: 2014; Reda: 2005). These new Economic courts had specialized judges who were well versed with ways and means of technological and economic development and raised the image of the country nationally and internationally. A big advantage felt by Egyptian judiciary was that owing to the expertise of its judges, it had become unnecessary to resort to international arbitration courts as most matters were resolved by the local economic courts that had become favoured means of dispute settlement (Ghanem: 2014).

Disputes within the Jurisdiction of new Economic Courts

As said earlier, specialized agencies in Saudi Arabia should act as tribunals and be elevated to the status of Economic courts. If so, their jurisdiction will be the same as that of other ordinary courts. These courts would be recognized as the specialized judiciary, and judges can also be appointed to deal with disputes of economic nature or those related to investments. The Saudi Decision makers take the official step toward launching the new Commercial Court officially in Formal ceremony that was held in October 2017. The Minister of Justice stressed that the commercial judiciary would carry out its functions through 3 main Commercial Courts that have been established in the country's capital, Riyadh, and both Jeddah and Dammam. In addition to commercial circles within the General Courts in cities where there are no Commercial Courts. The Minister confirmed that "The commencement of work in these courts is considered a qualitative shift and a remarkable development in the process of the specialized judiciary in the Kingdom" (Saudi Press Agency, 2017). This legislative step put the end of a long judicial practice that lasted for years when the consideration of commercial cases was within the jurisdiction of the Board of Grievances (Administrative Courts).

However, these Commercial Courts faced jurisdictional challenges as it was difficult to decide the appropriate court to hear a specific dispute, be it the Board of Grievances or the General Courts or these commercial courts. These challenges delayed the progress of claim/dispute resolution. Hence, many amendments and updating that made in the legislations and laws level. That done by adding new provisions of Law of Civil Procedure of 2013. All these amendments were pertaining to jurisdiction and admissibility conditions and aimed at bringing stability and consistency in the dispute resolutions. In the same context, a

special committee that was formed in 2017 according to a decision from Chairman of the Supreme Judicial Council in order to “determine the jurisdiction of Commercial Courts (Albaheth: 2019). The committee listed in its minutes the cases that could fall before the Commercial Courts. In addition, the Supreme Judicial Council also “published a sourcebook of legal principles and precedents,” which listed “2,323 principles and decisions and a further set of eight volumes containing jurisprudential roots from which these principles have been derived” (Basrawi: 2018).

Additionally, the new Law of Commercial Courts is seen as more structured and organized in terms of courts’ jurisdictions. Article (16) of the new Law has increased the courts’ jurisdiction to include the following types of cases within the existing Commercial Courts, namely cases filed against traders in commercial contract disputes; claims and violations arising from the application of intellectual property systems; and Lawsuits for compensation for damages arising from a case previously heard by Commercial Courts.

Importantly, the number of cases is to be considered before special agencies (judicial committees) located outside the judicial authority bodies and linked to executive authority bodies. The rationale behind increasing the jurisdiction of such cases was that economic courts should be able to establish a more effective judicial system and smoothen the disputes resolution process. However, such cases and disputes that are of significant financial and economic importance in the economic field have been kept outside the existing Commercial Courts. These cases include related to securities disputes, banking disputes, insurance disputes, and financial disputes that can be heard under Finance Companies Control Law of 2012.

The Importance of Establishing Economic Courts in Saudi Arabia

Hence, it is important that such specialized agencies should be converted into Economic courts in the kingdom. Once these agencies are recognized as Economic courts, they can greatly facilitate the resolution of disputes in the Kingdom. Such specialized courts would not only resolve economic, commercial and financial disputes but will also benefit the Legal system, in general. One of these benefits would be to enhance the judges’ experiences and helping them to settle the disputes faster and effectively. These courts would also grant stability in dealing with the economic and financial cases, thus gaining the confidence of litigants, including the investors. In addition, the existing of such courts would also play an important role of “economic development,” encouraging new companies to enter the business in areas where there is an effective, stable, and specialized judicial environment. This will enable developing the trust of business investors in the judicial system even if the state itself is a party to these disputes. This is consistent with the World Bank 2005 World Development Report, entitled “A Better Investment Climate for Everyone,” which states that the establishment of specialized courts adjudicates business-related disputes. As a result, many developing countries have started to establish specialized courts in order to increase the efficiency of the dispute resolution environment and encourage investment and economic reforms (Tripp & North: 2009).

Such evolution and strengthening of the Economic Courts in Saudi Arabia reflect the steps taken in the case of Egyptian decision-makers, who regarded specialized agencies as legal entities to decide cases related to investment activities and facilitate the litigation process. Due to this step, the judicial system in Egypt contributed to facilitating the development of social and economic conditions of the people and building a free and fearless business environment. It opened the doors of investment and attracted foreign capital. Such a legal environment instilled confidence in the investors who were convinced of the protection of their rights. They were confident that the new Economic Courts would create an efficient judicial system and build a positive investment climate facilitating quick litigation and easy enforcement procedures (Omniah & Heike: 2016). This process can be replicated in the case of Saudi Arabia as the two countries have much in common

DISCUSSION

Role of economic courts in achieving vision 2030

The main goals of Vision 2030, amongst others, include increasing interaction between public and private enterprises, between authorities and the general public; improving performance, productivity and flexibility and creating an attractive environment for local and international investors to build their confidence in Saudi Arabia's economy. The National Transformation Program (NTP) 2020 has also laid down many initiatives to improve the judicial system in Saudi Arabia and to accelerate Vision 2030 goals. The NTP 2020 has set forth key performance indicators such as reducing the average timeframe to conclude cases; increasing the percentage of concluded cases; satisfying the stakeholders and reducing the average number of incoming cases per judge and improve Saudi Arabia's World Bank institution ranking.

The Ministry of Justice and BOG have also implemented a huge IT project, connecting all Administrative, Commercial and Enforcement courts with hardware and software and online platforms. A close collaboration of IT projects for the field of the judiciary is helping to accelerate the achievement of Vision 2030 objectives. These IT projects have hugely supported in enhancing the efficiency of judges and administration of courts. By shifting from a paper-based to an electronic system, these projects have saved litigants' time and cost. This online approach has allowed parties to submit requests and file lawsuits online without visiting the court. It also allows all parties to update and track online all information related to their case.

The Ministry of Justice has also implemented a Royal Order which requires judicial notifications are communicated electronically via SMS on verified phone numbers, e-mail addresses, and accounts registered on automated government systems. Such notifications are valid and effective legal summons and have the same effect as traditional methods of notification recognized by law. This ensures that if courts send the legal summons to defendants via SMS using the number registered on automated government systems, their claim could have stayed. This was also very helpful in the case when the claimant did not know the defendant's address for service of the claim.

CONCLUSION

This paper was an attempt to seek an effective mechanism to resolve economic disputes and economic crimes by first highlighting the absence of an effective legal platform to resolve such disputes and then suggesting remedial measures through the establishment of specialized economic courts. Taking the Egyptian model of economic courts and specialized agencies to hear litigation of economic nature, this paper finds it as a viable framework of economic reform in the Kingdom of Saudi Arabia as well. Such a step is highly required in the context of the Kingdom's vision 2030, which clearly aims for its strategic objective of developing and diversifying the national economy through the private sector and foreign direct investment. Therefore, in order to accomplish this vision and to win the confidence of investors, it is imperative that new mechanisms must be introduced for disputes resolutions. Establishing specialized economic courts as a part of the existing ordinary courts was, therefore, one such reform suggested within the current judiciary system.

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BIODATA

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