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Accepted by the faculty, Indiana University Maurer School of Law, in partial fulfillment of the requirements for the degree of Doctor of Juridical Science.

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Donald H. Gjerdingen  
Professor of Law

March 27, 2020

**THE CURRENT SYSTEM OF RESOLVING INSURANCE DISPUTES IN  
SAUDI ARABIA: ITS WEAKNESSES AND WAYS OF DEVELOPING IT**

Saleh Alsheha

Submitted to the faculty of Indiana University Maurer School of Law  
in partial fulfillment of the requirements  
for the degree  
Doctor of Juridical Science  
March 2020

*Allah said;*

***“And cooperate in righteousness and piety, but do not cooperate in sin and aggression. And fear Allah; indeed, Allah is severe in penalty.” (2)***

*Surah Al-Mā'idah*

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First of all, I am very grateful to Allah, the Almighty and Merciful One, for his blessings and his willing of the circumstance and his support for accomplishing this achievement. I am also grateful to my country, the kingdom of Saudi Arabia, represented by its wise leadership and educational institutions, for allowing me and many students of my country to complete our graduate studies and achieve our aspirations.

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## **Dedication**

I dedicate this dissertation to all those who are dearest to me, my father, my mother, and all my family for their prayer and encouragement; to my lovely wife, Amal, for her moral support and patience with my time spent in research and writing; finally, to my young daughter, Yara, and my little son, Salman, whose joy for life were always inspiring even in the most difficult times. They all were my supporting strength in achieving my SJD degree.

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❖ **Glossary of Terms and Abbreviations**

<b>1</b>	The Basic Law of Governance	The Constitutional Law of Saudi Arabia
<b>2</b>	ADR	Alternative Dispute Resolution (Arbitration and Mediation)
<b>3</b>	SCCA	The Saudi Centre For Commercial Arbitration
<b>4</b>	Fatwa	A Jurisprudential Opinion or decision of an Islamic Scholar/s
<b>5</b>	The Insurance Dispute Committees	The Committees for Resolution of Insurance Disputes and Violations
<b>6</b>	CICCL	The Cooperative Insurance Companies Control Law
<b>7</b>	The General Secretariat	The General Secretariat of The Insurance Dispute Committees
<b>8</b>	SAMA	Saudi Arabian Monetary Authority
<b>9</b>	WRPIC	The Working Rules and The Procedures of The Insurance Dispute Committees
<b>10</b>	CCHI	The Council of Cooperative Health Insurance
<b>11</b>	CHIL	The Cooperative Health Insurance Law
<b>12</b>	Gharar	Uncertainty in Contract

## Abstract

Insurance industry generally revolves around financial risks, and the business of insurance companies is reliant on the resolution of claims that arise from these risks associated with insurance policies. In fact, insurance companies routinely adjust claims and provide indemnities to the insureds or beneficiaries. In some cases, however, the resolution of claims may falter, resulting in disputes that involve conflicting views between the insurer and insured on the eligibility of indemnity. Hence, this requires the existence of an effective and smooth mechanism that guarantees the end of such conflicts and protects the rights of the parties involved in insurance contracts.

Noting this significance, the Saudi legislature created a mechanism for resolving insurance disputes in 2003, represented by the current Insurance Dispute Committees that operate within the framework of the Saudi Arabian Monetary Authority (SAMA). This initiative has made substantial achievements in supporting the insurance industry in the Kingdom. It has also considerably increased the confidence of individuals in engaging in the insurance contract, especially when compared to the previous period when insurance disputes were resolved through the efforts of the Ministry of Commerce and mandatory arbitration.

Despite the achievements and the progress made by the existing mechanism, this dissertation focuses on reevaluating it, and discussing whether it can be amended to keep pace with future developments of the insurance sector in light of the Kingdom's Vision 2030. Specifically, this study explores the challenges facing the current mechanism and the effects of these challenges on either the Insurance Committees or litigants. The study then examines the proposed steps to overcome these challenges within the framework of the Saudi legal system, which is fundamentally based on the principles of Sharia.

## ❖ Introduction

Insurance industry is an important contributor to the national economies in various countries of the world. The insurance industry gained this prominence through economic, social, and technological variables that contributed to an increase in the risk rate. Many individuals, and economic and financial entities have become surrounded by several hazards, such as fires and accidents, which cannot be overcome or confronted without a supportive strategy. Therefore, the insurance industry, represented by insurance companies, was found to cover such risks.

Insurance companies play their role in covering risks by adjusting insurance claims and providing indemnities to the insured, third party, or beneficiary, when the risk occurs. Therefore, the resolution of claims is considered a routine business for insurance companies. However, insurance claims may turn into disputes when disagreements arise between insurance company and insured regarding the settlement of a claim. Typically, there are two areas whereby disagreement arises between the insurer and the insured parties. The first area is centered on the difference between the perceived value of the loss on the part of the insured, and the perceived damage recognized on the part of the insurance company. The second area of disagreement is centered on the perceived lack of liability of the insurance company, over what was contracted for compensation itself. For instance, in practice, an insurance company may deny a claim under the assertion that it was excluded under the policy, but the insured party may disagree. For this reason, it is necessary to have an active, effective, and fair mechanism for resolving disputes that may arise from the insurance contract between the insurer and the insured.

In the Kingdom of Saudi Arabia, the practice of insurance began gradually, partially due to the absence of a specific regulation since the middle of the twentieth century. This was in conjunction with a discussion among Sharia scholars about the legitimacy of insurance contracts. Later, however, the Saudi legislature acknowledged the necessity to regulate this sector and to find a mechanism to resolve disputes that may arise from the insurance contract. Therefore, in 2003, the Cooperative Insurance Companies Control Law was issued as the first regulation of the insurance industry in the Kingdom.<sup>1</sup> This law outlines the current mechanism for resolving insurance disputes, which is represented in the Insurance Disputes Committees. Article Twenty of this law granted the power, to hear all insurance disputes arising from the insurance contract in the Kingdom, to these quasi-judicial committees. These Committees exercise their jurisdiction over insurance disputes outside the judiciary through three primary committees, which are located in Riyadh, Jeddah, Dammam, as well as an appeals committee in Riyadh.

This current mechanism, represented by these Committees, has resulted in a significant step forward, which directly contributed to the development of the insurance sector, especially by resolving the dilemma of the insurance dispute and increasing confidence among individuals and institutions in engaging in the insurance contract. The role of these Committees in solving insurance disputes has been growing year by year, in line with the gradual expansion of the insurance industry in the Kingdom. For example, the Primary Committees issued 370 rulings in 2008 and 625 rulings in 2014,<sup>2</sup> while they issued around

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<sup>1</sup> *The Cooperative Insurance Companies Control Law*, Royal Decree No. M/32, 2/6/1424H (2003).

<sup>2</sup> *See the Statistics of the General Secretariat and the Preliminary Committees Rulings from (1426 H) to (Q2 of 1437 H)*, GEN. SECRETARIAT OF THE COMMITTEES FOR RESOL. OF INS. DISP. & VIOLATION (2005-2015), <http://www.idc.gov.sa/en-us/Pages/ReportsAndStatistics.aspx>.

1,200 rulings in 2017.<sup>3</sup> Therefore, the emergence and progress of this current mechanism is a positive step, especially in comparison to the previous period, when insurance disputes were resolved through the efforts of the Ministry of Commerce and mandatory arbitration, which were insufficient to preserve the rights of parties to the insurance contract. However, despite the positive change achieved by the current mechanism, it is essential to seek a more advanced step for resolving insurance disputes, that can keep pace with the future development of the insurance industry in light of the Kingdom's 2030 vision.

Therefore, this dissertation primarily aims at the exploration of the possible opportunities to develop the mechanism of resolving insurance disputes in the Kingdom of Saudi Arabia, in line with the Saudi legal system, which is derived from the general principles of Sharia. To that end, this dissertation will shed light on the work of the Insurance Disputes Committees, focusing on the challenges that the current mechanism face in dealing with insurance disputes and the implications of each challenge. Subsequently, this dissertation will examine the proposed solutions regarding the extent to which the jurisdiction can be restructured over insurance disputes and the establishment of a unified insurance authority in the future that could contribute to settling insurance disputes in the Kingdom of Saudi Arabia.

Moreover, this dissertation focuses on other corresponding areas, which include explaining the Saudi legal framework, the concept of Sharia and its sources, and Sharia scholars' views on the insurance contract. This examination also includes providing a

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<sup>3</sup> See the Annual Report for 2017, GEN. SECRETARIAT OF THE COMMITTEES FOR RESOL. OF INS. DISP. & VIOLATIONS 27, <http://www.idc.gov.sa/en-us/Pages/ReportsAndStatistics.aspx>.

historical summary of insurance practices in the Kingdom, the development phases of this sector's regulations, and the procedures of resolving the disputes in each phase.

## **1- Research Roadmap**

In pursuit of the desired goals of this dissertation, it contains the following four main chapters.

Chapter One presents an overview that helps the reader to understand better what will be discussed in subsequent chapters. Specifically, this chapter reflects upon the Saudi legal framework, which includes the sources of Sharia, the state authorities, and the judicial system. This chapter also explains the concept of the insurance contract in the Kingdom of Saudi Arabia, including the elements of this type of contract and the laws governing insurance operations in Saudi Arabia.

Chapter Two addresses the current system for resolving insurance disputes and the competencies of the Primary Committees, the Appeals Committee, as well as the General Secretariat of these committees. To that end, this chapter consists of three sections. The first section examines the concept of insurance litigation and its historical development in the Kingdom of Saudi Arabia. The second section explains the formation of the committees as well as the function of the General Secretariat and its duties. The third section describes the practical procedures used before the committees and the General Secretariat for resolving insurance disputes.

Chapter Three examines the means by which the committees resolve insurance disputes and the procedures' weaknesses. Specifically, this chapter explores the difficulty of some insured individuals accessing the Committees as well as the insufficient number of the Committees and their independence. This chapter also explores the problematic



status of the multiplicity of supervisory bodies over the insurance sector and the effect of this multiplicity on the legal environment for resolving insurance disputes. It further examines the idea of the existence of quasi-judicial committees, rather than courts, for hearing insurance disputes.

Chapter Four examines the proposed steps to further develop the mechanism for resolving insurance disputes in the Kingdom of Saudi Arabia, especially with the expected expansion of the insurance sector in the future. Specifically, this chapter examines the possibility and feasibility of granting the jurisdiction over insurance disputes to the Sharia Courts and to create a unified insurance authority that would contribute to settling insurance disputes alongside the judiciary. Also, this chapter provides an experiment or model that can be used to achieve each of these steps, along with exploring the obstacles that could face each step.

The conclusion includes the most prominent results of and recommendations stemming from this research.

## **2- Research Methodology**

The research methodology for this study was determined based on the main objective of this dissertation, which is to explore the possible opportunities to develop the current mechanism, so as to keep pace with the expected expansion of insurance in the future. Therefore, this research employed a multi-method approach that involved description and analysis of laws and data related to insurance disputes.

The first chapter relies on a descriptive method to introduce the reader to the Saudi legal system, with which any analysis in this study must be compatible. Therefore, this chapter describes the concept of Sharia as the essential source of legislation in the

kingdom, state authorities, and the concept of an insurance contract. Moreover, this chapter uses the quantitative method to indicate the number of courts, the geographical distribution of these courts according to the regions of the Kingdom, and the respective number of judges in these courts.

Similarly, the second chapter depends on the descriptive method in order to determine the features of the current mechanism for resolving insurance disputes, in preparation for clarifying its challenges in the next chapter. This includes describing the concept of insurance litigation, the tasks of the Committees, and the practical procedures that insurance disputes pass through.

Contrastingly, the third and fourth chapters rely upon the analytical method in evaluating the problems and proposed solutions. Additionally, Chapter Three specifically uses the quantitative method to outline the number of decisions issued by Insurance Disputes Committees, the number of insured parties, and the rate of gross written premiums, as well as to link this to the subject of the problem to be explained.

Moreover, this dissertation employs a qualitative approach through several in-depth interviews with insurance experts and judges. These interviews rely on open-ended questions to achieve the goals aforementioned. Therefore, the outputs of these interviews are concentrated in the third and fourth chapters of this dissertation.

## I. Chapter One: Overview

### o Introduction

Saudi Arabia is located at the center of the Arabian Peninsula. It is the land of revelation and prophecy, and it is the land of the Two Holy Mosques, which are located in Makkah and Medina. Since the establishment of Saudi Arabia in 1774, the Sharia and its principles have served as the country's foundation.<sup>4</sup> The first founder of the Kingdom of Saudi Arabia, Prince Mohammed bin Saud, worked with Ash-Sheikh Muhammad bin Abdul Wahhab to establish a state based on Sharia and its principles and rules.<sup>5</sup> Article Seven of the Basic Law of Governance states that "Government in Saudi Arabia derives power from the Holy Qur'an and the Prophet's tradition both of which govern this law and all laws of the state."<sup>6</sup>

Consequently, Sharia governs all aspects of financial, legal, and other transactions in the Kingdom of Saudi Arabia. It is also the standard that determines the constitutionality of laws issued to regulate specific matters, whether traditional or new. According to this, all laws written in Saudi Arabia must be consistent with the general principles of Sharia, and any law violating these principles would, therefore, be unconstitutional.

This chapter provides an overview of the Saudi legal system and Sharia in order to allow for a better understanding of the mechanism through which regulations are implemented, when they are applied, and how new matters, such as insurance contracts, will be considered. To that end, this chapter consists of two parts: The Saudi legal framework and the insurance contract in the context of the Kingdom of Saudi Arabia. The

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<sup>4</sup> See JAJATI K. PATNAIK, *SAUDI ARABIA: POLITICAL STRUCTURE AND REFORMS* 25 (2017).

<sup>5</sup> *Id.*

<sup>6</sup> *The Basic Law of Governance*, Royal Order No. A/90, 27/8/1412H (1992), art. 7.

first part of this chapter consists of four sections. The first section discusses Sharia and its sources. The second section discusses the legislative, the executive, and the judicial branches of the state authorities. It also includes statistics related to the types of courts, their numbers, and statistics regarding attorneys in Saudi Arabia. The third section provides a brief assessment of the current state of alternative dispute resolution in Saudi Arabia. Finally, the second part of this chapter provides an overview of the nature of the insurance contract in the Kingdom of Saudi Arabia and how it is viewed.

## A. The Saudi Legal Framework

### 1. Section One: The Sources of Sharia

Sharia, with its primary and secondary sources, organizes all aspects of life.<sup>7</sup> It is a complete and comprehensive approach aimed at protecting the five necessities of human life; namely, religion, self, mind, progeny, and property.<sup>8</sup> The Holy Qur'an and Sunnah address various provisions of economics, politics, sociology, and law.<sup>9</sup> In the Qur'an 5:3, God says, "This day I have perfected for you your religion and completed My favor upon you and have approved for you Islam as religion."<sup>10</sup>

Moreover, Sharia is valid for all times and places and can accommodate all life developments because it contains both general principles and unchangeable specific provisions.<sup>11</sup> Therefore, it considers the unchangeable elements of life as well as its variants viewed through the primary sources, which are the Qur'an and Sunnah, and through the secondary sources, which are *Ijma* and *Qiyas*.

#### a. The Qur'an

In Sharia, the Qur'an is considered the supreme foundation and the source of truth and knowledge.<sup>12</sup> The Qur'an was sent down to the Prophet Muhammad (Peace be upon him) (hereinafter, "PBUH") by the archangel Gabriel.<sup>13</sup> It contains all of the fundamental

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<sup>7</sup> See WEERAMANTRY, C. G., *ISLAMIC JURISPRUDENCE AN INTERNATIONAL PERSPECTIVE* 1 (1988).

<sup>8</sup> See Al Wardi, Jafar Abdullah, *Alkaliyat Alkhms Haqiqataha Watharuha [The Five Necessities in Islam; its Truth and its Effects]*, at 13, Alhabebulmostafa AL-WRDE (2006).

<sup>9</sup> See Ali Ahmari-Moghaddam, *Towards International Islamic Human Rights: A comparative study of Islamic Law, sharia, with universal human rights as defined in the International Bill of Human Rights* 31 (2012) (LLM thesis, University of Toronto).

<sup>10</sup> THE QUR'AN, 16.89.

<sup>11</sup> See Mohamed Noordin, *Researching Islamic Law; Malaysian Sources*. HAUSER GLOBAL LAW SCHOOL PROGRAM (Mar. 2009),

[https://www.nyulawglobal.org/globalex/Researching\\_Islamic\\_Law\\_Malaysian\\_Sources1.html](https://www.nyulawglobal.org/globalex/Researching_Islamic_Law_Malaysian_Sources1.html)

<sup>12</sup> See Michael Mumisa, *Islamic Law Theory & Interpretation* 21, Amana Pubns (2002).

<sup>13</sup> See Ahmari-Moghaddam, *supra* note 9, at 32.

guidance and instructions from God.<sup>14</sup> The literal meaning of Qur'an is "recite" or "read."<sup>15</sup> The first word of revelation to the Prophet Muhammad "PBUH" was the word, "recite." In the Qur'an 96:1, God says, "Recite in the name of your Lord who created - Created man from a clinging substance. Recite, and your Lord is the most Generous - Who taught by the pen - Taught man that which he knew not."<sup>16</sup> There are synonyms for the Holy Qur'an within the Qur'an itself, including *Al-Kitab* (The Book), *Furqan* (The Criterion of Right and Wrong), and *Al-Nur* (The Light).<sup>17</sup> Muslims read the Qur'an at the mosque in prayer and privately in worship and to become better acquainted with their religion. Reciting the Qur'an, reflecting upon its verses, and considering the meaning of its verses are all means of worshiping God Almighty.

The Holy Qur'an was completed during the life of the Prophet Mohammed "PBUH", and upon the death of the Prophet, all revelation ended. The word of God revealed in Arabic in the Qur'an is unchangeable. In the Qur'an 26:193, God says, "The Trustworthy Spirit has brought it down Upon your heart, [O Muhammad] - that you may be of the warners - In a clear Arabic language."<sup>18</sup> Therefore, the Qur'an has been read as it was sent down in its original version, because God guarantees that the Qur'an will be preserved and thus free from distortion. In the Qur'an 18:27, God says, "And recite, [O Muhammad], what has been revealed to you of the Book of your Lord. There is no changer of His words, and never will you find in other than Him a refuge."<sup>19</sup>

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<sup>14</sup> See Noordin, *supra* note 11.

<sup>15</sup> See WEERAMANTRY, *supra* note 7, at 5.

<sup>16</sup> THE QUR'AN, 96:1-4.

<sup>17</sup> See *Names of the Qur'an*, ISLAMIC RESEARCH FOUNDATION INT'L, INC., [http://www.irfi.org/articles/articles\\_551\\_600/names\\_of\\_the\\_qur.htm](http://www.irfi.org/articles/articles_551_600/names_of_the_qur.htm)

<sup>18</sup> THE QUR'AN, 26:193.

<sup>19</sup> THE QUR'AN, 18:27.

The revelation of the Qur'an to the Prophet Muhammad "PBUH" was given in two periods, and each period was defined by its own characteristics. The period of Makkah was the first period of the mission of the Prophet Mohammed "PBUH" and the emergence of Islam. The verses of the Qur'an from that period focus on faith and *Tawhid* to teach the Muslims their religion. The Medina period was the second period, and it was the period during which the Prophet Muhammad "PBUH" and his *Sahaba*<sup>20</sup> moved from Makkah to Medina.<sup>21</sup> The verses that were sent down in that period primarily addressed aspects of life more than of faith because the people had learned their religion in Makkah and had begun to establish a stable state that included different sects and races. This stable state required legislation that preserved both rights and duties.

The Holy Qur'an consists of 114 Surahs (chapters) and 6,235 verses.<sup>22</sup> The Surahs and their verses contain many religious regulations as well as secular regulations for the daily life of Muslims.<sup>23</sup> The Holy Qur'an sets forth rules that govern secular societal areas such as contracts, financial transactions, marriage, divorce, and inheritance. In addition, the Holy Qur'an provides many religious regulations such as Hajj, Umrah (the rituals at Mekkah), and fasting. Some of the regulations in the Holy Qur'an are mentioned briefly and some are more detailed.<sup>24</sup> In the Qur'an 16:89, God says, "And We have sent down to you the Book as clarification for all things and as guidance and mercy and good tidings for the Muslims."<sup>25</sup>

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<sup>20</sup> "A sahabi (the Companion) is a person who believed in the Prophet (pbuh), who came together with the Prophet, and who died as a Muslim." Anonim, *What is the Definitoin of Sahaba*, QUESTIONS ON ISLAM (Mar. 1, 2016), <https://questionsonislam.com/question/what-definition-sahaba-who-called-sahabi>.

<sup>21</sup> See Ahmari-Moghaddam, *supra* note 9, at 68.

<sup>22</sup> See Javaid Rehman & Aibek Ahmedov, *Sources of Islamic Law: Teaching Manual*, UK CTR. FOR LEGAL EDUC. 18 (2011).

<sup>23</sup> See MASHOOD A. BADERIN, *ISLAMIC LAW IN PRACTICE VOLUME III 3*, ROUTLEDGE (2014).

<sup>24</sup> *Id.*

<sup>25</sup> THE QUR'AN, 16:89.

In addition to the religious and secular regulations, the Holy Qur'an is attentive to many general principles that apply to human life. Take, for example, the principle of human unity; God says, "O mankind, indeed, we have created you from male and female and made you people and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you. Indeed, Allah is Knowing and Acquainted."<sup>26</sup> Another example includes the principle of justice in human life; God says, "O you who have believed, be persistently standing firm for Allah, witnesses in justice, and do not let the hatred of a people prevent you from being just. Be just; that is nearer to righteousness. And fear Allah; indeed, Allah is Acquainted with what you do."<sup>27</sup>

All Muslim scholars agree on the primary authority of the Qur'an, the obligation of acting according to it, and the necessity of subjecting all new variables of life to the legitimacy of the principles of the Qur'an. If there is no exact rule or interpretation of general provisions found within the Qur'an, scholars of Sharia research the traditions of the Sunnah as a second source.

### **b. The Sunnah "The Prophetic Tradition"**

The Sunnah is considered the second source of Sharia. In Arabic, Sunnah refers to the method or manner by which a person lives his or her life.<sup>28</sup> The Sunnah includes all aspects of Prophet Mohamed's life "PBUH", such as the events of his life, his character, and his way of dealing with others and with his family. The scholars of Sharia know the Sunnah as the life of the Prophet Muhammad "PBUH". This includes what we know about him from his contemporaries who provided his words, actions, verbal

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<sup>26</sup> THE QUR'AN, 49:13.

<sup>27</sup> THE QUR'AN, 4:135.

<sup>28</sup> See Sayed Abdu Al Majed Al-Ghouri, *Alsanat Alnubawiat Hujyataha Wataadwinuha [The Sunnah; its Legitimacy and its Codification]* 13, Dar Ibn Katheer, Damascus (2009).



confirmations, and silent agreements.<sup>29</sup> The Sunnah also involves the "Hadith," which refers to the texts of the speech and the stories about Prophet Mohamed "PBUH".<sup>30</sup> The transfer from one generation to the next of the "Hadith" of the Prophet Mohammed "PBUH" has been subjected to ilm al-ḥadīth or "the science of Hadith." This science of Hadith studies the historical evolution of each Hadith and the moral character of the narrators to determine the validity of the Hadith.<sup>31</sup>

The Sunnah derives its legitimacy from the Qur'an. God says in the Qur'an, "O you who have believed, obey Allah and obey the Messenger and do not invalidate your deeds."<sup>32</sup> Because the nature of many rulings in the Qur'an is general and implicit, the Sunnah interprets these rulings and makes them more specific. The Prophet Mohamed "PBUH" is commanded in the Qur'an to report what was revealed to him from the revelation of God and to explain the Qur'anic revelation. This explanation of the Qur'an has been provided through the tradition of the Sunnah. God says in the Qur'an, "[We sent them] with clear proofs and written ordinances. And We revealed to you the message that you may make clear to the people what was sent down to them and that they might give thought."<sup>33</sup>

Accordingly, the Sunnah interprets many of the general religious and secular rulings of the Qur'an. In relation to the religious rulings in the Qur'an, God said, "But when you become secure, re-establish [regular] prayer. Indeed, prayer has been decreed upon the believers a decree of specified times."<sup>34</sup> In another verse, God says, "And to establish

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<sup>29</sup> See RAJ BHALA, *UNDERSTANDING ISLAMIC LAW*, at 273 (2d ed. 2016).

<sup>30</sup> *Id.*

<sup>31</sup> See Rehman & Ahmedov, *supra* note 22, at 21.

<sup>32</sup> THE QUR'AN, 47:33.

<sup>33</sup> THE QUR'AN, 16:44.

<sup>34</sup> THE QUR'AN, 4:103.

prayer and fear Him. And it is He to whom you will be gathered.”<sup>35</sup> These verses indicate that God has enjoined prayer on Muslims without providing exact details, such as how or when to pray, under what conditions one should pray, and what the pillars of prayer are. However, the Sunnah provides all of these details regarding prayer. The Sunnah also provides details regarding other forms of worship, such as Zakah, Fasting, and Hajj, which are absent from the Qur’an.<sup>36</sup>

Furthermore, the Sunnah explains the general Qur’anic rulings governing daily life such as sales, purchases, litigations, and inheritance. For example, God says in the Qur’an, “And do not consume one another’s wealth unjustly or send it [in bribery] to the rulers in order that [they might aid] you [to] consume a portion of the wealth of the people in sin, while you know [it is unlawful].”<sup>37</sup> This verse sets up a general rule, prohibiting unjustly consuming people’s money. The Sunnah then provides a more detailed reflection on contracts, such as gambling and *Riba* (usury), which are prohibited by the Qur’an.<sup>38</sup> These prohibited contracts mentioned in the Sunnah are detailed examples of the Qur’an’s general prohibition of unjustly consuming another’s property.

The Sunnah, which comes from a legitimate process, is not only an important source of Sharia, but it is also a binding legislative authority. The Prophet pointed to the need to

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<sup>35</sup> THE QUR’AN, 6: 72.

<sup>36</sup> In Arabic, *Zakah* means “purification,” because one aims to purify oneself of greed and love of wealth. *Zakah* is a type of donation that must be paid annually and is a contribution of 2.5% of an individual’s money. *Zakah* also must be given to particular categories of recipients. It could be used to support the needy and the poor, or to free slaves and debtors. In addition, *Sawm* is the fourth pillar of Islam, and it means fasting. Third, *Hajj* (pilgrimage to Mecca) is the fifth pillar of Islam. *Hajj* is performed in Makkah, where there is the Holy Mosque and the Kaaba. See *The Five Pillars of Islam*, ISLAM HOUSE (2013), [https://dl.islamhouse.com/data/en/ih\\_articles/single2/en\\_The\\_Five\\_Pillars\\_of\\_Islam.pdf](https://dl.islamhouse.com/data/en/ih_articles/single2/en_The_Five_Pillars_of_Islam.pdf).

<sup>37</sup> THE QUR’AN, 2:188.

<sup>38</sup> *Riba* (interest or usury) is any return/reward or compensation charged on a loan contract, as well as charged with rescheduling debts. See Mohammad Razi, *Riba in Islam*, LEARNDEEN 18 (2008), <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.695.4810&rep=rep1&type=pdf>.

adhere to his Sunnah, as he said in the Farewell Pilgrimage, “I leave behind me two things, the Qur'an and my Sunnah, and if you follow these, you will never go astray.”<sup>39</sup>

In cases where the primary sources, the Qur'an and Sunnah, do not provide a ruling on an issue, scholars of Sharia look to the secondary sources, which include *Ijma* and *Qiyas*.

### c. *Ijma* (The Consensus)

After an examination of the Qur'an and the Sunnah as the primary sources of Sharia, it is appropriate to consider the importance of the secondary sources of Sharia, which include *Ijma* and *Qiyas*. *Ijma* plays a vital role in the legislation of Sharia as the third source of the legislation. *Ijma* emerged after the Prophet Mohamed's death “PBUH” and when the revelation of the Qur'an stopped. In linguistics, the term *Ijma* refers to determination regarding and agreement upon something.<sup>40</sup> *Ijma* is defined in Islamic jurisprudence books as “the unanimous agreement of the mujtahidun<sup>41</sup> of the Muslim community of any period following the death of Prophet Muhammad on any matter for a proper consensus.”<sup>42</sup> According to the jurisprudential definition, *Ijma* is an agreement based on the Qur'an and Sunnah on the judgment of a new matter that occurred after the death of the Prophet “PBUH”. *Ijma* could not have existed during the era of the Prophet because he was authorized to rule on all developments of life that he experienced. Therefore, there was no need for *Ijma* at that time.

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<sup>39</sup> See *Prophet Muhammad's Last Sermon*, ISLAM HOUSE 5 (2013), [https://d1.islamhouse.com/data/en/ih\\_articles/single2/en\\_Prophet\\_Muhammad\\_Last\\_Sermon.pdf](https://d1.islamhouse.com/data/en/ih_articles/single2/en_Prophet_Muhammad_Last_Sermon.pdf).

<sup>40</sup> See SAEDI ABU JAYB, *AL'IJMAE FI ALFAQIH AL'IISLAMII* [ENCYCLOPEDIA OF IJMA IN ISLAMIC JURISPRUDENCE] 29 (2012).

<sup>41</sup> In Islam, the term *mujtahidun* refers to a person who has qualifications amounting to understanding Islamic law, its subjects, and purposes, and also has knowledge of the sources of Islamic law and the methods of deduction. See BHALA, *supra* note 29, at 284.

<sup>42</sup> *Id.*

*Ijma* serves as a legitimate decision because it is based on the preservation of the *Ummah* (the Islamic community) from error, and the impossibility of its misguidance. This is a stable provision of the Qur'an and Sunnah. The Prophet Muhammad said, "My nation will not unite on misguidance, so if you see them differing, follow the great majority."<sup>43</sup> God states in the Qur'an, "And hold firmly to the rope of Allah all together and do not become divided."<sup>44</sup> In order for *Ijma* to be valid, it must not conflict with the instructions of either the Qur'an or Sunnah, and it must stem from the general provisions outlined in each of them.<sup>45</sup> In addition, *Ijma* of Islamic scholars must be an absolute consensus.<sup>46</sup> In contrast, the agreement of the majority of scholars upon something is not sufficient for it to be binding, but it could be used to provide guidance.

*Ijma* was effective in developing legislative thought among Muslim scholars living and reflecting upon the rapid changes that took place after the death of the Prophet "PBUH".<sup>47</sup> *Ijma* of the Prophet's Companions is considered infallible because they learned directly from the Prophet and were close to him.<sup>48</sup> However, in modern times, that same binding *Ijma* is not possible. Islamic jurists have been divided into several schools in various regions around the world that make it impossible for them to agree on any particular matter.<sup>49</sup> The current period is referred to as *Taqlid* or the period of blindness. It exists because there is not a single school of *Ijma*; rather, there are four schools of jurisprudence in the Islamic world today.<sup>50</sup> In this period of *Taqlid*, Islamic

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<sup>43</sup> Sunan Ibn Majah, Hadith 3950.

<sup>44</sup> THE QUR'AN, 3:103.

<sup>45</sup> See Abdullah F. Ansary, *A Brief Overview of the Saudi Arabian Legal System*, HAUSER GLOBAL LAW SCHOOL PROGRAM (July 2008), [https://www.nyulawglobal.org/globalex/Saudi\\_Arabia.html](https://www.nyulawglobal.org/globalex/Saudi_Arabia.html).

<sup>46</sup> See BHALA, *supra* note 29, at 316.

<sup>47</sup> *Id.* at 287.

<sup>48</sup> *Id.*

<sup>49</sup> See Mumisa, *supra* note 12, at 80.

<sup>50</sup> *Id.*

jurists and the jurisprudential academies can discuss a new matter that is not mentioned in the Qur'an or Sunnah, and they can issue a ruling regarding it; however, this provisional ruling will not rise to the level of binding unanimity.<sup>51</sup>

#### d. Qiyas (Analogy)

*Qiyas* is the fourth source of Sharia.<sup>52</sup> When faced with a situation for which no concrete answers could be found in the Qur'an, Sunnah, or *Ijma*, the Muslim jurists would devote themselves to studying or observing an analogous situation in which a decision had been issued previously.<sup>53</sup> In Arabic, *Qiyas* means "measurement." Islamic jurisprudence defines *Qiyas* as "the practice of 'measuring' a rule given in the Qur'an or the Sunnah and applying it analogically to a new, yet similar, set of facts."<sup>54</sup> *Qiyas* is a legitimate method available to "Mujtahidun" to compare a new case with an original case to reach a logical conclusion for the new case.<sup>55</sup> This process seeks to apply a rule that already exists to a new situation that was not previously known.<sup>56</sup>

The legitimacy of *Qiyas* and its necessary role necessity in Islamic legislation are derived from the Qur'an and the Sunnah. The legal provisions in the primary sources are limited, but naturally, there are no limits to the number of different situations that life may present. Therefore, the Qur'an and Sunnah view *Qiyas* as part of the *ijtihad* in Islamic jurisprudence. For instance,

When the Messenger of Allah (PBUH) intended to send Mu'adh ibn Jabal to Yemen, he asked, "How will you judge when the occasion of deciding a case

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<sup>51</sup> *Id.*

<sup>52</sup> See WEERAMANTRY, *supra* note 7, at 40.

<sup>53</sup> *Id.*

<sup>54</sup> See BHALA, *supra* note 29, at 288.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

arises?” He replied, “I shall judge in accordance with Allah's Book.” He asked, “[What will you do] if you do not find any guidance in Allah's Book?” He replied, “[I shall act] in accordance with the Sunnah of the Messenger of Allah (PBUH).” He asked, “[What will you do] if you do not find any guidance in the Sunnah of the Messenger of Allah (PBUH) and in Allah's Book?” He replied, “I shall do my best to form an opinion and I shall spare no effort.” The Messenger of Allah (PBUH) then patted him on the breast and said, “Praise be to Allah Who has helped the messenger of the Messenger of Allah to find something which pleases the Messenger of Allah.”<sup>57</sup>

A valid *Qiyas* in Islamic law is based on three pillars: *asl* (the original case and its rulings); *far'* (the new parallel situation); and *'illah* (the legal reasoning).<sup>58</sup> For the first pillar, the original case, there are several conditions that must be met. The ruling of the original case must be permanent and irrevocable, and it must be a constant derived from the primary sources, the Qur'an, the Sunnah, or from *Ijma*.<sup>59</sup> It need also be reasonable and not in conflict with the norms of *Qiyas*.<sup>60</sup> The second pillar, the new parallel situation, involves cases that could be compared with previous cases found in the primary sources and *Ijma*.<sup>61</sup> For this pillar, the application of *Qiyas* must not alter the law of the original sources, which would be contrary to a valid *Qiyas*.<sup>62</sup> The third pillar, *illah*, the legal reasoning, is the most critical pillar for the correct application of *Qiyas*. It involves several

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<sup>57</sup> Sunan Abi Dawud 3592, Book 25, Hadith 22; Sunan Abi Dawud 3592, Book 24, Hadith 3585, available at <https://sunnah.com/abudawud/25/22>.

<sup>58</sup> See Muhammad Al-Salami, *Al-Qiyas (Analogy) and its Modern Applications*, ISLAMIC DEVELOPMENT BANK 31, <https://uaelaws.files.wordpress.com/2012/05/al-qiyas-analogy-and-its-modern-application.pdf>

<sup>59</sup> See ALHAI AJIOLA, *INTRODUCTION OF ISLAMIC LAW* 78-80 (1981).

<sup>60</sup> *Id.*

<sup>61</sup> See Al-Salami, *supra* note 58, at 33.

<sup>62</sup> See AJIOLA, *supra* note 59, at 79.

conditions that must be met. For example, *illah* must be precise, invariable, and clear, so that it will be accepted as the legal reasoning for the case ruling.<sup>63</sup> It need also to be “commensurate to the injunction,” which means that if the rule of the original case is applied to the new case, then it will achieve the same purpose that was intended in the original case.<sup>64</sup> Finally, the *illah* of the original case need to be applicable to the new matter.<sup>65</sup>

At last, all schools of Islamic jurisprudence view the Qur’an and the Sunnah as the primary sources of Sharia that cannot be changed or distorted in any way.<sup>66</sup> *Ijma* and *Qiyas*, as secondary sources, are important tools that can enable the appropriate application of Sharia to the new matter, inevitable situations that arise via new developments. However, in some contexts, Islamic schools differ in their interpretations of Sharia.

In Saudi Arabia, Sharia is the primary source of legislation, and the Qur’an and Sunnah are the governors of all transactions. In addition to Sharia, the Saudi government creates laws and regulations intended to regulate specific matters. For instance, the Saudi

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<sup>63</sup> See BHALA, *supra* note 29, at 288.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> The vast majority of the Sunni Muslim community recognizes only four schools of independent Islamic jurisprudence. The founders of these four schools lived in the first three centuries of Islam. The founding jurists are Malik bin Anas of Medinah, Abu Hanifa of Kufa, Ahmad bin Hanbal of Baghdad, and Muhammad al-Shafi’i of Medinah. First, Abu Hanifa established the first school in Iraq. He was a consistent thinker and relied on deep thought in his legal logic. The Hanafiyya School is found today in Turkey, Egypt, and India. Second, Malik bin Anas founded his school in Medina. Imam Malik was the judge of all rulings in the Medina judiciary, which made their way into a book named al-Muwatta (“The Leveled Path”). The adherents of the Malikiyya School are predominantly in areas of North Africa. Third, the Shafi’i School emerged from the Malik School where Shafi’i was a disciple of Imam Malik. Shafi’i was very intelligent, and he understood the Sunnah and Islamic principles in a deep way. This school has spread into Egypt, Syria, Indonesia, and other countries of the Islamic world. Finally, the fourth school is Hanbaliyya, which was founded by bin Hanbal's disciples and followers. Today, the Hanbali School is followed by Saudi Arabia and some Gulf countries. See The Four Schools of Law in Islam, UNDERSTANDING ISLAM, <http://free-islamic-course.org/stageone/stageone-module-4/four-schools-law-islam.html>.

government enacted the Basic Law of Governance, the Labor Law, and the Cooperative Insurance Companies Control Law. However, all of the laws issued by the Saudi government are subject to the general principles of Sharia, and the three state authorities work side-by-side to achieve this constitutional principle. The following section examines the three branches of government and the area of the authority for each one of them.

## **2. Section Two: State Authorities**

Most countries manage their internal and external affairs through public facilities and institutions that represent state authorities. These authorities are divided into three branches: the legislative authority, the executive authority, and the judicial authority.

In Saudi Arabia, the Basic Law of Governance provides for three authorities with the King as the final authority. It also describes the relationships that exist among these authorities, which is based on mutual cooperation in the discharge of their functions.<sup>67</sup> However, there is not an absolute separation between any of the individual authorities, especially not between the executive authority and the legislative authority.<sup>68</sup>

### **a. The Legislative Authority**

The legislative authority is empowered to approve international treaties and to issue domestic laws and regulations.<sup>69</sup> In Saudi Arabia, the Basic Law of Governance refers to (regulatory authority) to express to the legislative authority.<sup>70</sup> This legislative authority is divided among the King, the Council of Ministers, and *Shura* Council.<sup>71</sup>

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<sup>67</sup> *The Basic Law of Governance*, *supra* note 6, art. 44.

<sup>68</sup> See F. GREGORY GAUSE, *OIL MONARCHIES: DOMESTIC AND SECURITY CHALLENGES IN THE ARAB GULF STATES* 108 (1994).

<sup>69</sup> See Ansary, *supra* note 45.

<sup>70</sup> *The Basic Law of Governance*, *supra* note 6, art 44.

<sup>71</sup> See Ahmad Albaz , *Alnizam Alsiyasiu W Aldstwrlyu Lilmamlakat Alearabiat Alsaedia* [*The Political & Constitutional System of The Kingdom Of Saudi Arabia*] 206 (2012).



### i. The King

In accordance with the principles of Sharia and the Basic Law of Governance, the King is the supreme authority of all authorities, including the legislative authority.<sup>72</sup> The King has a primary and independent law-making function. The King also has the power to amend or accept laws as the Head of the Country or the Chairman of the Council of Ministers.<sup>73</sup> As the Head of State, the King is authorized to issue regulations by Royal Order, which are the will of the King. Royal Orders are basic laws that are issued without the participation of other legislative bodies such as the Council of Ministers or Shura Council.<sup>74</sup> For instance, the Basic Law of Governance, Shura Council Law, and the Council of Ministers Law were issued via Royal Order.<sup>75</sup> Moreover, the King is authorized by law to ratify conventions, treaties, and laws through Royal Decree. After the legislative bodies vote on a bill, the bill is then presented to the King for ratification through Royal Decree. The vast majority of local laws are enacted via Royal Decree.<sup>76</sup>

### ii. The Council of Ministers

The Council of Ministers, which may also be referred to as the Cabinet, has a major legislative authority, but it is also considered part of the executive authority in Saudi Arabia.<sup>77</sup> The Council of Ministers consists of the Chairman of the Council (the King), Deputy Prime Ministers (the Crown Prince), Ministers with Portfolios, and Ministers of State appointed as members of the Council.<sup>78</sup> As part of its legislative powers, the Council

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<sup>72</sup> *The Basic Law of Governance*, *supra* note 6, art. 44.

<sup>73</sup> *Id.* art. 70.

<sup>74</sup> *See* Albaz, *supra* note 71, at 188–89.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *The Council of Ministers Law*, Royal Order No. A/13, 2/3/1414H (1993), art 19, published in *Umm al-Qura* No. 3468, 10/3/1414H (1993).

<sup>78</sup> *Id.* art. 12.

of Ministers reviews treaties, concessions, and international agreements, which are issued by Royal Decrees. It also examines the bills of new laws and the amendments to these laws.<sup>79</sup> In addition, each member of the Council may propose what he considers worthy of debate in the Council after the approval of the President.<sup>80</sup> The decisions of the Council of Ministers are not valid unless the majority of the members are in agreement regarding them. In the event of a tied vote, the Chairman of the Council (the King) has the deciding vote.<sup>81</sup> It is also worth noting that the decisions of the Council of Ministers, including the promulgation of new laws or legislative amendments, are not binding unless approved by the King.<sup>82</sup>

### iii. Shura Council (Consultative).

Shura Council is the third legislative body to contribute to the enactment of laws in the Kingdom of Saudi Arabia. Shura Council consists of the President of the Council and 150 members selected from among experts and specialists in various fields such as law, economics, and Sharia.<sup>83</sup> Saudi women have been members of Shura Council since 2013 and represent 20% of Shura Council. Under Shura Council law, the Prime Minister provides general policies of the State to the Council for discussion. They are also authorized to examine laws, regulations, and treaties, and to make whatever proposals they deem appropriate. Shura Council also has the right to discuss the annual reports of executive institutions, such as ministries and public bodies.<sup>84</sup>

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<sup>79</sup> *Id.* art. 20.

<sup>80</sup> *Id.* art. 22.

<sup>81</sup> *Id.* art. 21–22.

<sup>82</sup> *Id.* art. 7.

<sup>83</sup> *Shura Council Law*, Royal Order No. A/91, 27/8/1412H (1992), art. 3, published in *Umm al-Qura* No. 3397, 2/9/1412H (1992).

<sup>84</sup> *Id.* art. 15.

## b. The Executive Authority

As noted previously, the relationship that exists among the different Saudi state authorities is based on cooperation and not on absolute separation. Thus, besides the legislative power of the King and the Council of Ministers, they are also part of the executive branch, along with local governments, general bodies, ministries, and local branches of ministries.<sup>85</sup>

The King, as the final authority of all authorities, has extensive authority to issue executive orders and to supervise the implementation of laws in Saudi Arabia. For instance, the King oversees the application of Sharia, the laws issued by the government, and the public policy of the state.<sup>86</sup> Additionally, the King is the supreme commander of the armed forces, and only he can declare a state of emergency in the country.<sup>87</sup> The King also appoints the members of the Council of Ministers who are responsible to him for the application of laws and Sharia rules.

The Council of Ministers over which the King presides is charged with the direct executive authority to run the affairs of the country.<sup>88</sup> It is responsible to define the nation's domestic, educational, economic, and defense policies.<sup>89</sup> It is also considered the final authority in the executive affairs of all ministries and other government bodies.

Finally, the executive authority, represented by the King, the Council of Ministers, the governmental bodies, and other institutions, cooperate to implement the judgments of the judiciary, that based on the principles of Sharia and the provisions of the law.

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<sup>85</sup> See Albaz, *supra* note 71, at 206–07.

<sup>86</sup> *The Basic Law of Governance*, *supra* note 6, art. 55.

<sup>87</sup> *Id.* art. 60.

<sup>88</sup> *The Council of Ministers Law*, *supra* note 77, art. 19.

<sup>89</sup> See Ansary, *supra* note 45.

### c. The Judicial Authority

The judicial authority in the Kingdom of Saudi Arabia is responsible for ensuring justice and the resolution of disputes between individuals, corporations, and government bodies. This is achieved through the dual judicial system that makes up the judicial authority in Saudi Arabia. The two independent court systems are the Sharia Courts and the *Diwan al-Mazalim* (Board of Grievances).<sup>90</sup> These courts are independent of one another. They each have their own system of operation, and their only limitations are the provisions of Sharia and the legislations issued by the legislative branch.<sup>91</sup> This section briefly describes the two judicial systems in Saudi Arabia and the types of courts and their jurisdictions within each system.

#### i. Sharia Courts

In 2007, the new judiciary law was promulgated by royal decree to replace the old Judicial Law that had been in force since 1975.<sup>92</sup> This new law brought about many changes in the judicial structure of Sharia Courts. It created three levels: The First Instance Courts, the Courts of Appeal, and the High Court. The 2007 Judicial Law created five jurisdictions for the First-Degree Courts. It also provides for two levels of litigation for all cases, which is meant to ensure the fairness of every judicial decision.<sup>93</sup>

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<sup>90</sup> See Mohammed Al-Ghamdi, John Lonsberg, Jonathan Sutclie, & Sam Eversman, *Saudi Arabia*, in *THE DISPUTE RESOLUTION REVIEW* 661, 662 (2012).

[https://www.jurists.co.jp/sites/default/files/tractate\\_pdf/en/201005\\_tezuka2.pdf](https://www.jurists.co.jp/sites/default/files/tractate_pdf/en/201005_tezuka2.pdf)

<sup>91</sup> *The Law of the Judiciary*, Royal Decree No. M/78, 19/9/1428H (2007), art. 1, published in *Umm al-Qura* No. 4170, 30/9/1428H (2007).

<sup>92</sup> *Id.* art. 85.

<sup>93</sup> *Id.* art. 9.

## 1. The First Instance Courts

The First Instance Courts are divided into five types of courts: General Courts, Commercial Courts, Personal Status Courts, Criminal Courts, and Labor Courts.<sup>94</sup> These courts are meant to have jurisdiction over all types of disputes that may arise between individuals or between private institutions. These courts also meant to eliminate many of the judicial committees.<sup>95</sup> Also, they are being established in the provinces, regions, and counties of the Kingdom in accordance with need.<sup>96</sup> Each court consists of one judge, appointed by Royal Order, except Criminal Courts that consist of three judges.

The First Instance Courts are distributed in thirteen regions throughout Saudi Arabia. Administratively, each region consists of at least one main city, where there is a governor of the region and a number of counties and districts.<sup>97</sup> Thus, each of these thirteen regions contains a different number of First Instance Courts (see Table 1).<sup>98</sup>

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<sup>94</sup> *Id.* art. 23.

<sup>95</sup> See MAJID AL KHALIFA, *IJJRA'AT ALTAQADI WALTANFIDH [LITIGATION AND ENFORCEMENT PROCEDURES]* 61 (2016).

<sup>96</sup> *The Law of the Judiciary*, *supra* note 91, art. 18.

<sup>97</sup> *The Law of Provinces*, Royal Order No. A/92, 27/8/1412H (1992), art. 3

<sup>98</sup> *The Annual Report of 2017*, MINISTRY OF JUSTICE, <https://www.moj.gov.sa/en/Pages/default.aspx>.

Table 1

The Number of First Instance Courts According to Region

<b>The Region</b>	Riyadh Region	Makkah Region	Medina Region
<b>The Number of Courts</b>	43	35	13
<b>The Region</b>	Qassim Region	Eastern Region	Asir Region
<b>The Number of Courts</b>	25	26	43
<b>The Region</b>	Tabuk Region	Hail Region	Northern border Region
<b>The Number of Courts</b>	10	13	6
<b>The Region</b>	Jazan Region	Najran Region	Bahah Region
<b>The Number of Courts</b>	23	7	12
<b>The Region</b>	Aljouf Region		
<b>The Number of Courts</b>	5		
<b>The Total Number of First Instance Courts</b>		261	

## 2. The Courts of Appeal

Per the Law of the Judiciary of 2007, the Courts of Appeal have jurisdiction to review the decisions of First Instance Courts to ensure fairness.<sup>99</sup> This law establishes at least one Courts of Appeal in each region of the Kingdom of Saudi Arabia.<sup>100</sup> Each court

<sup>99</sup> *The Law of the Judiciary*, supra note 91, art. 17.

<sup>100</sup> *Id.* art. 15.

functions through several specialized panels: labor, commercial, criminal, personal status, and general panels.<sup>101</sup> Each panel is comprised of three judges, except for the criminal panel, which reviews the judgments of *qisas* (lex talionis retribution), *hadd* (Qur’anic prescribed punishment), and *tazir* (discretionary punishment’).<sup>102</sup>

### 3. The High Court (The Supreme Court)

The Supreme Court is the supervisor of all judicial judgments issued by the First Instance Courts and the Courts of Appeal. The Supreme Court is located in the capital city of the Kingdom of Saudi Arabia, Riyadh, and it is composed of a president and a sufficient number of ranking judges from the Courts of Appeal.<sup>103</sup> The Supreme Court exercises its jurisdiction by specialized panels consisting of three judges, with the exception of the penal panel, which is composed of five judges.<sup>104</sup> The Supreme Court, with all its panels, also plays an important role in ensuring that judgments issued by Sharia Courts are based on both Sharia principles and the regulations issued by the government.<sup>105</sup>

Furthermore, the Ministry of Justice’s Annual Report for 2017 indicates that the Sharia Courts has 1,200 judges.<sup>106</sup> These judges are present in different numbers among the Sharia Courts of each region of the Kingdom (see Table 2).<sup>107</sup>

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<sup>101</sup> *Id.* art. 16.

<sup>102</sup> *Id.* art. 20.

<sup>103</sup> *Id.* art. 10/ 1–(3).

<sup>104</sup> *Id.* art. 10/ 4.

<sup>105</sup> *Id.* art. 11.

<sup>106</sup> *The Annual Report of 2017, supra* note 98.

<sup>107</sup> *Id.*

Table 2

The Number of Judges Over All the Regions of Saudi Arabia

<b>The Region</b>	Riyadh Region	Makkah Region	Medina Region
<b>The Number Judges</b>	257	291	82
<b>The Region</b>	Qassim Region	Eastern Region	Asir Region
<b>The Number of Judges</b>	76	153	121
<b>The Region</b>	Tabuk Region	Hail Region	Northern border Region
<b>The Number of Judges</b>	39	40	21
<b>The Region</b>	Jazan Region	Najran Region	Bahah Region
<b>The Number of Judges</b>	77	21	26
<b>The Region</b>	Aljouf Region		
<b>The Number of Judges</b>	31		

<b>The Number of Judges Over All the Regions</b>	1235
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## ii. Board of Grievances

The Board of Grievances is the second judicial system in the Kingdom of Saudi Arabia. The Board of Grievances was established to serve as an administrative judiciary body independent of the Sharia Courts in the Kingdom of Saudi Arabia.<sup>108</sup> The Board of Grievances has jurisdiction over cases involving the government or government

<sup>108</sup> *The Law of the Board of Grievances*, Royal Decree No. M/78, 19/9/1428H (2007), art. 1.



bodies.<sup>109</sup> The Board of Grievances has undergone a number of changes since its inception; most notably, it realized changes under the current law mandated by the Royal Decree of 2007. This Royal Decree changed the structure of the Board of Grievances so that it was parallel to the structure of the Sharia courts. It accepts litigation on two levels and divides the courts into first instance courts, appellate courts, and a Supreme Court.<sup>110</sup> Each court operates through specialized panels consisting of three judges each.<sup>111</sup> Per the procedural rules of the Board of Grievances, the courts apply the rules of Sharia to the cases filed therein.<sup>112</sup>

### iii. Other Tribunals

In addition to the Board of Grievances and the Sharia Courts, other specialized tribunals have particular jurisdiction.<sup>113</sup> Most of these tribunals, referred to as committees, operate under executive bodies. It is estimated that there are over 100 of these committees,<sup>114</sup> some of which (e.g., the Insurance Dispute Committee) exercise judicial authority independent of the courts, and others<sup>115</sup> (e.g., the Committee of Copyright) exercise semi-judicial authority wherein administrative decisions are issued and can be appealed before the Board of Grievances.

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<sup>109</sup> See Al-Ghamdi et al., *supra* note 90, at 663.

<sup>110</sup> *The Law of the Board of Grievances*, *supra* note 108, art. 8.

<sup>111</sup> *Id.* art. 9.

<sup>112</sup> *The Procedural Rules of the Board of Grievances*, Royal Decree No. M/3, 22/1/1435 H (2013), art. 1.

<sup>113</sup> See Al-Ghamdi et al., *supra* note 90, at 664.

<sup>114</sup> See AYOUB ALJARBOU, *ALLJAN SHABAT ALQADAYIYAT FI ALQANUN ALSAEUDII* [*Sub-Judicial Committees in Saudi Law*] 23 (2017).

<sup>115</sup> At this time, the majority of these Committees are under this category.

#### iv. Legal Profession in Saudi Arabia

According to the 2017 annual report of the Saudi Bar Association, there were 4,879 lawyers licensed to plead before Saudi courts and judicial committees.<sup>116</sup> With about 2,250 lawyers, the region of Riyadh has the highest proportion of Saudi lawyers.<sup>117</sup> The Saudi legal system does not distinguish between lawyers according to their specialization or years of experience; therefore, all licensed lawyers in all types of disputes are entitled to plead before all courts and committees. However, the Saudi Bar Association is considering a proposal to classify lawyers according to their respective expertise and their years of experience. This proposal suggests that lawyers should be classified into four categories: an initial lawyer "fellowship" with more than three years' experience, a general lawyer with more than eight years of experience, a specialized lawyer with more than 14 years of experience, and a counselor lawyer with more than 15 years of experience.<sup>118</sup>

In concluding this section, the judiciary, with all its types of courts, is responsible for carrying out formal procedures in order to achieve justice and adjudication in all disputes. However, parties may resort to resolving their disputes through alternative dispute resolution, which is less formal and more flexible than the courts.

### 3. Section Three: Alternative Dispute Resolution

The term ADR, or alternative dispute resolution, involves many types of processes that fall short of a full pleading before the courts. It is ADR that often provides an

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<sup>116</sup> *The Annual Report of 2017*, SAUDI BAR ASSOCIATION (2017), <https://sba.gov.sa/wp-content/uploads/2018/09/annualReportEnglish.pdf>.

<sup>117</sup> *Id.*

<sup>118</sup> See Muwaidi al-Mutairi, *tasnif mhamy almamlakat qaribaan watawajah lilaindimaj bayn almakatib* [The classification of the lawyers in Saudi Arabia is soon], AL EQTISADIAH (May 12, 2016), [http://www.aleqt.com/2016/05/12/article\\_1053975.html](http://www.aleqt.com/2016/05/12/article_1053975.html).

opportunity for parties to resolve their disputes prior to or during formal litigation, as that can be time-consuming and also requires considerably more effort. ADR is not intended to replace traditional litigation in courts, but it can allow for unique solutions to disputes that end up resulting in win-win outcomes or at least outcomes in which losses may be limited.<sup>119</sup> In contrast, traditional litigation procedures often force a judgment that is issued by a judge as a third party, which results in a lose-win outcome that could lead to continued conflict between parties.<sup>120</sup>

In the Kingdom of Saudi Arabia, ADR is available through various means. To date, arbitration, mediation, and reconciliation are the most popular means in the Kingdom, especially for commercial disputes.

#### **a. Arbitration**

Arbitration is commonly referred to as "private court." In arbitration, the parties may appoint an arbitrator and choose the forum for arbitration proceedings.<sup>121</sup> Usually, the arbitration procedures are informal or, at least, relatively less formal compared to court procedures.<sup>122</sup> Arbitration aims to reach a binding and final verdict that is not subject to judicial review unless it is outside the scope of the jurisdiction granted by the parties or is an illegal decision.<sup>123</sup> Therefore, the arbitrator's role is similar to the judge's role in court.

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<sup>119</sup> See JEROME DELLI PRISCOLI, *OVERVIEW OF ALTERNATIVE DISPUTE RESOLUTION (ADR): A HANDBOOK FOR CORPS MANAGERS* 3 (1996).  
[https://www.researchgate.net/publication/235199146\\_Overview\\_of\\_Alternative\\_Dispute\\_Resolution\\_ADR\\_A\\_Handbook\\_for\\_Corps\\_Managers](https://www.researchgate.net/publication/235199146_Overview_of_Alternative_Dispute_Resolution_ADR_A_Handbook_for_Corps_Managers)

<sup>120</sup> *Id.*

<sup>121</sup> See Robert Mnookin, *Alternative Dispute Resolution*, HARVARD L. SCH. JOHN M. OLIN CTR FOR L., ECON. & BUS. DISCUSSION PAPER SERIES 3 (1998).  
[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=117253](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=117253)

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

Arbitration is among the oldest methods of alternative dispute resolution, practiced by most ancient civilizations, including the Arabs.<sup>124</sup> Arabs practiced arbitration before the advent of Islam.<sup>125</sup> For example, the Quraysh tribe appointed Prophet Muhammad to serve as an arbitrator in the Blackstone case.<sup>126</sup> After the advent of Islam, the Qur'an recognized the legitimacy of arbitration, especially in familial cases. The Qur'an says, "And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah will cause it between them."<sup>127</sup>

In Saudi Arabia, arbitration has developed into a sophisticated practice, one that is on par with arbitration practices in most countries. This is primarily due to the enactment of the Arbitration Law in 2012 and the establishment of the Saudi Centre for Commercial Arbitration (SCCA) in 2014.<sup>128</sup>

#### i. The Arbitration Law

On July 8, 2012, the Arbitration Law was issued by Royal Decree to replace the old arbitration law, which was issued on April 24, 1983.<sup>129</sup> The new law serves as a quantum leap for arbitration in Saudi Arabia. It outlines a more comprehensive and more precise system than in the past, and it addresses all the details of arbitration proceedings.<sup>130</sup> The new law is in line with the UNCITRAL Model Law, which is a model law for States

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<sup>124</sup> See Aseel Al-Ramahi, *Sulh: A Crucial Part of Islamic Arbitration* 3 (LSE L., Soc. & Econ. Working Papers 12/2008, 2008).

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at 6.

<sup>127</sup> THE QUR'AN, 4:35

<sup>128</sup> See Saud al-Amari, Markas Altahkem Altegari Alsaudi [Saudi Centre for Commercial Arbitration], ALYAUM newspaper, April 28, 2014, <http://www.alyaum.com/article/3135844>

<sup>129</sup> *The Law of Arbitration*, Royal Decree No. M/34, 24/5/1433H (2012), art. 57.

<sup>130</sup> See Ahmed Abdel Fattah, *Aogoh Almokarana Bina Netham Altahkem Alsaudi Alkadem Waa Algaded* [Comparison study between the new and old arbitration law in Saudi Arabia] 6 (2014).

around the world.<sup>131</sup> One of the most important aspects of this law is that it provides more freedom to the arbitration tribunal to work towards the termination of the arbitration dispute.<sup>132</sup> For instance, in a case where the parties do not agree on the applicable law, the arbitration tribunal is permitted to apply the substantive rules of the State most relevant to the dispute.<sup>133</sup> The arbitration tribunal can also then apply reasonable prevailing customs to the transaction.<sup>134</sup> Further, the new law has also contributed to speeding up the process of arbitration and to limit judicial intervention in the process. For instance, the new law authorizes the arbitration tribunal to adopt the arbitration agreement document without the approval of the court that originally heard the dispute.<sup>135</sup> Essentially, the new law aims to achieve speed and specialization in the arbitration process, especially since it is used commonly to settle business disputes.<sup>136</sup>

## ii. The Saudi Centre for Commercial Arbitration

The second factor that helped in developing the arbitration status in the Kingdom is the establishment of the Saudi Centre for Commercial Arbitration (SCCA) on April 14, 2014. The SCCA was established in Riyadh by a decision of the Council of Ministers<sup>137</sup>, and it seeks to practice and apply the Arbitration Law in Saudi Arabia.<sup>138</sup> The SCCA

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<sup>131</sup> This law is considered an arbitration model, and it aims to assist States in reforming international commercial arbitration procedures. *See generally United Nations Commission on International Law*, UNITED NATIONS,

[http://www.uncitral.org/uncitral/en/uncitral\\_texts/arbitration/1985Model\\_arbitration.html](http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration.html).

<sup>132</sup> *See* Abdel Fattah, *supra* note 130, at 11.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *See* Nawaf Al-Mutab, *Alnizam Aljadid Yutih Hala Alnizaeat Altijariat Dun Marakiz Tahkim [Resolving Commercial Disputes Under The New Arbitration Law]*, ALJAZEERA (Aug. 6, 2012), <http://www.al-jazirah.com/2012/20120608/ec13.htm>.

<sup>136</sup> *Id.*

<sup>137</sup> *See Arbitration in the Kingdom of Saudi Arabia*, SHEARMAN & STERLING LLP 5 (Jan. 2017), <http://www.shearman.com/~media/Files/NewsInsights/Publications/2017/01/Arbitration-in-the-Kingdom-of-Saudi-Arabia-IA-012017.pdf>.

<sup>138</sup> *Id.*

allows Saudi and foreign investors to choose to resolve their commercial disputes by arbitration, which is characterized by speed and confidentiality. The SCCA has its own rules, which describe the procedures for the arbitration process. The parties have the option to choose the SCCA rules as the procedural basis for the arbitration.<sup>139</sup> These rules regulate various items, such as the fees levied on the arbitration process, which includes a lump sum calculated via a percentage of the amount in dispute, plus the fixed fees.<sup>140</sup>

### **b. Mediation**

Mediation is a resolution process through which parties choose a third party, called the mediator, in an attempt to achieve a mutually satisfactory solution for both parties.<sup>141</sup> The decision-making power during the proceedings is concentrated within the parties, rather than the mediator.<sup>142</sup> Typically, when the parties reach a consensus that resolves all or part of the dispute, they will then write the agreement down.<sup>143</sup> To consider the mutual agreement as a binding contract, it must be signed by all the parties in question.<sup>144</sup> It is not necessary for the parties to reach an agreement at the end of the mediation.<sup>145</sup> If no solution is reached, the parties can pursue other measures to resolve their dispute, including traditional litigation.<sup>146</sup>

In the Kingdom of Saudi Arabia, mediation is practiced in a limited manner. It is conducted by the SCCA, which offers private mediation that could be subject to the

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<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> See Suallam Safian, *Altora Albadela Le Hal Almonazat Ze KAnon Algsaeear* [Alternative Disputes Resolution in Algerian Law] 41-43. University of Biskra (2014).

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

particular rules issued by the SCCA.<sup>147</sup> The SCCA opted to borrow directly from the AAA-ICDR<sup>148</sup> for its own mediation rules, because of the success and flexibility that the AAA-ICDR Mediation Rules have achieved around the world.<sup>149</sup> The private mediation provided by this Center is available for commercial and civil disputes, which can be submitted to SCCA via contract or referral.<sup>150</sup> This is useful as well as attractive to foreign and national investors attempting to resolve their disputes quickly and easily. However, the average individual tends not to prefer resolving civil and family disputes through private mediation; this is in part because it costs money, whereas the pleadings before the Saudi courts are free for all.<sup>151</sup>

### c. Reconciliation Under Sharia Courts

The Sharia Courts provide some alternative procedures for settling some types of disputes. As a practical matter, the features of these procedures were vague and not well defined. Thus, they were viewed as a general method for settling disputes and optionally resorted to. For example, formal, non-binding endeavors were provided in the Sharia Courts for settling family disputes.<sup>152</sup> These endeavors were practiced in the absence of clear rules and conducted by the judges themselves or by the office of settlement, which was operated by an administrative staff.<sup>153</sup>

However, in mid-2019, the Ministry of Justice issued the Rules of Operation of Reconciliation Centers as new rules to regulate the reconciliation procedures in the Sharia

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<sup>147</sup> See *Arbitration in the Kingdom of Saudi Arabia*, *supra* note 137.

<sup>148</sup> American Arbitration Association and its International Centre for Dispute Resolution.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> See AL KHALIFA, *supra* note 95, at 67.

<sup>152</sup> See Al-Ghamdi et al., *supra* note 90, at 677.

<sup>153</sup> *Id.*

Courts.<sup>154</sup> Under these rules, the word “reconciliation” has become the official description of these alternative measures within the Sharia Courts. Also, under these rules, this reconciliation became available through centers involving several qualified persons who now conducted such proceedings.<sup>155</sup> Also, because of these rules, reconciliation practices have expanded to include family, real estate, finances, and traffic disputes.<sup>156</sup> This change is considered to be supportive of the role of ADR in the Sharia Courts, so as in order to achieve better results in the future.

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<sup>154</sup> *The Rules of Operation of Reconciliation Centers*, The Decision of the Minister of Justice No. 5595, 29/11/1440H (2019).

<sup>155</sup> *Id.* art. 8.

<sup>156</sup> *Id.* at the Preamble.



## B. Insurance Contract in Saudi Arabia

### o Introduction

With the developments of social and cultural changes in all fields, and with the spread of industrial, technological, and economic revolutions, people have become more vulnerable to many risks. These risks often surpass one's own ability for defense, and they cannot be faced and dealt with individually. Therefore, in the face of these dangers, individuals strive to take defensive measures based on cooperation among members of society and try to mitigate their effects. For these reasons, the idea of insurance has long appeared as an effective means of overcoming such dangers.

Insurance practices have continued to develop since ancient times. Their gradual development parallels the expansion of entrepreneurship and the increasing risk uncertainty in the transactions of business and sea freight.<sup>157</sup> Historically, marine insurance was the first insurance among other types of insurance that emerged later, and it is considered the prototype of many branches of the insurance industry and insurance law.<sup>158</sup> In the middle of the 14<sup>th</sup> century, maritime insurance spread throughout European countries facing potential risks in maritime transport. The first statute for marine insurance was issued in Barcelona in 1435.<sup>159</sup> Moreover, in 1666, the Great Fire swept through London, which destroyed hundreds of homes and displaced thousands of people. This disaster opened public opinion on the value and the role of insurance.<sup>160</sup> It did not take long for the first fire and natural disaster insurance companies to be established after

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<sup>157</sup> See Pietro Masci, *The History of Insurance: Risk, Uncertainty and Entrepreneurship*, 5 JOURNALS OF THE WASH. INST. OF CHINA STUDIES 25, 25–27 (2011).

<https://www.bpastudies.org/bpastudies/article/view/153/296>

<sup>158</sup> *Id.* at 30.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.* at 32.

the London catastrophe.<sup>161</sup> As such, the insurance we know nowadays can be traced back to the London fire.<sup>162</sup> This event contributed to the expansion of the insurance industry beyond maritime insurance to include insurance protection for businesses and individuals against potential future losses.

The Islamic world was not isolated from the changes in the commercial life of other world countries, especially the European countries. The Islamic world has engaged in commercial and civil transactions with European countries from ancient times. Those transactions have been both corporate and individual in nature.<sup>163</sup> These dealings permitted the Islamic world to become familiar with a number of variables, including insurance contracts. Therefore, in the early 19th century, scholars in the Islamic world began examining the insurance contract to assess whether it complied with the provisions of Sharia, especially since insurance contracts are not mentioned in the Qur'an or the Sunnah.

This section discusses the general concept and nature of the insurance contract, as well as the elements of these contracts, including consent, subject matter, and legal purpose. It also briefly reviews the opinions of Muslim scholars with regard to the insurance contract. Finally, it examines the most prominent features of the regulations of the insurance industry in the Kingdom of Saudi Arabia.

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<sup>161</sup> *Id.*

<sup>162</sup> See Alhumoudi, Yuosef Abdullah, *Islamic Insurance Takaful and its Applications in Saudi Arabia*, 31 (2012) (thesis submitted for the degree of Doctor of Philosophy, Brunel University Law School), available at <https://bura.brunel.ac.uk/bitstream/2438/7449/1/FulltextThesis.pdf>.

<sup>163</sup> See Sultan Alosaimi, *Insurance Under Islamic Law and its Development in Saudi Arabia*, 1 (2010) (unpublished Master's Thesis, Indiana University, Maurer School of Law).

## 1. The Concept of the Insurance Contract

A Contract generally is a commitment between two or more parties, either individuals or legal entities, to establish a common legally enforceable obligation between or among them.<sup>164</sup> The basic concept of the contract is to set up obligations and rights for each party. If one party fails to follow the terms of the contract, the other party is entitled to obtain a remedy via legal justice.<sup>165</sup>

The insurance contract is one form of a contract entered into by both the insured and the insurance company via which the insurance company indemnifies the insured in case of damage. In addition, the insured's obligation is to pay the premiums to the insurer.<sup>166</sup> Therefore, the primary objective of the insurance contract is to limit the losses and mitigate the effects of those losses as well as to reduce uncertainty and enhance tranquility for the insured.

In Saudi Arabia, the insurance contract is defined as being, "represented by the contractual relationship between the insurer and the insured, wherein a risk faces the insured and hence such risk is covered by an undertaking to meet a specific obligation to the insured or the beneficiary in case a damage/loss occurs."<sup>167</sup> In addition, the Implementing Regulation of the Cooperative Insurance Control Law defines an insurance policy as "a legal document/contract issued to the insured by the insurer setting out the

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<sup>164</sup> See Oluwakemi Oke, *The Application of the Doctrine of Privity of Contract to Insurance Contract in Nigeria* 4 (2015).

[https://www.researchgate.net/publication/315210923\\_The\\_Application\\_of\\_the\\_Doctrine\\_of\\_Privity\\_of\\_Contract\\_to\\_Insurance\\_Contract\\_in\\_Nigeria](https://www.researchgate.net/publication/315210923_The_Application_of_the_Doctrine_of_Privity_of_Contract_to_Insurance_Contract_in_Nigeria)

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> Saudi Arabian Monetary Agency Consumer Protection Department, *the Insurance Consumer Protection Principles of Insurance Sector Companies, Definitions* (June 2014),

[https://www.alamiyainsurance.com.sa/sites/default/files/pdf/ICPP%20OF%20Insurance%20Sector%20Companies\\_Eng.pdf](https://www.alamiyainsurance.com.sa/sites/default/files/pdf/ICPP%20OF%20Insurance%20Sector%20Companies_Eng.pdf).

terms of the contract to indemnify the insured for loss and damages covered by the policy against a premium paid by the insured."<sup>168</sup>

## **2. Insurance Contract Elements**

The insurance contract, according to the Saudi legal system, consists of three elements: consent, subject matter, and legal purpose. These elements must be met in an insurance contract to be legally enforceable.

### **a. Consent**

Consent is the first element for a valid insurance contract. This element consists of a mutual agreement between two or more parties concerning the obligations and rights of each party.<sup>169</sup> This agreement is made as one party provides a specific offer, and the other indicates an explicit acceptance of the offer.<sup>170</sup> In the insurance industry, typically, the contract starts with the insurance company offering its insurance options to attract a possible insured.<sup>171</sup> The offer must be expressed in a clear manner that describes all of the terms of the insurance contract.<sup>172</sup> This is followed by an acceptance by the insured consistent with the offer and its insurance policies.

### **b. Subject Matter**

Subject matter is the second element for entering into a valid insurance contract.<sup>173</sup> The subject matter of a contract is the good or service for which the parties are

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<sup>168</sup> Saudi Arabian Monetary Authority, *The Implementing Regulation of the Cooperative Insurance Companies Control Law*, SAMA art. 1(17) (2004).

<sup>169</sup> See ERIC A. WIENING & DONALD S. MALECKI, *INSURANCE CONTRACT ANALYSIS* 5 (1992).

<sup>170</sup> *Id.*

<sup>171</sup> See Majed Almuataq, *Alfasl fi Munazaeat Altaamin fi Almamlakat Alearabiat Alsaediat*; *Dirasat Tatbiqiat Mqarn [Solving of Insurance Disputes in Saudi Arabia]* 20 (2010) (Unpublished master's thesis, Naif Arab University for Security Sciences).

<sup>172</sup> See WIENING & MALECKI, *supra* note 169.

<sup>173</sup> See Saeed Al-Ghamdi, *Qadaya Altaamin fi Almamlakat Alearabiat Alsaediat Dirasatan Mqarntan [Insurance Disputes in Saudi Arabia: Comparative Study]* 51 (2016).

contracting.<sup>174</sup> A risk is the subject matter of an insurance contract, and it is a prominent feature of the contract.<sup>175</sup> The insurance contract revolves around the risk the insured faces. The insured undertakes the obligation to pay premiums to ensure protection from the potential damage of the risk. The insurer is, thereby, obligated to pay compensation to the insured when that danger occurs.<sup>176</sup> The risk in an insurance contract must be outside of the willful control of the insured and the insurer; if it is not, then the contract will be void. Also, the risk in an insurance contract usually takes one of two forms. It is either an uncertainty of an occurrence, such as the risk of fire, or the certainty of an occurrence but with an indefinite time such as a death in life insurance.<sup>177</sup>

### c. Legal Purpose

An enforceable contract must contain a legal purpose, which is the decisive reason for the parties to enter into the contract.<sup>178</sup> This element must be in compliance with the law and its principles. For example, it is obviously illegal to make a contract that has to do with stealing money or murdering a person. In an insurance contract, the legal purpose is close to the subject matter of the contract, since the subject matter of the contract is the potential risk, and the reason for the contract is the cover from the actual damage of the risk.<sup>179</sup>

In summary, the elements of insurance contracts fall within the scope of the general elements of contracts. However, insurance contracts have particular details that distinguish them from other types of contracts, such as the subject matter of the insurance

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<sup>174</sup> *Id.* at 51.

<sup>175</sup> *Id.*

<sup>176</sup> See Almuataq, *supra* note 171.

<sup>177</sup> See Alosaime, *supra* note 163, at 9.

<sup>178</sup> See Al-Ghamdi, *supra* note 173, at 53.

<sup>179</sup> *Id.*

contract represented by the multiplicity of the forms of risks and how they occur. These details of the multiple forms of risk within an insurance contract contribute to the debates among Sharia scholars, which is summarized in the following section.

### 3. Islamic Scholarly' Views about Insurance

As mentioned earlier, insurance is a new phenomenon for the Islamic world. Insurance was not a concept familiar to the early era of the emergence of Islam. The Islamic world came to know insurance through commercial transactions with European countries and their agents located in various parts of the Islamic world.<sup>180</sup> Since that time, insurance has been a controversial matter and has been the subject of many debates among Islamic scholars whose points of view vary. Islamic scholars have been concerned about whether or not the insurance contract complies with Islamic formula and the principles of Sharia.<sup>181</sup> Consequently, Islamic scholars have presented no shortage of interpretations regarding the nature of the insurance contract. Some scholars have prohibited insurance contracts, while others have approved them; still others have distinguished between insurance contracts that are commercial or cooperative in nature. These later scholars have prohibited only commercial insurance because it contains prohibitions that run counter to Sharia, as they view it.<sup>182</sup>

In 1836, Ibn Abidin was first to assess the insurance contract relative to Sharia. Ibn Abidin discussed the matter of insurance, which was called *Sukarah*, and its compatibility with Sharia.<sup>183</sup> In this regard, Ibn Abidin said:

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<sup>180</sup> See Alosaimei, *supra* note 163, at 17.

<sup>181</sup> *Id.*

<sup>182</sup> *Id.* at 29.

<sup>183</sup> See Ammar Aljaser, *Is Islamic Insurance Ready to Take Lead? A Case Study of Saudi Arabia Insurance Law* 41 (2014) (unpublished S.J.D. dissertation, Georgetown University Law Center).

“[I]f a merchant rented a ship to carry his goods and he paid a fee for another person to ensure his goods from any risk, then if the risk-covered event occurs, it would not be permissible for this Muslim merchant to claim compensation if the contract was signed on Muslim land. However, for contracts signed on non-Muslim land, then it would be permissible for such Muslim merchant to claim compensation. The rationale is that it is permissible because insurance is allowed on non-Muslim land.”<sup>184</sup>

Moreover, Ibn Abidin stated, "In my opinion, it appears that the merchant is not entitled to receive reimbursement for the assets because this is an obligation where none should be."<sup>185</sup> According to Ibn Abidin's view, the insurance contract is void and contradicts the Islamic formula of transactions because the risk upon which the contract is made is unclear, and it depends on uncontrollable facts.<sup>186</sup>

The second view, which emerged in the second half of the 20<sup>th</sup> century, states that insurance is permissible. The supporters of this view, including Mustafa Al-Zarqa and Sheikh Abdulrahman Issa, stated that commercial and cooperative insurance contracts are permissible under Sharia.<sup>187</sup> For instance, Mustafa al-Zarqa argued that an insurance contract is a bilateral contract in which the insured is obliged to pay premiums while the insurer is obliged to cover the damage from the risk, and that means that there is nothing uncertain (*gharar*) about the terms of contract. He claimed that uncertainty with regard to the occurrence of the risk or the time of its occurrence is insufficient to consider

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<sup>184</sup> *Id.* at 42.

<sup>185</sup> See Alosaime, *supra* note 163, at 19.

<sup>186</sup> *Id.*

<sup>187</sup> See MUSTAFA AL-ZARQA, *NIZAM ALTAAMIN HAQIQATAH W ALRAAY ALSHAREIU FIH [INSURANCE LAW; ITS TRUTH AND THE LEGAL OPINION ABOUT IT]* 51 (1984).

insurance to be a *gharar* contract (“uncertain contract”) because it does not affect the commitment of the insurer and the insured.<sup>188</sup> Furthermore, according to this view, insurance is considered a beneficial contract that helps individuals and institutions to overcome their losses.<sup>189</sup>

However, in 1977, the Council of the Senior Ulema in Saudi Arabia issued a *fatwa* (a decision, or an opinion, made by a religious scholar) prohibiting commercial insurance while opening the door for cooperative insurance as an alternative to the prohibited insurance.<sup>190</sup> At that time, this *fatwa* represented the views of the majority of Islamic scholars who stated that commercial insurance conflicts with the rules of Sharia. According to this *fatwa*, commercial insurance is considered a commutative contract and involves several prohibitions under Sharia, such as *gharar*. Although the insured is committing to paying the premiums, and the insurer is obligated to cover damages caused by a given risk; the occurrence of indemnity, its amount, and the time during which it occurs are the *gharar* or uncertain components.<sup>191</sup> Hence, there is *gharar*, which is prohibited in a commutative contract.

While this particular view prohibits commercial insurance, it allows for cooperative insurance and considers this type of contract compatible with Sharia. Commentators supporting this view argue that cooperative insurance is like a freely given donation and not contracted for profit; rather, it is based on co-operation and solidarity between the policyholders. The supporters of this view state that the uncertainty does not invalidate this type of donation contract unlike it would for a commutative contract. They argue that

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<sup>188</sup> *Id.*

<sup>189</sup> See Alosaime, *supra* note 163, at 26.

<sup>190</sup> See Aljaser, *supra* note 183, at 17.

<sup>191</sup> *Id.* at 35–36.



the insured pays the premiums as a way of donating and not as a means of commutation. Therefore, it does not matter whether the occurrence of indemnity has happened or not, nor does the actual amount of indemnity matter.<sup>192</sup>

After the religious authority in Saudi Arabia issued this fatwa regarding cooperative insurance, the Saudi government began gradually developing the insurance industry by establishing the National Insurance Company and by issuing laws to regulate this industry in Saudi Arabia. The next section briefly discusses the most prominent features of these developments pertinent to the Saudi insurance industry.

#### **4. Features of the Insurance Industry in Saudi Arabia**

Insurance practice in Saudi Arabia generally is not new. It has been practiced – even if in a limited manner – since the discovery of oil in the 1930s.<sup>193</sup> This practice came to meet the needs of economic development, the requirements of maritime transport, and foreign companies operating in Saudi Arabia. However, early on, the practice of insurance lacked a regulatory framework, except for some minor rules related to maritime activities, which were a part of the Commercial Court Law issued in 1931.<sup>194</sup> The lack of regulation at the time meant that there were no procedures in place for the registration of insurance companies, and there were no protocols established regarding the supervision of these companies' operations. Therefore, these practices were done through branches

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<sup>192</sup> *Portal of the General Presidency of Scholarly Research and Ifta'*, (Part No. 11; Page No. 198) <http://www.alifta.net/Search/ResultDetails.aspx?language=en&lang=en&view=result&fatwaNum=&FatwaNumID=&ID=14537&searchScope=7&SearchScopeLevels1=&SearchScopeLevels2=&highlight=1&SearchType=exact&SearchMoesar=false&bookID=&LeftVal=0&RightVal=0&simple=&SearchCriteria=allwords&PagePath=&siteSection=1&searchkeyword=09911111112101114097116105118101032105110115117114097110099101#firstKeyWordFound>

<sup>193</sup> See Aljaser, *supra* note 183, at 63.

<sup>194</sup> *Id.*

of insurance companies that were registered abroad until the Council of the Senior Ulema in Saudi Arabia presented its opinion about insurance contracts in 1977.<sup>195</sup>

Subsequently, in 1985, the Saudi government established by Royal Decree the National Insurance Company as a public company, which is referred to today as *Tawuniya*.<sup>196</sup> This national company was the first attempt at updating a previously loose insurance industry and making it more professional in Saudi Arabia.<sup>197</sup> It should be noted that *Tawuniya* had worked side-by-side with branches of foreign insurance companies in the absence of regulation that governed insurance activities until the Law on the Supervision of Cooperative Insurance Companies (CICCL) was issued in 2003.<sup>198</sup>

The issuance of CICCL in 2003 brought about a fundamental change in Saudi Arabia's insurance industry. It filled the regulatory vacuum to which insurance activity in Saudi Arabia had been subjected.<sup>199</sup> The law consists of 25 articles that, among other things, grant supervision of the insurance industry to the Saudi Monetary Authority (SAMA) and that specify the conditions required to register insurance and reinsurance companies in Saudi Arabia. Moreover, in 2004, the implementing regulation of this law was enacted along with the main law so as to expand on the specifics regarding the supervision of insurance-related activity and the rights of parties' subject to insurance contracts.

The regulations of the 2003 and 2004 provided a method by which to resolve disputes between the parties of the insurance contracts and to address violations of the rules of insurance activities. These regulations granted the jurisdiction over all insurance disputes

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<sup>195</sup> *Id.* at 64.

<sup>196</sup> *Articles of Incorporation of the National Company for Cooperative Insurance*, Royal Decree No. M/5, 17/4/1405H (1985).

<sup>197</sup> See Aljaser, *supra* note 183, at 65.

<sup>198</sup> See Alosaime, *supra* note 163, at 74.

<sup>199</sup> *The Cooperative Insurance Companies Control Law*, *supra* note 1.

and violations of the law to the Insurance Disputes Committees. These Committees operate within its judicial jurisdiction through three primary committees and one appeals committee.

The next chapter examines the administrative structure of these Committees, the procedures they follow, and their role in ending insurance disputes in the Kingdom of Saudi Arabia.

## II. Chapter Two: The Current System of Resolving Insurance Disputes in Saudi Arabia

### ○ Introduction

The establishment of the National Insurance Company in 1985 and the issuance of the Cooperative Insurance Companies Control Law (CICCL) in 2003 are considered substantial steps in the development of the insurance industry in the Kingdom of Saudi Arabia. Subsequent to these practical steps, Saudi Arabia's insurance industry gradually developed. Currently, there are 35 insurance and reinsurance companies and 76 insurance brokers operating in Saudi Arabia.<sup>200</sup> In 2016, the Gross Written Premiums in the Saudi insurance industry reached SR 36.85 billion (USD 9.8 billion). Further, the total number of insurance policies written reached 7,308,067 in 2016.<sup>201</sup> Because of this remarkable development, it became necessary for the insurance industry to put into place a mechanism that would protect the rights of the involved parties and resolve disputes within the industry.

Therefore, CICCL creates a particular dispute-resolution mechanism, represented by committees that have independent and specialized juridical authority. Article 20 of CICCL states:

"One or more committees shall be formed based on a Resolution by the Council of Ministers, upon the recommendation of the Minister of Finance, composed of three specialized members, at least one of whom shall be a legal counselor, to

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<sup>200</sup> See Turki Suliman Al-Zumaie & Amer Mohammed Alhusini, *Insurance Sector in the Kingdom of Saudi Arabia*, CTR. FOR RESEARCH & INTERCOMMUNICATION KNOWLEDGE 11 (2017).

<sup>201</sup> See Saudi Arabian Monetary Authority: The General Department of Insurance Control, *the Saudi Insurance Market Report 2016*, SAMA 4. [http://www.sama.gov.sa/en-US/Insurance/Publications/KSA%20Market%20Report\\_2016\\_English-vf.pdf](http://www.sama.gov.sa/en-US/Insurance/Publications/KSA%20Market%20Report_2016_English-vf.pdf).

be entrusted with the settlement of disputes occurring between insurance companies and their clients, or between these companies and others that may substitute for the insured, and shall decide on cases of violations of control and supervision instructions for the licensed insurance and re-insurance companies, and the violations of those practicing self-employment professions referred to in Article Eighteen of this Law.”<sup>202</sup>

Under this Article, the General Secretariat of the Insurance Disputes Committees was formed, and it included three Primary Committees in Riyadh, Jeddah, and Dammam. In addition to these three local Committees, there is also the Appeals Committee in Riyadh, to which parties can appeal the Primary Committee’s lower verdict.

This chapter explains the current mechanism for the work of these Committees and their administrative structure. To that end, this chapter is divided into three sections. The first section examines the concept of insurance litigation, including the development of insurance litigation in the Kingdom of Saudi Arabia. The second section examines all the Committees; the Primary Committees, the Appeals Committee, and the General Secretariat. The third section explains the current practical procedure for resolving insurance disputes before the General Secretariat and in the Insurance Disputes Committees.

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<sup>202</sup> *The Cooperative Insurance Companies Control Law, supra* note 1, art. 20.

## A. Section One: The Concept of Civil/Insurance Litigation in Saudi Arabia

The nature of the insurance contract within this industry is based on the claim between the insured and the insurer.<sup>203</sup> Insurers regularly review insurance claims and conduct many negotiations in order to provide defense and indemnity.<sup>204</sup> Accordingly, some argue that the insurance companies' business is litigation, referring to comprehensive insurance between the insured and insurer as well as the insurance of liability between the third party and the insurer.<sup>205</sup> The parties in an insurance litigation are the insurer that collects insurance premiums, the insured who seeks compensation for the damage he suffered, and the third party who files a claim for compensation for damage caused by the insured.<sup>206</sup>

In Saudi Arabia, the insurance sector has faced increased claims against their written policies, reaching 60% of the total amount of aggregate premiums of the general and health insurance sectors.<sup>207</sup> For instance, in 2016, the total claims paid amounted to SR 26 billion, which is equivalent to approximately USD 7 billion.<sup>208</sup> Vehicle and health insurance claims accounted for the highest percentage of insurance claims.<sup>209</sup> Further, the Insurance Dispute Committees decided various other claims before them through litigation. For instance, from 2005 to 2015, the General Secretariat received 22,093 cases,

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<sup>203</sup> See Charles Platto, Peter A. Scarpato, & Simeon H. Baum, *Insurance/Reinsurance Arbitration and Mediation*, NYSBA DISPUTE RESOLUTION SECTION WHITE PAPER (Jan. 2011), [http://www.nysba.org/Sections/Dispute\\_Resolution/Dispute\\_Resolution\\_PDFs/Insurancewhitepaper12-21-2010\\_pdf.html](http://www.nysba.org/Sections/Dispute_Resolution/Dispute_Resolution_PDFs/Insurancewhitepaper12-21-2010_pdf.html).

<sup>204</sup> *Id.* at 1.

<sup>205</sup> *Id.*

<sup>206</sup> See Ammar, Abdel Halim, *Daewaa Altaamin fa Alnizam Alsaedii* [*Insurance Litigation in Saudi Law*]

<sup>207</sup> See the *Saudi Insurance Market Report 2016*, *supra* note 201, SAMA 15. [http://www.sama.gov.sa/en-US/Insurance/Publications/KSA%20Market%20Report\\_2016\\_English-vf.pdf](http://www.sama.gov.sa/en-US/Insurance/Publications/KSA%20Market%20Report_2016_English-vf.pdf).

<sup>208</sup> *Id.*

<sup>209</sup> *Id.* at 14.

and the total amount of the claims within these cases equaled almost SR 4 billion, equating over USD 1 billion.<sup>210</sup>

### 1. The Concept of Insurance Litigation

Many countries in the world do not provide a specific definition of civil litigation; instead, that is left to legal jurists.<sup>211</sup> However, some countries have provided a definition of civil litigation such as the Lebanese Civil Procedure Code and Majallah al-Ahkam-i-Adliya.<sup>212</sup> Article Seven of Lebanese law states that, "Litigation is the right due to anyone who wants to submit a demand to the judiciary for judgment of his demand."<sup>213</sup> Similarly, Article 1613 of the Majallah al-Ahkam-i-Adliya defines litigation as "the demand of a person claiming his right against another in the presence of a judge."<sup>214</sup>

Regardless, since most countries do not define litigation, various definitions of litigation exist among jurists of law.<sup>215</sup> Some define litigation as "proclaiming a right against a third party before a judge,"<sup>216</sup> while others define it as the legal process to settle disputes between people.<sup>217</sup>

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<sup>210</sup> See the *Statistics of the General Secretariat and the Preliminary Committees Rulings from (1426 H) to (Q2 of 1437 H)*, *supra* note 2.

<sup>211</sup> See Mohammed Almaharib, *Expiry of The Dispute in The Saudi Civil Procedural Law* [Ainqida' Alkhusumat Fi Nizam Almurafaeat Alshareiat Alsa'udii] 65 (2006).

<sup>212</sup> The Mecelle, or as it called in Arabic, Majallah el-Ahkam-i-Adliya, is a code of rights in Islamic jurisprudence and civil law of the Ottoman Empire. It was the first attempt to codify Islamic civil law based on Sharia principles, it and was issued in 1882. See generally *unmudhijiat tadwin majalat al'ahkam aleadliat fi taqin alfaqih al'iislamii almueasir*, ASJP, <https://www.asjp.cerist.dz/en/article/15584>.

<sup>213</sup> LEBANESE CODE OF CIV. PROC., art. 7 (1983). The English translation from the Arabic text is provided by the researcher.

<sup>214</sup> See ALI HAIDER, *DARAR ALHUKKAM FI SHARAH MAJALAT AL'AHKAM* [The Book of Explanation Majallah al-Ahkam-i-Adliya], art. 1613, available at <https://al-maktaba.org/book/21692>. The English translation from the Arabic text is provided by the researcher.

<sup>215</sup> See Almaharib, *supra* note 211, at 65.

<sup>216</sup> ALI BIN HASSAN AL-HAZMI, *ALTADAKHUL ALAIKHTISAMIU FI NIZAM ALMURAFAEAT ALSAEUDII* [INTERVENTION IN THE LAW OF CIVIL PROCEDURES] 20 (2010).

<sup>217</sup> See STEVEN T. STERN, *INTRODUCTION TO CIVIL LITIGATION: THE INSTITUTE FOR PARALEGAL TRAINING 1* (1977).

However, the most common definition of litigation within most Arab countries is "an acceptable written or oral statement before a judge in order to seek or protect a right for a person himself or his client."<sup>218</sup> This definition is accurate in expressing the correct features and conditions of litigation insofar as it defines litigation as legal action with a valid demand, submitted in writing or orally, before a judge. This is consistent with relevant action taken in many countries, including Saudi Arabia, which allows oral and written pleadings.<sup>219</sup> This definition clearly distinguishes between litigation and other actions that take place in the courtroom. The definition characterizes litigation as both seeking and protecting the right of the person himself, or the client. This indicates that the action of testimony before the judge is not litigation, because it does not include a request to seek or protect a right of a person against another, but only provides evidence for the case.

Saudi Arabia stands with countries that remained silent on the definition of civil litigation, including insurance litigation. It has left the definition to scholars of Sharia and to legal jurists.<sup>220</sup> Perhaps the reason for this is because the Saudi legislature does not wish to add and increase legal definitions. Accordingly, insurance litigation in Saudi Arabia is understood within the general concept of a civil lawsuit, which deals with relationships between people, and involves a plaintiff who sues in court another person, called the defendant.

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<sup>218</sup> See Mohammed Naeem Yassin, *Nazariat Aldaewaa Bayn Alshryet Al'iislatmiat Waqanun Almurafaeat Almadaniat Waltijaria* [The Theory of Litigation in Islamic Law and Civil and Commercial Law] 83 (2003).

<sup>219</sup> *The Law of Civil Procedures*, Royal Decree No. M/1, 22/1/1435H (2013), art. 65.

<sup>220</sup> See Adel Mohamed El Sheikh, *Alaidia' Bialhaqi Alkhasi Fi Alshryet Al'iislatmiat Walqanun Alsaedii* [The Claiming of a Private Right in Islamic Law and Saudi Law] at 82. (2004).



However, Saudi insurance regulations have addressed in the past the meaning of insurance claims. The first section of the Insurance Consumer Protection Principles states that a "claim is the application the insured or the beneficiary submits to the company asking the payment of the compensation amount as per the policy terms."<sup>221</sup>

Moreover, under the rules of procedure of Insurance Committees, it is not possible to commence insurance litigation before the Insurance Dispute Committees without providing proof of the insurance company's refusal of the claim. This means submitting the claim to the insurer is a necessary initial step, prior to resorting to Insurance Dispute Committees. Accordingly, Article Three of the Working Rules and The Procedures of The Insurance Dispute Committees (WRPIC) provides for this:

“If the lawsuit is filed against an insurance or a reinsurance company for compensation or fulfillment of coverage obligation, the plaintiff shall provide the rejection of the claim's letter issued by the defendant company or any evidence proving the lapse of 15 days from the date of submission of the claim.”<sup>222</sup>

## **2. The Development of Jurisdiction in Insurance Litigation**

With the emergence of insurance practices in the Kingdom of Saudi Arabia as a modern business transaction, along with the debate among Islamic Scholars about insurance contracts, as discussed in chapter one, the jurisdiction over insurance litigation has gone through two substantial stages thus far. The first phase developed during the absence of a particular regulation governing the insurance market, so that insurance

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<sup>221</sup> *The Insurance Consumer Protection Principles*, supra note 167, at. 2.

<sup>222</sup> *The Working Rules and Procedures of the Insurance Disputes and Violations Settlement Committees*, Resolution No. 190, 9/5/1435H (2014), art. 3. hereinafter "The Working Rules and Procedures"

disputes were solved through arbitration processes and the efforts of the Ministry of Commerce. The second phase developed with the issuance of CICCL in 2003 and the establishment of the Insurance Dispute Committees.

Therefore, the jurisdiction over insurance litigation can be examined separately, in the pre-regulatory and post-regulatory stages.

#### **a. Pre-Regulation Stage.**

During this period of an absence of regulation in the insurance market, insurance practices in Saudi Arabia were limited, and the Sharia Courts refused to hear insurance cases based on the *fatwa* of 1977.<sup>223</sup> This refusal led to the Ministry of Commerce hearing insurance disputes, beginning in 1978.<sup>224</sup> The authority to do so was granted by the Saudi legislature.<sup>225</sup> It is likely that the Ministry of Commerce was chosen because, for the most part, insurance contracts were linked to commercial transactions during this period.

Moreover, during this stage, insurance dispute was submitted by a plaintiff, either the insurer or insured, to the Undersecretary of the Ministry of Commerce for Legal Affairs.<sup>226</sup> The Undersecretary would then transmit the plaintiff's demand to one of the legal counselors on his team.<sup>227</sup> The responsible legal counselor would study the demand, and set a date to hear the parties' defense and to obtain their statements.<sup>228</sup> Based on what the legal counselor heard from the parties, he would then write a memo, which was to be sent to the Minister for his signature.<sup>229</sup> After the Minister's approval, the decision would

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<sup>223</sup> See Ahmed Alanzi, *Taswiat Almunaza'at Alta'aminat Fi Almamlakat Ale'arabiat Alsa'udia* [Settlement of Insurance Disputes in The Kingdom of Saudi Arabia] 24 (2015).

<sup>224</sup> See Aljaser, *supra* note 183, at 83.

<sup>225</sup> *Id.*

<sup>226</sup> Almuataq *supra* note 171, at 69.

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

become binding on the parties and could not be appealed to any court. However, the parties still retained the right to address the Minister of Commerce and request a re-study of the case with another legal counselor.<sup>230</sup>

Moreover, in 1983, the Saudi legislature issued the Arbitration Law, which was to be used as an alternative choice for parties in a dispute, instead of formal litigation.<sup>231</sup> However, the Minister of Commerce, through the powers granted to him by the Council of Ministers, issued a decision to require arbitration as compulsory for insurance disputes in which the claim amount exceeded SAR 100,000 (USD 27,000).<sup>232</sup> During this period, arbitration was conducted through arbitrators in the Chambers of Commerce. They would then send the awarded decision to the Ministry of Commerce for approval.<sup>233</sup> However, what was done in this period has been altered because of the government's serious commitment to developing the insurance sector, as indicated, for example, in 2003, as it issued CICCL, and, in 2005, through the establishment of Insurance Dispute Committees.<sup>234</sup>

### **b. Post-Regulation Stage**

In 2003, the Saudi legislature announced the issuance of CICCL, which initiated an independent mechanism for resolving insurance disputes in the Kingdom of Saudi Arabia. This was significant in changing the jurisdiction of insurance litigation in the Kingdom. After this law was enacted, three Committees were established for the purpose of hearing insurance litigations outside of the Saudi judicial system, replacing the Ministry of

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<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> *Id.* at 70.

<sup>233</sup> *Id.*

<sup>234</sup> *See* Aljaser, *supra* note 183, at 83.

Commerce and the compulsory arbitration process of the previous period. The Committees have been in operation since 2005,<sup>235</sup> side by side with the General Secretariat, receiving various types of insurance disputes.

During this period, there was an amendment approved in 2013 which affected the appeal of decisions made by the Primary Committees. Previously, the appeal of the decision of the Primary Committees was made before the Board of Grievances.<sup>236</sup> However, following this change, through the amendment of Article Twenty and Twenty-Two of CICCL, the Appeals Committee was established solely for insurance disputes.

## **B. Section Two: The Organizational Structure of the Insurance Dispute Committees**

The authority of governing and settling insurance disputes in the Kingdom of Saudi Arabia, according to the current mechanism, has been awarded to the Insurance Dispute Committees, which include the General Secretariat, the Primary Committees, and the Appeals Committee.<sup>237</sup> Each of these entities has an organizational structure in which its role is exercised.

### **1. The General Secretariat of the Insurance Disputes Committee**

#### **a. The Establishment**

In light of the issuance of CICCL, which included activating the process of insurance dispute resolution, the Insurance Dispute Committees required a support administrator. Therefore, the General Secretariat was established by the Rules of Procedure for the

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<sup>235</sup> See Al-Ghamdi, *supra* note 173, at 101.

<sup>236</sup> *The Cooperative Insurance Companies Control Law*, *supra* note 1, art. 22.

<sup>237</sup> See Alanzi, *supra* note 223, at 37.

Insurance Disputes Committees.<sup>238</sup> The General Secretariat is composed of the General Secretary and a number of administrative and technical departments, which includes advisors and legal researchers.<sup>239</sup> The headquarters of the General Secretariat is located in Riyadh, and there are two branches located in Dammam and Jeddah.

The General Secretariat is under the management of SAMA, which appoints the administrative staff of the General Secretariat and supervises their training.<sup>240</sup> Similarly, the General Secretary is appointed by the Governor of SAMA, based on individual economic and legal expertise.<sup>241</sup>

Furthermore, the General Secretariat was established to exercise the role of technical and administrative support for the Insurance Disputes Committees, as it carries out the tasks of supervising and organizing the operations of the committees, along with the task of managing insurance disputes and violations in all their aspects. These tasks are initiated by accepting the insurance litigation and continue until the process is complete, either by settlement or by referring the case to the committees for a decision.

Consequently, calling upon the General Secretariat is a preliminary procedural step taken by one who has an interest in later litigation. The interested parties can include:

1. Insurance or reinsurance companies.<sup>242</sup>
2. Insureds.<sup>243</sup>
3. Insurance Brokers and Insurance Services Providers.<sup>244</sup>

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<sup>238</sup> *The Rules of Procedure for the Insurance Disputes Committees*, art. 4. These rules have been replaced by the current rules WRPIC

<sup>239</sup> Minister of Finance Decision No. 9288/1 (Oct 24, 2005).

<sup>240</sup> *The Rules of Procedure for the Insurance Disputes Committees*, art. 4.

<sup>241</sup> *Id.*

<sup>242</sup> See Khaled Alfendi, *Damanat Huquq Almumin Lah Eind Sharikat Altaamin Altaeawunii* [Guarantees of the rights of the insured in insurance companies] 338 (2012), Cairo Library.

<sup>243</sup> *Id.*

<sup>244</sup> *Id.*

4. Beneficiaries.<sup>245</sup>
5. Insurance Agents.<sup>246</sup>

#### **b. The Competencies of the General Secretariat**

Under the supervision of the General Secretary, the General Secretariat undertakes several tasks related to the management of insurance litigation and the development of rules of insurance litigation that are to be followed:

1. The General Secretariat registers and records lawsuits, provides appointment dates, manages all correspondence, and sends all necessary notices.<sup>247</sup> In this role, the Secretariat uses several means, such as email, mail, and fax, to communicate with individuals who have an interest in insurance litigation.
2. It also performs administrative tasks and assists in the research and study of the rules for resolving insurance disputes.<sup>248</sup>
3. It also offers proposals for reconciliation to the parties through the work of legal researchers and administrators working in the General Secretariat.<sup>249</sup>
4. It prepares annual statistics of the Committees' decisions and its achievements. It classifies those decisions issued for future reference.<sup>250</sup>

In summary, the task of the General Secretariat supplements the work of the Insurance Disputes Committees through registration of cases, preparing the cases, and notifying the parties. It also assists in resolving insurance disputes before reaching the Committees by proposing a settlement to the parties. However, it should be noted that the procedures of

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<sup>245</sup> *Id.*

<sup>246</sup> *Id.*

<sup>247</sup> *The Working Rules and Procedures, supra* note 222, art. 13

<sup>248</sup> *Id.*

<sup>249</sup> *Id.*

<sup>250</sup> *Id.*

the General Secretariat do not constitute litigation itself but are rather a preliminary step to any insurance litigation.

### c. The Organizational Structure

The General Secretariat accomplishes its specific tasks through two main departments, the administrative department and the technical department.<sup>251</sup>

#### i. The Administrative Department

The administrative department is divided into the Administrative Support Unit and the Communications and Correspondence Unit.<sup>252</sup> These two units carry out all administrative functions of the General Secretariat, which include the reception and registration of insurance cases, setting dates for hearings, and meeting other necessary requirements.<sup>253</sup>

#### ii. The Technical Department

The technical department consists of various consultants and legal researchers, each with specific tasks.<sup>254</sup>

First, the consultants, in coordination with the legal researchers, study the insurance cases received by the General Secretariat and give their technical and legal opinion of the cases.<sup>255</sup> In addition, they participate in the evaluation of the General Secretariat's work and provide technical and legal advice in this regard.<sup>256</sup> Consultants also work to support the Secretariat's legal researchers in carrying out their work.<sup>257</sup> They further aid in

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<sup>251</sup> See Ahmed Alanzi, *supra* note 223, at 37.

<sup>252</sup> *Id.*

<sup>253</sup> See Almuataq, *supra* note 171, at 46.

<sup>254</sup> *Id.*

<sup>255</sup> *Id.*

<sup>256</sup> *Id.*

<sup>257</sup> *Id.*

developing the training and performance of employees in the Secretariat, through their expertise in the field.<sup>258</sup> Moreover, the consultants contribute to preparing an annual report on the achievements and developments of the General Secretariat's work.<sup>259</sup>

The legal researchers are the second component of the technical team. They review the documents of insurance cases and make sure that the cases fulfill required formalities and the legal objectivity of the case, before providing a legal opinion.<sup>260</sup> As a result, the legal researchers are considered the first step in examining an insurance case, before studying it together with the consultants and reaching a technical and legal opinion.<sup>261</sup>

Because the General Secretariat is considered the supporter of Insurance Disputes Committees, which is located in Riyadh, Jeddah, and Dammam, the General Secretariat established its headquarters in Riyadh and two branches in Jeddah and Dammam.<sup>262</sup> All three offices possess the same organizational structure, but the latter two locations are headed by an Assistant Secretary-General, whose task is to oversee the functions of his branch of the General Secretariat in relation to supporting the Insurance Dispute Committees.<sup>263</sup>

## **2. The Insurance Dispute Committees**

Under the Saudi judicial system, there are many committees with judicial authority, operating within the departments of executive authority to hear specific disputes. The proliferation of these committees began with the issuance of the Commercial Court Law in 1930, which provided for the establishment of the Commercial Disputes Authority to

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<sup>258</sup> *Id.*

<sup>259</sup> *Id.*

<sup>260</sup> *Id.*

<sup>261</sup> *Id.*

<sup>262</sup> See Aljaser, *supra* note 183, at 84.

<sup>263</sup> See Almuataq, *supra* note 171, at 46.



settle commercial and maritime disputes.<sup>264</sup> This was followed by the issuance of a number of specific laws, such as the Competition Law, the Customs Law, and the Law of Commercial Papers, which provided for the establishment of the various committees with judicial authority.<sup>265</sup> Today, there are more than 100 committees with specific jurisdiction in the Kingdom of Saudi Arabia.

The reasons for the emergence of these Committees are as follows:

1. The rapid development of economic and cultural aspects overwhelmed judicial authority, and they could not adapt rapidly enough.<sup>266</sup>
2. The nature of the disputes assigned to these committees often includes technical elements that members of the courts may not be familiar with.<sup>267</sup>
3. There was a desire to ease the judiciary's burden, especially since the number of judges in Saudi Arabia was limited in the past in relation to the population and the number of cases.<sup>268</sup>
4. Some judges in the courts were hesitant to rule under the concept of positive law, because they believed that Sharia and its general provisions were sufficient to adjudicate all disputes.<sup>269</sup> This situation arose with the issuance of written law in the Kingdom of Saudi Arabia. However, this is no longer the case, especially since the

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<sup>264</sup> See Abdulmalek Altwajri, *Lijan Alfasl Fi Almukhalafat Walmunazaeat Altaaminia* [The Committees for adjudicating violations and insurance disputes] 26 (2012) (unpublished master's degree Thesis, Al-Imam Mohammad Ibn Saud Islamic University).

<sup>265</sup> *Id.*

<sup>266</sup> See Osama Salem Tafran, *Allijan Shbh Alqadayiyat Fi Almamlakat Alearabiat Alsaudia* [Semi-judicial committees in the Kingdom of Saudi Arabia] 162 (1996) (unpublished master's degree Thesis, Naif Arab University for Security Sciences).

<sup>267</sup> *Id.*

<sup>268</sup> See Abdullah Alrashed, *Allijan Dhat Alaikhtisas Alqadayiyi* [Committees with judicial jurisdiction] 9 (1985) (Unpublished Master's Degree Thesis, Institute of Public Administration).

<sup>269</sup> See Ahmed A. Al-Ghadyan, *The Judiciary in Saudi Arabia*, ARAB LAW QUARTERLY 235, 247 (1998).

courts now handle many matters according to written laws, in addition to the Sharia provisions.

5. Some judges have reservations about certain modern commercial and civil transactions they believed to be forbidden under Sharia.<sup>270</sup>

The Insurance Dispute Committees were established to avoid some judges' unwillingness to consider insurance disputes based on the 1977 *fatwa*. These committees consist of the Primary Committees and the Appeals Committee, and they are independent Committees with judicial authority that operate within the department of the executive branch, SAMA.

#### **a. The Primary Committees**

##### **i. The Establishment**

Under the Council of Minister's Decision No. 71 in 2005,<sup>271</sup> the first Primary Insurance Committee was established in Riyadh to exercise all tasks related to insurance disputes matters mentioned in Article 20 of CICCL.<sup>272</sup> This Article, before the amendment, states that "One or more committees shall be formed ... to be entrusted with the settlement of disputes occurring between insurance companies and their clients, or between these companies and others that may substitute for the insured, and shall decide on cases of violations of control and supervision instructions for the licensed insurance and reinsurance companies, and the violations of those practicing self-employment professions."<sup>273</sup>

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<sup>270</sup> See Altwaijri, *supra* note 264, at 29.

<sup>271</sup> The Council of Minister's Decision No. 71 (May 4, 2005).

<sup>272</sup> See Al-Ghamdi, *supra* note 173, at 101-102.

<sup>273</sup> *The Cooperative Insurance Companies Control Law*, *supra* note 1, art. 20.

Consequently, the Riyadh Committee had territorial and subject matter jurisdiction over all insurance disputes in Saudi Arabia.<sup>274</sup> The Riyadh Committee received insurance cases both from the complaints initially submitted to SAMA, as well as those from the courts, which referred their pending insurance cases directly to the Committee.<sup>275</sup>

However, with the expansion of the insurance industry and an increase in the number of cases, which exceeded the capacity of the Riyadh Committee, two other Committees were established in Jeddah and Dammam, under Council of Minister's Decision No.105 in 2007.<sup>276</sup> The establishment of these Primary Committees in Jeddah and Dammam was motivated by the rising number of cases in those cities.<sup>277</sup> Therefore, the establishment of these two additional Committees was significant, particularly with regard to facilitating claims of parties who resorted to Primary Committees in these regions.

Each Primary Committee consists of three specialized members with experience in insurance, at least one of them being a legal advisor.<sup>278</sup> Membership on these Committees is valid for three years and is renewable.<sup>279</sup>

## ii. The Jurisdiction

The rules concerning the jurisdiction of Insurance Dispute Committees include the territorial jurisdiction and the subject matter jurisdiction. They are as follows:

First, as for the territorial jurisdiction, the general rule in the Law of Civil Procedures is that the lawsuit takes place in a court within the jurisdiction of the defendant's place of

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<sup>274</sup> See Al-Ghamdi, *supra* note 173, at 101-02.

<sup>275</sup> *Id.*

<sup>276</sup> Council of Minister's Decision No. 105 (Apr. 8, 2007)

<sup>277</sup> See Al-Ghamdi, *supra* note 173, at 101-102.

<sup>278</sup> *The Cooperative Insurance Companies Control Law, supra* note 1, art. 20.

<sup>279</sup> *Id.*

residence, in case the defendant is a natural person (individual defendant)<sup>280</sup>, and in the place of the head office, in case the defendant is a legal person (institution or company).<sup>281</sup>

Contrary to the general rule in the Law of Civil Procedures, insurance regulations favor the interest of the insured, whereas the territorial jurisdiction of the Primary Committees is slightly different from the general rule of jurisdiction. For instance, under WRPIC, the jurisdiction of the Primary Committees is found at the place of the plaintiff's residence, if he is an individual. The individual is not obligated to file the lawsuit in the place of the insurance company's headquarters, as would be the case in the Law of Civil Procedures. On the other hand, the lawsuit should be filed in the defendant's place of residence if he is an individual and a plaintiff is a legal person (an insurance company). Article six of WRPIC states that "any lawsuit against insurance and reinsurance companies shall be in the jurisdiction of the Primary Committees in the territorial jurisdiction of which the plaintiff is residing in case a plaintiff is a natural person, and in the jurisdiction of the Primary Committees in the territorial jurisdiction of which the defendant is residing in case a plaintiff is a legal person."<sup>282</sup>

Moreover, it is worth mentioning that the rules of territorial jurisdiction are not absolutely binding. To facilitate the parties' case, they are allowed to mutually agree upon placing their case in a different jurisdiction. For instance, if an accident occurred to the insured in Riyadh, and the head office of the insurer is in Jeddah, the parties are able to

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<sup>280</sup> *The Law of Civil Procedures*, *supra* note 219, art. 36/1.

<sup>281</sup> *Id.* art. 38.

<sup>282</sup> *The Working Rules and Procedures*, *supra* note, 222 art. 6.

file their case in Riyadh in order to facilitate the procedure to examine the accident and estimate the damage, irrespective of the place of residence of the insured.<sup>283</sup>

Second, as for the subject matter jurisdiction, the Primary Committees are competent to deal with insurance disputes as well as violations that may be committed by the insurance companies or insurance-related service providers. The CICCL contains the following jurisdictions for the Primary Committees:

1. Every dispute arising from insurance contracts between insurers and their clients, or between the insurers and insurance beneficiaries.<sup>284</sup>
2. Every dispute arising from insurance contracts between insurers and another subrogated<sup>285</sup> to the rights of the insured.<sup>286</sup>
3. Every dispute occurring between insurance companies and reinsurance companies because of insurance contracts.<sup>287</sup>
4. Every dispute arising between these companies and insurance-related service providers<sup>288</sup> such as insurance consultants, insurance brokers, loss adjusters and loss assessors, actuaries, and specialists in settlement of insurance claims.<sup>289</sup>
5. Violations related to the regulatory and supervisory instructions of insurance and reinsurance companies.<sup>290</sup>

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<sup>283</sup> *The Implementing Regulations for Law of Civil Procedures*, Decision of the Ministry of Justice No. 39933 (Mar. 20, 2014).

<sup>284</sup> *The Cooperative Insurance Companies Control Law*, *supra* note 1, art. 20/1(a).

<sup>285</sup> In the context of insurance, subrogation is the right granted to the insurer to be in the position of the insured against the third party responsible for the loss that the insurer has both covered and paid for. See Jeffrey A. Greenblatt, *Insurance and Subrogation: When the Pie Isn't Big Enough, Who Eats Last?*, 64 U. CHI. L. REV. 1337, 1337–66 (1997).

<sup>286</sup> *The Cooperative Insurance Companies Control Law*, *supra* note 1, art. 20/1(a).

<sup>287</sup> *Id.* art. 201(b).

<sup>288</sup> *Id.*

<sup>289</sup> *Id.*

<sup>290</sup> *Id.* art. 20/1(c).

6. Violations of insurance that relate to service providers.<sup>291</sup>
7. Violations arising from the implementation of the CICCL, and the enforcement of fines as prescribed in Article 21 of the CICCL.<sup>292</sup>

Accordingly, the Primary Committees are responsible for their fundamental work, which consists of hearing all insurance disputes and the enforcement of fines for violations.

### iii. Samples of Insurance Litigation

Based on the territorial and subject matter jurisdiction of the Primary Committees, they receive various types of litigation, such as motor insurance litigation, health insurance litigation, engineering insurance litigation, and litigation of insurance violations. The Primary Committees receive these litigations, as well as others, in different percentages each year.

#### 1) Motor Insurance Litigation

Motor insurance litigation represents the highest proportion of cases submitted to the Primary Committees. The number reached more than 13,900 cases between 2005 and 2015.<sup>293</sup> This type of litigation arises from two types of insurance: liability insurance and comprehensive insurance.

First, liability insurance is a type of motor insurance under which insurance companies undertake to indemnify the third party because of damages caused by the insured.<sup>294</sup> Also, under the policy of this type of insurance, the insurer compensates for physical damages

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<sup>291</sup> *Id.*

<sup>292</sup> *Id.*

<sup>293</sup> See the Statistics of the General Secretariat and the Preliminary Committees Rulings from (1426 H) to (Q2 of 1437 H), *supra* note 2.

<sup>294</sup> The Unified Compulsory Motor Insurance Policy, The Governor's Resolution No. 1/427 18/05/1427H (2006), art. 2/15.

such as injuries and death.<sup>295</sup> It also includes the compensation for losses to property belonging to the third party.<sup>296</sup> In litigation relating to liability insurance, official reports issued by *Najm*<sup>297</sup> are used to assess the insured party's liability. Additionally, court rulings are used to determine the amount of "*diyah*"<sup>298</sup>, i.e. "blood money", for physical damages that have occurred to the third party, whether they are physical injuries or death.<sup>299</sup>

Second, comprehensive insurance is coverage that includes physical damage or losses sustained by the insured party's vehicle from fire, falling objects, or vandalism irrespective of the insured party's liability. This type of insurance also covers the insured party's liability against the third party. In litigation pertaining to comprehensive insurance, reports issued by *Najm* and the Accident Assessment Office are used to determine the amount of compensation the insured is entitled to for the physical damage to his vehicle and for his liability for damage to the third party.<sup>300</sup>

## 2) Health Insurance Litigation

Health insurance litigation is one of the most common cases received by the Primary Committees, following motor insurance litigation. For instance, the Primary Committees

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<sup>295</sup> *Id.* art. 3.

<sup>296</sup> *Id.*

<sup>297</sup> *Najm* is a company that plays the role of a third party in the relationship between the insured and the insurance company. *Najm* was established in 2007 to manage accident related processes. It seeks to facilitate the procedures related to the assessment of the liability of traffic accidents in accordance with traffic laws and act as a mediator in obtaining claims by raising them to the insurance companies and following up on them. *See Overview*, NAJM, <https://www.najm.sa/en/vision-mission>

<sup>298</sup> "*Diyah*" is an Arabic word, and it means blood money, which obligates the family of the criminal offender to pay money to the victim's family. *See Mohammed Abu-Nimer, A Framework for Nonviolence and Peacebuilding in Islam*, 15 J. L. & Religion 217, 266 (2000).

<sup>299</sup> *See Al-Ghamdi, supra* note 173, at 105.

<sup>300</sup> *See Hatem Alkhatlan, Mahy al'ijra'at baed wuque alhadith? [What are the procedures after the accident?]* SAUDISHIFT (July 28, 2017), <https://saudishift.com/accident-procedures/>.

heard more than 1,100 health insurance cases between 2005 and 2015.<sup>301</sup> This type of litigation involves a relationship that arises from the health insurance contract between the insurer and the insured or beneficiary, under which the insurer bears a limited cost of medical, therapeutic, and surgical expenses incurred by the insured or the beneficiary.<sup>302</sup> Health insurance litigation typically revolves around a person's medical declaration, insurance coverage, and coverage limits.

In health insurance litigation, medical reports and invoices are used to determine whether the insurance coverage is due or is not due, and if so, to what limit coverage is due. Additionally, the personal medical declaration form is used to determine whether there was full disclosure on part of the insured, or if there was concealment of substantial information about the health condition of the insured or beneficiary prior to entering the contract.

### 3) Engineering Insurance Litigation

The Insurance Dispute Committees hear litigation regarding engineering insurance contracts that cover contractor's risks, contractor's plant and machinery, and their breakdown.<sup>303</sup> The engineering insurance contract provides economic and legal safeguards against risks which may be faced by a construction project.<sup>304</sup> It also covers liability of the insured contractor against a third party, who may be exposed to damage resulting from the project.<sup>305</sup>

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<sup>301</sup> See the Statistics of the General Secretariat and the Preliminary Committees Rulings from (1426 H) to (Q2 of 1437 H), *supra* note 2.

<sup>302</sup> The Cooperative Health Insurance Policy, Ministerial Order 9/35/1/DH, 3/4/1435H (2014), § 2.

<sup>303</sup> See Al-Ghamdi, *supra* note 173, at 106.

<sup>304</sup> *Id.*

<sup>305</sup> *Id.*



In this type of litigation, the reports of the inspectors and the loss adjusters are provided to the insurance committees and they help to determine the amount of compensation owed.<sup>306</sup>

#### 4) Litigation of Insurance Violations

Litigation of insurance violations is different from other types of litigation received by Primary Committees for two reasons. First, this action involves a legal infraction committed by the insurance or reinsurance company or insurance-related service provider. In other words, the subject matter of this litigation does not arise from the insurance contract between the insured and the insurer, but rather from actual violation of the rules governing the insurance sector. Second, the parties of this litigation are the public prosecutor and the party in violation of rules of the insurance industry of the Kingdom.<sup>307</sup> The prosecution, in such cases, is represented by employees designated by the Governor of SAMA.<sup>308</sup>

#### iv. The Regulations Governing the Work of the Primary Committees

In terms of substance, the Primary Committees are obliged to adjudicate on the substance of insurance litigations in accordance with CICCL and its implementing regulations. The Committees also consider case law and the comparative jurisprudence in judging the merits of some insurance cases.<sup>309</sup>

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<sup>306</sup> *Id.*

<sup>307</sup> *The Working Rules and Procedures, supra* note 222, art. 15.

<sup>308</sup> *Id.*

<sup>309</sup> *The Working Rules and Procedures, supra* note, 222 art. 9.

Procedurally, the Primary Committees are bound by WRPIC approved by the Council of Ministers Decision No. 190 in 2014.<sup>310</sup> In addition, they use Law of Civil Procedures and other judicial procedures to rule in matters not regulated by WRPIC.<sup>311</sup>

Therefore, the Primary Committees apply the procedural and substantive criteria and conditions mentioned in the Law of Civil Procedures when accepting any insurance litigation. Their focus is to determine the legitimate interest and the legality of the party's complaint, especially that of the plaintiff's, who initiates the lawsuit.<sup>312</sup> The Primary Committees are also governed by a statute of limitations, which prevents them from hearing the insurance litigation after the lapse of a 5-year period from the claim's due date.<sup>313</sup>

Furthermore, under the Law of Civil Procedures, each Primary Committee has a record clerk who prepares minutes of the hearings.<sup>314</sup> The minutes state the date and hour of the opening and closing of each hearing, the arguments of each party, names of the members of the Committee, and litigants or their attorneys.<sup>315</sup>

The role of the Primary Committees is similar to the role of the Violations Committee for the Cooperative Health Insurance Law, the latter of which operates under the supervision of the Cooperative Health Council. However, this Committee is only concerned with violations that are committed within the scope of health insurance.

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<sup>310</sup> *Id.* art. 12.

<sup>311</sup> *Id.*

<sup>312</sup> *The Law of Civil Procedures, supra* note 219, art 3.

<sup>313</sup> *The Working Rules and Procedures, supra* note, 222 art. 11.

<sup>314</sup> *The Law of Civil Procedures, supra* note 219, art. 6.

<sup>315</sup> *Id.* art. 71.

## **b. The Violations Committee of the Health Insurance Law**

The competence of this Committee was defined under Article 14 (c) of the Cooperative Health Insurance Law, which states that:

“A committee, or more, shall be formed by a decision of the Chairman of the Health Insurance Council including a representative of each of the following: Ministry of Interior, Ministry of Labor and Social Affairs, Ministry of Justice, Ministry of Finance and National Economy, Ministry of Health, and Ministry of Commerce. The Committee shall look into violations of the provisions of this Law and recommend the suitable penalty. The penalty shall be signed by the Chairman of the Health Insurance Council. The regulatory bylaw shall define such committee. Appealing against this decision may be raised with the Board of Grievances within sixty days as of the date of notification.”<sup>316</sup>

The above text reveals several points about this Committee. First, this Committee is formed by a decision of the Chairman of the Health Insurance Council, represented by the Minister of Health. Second, the Committee consists of representatives of six ministries. Third, it shows the possibility of forming more than one Committee, but in practice thus far, there is one Committee at the headquarters of the Council of Health Insurance in Riyadh. Fourth, the text also reveals the duty of this Committee to hear violations of provisions of the Health Insurance Law. It is not responsible for hearing violations occurring in other types of insurance. Fifth, the text designates that the decisions issued by this Committee need to be signed by the Chairman of the Health Insurance Council. Sixth, the signed decision by this Committee is considered an

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<sup>316</sup> *The Cooperative Health Insurance Law, Royal Decree No. M/10, 1/5/1420H (1999), art 14(c).*

administrative decision, and not a final judgment, and thus can be appealed before the Board of Grievances within 60 days of signing.

### **c. The Appeals Committee**

#### **i. Establishment**

According to Article 20 of CICCL, prior to the amendment, the Board of Grievances was competent to hear appeals against decisions of the Primary Committees.<sup>317</sup> However, within courts, the judges of the Board of Grievances debated among themselves whether to accept or refuse insurance disputes. The arguments among the judges were based on different opinions in legal jurisprudence concerning insurance contracts within Sharia law.<sup>318</sup>

However, in order to overcome this controversy, Royal Order No. A /148 was issued in 2010 to establish an appeals committee consisting of advisors and experts in insurance and jurisprudence of transactions.<sup>319</sup>

Subsequently, Royal Decree No. M /30 of 2013 was issued, approving the amendment to Articles 20 and 22, and establishing the Appeals Committee. Based upon this amendment, Article 22 of CICCL states that:

“An Appeal Committee shall be formed of not less than three consultants, working full-time if possible, who are specialized and knowledgeable about the jurisprudence of transactions and insurance. The Committee is responsible for looking into grievances raised by concerned parties against the rulings of the

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<sup>317</sup> *The Cooperative Insurance Companies Control Law, supra* note 1, art. 22.

<sup>318</sup> *See* Altwaijri, *supra* note 264, at 68-70.

<sup>319</sup> Royal Order No. A/148, 2/12/1431H (2010).

Committees set forth in Article (20) of this Law, and its decision shall be final and not open to appeal.”<sup>320</sup>

Under this text, the Appeals Committee, which includes at least three consultants, was established to be the sole party responsible for receiving grievances against the decisions of the Primary Committees. Also, under this provision of the amendment, the insurance litigation system became independent from traditional judicial authority. Therefore, no traditional court had jurisdiction over any insurance dispute anymore, because the decisions of the Appeals Committee became final and not open to appeal before any other party, whether judicial or administrative.

## ii. The Jurisdiction

The main jurisdiction of the Appeals Committee is to hear all appeals submitted by litigants in insurance disputes against decisions issued by one of the Primary Committees, whether the cases involve small or large claims. There is, however, an exception in appeal cases that grants the Appeals Committee a discretionary authority to merely review the decisions, rather than to adjudicate the dispute again.<sup>321</sup> This discretionary authority is left to the Appeals Committee if the claim awarded by the Primary Committee is less than SAR 50,000 (USD 14,000).<sup>322</sup> Therefore, the criterion for using this option is the amount awarded by the Primary Committee, regardless of the amount indicated in the original statement of claim. Accordingly, Article 8 of WRPIC provides that:

“The Appeal Committee shall have the jurisdiction to settle litigants’ grievances submitted by persons concerned against the decisions issued by the Primary

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<sup>320</sup> *The Cooperative Insurance Companies Control Law, supra* note 1, (Amendment of art 20 and 22, Royal Decree No. M /30, 27/5/1434H (2013) art. 22.

<sup>321</sup> *The Working Rules and Procedures, supra* note 222, art. 8.

<sup>322</sup> *Id.*

Committees. The Appeal Committee may only limit its consideration to examining decisions of lawsuits the amount decided on which is less than SAR 50,000.”<sup>323</sup>

### iii. The Regulations Governing the Work of the Appeals Committee

Many rules and laws govern the substantive and procedural work of the Appeals Committee. First, substantively, the Appeals Committee’s work is based on CICCL, its implementing regulations, other rules governing the insurance sector, and the provisions reached by the judiciary and comparative jurisprudence in settling insurance disputes.<sup>324</sup> In light of these rules, the Appeals Committee hears the grievances against lower committees verdicts and determines the legitimacy of each grievance.<sup>325</sup> Second, procedurally, the Appeals Committee takes WRPIC into account, as well as the Criminal Procedures and the Law of Civil Procedures in making their decision.<sup>326</sup> In accordance with these rules, the Committee refrains from hearing grievances submitted against the Primary Committee’s decisions if they are not submitted within thirty days from the decision’s delivery date.<sup>327</sup> The Appeals Committee also ensures that the substantive and formal criteria are met for every grievance received.

To summarize this section, the body responsible for dealing with insurance disputes in the Kingdom of Saudi Arabia is the Insurance Dispute Committees, which includes the General Secretariat, the Primary Committees and the Appeals Committee. The role of the General Secretariat is to provide technical and administrative support to the Primary

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<sup>323</sup> *Id.*

<sup>324</sup> *Id.* art. 9/1.

<sup>325</sup> *Id.*

<sup>326</sup> *Id.* art. 12.

<sup>327</sup> *Id.* art. 9/2.

Committees and the Appeals Committee. The procedures of the General Secretariat are not litigation itself, but a preliminary step to any insurance litigation. Actual insurance litigation arises when the insurance dispute reaches one of the Primary Committees, and a decision is issued which, then, can be appealed to the Appeals Committee in Riyadh.

The following section will examine the practical procedure of resolving insurance disputes by the General Secretariat, the Primary Committees, and the Appeals Committee. It will clarify the reconciliation work of the General Secretariat in resolving insurance disputes before being referred to insurance dispute committees. This section will also examine all stages of the insurance litigation, from the hearing before the Primary Committees until the issuance of the Appeals Committee's final ruling.

### **C. Section Three: The Practical Procedures for Resolving Insurance Disputes before the General Secretariat and Insurance Disputes Committees**

The practical procedures to resolve insurance disputes are significant because they play an important role in protecting the rights of the parties involved in the insurance contract. In the Kingdom of Saudi Arabia, the current procedure for resolving insurance disputes passes through three levels. Proceedings occur before the General Secretariat, the Primary Committees, the Appeals Committee. A resolution for a dispute may be reached at any of the three levels.

#### **1. The Procedures of the General Secretariat**

As mentioned in the previous section, the procedure of the General Secretariat is considered a preliminary stage for insurance disputes before these disputes reach the Insurance Dispute Committees. In this capacity, the General Secretariat registers the

dispute, communicates with the defendants, and proposes a possible reconciliation. These three initial steps are detailed as follows:

#### **a. Registering the Claim**

Depending on the subject matter over which the Insurance Dispute Committees have jurisdiction, the Secretariat, as a preliminary step to any insurance litigation, receives all insurance litigations and registers them, each with a slightly different requirement based on the type of litigation.<sup>328</sup>

First, in respect to disputes arising out of the insurance contract itself, the original pleading is submitted in Arabic to the General Secretariat, in addition to copies equal to the number of defendants.<sup>329</sup> To be accepted, a pleading must include the following basic information:<sup>330</sup>

1. Plaintiff's full name, residence, occupation, ID number, and if the case is filed by a legal person, the commercial registration number, its representative's full name, occupation, residence, and ID number. The plaintiff's contact information must also be provided to ensure effective communication.
2. Defendant's full name, residence, and contact information.
3. Date of filing of the claim.
4. The subject of the complaint in detail, the monetary value of the claim, and any evidence supporting the claim.

Other information is required depending on the type of dispute submitted to the Secretariat. For instance, if the dispute is between an insured or a beneficiary against an

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<sup>328</sup> *Id.* art.13/2.

<sup>329</sup> *Id.* art. 3.

<sup>330</sup> *Id.*



insurance company, the plaintiff is obliged to provide evidence of the rejection of the claim by the insurer or a lapse of 15 days from the date of submission of the claim to the company.<sup>331</sup> The plaintiff must also submit the insurance policy and the reports supporting the claim.<sup>332</sup> These requirements vary based on the type of dispute in question.

After submitting the necessary information in the pleading, the General Secretariat registers the case in an official record and issues a number and date for the case.<sup>333</sup>

Second, with respect to litigations of insurance violation, these are submitted by SAMA, which is represented by the Legal Administration Department that includes public prosecutors appointed by the Governor of SAMA. Such an action is filed against insurance or reinsurance companies if they are accused of violating regulations that govern the insurance sector. The necessary data for pleading this type of litigation is different from that required in disputes arising from the insurance contract. The following data is required in pleading litigations of insurance violations:<sup>334</sup>

1. The name of the company or institution accused of committing the violations.
2. The name of the legal representative of the company or institution, or the chief executive or manager responsible for the violation.
3. A technical report outlining the violation.
4. A statement of actions taken by the Insurance Control Department regarding the disclosure of the violation.

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<sup>331</sup> *Id.*

<sup>332</sup> *Id.*

<sup>333</sup> *The Law of Civil Procedures, supra* note 219, art 42.

<sup>334</sup> *See Almuataq, supra* note 171, at 54–55.

After the necessary information has been compiled and submitted to the General Secretariat, this case will similarly be registered and given a case record number, in order to submit it to the Insurance Dispute Committees.<sup>335</sup>

It should be noted that resorting to the Insurance Dispute Committees through the Secretariat and submitting the insurance claim is a free procedure.<sup>336</sup> However, for the claim to be accepted, the claim needs to be filed with a legitimate reason and within the jurisdiction of the Insurance Dispute Committees.

### **b. Communication with the Defendants - the Complaint Served**

After registering the complaint, the General Secretariat serves the complaint to the defendant by providing him with a copy of the present lawsuit being pleaded and the attached documents. At this point, the Secretariat notifies the defendant of the need to respond within 15 working days. After receiving the defendant's reply within the specified time of period, the technical advisers and legal researchers of the Secretariat study the case. This examination includes the plaintiff's claims, the defendant's response, the reports, and the documents attached to each response. Subsequently, a technical and legal opinion on the complaint is issued.<sup>337</sup>

### **c. The Proposed Reconciliation**

The proposal to end the insurance dispute through reconciliation is the Secretariat's last procedure before the dispute is referred to the Primary Committees.<sup>338</sup> The reconciliation efforts are carried out after examination of the complaint from all sides by

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<sup>335</sup> *Id.*

<sup>336</sup> *The Basic Law of Governance, supra* note 6. art. 47.

<sup>337</sup> *See* Almuataq, *supra* note 171, at 56.

<sup>338</sup> *The Annual Report for 2016*, GEN. SECRETARIAT OF THE COMMITTEES FOR RESOL. OF INS. DISP. & VIOLATIONS 10, <http://www.idc.gov.sa/en-us/Pages/ReportsAndStatistics.aspx>

the technical advisors and legal researchers.<sup>339</sup> To that end, the officer responsible for the reconciliation process may meet with the parties and present the reconciliation in light of the technical and legal opinions issued. In case the parties accept the proposed reconciliation, a final and binding agreement will be signed by each party, bringing an end to the dispute. If the reconciliation is not accepted, however, the Secretariat will transfer the dispute to the Primary Committees, together with the opinion reached by the consultants and researchers.

It should be noted that reconciliation efforts cannot be used in litigating insurance violations, since this type of litigation is not eligible for the reconciliation process.<sup>340</sup>

## **2. The Procedures of the Primary Committees**

When reconciliation efforts fail to resolve the insurance dispute, the dispute is transferred to the Primary Committees to officially enter the litigation phase. The General Secretariat will then be responsible for scheduling the case and informing the litigants at least five working days prior to the hearing, so they may attend and continue their case.<sup>341</sup> During this process, the Primary Committees apply the procedures specified for litigation in WRPIC and in the Law of Civil Procedures, both of which govern the appearance and absence of litigants, the hearing procedure, evidence presented, and the decision announced.

### **a. The Appearance and Absence of Litigants**

Normally, the judge adjudicates the dispute with all of the parties in attendance. This ensures that the judge hears each side's arguments directly and reviews the support for

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<sup>339</sup> *Id.*

<sup>340</sup> See Al-Ghamdi, *supra* note 173, at 149.

<sup>341</sup> *The Working Rules and Procedures*, *supra* note 222, art. 13 /2.

their positions. However, it may be difficult for litigants to appear in person, and, therefore, their lawyers or representatives appear instead.<sup>342</sup>

If the plaintiff absents himself from the hearing session after establishing that he had been duly served, the Primary Committee has two possible courses of action. It can, on its own or at the request of the defendant render its judgment if the dispute is legally valid.<sup>343</sup> It can also order a dismissal of the case.<sup>344</sup> However, if the case is discharged, the plaintiff can request a re-hearing of the case on a written form, submitted to the General Secretariat.<sup>345</sup>

### **b. The Hearing Procedure**

With regard to the proceedings of the hearing, there are several points to highlight. First, the hearing session before the Primary Committees must take place in the presence of all Committee members and in the place and at the time established.<sup>346</sup> Second, the Chairman of the Committee is responsible for conducting the session and for directly questioning the parties or their representatives.<sup>347</sup> Third, contrary to what is practiced in Saudi courts, the pleadings before the Committees are presented in writing,<sup>348</sup> particularly because the insurance disputes are submitted before the Insurance Committees examine the arguments of the parties and issue technical and legal opinions. Additionally, the parties can make other oral arguments during the hearing session.<sup>349</sup> Fourth, contrary to the open sessions of Saudi courts, the hearing before the Insurance Committees is held in

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<sup>342</sup> *The Working Rules and Procedures, supra note 222, art. 5.*

<sup>343</sup> *Id.*

<sup>344</sup> *Id.*

<sup>345</sup> *Id.*

<sup>346</sup> *Id. art. 4.*

<sup>347</sup> *See Almuataq, supra note 171, at 57.*

<sup>348</sup> *The Working Rules and Procedures, supra note 222, art. 9/1.*

<sup>349</sup> *Id.*

closed session with the litigants present, along with any witnesses and necessary experts.<sup>350</sup>

### c. The Evidence

The approach to evidence before the Insurance Committees is more flexible than the rules of evidence before Saudi courts. The Insurance Committees consider original types of evidence, such as written documents and the opinion of experts, along with other types of evidence, such as electronic and computer data, fax correspondence, emails, text messages, and telephone recordings in order to reach its decision.<sup>351</sup>

#### i. The Written Documents

A written document, either on official paper or ordinary paper, is considered by Insurance Committees as the principal means of proving facts presented by the parties.<sup>352</sup> Therefore, most of the decisions issued by Insurance Committees are based on written documents submitted by the litigants. Typically, these written documents are an insurance policy, reports issued by loss adjusters, the Accident Assessment Office for vehicles, or the Department of Civil Defense. These documents help determining the percentage of insurance coverage due or the percentage of liability.<sup>353</sup> In this regard, Insurance Committees consider the lawsuits and written documents in the light of regulations governing the nature of the dispute and principles reached by the judiciary.<sup>354</sup>

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<sup>350</sup> This is contrary to the general principle in the Saudi courts, which states that trials are conducted in public; however, the judge and parties have a right to decide to hold it privately. Article 64 of the Civil Procedural Law states that “A hearing shall be held in open court unless the judge, upon his own motion or motion of one of the parties, holds the hearing in a closed session in order to maintain order, observe public morality, or protect the privacy of the family.”

<sup>351</sup> *The Working Rules and Procedures*, *supra* note 222, art. 7.

<sup>352</sup> *The Law of Civil Procedures*, *supra* note 219, art 139.

<sup>353</sup> See Almuataq, *supra* note 171, at 59.

<sup>354</sup> *The Working Rules and Procedures*, *supra* note 222, art. 9/1.

## ii. The Opinion of Expertise

The Primary Committees may seek the assistance of authorized technical experts, such as inspectors, loss adjusters, experts in settling insurance disputes, and actuaries.<sup>355</sup> They may do this per their own request or by demand of the litigants.<sup>356</sup> The experts may present their views to the Primary Committees through reports submitted to the Committee within a specified period of time or through an oral opinion at the hearing session.<sup>357</sup> Typically, the use of experts takes place in disputes of technical dimensions that the members of the Primary Committees may not be familiar with, such as technicalities in fire insurance, aeronautical insurance, or engineering insurance.<sup>358</sup>

It should be noted that the opinion of the experts is not binding on the Primary Committees. In other words, the members of the Committees have the discretionary authority to accept or reject what is included in the experts' reports.<sup>359</sup>

## d. Rendering the Decision

Upon completion of case arguments by the parties involved, the Primary Committee issues its decision either at the last session during which the hearing is conducted, or at a subsequent hearing, provided that the parties are informed of that date.<sup>360</sup> The Primary Committee issues its decision following deliberation among all its members, and making the decision by majority votes.<sup>361</sup> In case of a tie vote among the Primary Committee members, the Committee Chairman possesses the authority to break the tie.<sup>362</sup> Because

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<sup>355</sup> *The Cooperative Insurance Companies Control Law*, *supra* note 1, art. 18.

<sup>356</sup> *The Law of Civil Procedures*, *supra* note 219, art 128.

<sup>357</sup> *Id.*

<sup>358</sup> *See Al-Ghamdi*, *supra* note 173, at 112.

<sup>359</sup> *The Law of Civil Procedures*, *supra* note 219, art. 138.

<sup>360</sup> *Id.* art. 159.

<sup>361</sup> *The Working Rules and Procedures*, *supra* note 222, art. 9/2.

<sup>362</sup> *Id.*

the hearing session before the Primary Committees is closed to the public, the decision is announced by reading it in the presence of the parties or their representatives and members of the Committee.<sup>363</sup> The General Secretariat undertakes to deliver the decision to the litigants within 15 business days.<sup>364</sup>

The decision of the Primary Committee includes the names of the parties or their representatives, the Chairman of the Committee and its members, as well as the date of the decision.<sup>365</sup> It also specifies a full record of litigants' attendance and absence, as well as a brief summary of each parties' arguments and defenses mentioned in the litigation sessions.<sup>366</sup> Finally, in the written decision, the Committee sets out its ruling and the reasons on which its decision was based.<sup>367</sup>

Furthermore, the decision issued by the Primary Committee is considered a judicial decision, such as the judicial decisions rendered by Saudi courts. This judicial authority of the Primary Committee was granted by the Saudi government, by making Primary Committees independent of Saudi courts. Therefore, the decision of the Primary Committee could terminate the dispute if the parties are satisfied. However, if one of the parties in the case objects to the decision, he or she has the right to appeal the decision before the Appeals Committee within thirty business days from the decision's delivery date.<sup>368</sup>

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<sup>363</sup> *The Law of Civil Procedures*, *supra* note 219, art. 164.

<sup>364</sup> *See Almuataq*, *supra* note 171, at 61.

<sup>365</sup> *The Working Rules and Procedures*, *supra* note 222, art. 9/4.

<sup>366</sup> *Id.*

<sup>367</sup> *Id.*

<sup>368</sup> *Id.* art. 9/2.

### **3. The Procedure of the Appeals Committee**

When one of the parties of the insurance dispute presents his appeal against the decision of the Primary Committee within the legal period of time, the dispute is transferred to the Appeals Committee in accordance with the following procedures.

#### **a. Registering the Appeal**

The procedures for considering the appeal commences under the statement submitted by the appellant, within thirty days, to the Secretariat, which studies and register the request for the appeal. The statement of the appeal must include the following information:<sup>369</sup>

1. The original appeal pleading in Arabic and copies for each of the defendants.
2. A copy of the Primary Committee's decision.
3. A statement indicating the reasons for the appeal and the grounds on which it is based.

#### **b. Considering the Appeal**

When the Appeals Committee receives the grievance statement, it renders a judgment on the basis of the defenses and the arguments presented by the parties, provided in writing or orally. However, as noted in the previous section, the Appeals Committee has the discretionary authority to not to hear the arguments again and only to review the preliminary decision, provided that the awarded claim is less than SAR 50,000.<sup>370</sup>

#### **c. Rendering the Decision**

The Appeals Committee issues its decision by majority vote and, if the vote is tied, the Chairman of the Appeals Committee's weighted vote breaks the tie, just as is the practice

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<sup>369</sup> See Sahafi Abdullah, *alijan alaistinafiat alfasl fi almunazaeat walmukhalafat altamynyt fi alnizam alsaeudii* [Insurance Appeals Committee in the Saudi Law] 103 (2015) (unpublished master's degree Thesis, Naif Arab University for Security Sciences).

<sup>370</sup> *The Working Rules and Procedures*, supra note 222, art. 8.



in the Primary Committees.<sup>371</sup> The decisions of the Appeals Committee are final and cannot be appealed before any judicial or administrative body, which means this officially ends the insurance dispute.<sup>372</sup>

Moreover, the decision of the Appeals Committee must include the same official data that are included in the decision of the Primary Committees, such as the names of the litigants and members of the Committee.<sup>373</sup> Additionally, the decision of the Appeals Committee includes the enforcement details that make the decision final, along with the duty of implementation.<sup>374</sup>

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<sup>371</sup> *Id.* art. 9/3.

<sup>372</sup> *Id.*

<sup>373</sup> *Id.* art. 9/4.

<sup>374</sup> *Id.* art. 9/3. Article 168 of the Law of Civil Procedure stats that “The judgment decree which governs execution shall be sealed with the seal of the court after adding the following text: *All ministries and government agencies shall enforce this judgment by all applicable legal means, even if it requires the use of force by the police.*” *The Law of Civil Procedures, supra* note 219, art. 168.

## ○ **Conclusion**

The Saudi legislature created a mechanism independent of the judiciary to resolve insurance disputes arising between parties involved in the insurance contract. This mechanism is evidenced in the granting of jurisdiction over all insurance disputes to committees with judicial authority operating under the supervision of SAMA. These committees are composed of the General Secretariat, the Primary Committees located in Riyadh, Dammam, and Jeddah, and the Appeals Committee in Riyadh.

This chapter was divided into three sections discussing the work of the current Insurance Committees. The first section examined the concept of insurance litigation within the framework of civil litigation according to legal jurists who view litigation as the legal procedure to settle disputes before a judge. The second section addressed the organizational structure of the General Secretariat and the tasks entrusted to it in order to support the Insurance Committees. In addition, this section discussed the jurisdiction of the Primary Committees and the Appeals Committee, as well as the types of insurance litigation they hear. The third section discussed the practical procedures for resolving the insurance dispute, starting from the reception of the dispute by the General Secretariat, then offering a possible reconciliation, followed by transferring the dispute to the Insurance Committees and, finally, issuing a decision. This section also included the procedures followed, for reviewing the dispute, by the Primary and Appellate Committees as well as the procedures for issuing their verdicts, which cannot be appealed before any other judicial or administrative body.

### **III. Chapter Three: The Weaknesses of the Current System of Resolving Insurance Disputes in Saudi Arabia**

#### **○ Introduction**

The existence of the current system of resolving insurance disputes in Saudi Arabia, with its Primary Committees and the Appeals Committee, is a substantial step forward that contributed directly to the development of the insurance sector, particularly by solving the insurance dispute dilemma. The emergence of this current system has bolstered the confidence of individuals and institutions to involve themselves in insurance transactions. It has done so by providing a better mechanism to protect the rights of the parties involved and ensuring a solution to disputes arising from insurance contracts. This considerable change in the current system becomes clear when it is compared to the previous period, wherein the process of handling insurance disputes was less defined and more random. During that time period, insurance disputes were only resolved through the efforts of the Ministry of Commerce and mandatory arbitration, which were insufficient to provide confidence to the parties that their rights were protected under the insurance contract.

However, despite the substantial change that emerged in the current mechanism for protecting the parties' rights and resolving disputes since 2005, it has now become appropriate to examine other, more advanced steps in developing insurance dispute resolution in the Kingdom of Saudi Arabia. To this end, challenges and weaknesses in the current system of resolving insurance disputes will be identified first. Then, proposed ways of improving the mechanism of resolving insurance disputes will be examined in

order to have more appropriate mechanisms for the future developments of the Kingdom in light of the Vision 2030.

Therefore, this chapter analyzes the current system of resolving insurance disputes in the Kingdom of Saudi Arabia in order to highlight the most prominent challenges of the system. Specifically, this chapter explores five areas of challenge related to the effectiveness of the current procedures in dealing with insurance cases, especially with the supposed evolution of the industry in the future. The first challenge centers on the difficulty in access to the Insurance Dispute Committees due to the distance. The second one focuses on the insufficient number of these Committees to accommodate the increasing number of insurance cases in the Kingdom. The third challenge revolves around the independence of the Insurance Dispute Committees. The fourth is about the multiplicity of supervision in the insurance sector and the disputes that may arise from the insurance contract. The fifth challenge examines the existence itself of the quasi-judicial committees to hear insurance disputes, instead of a court.

## A- The Difficulty in Access to the Committees

As mentioned previously in Chapter Two, the current system of insurance dispute resolution includes three Primary Committees based in the three central cities of Saudi Arabia: Riyadh, Jeddah, and Dammam. Riyadh is in the center of Saudi Arabia, and it is the administrative and political capital of the Kingdom. Jeddah is on the west coast, and is an economic capital, containing a port for the import and export of commodities and non-oil goods. Dammam is on the eastern coast of Saudi Arabia, and it is an industrial city dominated by the petroleum industry. These three cities were selected for establishing the Primary Committees because of the high percentage of insured industries in these cities. This was a logical choice, based on the direct correlation between the number of insureds and the number of disputes that would be generated in each region.

However, as a practical matter, a number of insured individuals face a geographical difficulty in accessing one of the Primary Committees, which could be far in distance. This geographical challenge could exist despite the rules of procedure of the Insurance Committees (WRPIC), which allows insured individuals to lodge their case against insurers in front of the Committee located in their place of residence. The problem persists because there are a number of insured in remote areas where there is no Primary Committee. Thus, anyone with an insurance dispute in a remote area must travel long distances to access one of the three Primary Committees, in order to have their case heard. For example, the residents of Abha city<sup>375</sup> in southern Saudi Arabia need to travel more than 7 hours to reach Jeddah Committee, which is the closest Committee available. The

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<sup>375</sup> The city of Abha is the administrative capital of the Asir region, and it is one of the most important tourist destinations in Saudi Arabia because it has a mild climate and a different nature. Abha's population is about 1 million people.

same is true for insured in the northern regions of Saudi Arabia, who must drive a distance exceeding 8 hours to reach the Riyadh Committee.

The following map and table demonstrate the number of health insurance policyholders, as one of the insured categories, according to regions of the Kingdom in 2017, and the location of the Primary Committees which are authorized to hear the insurance disputes.

The Primary Committees, located in Riyadh, Jeddah, and Dammam:



Number of Insureds with Health Insurance in 2017:<sup>376</sup>

<b>The Region</b>	Riyadh Region	Makkah Region	Medina Region
<b>Number of Insured</b>	3416,669	4322,220	622,450
<b>The Region</b>	Qassim Region	Eastern Region	Asir Region
<b>Number of Insured</b>	374,271	2365,264	347,837
<b>The Region</b>	Tabuk Region	Hail Region	Northern Border Region
<b>Number of Insured</b>	180,256	2572,553	70,258
<b>The Region</b>	Bahah Region	Aljouf Region	Jazan Region
<b>Number of Insured</b>	71,859	85,942	139,610
<b>The Region</b>	Najran Region		
<b>Number of Insured</b>	98,572		

<b>Total Number of Insureds</b>	12,265,771
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<sup>376</sup> Fahad Al-Murki, 25 % min alsaediyyn mashmulin bialtaamin alsihiyi w 75 % muqymun [25% of Saudis are covered by health insurance and 75% are residents], ALRIYADH (July 30, 2018), <http://www.alriyadh.com/1695701>.

Upon reviewing the above map and chart, it is clear that each region of Saudi Arabia involves a different number of insured beneficiaries of health insurance, which is one of the most common types of insurance in the Kingdom. In 2016, health insurance accounts for 52% of gross written premiums.<sup>377</sup> The above figures also make it explicitly clear that the ability of people to access Insurance Dispute Committees is unequal due to geographical distance. People residing in far remote areas, or even some center areas, require more travel time over a greater distance than those living in the three main regions. The consequence of this obstacle has been a reason, in some cases, for parties of insurance disputes, whether they are the insured or the beneficiary, to vacate their claim. This is especially true when the claim is a modest amount and entails such an effort to pursue it. Because of the overwhelming effort to pursue it, the insured often judges it worthless to pursue.

Recognizing this obstacle, Habib Al-Enzi, a Saudi attorney interviewed for this dissertation, provided the following analysis. He believes that residents of the outlying regions face difficulties in reaching the three Committees because of the extensive distance. However, he also acknowledges that parties from remote areas, such as Jizan, Tabuk, and Abha, do come to the Riyadh and Jeddah Committees to present their case. As a result, he suggests that this calls for a review of the geographic distribution of the Committees, and the establishment of additional Committees, so as to take into account the difference between urban and remote areas. Al-Enzi also states that according to Article 10 of WRPIC,<sup>378</sup> the Insurance Dispute Committees possess the discretionary

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<sup>377</sup> See the *Saudi Insurance Market Report 2016*, *supra* note 201. SAMA 4.

<sup>378</sup> Article 10 of the Working Rules and the Procedures provides that “The Committees may settle the claims of any litigants (submitted before them) for compensation for all expenses in relation to the lawsuit, whether included in the same lawsuit or be in a separate lawsuit.”



authority to compensate for expenses related to lawsuits, which may include the cost of aviation, hotels, and car rentals. However, there is no specific mechanism governing the granting of this compensation, which means that compensation may not cover all expenses, even if they are proven legitimate.<sup>379</sup>

### **B- The Insufficient Number of Committees**

The Primary and Appellate Insurance Committees receive an increasing number of insurance cases year by year, which could create an accumulation of insurance cases before these Committees for handling all these cases in a timely manner. This would be more apparent with the future expansion of the insurance sector and the diversity of its activities. The current reports and statistics from the Insurance Dispute Committees indicate that the number of registered cases before the committees, as well as the rulings issued by them, have rapidly increased and continue to do so year by year. This is in line with the expansion of the sector itself, the increase in the number of insureds, and the increase in the awareness of insured individuals about their rights.<sup>380</sup> For instance, in

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<sup>379</sup> As for the lack of a specific mechanism governing compensation for expenses, an insurance expert states that each Primary Committee rules the compensation for expenses through its interpretation and its view. For instance, the Jeddah Committee had a determined SR 10,000 and then SR 5,000 as compensation for expenses related to the lawsuit, regardless of the actual expenses incurred by the plaintiff. As for the Riyadh Committee, an insurance expert states that compensation before this committee is divided into two types. The first is the compensation for costs related to the litigation, which the plaintiff must prove, such as lawyer's fees, car fare, airfare cost, etc. For this category, the Riyadh Committee exercises its discretionary authority to rule on the compensation, which does not necessarily cover all the paid costs. The second type is compensation for the supposed damage of the delay and procrastination of the insurance company in settlement of the claim. In this type of compensation, the plaintiff (insured) does not have to provide proof of the damage, which is contrary to the first type, because the Committee assumes that the damage occurred by procrastination. It is worth mentioning that the Riyadh Committee does not rule on both types of compensations at the same time.

<sup>380</sup> Several factors lead to the high number of insurance claims among the eligible beneficiaries. The insurance awareness of the insured and the ease of access to knowledge of their rights is an important factor in increasing the number of insurance claims. See Tom Baker, *Insuring Liability Risks*, 29 THE GENEVA PAPERS ON RISK & INSURANCE 128, 128-49 (2004).

2014, the three Primary Committees collectively issued 625 decisions,<sup>381</sup> whereas in, 2017, they issued around 1,200 decisions.<sup>382</sup> Because of the growing number of cases before the Primary Committees, the ability of these Committees to handle the increased caseload and their ability to cope with future cases, should both be examined.

In 2014, when the Appeals Committee was inaugurated, the this Committee received more than 1,200 cases, which needed to be reviewed.<sup>383</sup> In that same year, in addition to the cases before the Appeals Committee, the number of cases registered in the Primary Committees against insurance companies amounted to 1,000 cases.<sup>384</sup> Motor insurance cases, i.e. both liability insurance and comprehensive insurance, amounted to the highest number registered before the committees, totaling 880 cases. They represented 88% of registered cases.<sup>385</sup> Health insurance cases came in second, with 75 cases, representing about 7% of the number of registered cases.<sup>386</sup> However, in 2014, the number of decisions in the Primary Committees amounted to 625, divided among the three Committees as shown in the following table.<sup>387</sup>

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<sup>381</sup> See the *Annual Report for 2014*, GEN. SECRETARIAT OF THE COMMITTEES FOR RESOL. OF INS. DISP. & VIOLATIONS 24–25, <http://www.idc.gov.sa/en-us/Pages/ReportsAndStatistics.aspx>.

<sup>382</sup> See the *Annual Report for 2017*, *supra* note 3, GEN. SECRETARIAT OF THE COMMITTEES FOR RESOL. OF INS. DISP. & VIOLATIONS 30–31.

<sup>383</sup> See the *Annual Report for 2014*, *supra* note 381, at 25.

<sup>384</sup> *Id.* at 18.

<sup>385</sup> *Id.*

<sup>386</sup> *Id.* at 19.

<sup>387</sup> *Id.* at 24–25.

The Number of Rulings of the Primary Committees in 2014:

<b>The Committee</b>	<b>The Number of Rulings</b>
Riyadh Primary Committee	194 Rulings
Jeddah Primary Committee	247 Rulings
Dammam Primary Committee	184 Rulings

Contrastingly, in 2017, there was a sharp rise in the number of cases registered before the Insurance Dispute Committees, with a total of 1,700 cases.<sup>388</sup> Motor insurance cases accounted for the highest percentage, reaching 1484 cases, which is equivalent to about 87% of registered cases.<sup>389</sup> Health insurance cases reached 110 registered cases during this year, representing about 6.5% of registered cases.<sup>390</sup> However, considering the total number of judgments issued by the Committees in 2017, the Primary Committees issued about 1,200 judgments out of the 1,700 received,<sup>391</sup> while the Appeal Committee issued 270 rulings out of the 372 appeals received during the same period.<sup>392</sup>

The Number of Rulings of the Primary Committees in 2017:

<b>The Committee</b>	<b>The Number of Rulings</b>
Riyadh Primary Committee	460 Rulings
Jeddah Primary Committee	414 Rulings
Dammam Primary Committee	277 Rulings

<sup>388</sup> See the Annual Report for 2017, *supra* note 3, at 27.

<sup>389</sup> *Id.*

<sup>390</sup> *Id.*

<sup>391</sup> *Id.* at 30–31.

<sup>392</sup> *Id.* at 32.

The above data exhibit that the number of registered cases against insurance companies increased by 50% in 2017, compared to 2014. It also demonstrates that the total number of decisions issued by the Primary Committees increased by more than 80% in 2017. This sharp increase is an important indicator of the challenge faced by the Insurance Disputes Committees in reaching timely verdicts and keeping pace with the increasing number of insurance cases. For instance, the Primary Committees have heard approximately 1,200 out of 1,700 registered cases in 2017, which suggests that a number of insurance cases were backlogged during that year. Perhaps one of the main reasons that contributed to the existence of this problem, besides the inadequate number of committees, is that the members of the Insurance Dispute Committees do not work full-time.<sup>393</sup> Therefore, the Committees are unable to meet daily or on a routine basis.

Habib Al-Enzi, the attorney cited above, pointed out that the Insurance Dispute Committees face an increasing number of insurance cases year by year, outweighing their abilities to keep pace with this growth and to consider all cases and examine them in a timely fashion. Consequently, the Insurance Disputes Committees experience negative repercussions, both in the duration of the waiting period and in the number of decisions expected. With regard to the problem of waiting before a case is heard, parties often must wait from 4 to 6 months after registering a case in the General Secretariat. This period is considered lengthy, especially for insured individuals. Concerning the verdicts issued, the large number of cases received by the Insurance Committees, and the limited ability of these Committees to meet on a regular basis, may end up impacting the quality of the verdict. Sometimes, the Insurance Committees do not have enough time to examine the

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<sup>393</sup> *The Cooperative Insurance Companies Control Law, supra note 1, art. 20/1.*

case material, to inquire about the facts contained in the documents, and to review individual reports attached to each case. As a practical matter, the Insurance Committees rarely return the reports of the Accident Assessment Office or the Civil Defense or the loss adjusters, in order to correct an error or amend any information deficiencies related to the case. Sometimes, this could affect the quality of the outcome of the Committees.

In addition to the analysis of the cited lawyer, the insurance industry in Saudi Arabia is modern and developing. It has been growing gradually, ever since its foundation in Saudi Arabia. This growth is primarily centered in the generally increasing number of insurance policies and gross written premiums (GWP),<sup>394</sup> as shown in the following tables.

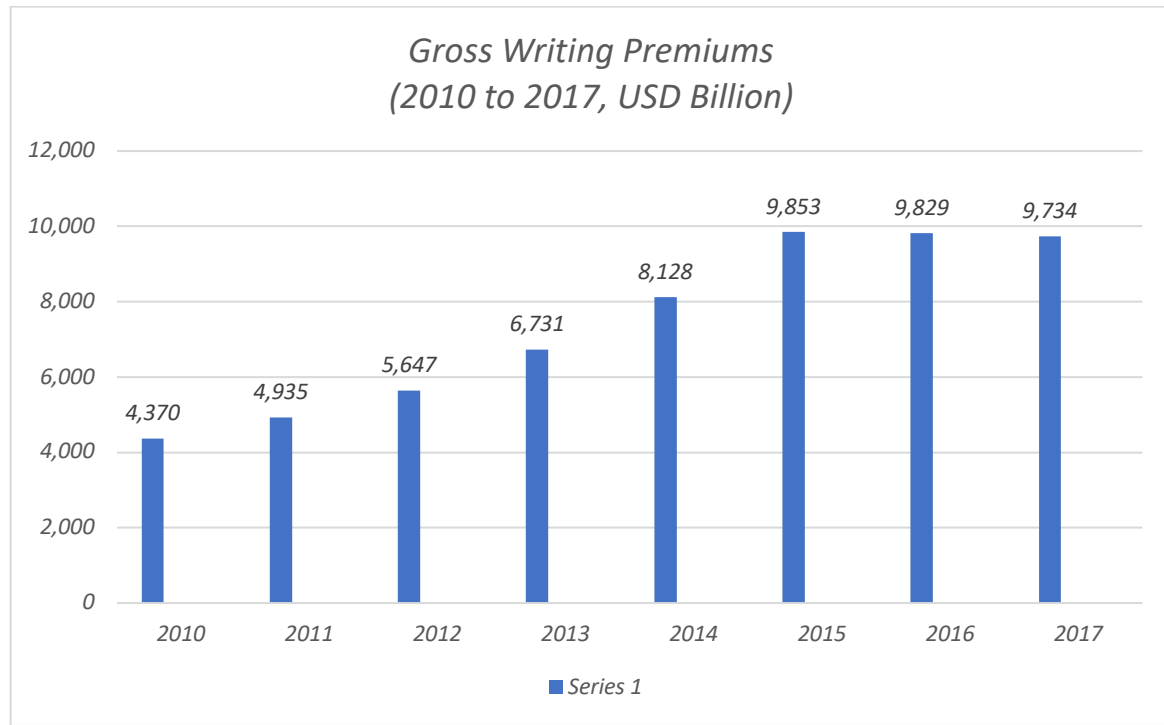
Total Number of Policies by Line of Business (2012-2016)<sup>395</sup>

Period	General Insurance	Health insurance	Grand Total
2012	3,977,758	1,951,146	6,527,651
2013	4,065,702	2,572,623	6,893,423
2014	3,935,613	2,158,236	6,338,936
2015	4,607,176	3,412,786	8,123,501
2016	4,293,428	2,916,663	7,308,067

<sup>394</sup> The GWP is the total premiums (direct and assumed) that will be collected by the insurer regardless of the payment plan before deductions for ceding commissions and reinsurance. See *Gross Written Premium (GWP)*, IRMI, <https://www.irmi.com/term/insurance-definitions/gross-written-premium>.

<sup>395</sup> SAMA, *Total Number of Policies by Line of Business*, THE GEN. AUTH. FOR STATISTICS (2017), <https://www.stats.gov.sa/en/5876>.

## The Gross Written Premiums (2010-2017)<sup>396</sup>



Therefore, there is a direct correlation between the growth of the insurance sector and the number of claims and insurance disputes filed. Because of this correlation, the cases accumulating in the insurance industry and the problem of an insufficient number of Committees to handle them could be more apparent in the future, especially since Saudi Arabia is working on the Saudi Vision 2030.<sup>397</sup>

This Vision 2030 is a comprehensive plan to reform the Kingdom's economic structure, and it aims at developing domestic industries and other public sectors.<sup>398</sup> This Vision is expected to support privatization programs and push the economy forward.<sup>399</sup>

<sup>396</sup> SAMA, *Gross Written Premiums by Line of Business*, THE GEN. AUTH. FOR STATISTICS (2017), <https://www.stats.gov.sa/en/5872>

<sup>397</sup> See generally Saudi Vision 2030, <https://vision2030.gov.sa/en>.

<sup>398</sup> *Id.*

<sup>399</sup> *Id.*

The Saudi Vision 2030 is, therefore, expected to lead to rapid and significant growth in the insurance sector. Abdulrahman Alkhatib, an insurance expert, predicts that the Saudi insurance sector will grow under Saudi Vision 2030 by 10% yearly, to reach more than \$16 billion USD by 2021.<sup>400</sup>

Turki Al-Zumaie, a Saudi Professor, indicates that the insurance sector in Saudi Arabia is one of its promising sectors, with a more effective role in the near future under Vision 2030's programs, which are aimed at developing the Saudi economy and diversifying sources of income. One of the most important programs under this initiative is the privatization of many public institutions in order to improve their efficiency and performance. Privatization will inevitably require institutions to provide health insurance for their employees. Therefore, this will contribute greatly to an increase in the number of health insurance beneficiaries in the Kingdom. Vision 2030 also works to support local industries and establish mega projects, such as the Red Sea Project<sup>401</sup> and Neom Project,<sup>402</sup> which will increase the requirements for general insurance activities, such as property/fire insurance and engineering insurance. Consequently, all this growth will be reflected in the number of insurance claims and disputes.

In summary, currently, the Insurance Disputes Committees receive increased numbers of insurance cases that may outweigh their ability to adjudicate them and render timely verdicts. As a result, Insurance Disputes Committees face an accumulation of cases each

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<sup>400</sup> Abdulrahman Alkhatib, *Taht Almujihr .. Qitae Altaamin Fi Almamlakat 2030* [Under the Microscope, Insurance Sector In The Kingdom 2030] MAAAL, 3, 28 (2018), <https://www.maaal.com/archives/20180328/105314>.

<sup>401</sup> The Red Sea Project (TSP) is one of the most ambitious luxury tourism development in the world. It is a project to develop more than 90 pristine islands in the west of the Kingdom to attract tourists. *See generally* THE RED SEA DEVELOPMENT COMPANY, <https://www.theredsea.sa/en/project>.

<sup>402</sup> Neom is a project that will be designed in the north of Saudi Arabia to be an independent economic zone, governed by its own regulations and laws, and it aims at driving economic growth throughout the region. *See generally* NEOM, <https://www.neom.com>.

year. This leads generally to a burdensome waiting period; from the time the case is presented to the actual hearing. Sometimes, it could even influence the quality of decisions rendered. This challenge could be more apparent in the future, due to the growth of the sector, the increasing number of insurance holders, and an increase in awareness by the insured of their rights, which would result in an increase in the number of insurance cases.

### **C- The Independence of the Insurance Dispute Committees**

As presented in the previous chapter, the Primary and Appellate Insurance Committees are the only bodies authorized to officially hear insurance disputes in Saudi Arabia. They are also authorized to hear insurance violation cases submitted by SAMA against insurance or reinsurance companies or insurance-related service providers when they commit a violation against the rules governing the insurance sector. However, a concern may appear to some regarding the independence of the Insurance Dispute Committees in exercising their jurisdiction over cases of insurance violations or disputes.<sup>403</sup> This may occur because of an insufficient separation between the prosecutors of SAMA and the work of the Committees. The same may be true because of a lack of complete separation between these same Committees and the General Secretariat.

With regard to the cases of insurance violations, the independence of the Insurance Dispute Committees is of concern since the entire proceedings of such lawsuits are under the discretion of SAMA. As mentioned earlier, the Insurance Dispute Committees have jurisdiction over the cases of insurance violations based on Article 20 of CICCL.<sup>404</sup> This

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<sup>403</sup> This point does not criticize the neutrality of the Committees nor the justice of their rulings, but it analyzes the extent of the Committees' independence in carrying out their work from SAMA as an executive body.

<sup>404</sup> *The Cooperative Insurance Companies Control Law*, *supra* note 1, art. 20/1.



type of litigation is brought against insurance, reinsurance companies, or insurance-related service providers due to an alleged violation of the rules governing the insurance sector.<sup>405</sup> These rules include CICCL, its implementing regulations, and SAMA's instructions regarding the regulation of the sector. Litigation of insurance violations is filed by SAMA as the supervising authority of the general insurance sector. In such hearings, SAMA is represented, before the Committees, by prosecutors who are SAMA employees nominated by a decision of SAMA's Governor.<sup>406</sup>

Therefore, a concern might arise to some regarding the independence of the Insurance Dispute Committees in such cases because a conflict might appear between the role of these Committees and the role of the prosecutors, who are appointed by the Governor of SAMA. This concern might arise because both the prosecutorial authority and the judicial authority granted by the Committees are practiced within the framework of one executive body, i.e. SAMA. The Insurance Dispute Committees operate indirectly under the management of SAMA. However, they directly coordinate with the General Secretariat, which is governed by SAMA, to carry out their duties in the consideration of cases and issuing judgments. This makes it difficult to view the Insurance Disputes Committees as completely independent of SAMA or even outside its general domain. Therefore, SAMA appears to perform two roles that, in principle, should be functionally separated, so as to ensure the principle of independence in issuing verdicts against insurance institutions. The two roles that should be separated are those of prosecution and judgment. This would lead one to say that the SAMA department concerned with supervising the insurance

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<sup>405</sup> *Id.* art. 20/1(C).

<sup>406</sup> *The Working Rules and Procedures, supra* note 222, art. 15.

sector, and not the Insurance Committees, should be the one who completely undertakes the task of dealing with violations committed by insurance companies.

With regards to cases of insurance disputes arising from an insurance contract, the independence of the Insurance Disputes Committees from the Secretariat in dealing with this type of litigation is of concern too. This could appear by comparing the Secretariat's tasks determined by WRPIC with real-life practices.

The General Secretariat was established for the primary purpose of playing the role of technical and administrative support for the Insurance Disputes Committees. With this purpose, the General Secretariat receives insurance cases and studies them. It also provides a legal and technical opinion in each case, and, if possible, seeks to end insurance disputes by offering reconciliation options to the parties involved.<sup>407</sup>

However, besides these administrative and technical functions carried out by the General Secretariat, the Secretariat typically participates in one an important aspect of the Committees' work which relates to rendering judgments. As a practical matter, the Secretariat prepares and records the grounds for decisions issued by the Primary and the Appeals Committees.<sup>408</sup> The Secretariat also records the reasoning for these decisions.<sup>409</sup> This could be perceived to indicate that the Secretariat is engaged in some of the procedure that falls within the core of the Committees' tasks.

Therefore, the problem lies in the fact that this function of the Secretariat is considered a judicial act. It is a fundamental principle in the judiciary that the judge provides the reasoning underlying judgments since such reasoning is considered part of the judgment

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<sup>407</sup> *Id.* art. 13.

<sup>408</sup> *See* Al-Ghamdi, *supra* note 173, at 87.

<sup>409</sup> *Id.*

as issued by the court. Article 163 of the Law of Civil Procedures states that “Upon closing of arguments and rendering of judgment in the case, the judgment shall be entered into the record preceded by the grounds and reasoning on which it was based, and signed by the judge or judges who participated in consideration of the case.”<sup>410</sup> Therefore, the Secretariat’s drafting of the grounds of the judgment, rather than the Insurance Dispute Committees doing it, seems contrary to what should be done. This is because the recording of judgment and the reasons for said judgment are part of the decision issued by the Committees.

Reflecting on the above, some may say that there is a lack of complete independence of the Committees from SAMA or the Secretariat in dealing with cases of insurance violations and insurance disputes. Sometimes, this situation may result in the parties of insurance litigation, especially the insurer, feeling that the rulings of the Committees have been influenced by the views of SAMA or the Secretariat.

#### **D- Duplication in Supervision**

The supervision of the insurance sector in the Kingdom of Saudi Arabia is divided between two separate bodies: SAMA and the Council of Cooperative Health Insurance (CCHI). Under Article 2 of CICCL, issued in 2003, SAMA oversees the general insurance sector.<sup>411</sup> This includes vehicle insurance, property/fire insurance, engineering insurance, and other types of insurance that are not health insurance. For the general insurance sector, SAMA receives and reviews applications for the establishment of insurance and reinsurance companies.<sup>412</sup> It also issues licenses to practice self-

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<sup>410</sup> *The Law of Civil Procedures*, *supra* note 219, art. 163.

<sup>411</sup> *The Cooperative Insurance Companies Control Law*, *supra* note 1, art. 2.

<sup>412</sup> *Id.*

employment professions relating to insurance activity, and it oversees providing employment opportunities to Saudi nationals in the sector.<sup>413</sup> SAMA issues rules and instructions for the protection of the rights of the insured and ensures fairness of prices of insurance policies.<sup>414</sup> It reviews the criteria used by insurance companies as the basis for determining their pricing.<sup>415</sup> Under the authority that SAMA has, it also monitors violations committed by the practitioners of insurance activity and deals with the complaints<sup>416</sup> filed by customers of insurance companies based on the Insurance Consumer Protection Principles, issued in 2014.<sup>417</sup>

On the other hand, the Council of Cooperative Health Insurance (CCHI), which was established under Article 4 of the Cooperative Health Insurance Law (CHIL) issued in 1999, is responsible for overseeing health insurance activity in the Kingdom of Saudi Arabia.<sup>418</sup> CCHI enacts regulations and issues instructions for the implementation of CHIL, which aims to provide and organize health care for beneficiaries, who are employees of the private sector and their families. CCHI rehabilitates insurance companies to work in the field of health insurance and determines the necessary requirements to do so.<sup>419</sup> The supervisory authority of CCHI extends to dealing with

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<sup>413</sup> Saudi Arabian Monetary Authority, *the Implementing Regulation of the Cooperative Insurance Companies Control Law*, *supra* note 168, art.3.

<sup>414</sup> *The Cooperative Insurance Companies Control Law*, *supra* note 1, art. 2.

<sup>415</sup> *Id.*

<sup>416</sup> The rules and regulations of insurance distinguish three important terminologies namely: the complaint, the claim, and the dispute.

- The complaint is “any opposition or grievance the insured or beneficiary submits to the company due to any breach to the policy terms and/or the related regulations and instructions.”
- The claim is “the application the insured or the beneficiary submits to the company asking payment of the compensation amount as per the policy terms.”
- The dispute is “any difference between the insurer and the insured or beneficiary which settlement requires obligating one of the parties to the dispute or difference with the certain obligation/s.” *See the Insurance Consumer Protection Principles*, *supra* note 167, at. 2.

<sup>417</sup> *Id.*

<sup>418</sup> *The Cooperative Health Insurance Law*, *supra* note 316, art. 5.

<sup>419</sup> *Id.*

health facilities that provide health insurance services and to defining their accreditation criteria.<sup>420</sup> It also draws up technical and legal standards to protect the rights of the insured and determine the process of receiving their complaints. Both SAMA and CCHI exercise their authority in complete independence of each other. One is not a part of the other and their administration is not shared.

This current duplication of supervision in the insurance sector is a challenge to the industry. Sometimes, it may cause ambiguity regarding certain aspects of supervision. Also, it could lead to conflict in some tasks of the Insurance Disputes Committees in SAMA and the Violations Committee of the Health Insurance Law in CCHI.

With regard to the possible ambiguity aforementioned, most insurance companies in the Kingdom of Saudi Arabia provide both health insurance and general insurance. These insurance companies are governed by the rules and instructions issued by SAMA and CCHI according to the type of insurance being provided. This double supervision could cause confusion for insurance companies and the other entities operating in the insurance sector, especially because of the insufficient coordination between SAMA and CCHI themselves. For example, insurance companies suffer from paying double the fees for registration, rehabilitation, and supervision.<sup>421</sup> SAMA requires insurance companies to pay 0.5 percent of total annual premiums, including health insurance premiums, as a supervision fee.<sup>422</sup> On the other hand, CCHI imposes on insurance companies 1% of the total medical insurance premiums also as a supervision fee.<sup>423</sup>

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<sup>420</sup> *Id.*

<sup>421</sup> Mohammed Alsaeed, *Aitihat <Aldaman Alsahey> Biwujud Aizdiwajia .. Tuthir Jdlaan Fi 'Awsat Altaamin* [*health insurance*] with duality .. arouses controversy in the insurance community], ALRIYADH (May 25, 2005), <http://www.alriyadh.com/67128>.

<sup>422</sup> *Id.*

<sup>423</sup> *Id.*

Moreover, this duplication could lead to uncertainty among some insured individuals who are trying to decide who is responsible for receiving their complaints against insurance companies or service providers. Individuals with optional health insurance outside of the private sector often face a refusal from CCHI to receive their complaint on the grounds that CCHI is only responsible for enforcing the implementation of the required health insurance for private sector workers and their families. As a practical matter, this results in individuals vacating their complaints or resorting to SAMA, even though SAMA may not be familiar with all the details governing the health insurance sector and service providers.

With regard to the impact on insurance litigation, this duplication is a reason for the existence of discrepancies between some rules governing the functions of the Violations Committee of the Health Insurance Law in CCHI, and the Insurance Dispute Committees within SAMA. In examining these rules, it appears that there is an internal conflict in the drafting of the rules of the two Committees as a result of duplication and insufficient coordination between CCHI and SAMA, which may affect both insurance activity and the clear awareness of individuals involved.

As discussed in the previous chapter, under Article 20 of CICCL, the Insurance Dispute Committees in SAMA is responsible for considering all insurance disputes arising from the insurance contract. They are also responsible for hearing cases of violations committed within the framework of the general insurance activities supervised by SAMA. Contrarily, the Violations Committee of the Health Insurance Law in CCHI is responsible, under Article 14 of CHIL, to consider only the cases of violations which

are committed within the framework of the health insurance activity supervised by CCHI.<sup>424</sup>

However, the Unified Health Insurance Policy issued by CHIL stipulates "Any disagreement or dispute arising out of or relating to the policy shall be settled in accordance with Article (14) of the Cooperative Health Insurance Law (CHIL)."<sup>425</sup> This indicates that the Violations Committee of the Health Insurance Law in CCHI is responsible for hearing any disputes arising from the unified Health Insurance Policy. This is contrary to Article 14 of CHIL, which made this committee competent only for violations without disputes. This also contradicts Article 20 of CICCL, which indicates that the Insurance Dispute Committees within SAMA are competent in all disputes arising from the insurance contract, including health insurance disputes.

This situation of conflict may create confusion regarding the jurisdiction between the Insurance Dispute Committees and the Violations Committee of the Health Insurance Law within CCHI. It may also confuse individuals involved in health insurance contracts, especially non-specialists. Therefore, this duplication of supervision within the insurance sector should be reformed, as it may continue to cause unnecessary conflict and ambiguity.

#### **E- The Existence of a Committee Instead of a Court**

As presented in the previous chapter, the current system of resolving insurance disputes is presently only the prerogative of the Insurance Disputes Committees, which play a quasi-judicial role, outside of judicial authority, in dealing with all insurance cases

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<sup>424</sup> *The Cooperative Health Insurance Law, supra* note 316, art. 14.

<sup>425</sup> *The Unified Health Insurance Policy*, Ministerial Decision No. R/1/18/3, 12/05/1439H (2018) §§ 18, at 22.

in the Kingdom of Saudi Arabia. Because of this situation, there is a criticism, not regarding the procedures of the current system of insurance dispute resolution but of the existence itself of a quasi-judicial committee over insurance disputes outside of the judiciary.

Despite the existence of the quasi-judicial committees which have a positive effect by reducing the burden on the courts, some legal jurists criticize the existence of the quasi-judicial committees. This criticism extends to all the quasi-judicial committees in the Kingdom, including Insurance Committees, and this criticism generally focuses on two points.<sup>426</sup>

#### 1. The Existence of Quasi-Judicial Committees Rather Than Courts is

##### Inconsistent with the Principle of The Unity of The Judiciary

As addressed in Chapter One of this dissertation, the judiciary in Saudi Arabia is represented by a dual judicial system, the Board of Grievances and the Sharia Courts. Under Saudi laws, it is assumed that these two courts cover all types of disputes. The Board of Grievances is concerned with disputes which involve the government or government bodies, and the Sharia Courts are concerned with disputes arising between individuals themselves or between individuals and private legal persons. Article 49 of the Basic Law of Governance provides that, "Subject to the provisions of Article 53 herein, the courts shall have jurisdiction to adjudicate all disputes and crimes."<sup>427</sup> Article 53 of this law states that, "The Law shall set forth the structure and jurisdiction of the Board of

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<sup>426</sup> These two points are among the points presented by legal jurists in Saudi Arabia regarding the existence of the quasi-judicial committees in their current status. The reason for focusing on these two points is because they are evident in the existence of the Insurance Disputes Committees.

<sup>427</sup> *The Basic Law of Governance, supra* note 6, art. 49.



Grievances.”<sup>428</sup> These two articles of the Basic Law of Saudi Arabia express the unity of the judicial authority, represented by the Board of Grievances and the Sharia Courts. It also means that these two types of courts have the final word over all disputes and crimes in Saudi Arabia.

However, in present practice, the existence of quasi-judicial committees in general, and in particular, Insurance Disputes Committees, appears inconsistent with the principle of the unity of the judiciary, which is to be exercised by the Sharia courts and the Board of Grievances.<sup>429</sup> The Insurance Disputes Committees presently exercise judicial authority over insurance disputes outside of the judiciary and within the executive branch, SAMA. This criticism would be more evident if one realizes the impossibility of appealing decisions or judgments issued by these committees before any judicial body, other than the Appeals Committee.

## 2. The Quasi-Judicial Committees are Composed of Members not Belonging to the Judiciary and not Enjoying the Judicial Guarantees

Among the criticisms by legal jurists concerning the existence of quasi-judicial committees in the Kingdom of Saudi Arabia, is the idea that the Committees are composed of administrative members who do not belong to the judicial branch, but they exercise judicial authority in the final settlement of disputes within their jurisdiction. Also, contrary to what is practiced in the judiciary, the members of the quasi-judicial committees do not enjoy the independence of the judiciary and its guarantees which protects members’ impartiality. Judges in the Sharia Courts and the Board of Grievances enjoy guarantees that prevent them from being removed from office without a defined

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<sup>428</sup> *Id.* art. 53.

<sup>429</sup> See ALJARBOU, *supra* note 114, at 124.

legal process or from being influenced in issuing their verdict.<sup>430</sup> There is no authority over them other than the provisions of Sharia and the enacted laws of the Kingdom. Article 46 of the Basic Law of Governance provides that, “The Judiciary is an independent authority. The decisions of judges shall not be subject to any authority other than the authority of the Islamic Sharia.”<sup>431</sup> Also, the first article of the Law of the Judiciary states that “Judges are independent and, in the administration of justice, they shall be subject to no authority other than the provisions of Sharia and laws in force. No one may interfere with the judiciary.”<sup>432</sup>

Moreover, members of the quasi-judicial committees, especially the primary ones, are typically not appointed by Royal Order, which is the procedure through which judges are appointed in Saudi courts. Rather, such members are usually appointed by a decision of the Council of Ministers, based on the recommendation of the competent minister. The competent minister, under whom a committee works, submits to the Council of Ministers his proposed names for the members of the committee which is to be formed.

In particular, members of the Insurance Disputes Committees, which is one of the quasi-judicial committees in the kingdom, do not belong to the judiciary and do not enjoy the judicial guarantees. Insurance Disputes Committees' members are legal or academic professionals who are familiar with the field of insurance law, but they are not required to hold the qualifications of judges in the Sharia Courts or the Board of Grievances. Members of the Primary Committees are appointed by a decision of the Council of

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<sup>430</sup> *The Law of the Judiciary, supra* note 91, art. 46.

<sup>431</sup> *The Basic Law of Governance, supra* note 6, art. 47.

<sup>432</sup> *The Law of the Judiciary, supra* note 91, art. 1.

Ministers. However, only members of the Appeals Committee are appointed by Royal Order.

Consequently, this current situation of granting jurisdiction over insurance disputes to quasi-judicial committees whose members do not enjoy the guarantees of judges and exercise their functions within the framework of the executive branch, is criticized by legal jurists. Therefore, it is necessary to examine the feasibility and possibility of achieving the proposal of transfer jurisdiction over insurance disputes from the quasi-judicial committees to the Sharia Courts.

## ○ Conclusion

The current system of resolving insurance disputes, which consists of the Primary Committees and the Appeals Committee, and the procedures followed before them, is a significant step forward for the insurance sector for Saudi Arabia. It was accomplished by defining a clear mechanism for resolving any dispute that may arise from the insurance contract between insurance and reinsurance companies or between insurance companies and the insured. This substantial change, implemented in 2005, has shaped the current system. The magnitude of this change and its impacts becomes clear when it is compared to the previous period, where the mechanism of resolving insurance disputes was relatively more random and less clear. However, despite the achievements of this current system of resolving insurance disputes, it faces some challenges worthy of attention.

Within this current system, there is a difficulty in accessing the Insurance Dispute Committees. The Primary Committees are centered only in three main cities: Riyadh, Jeddah, and Dammam. This challenge is mostly experienced by insured residents of remote cities in the north or south of the Kingdom, because they are required to travel long distances to present their case before one of the Primary Committees. Thus, this sometimes leads some insured individuals to vacate their claim, because of the difficulties encountered in accessing the Committees.

Moreover, this current system faces another challenge, namely the small number of Insurance Disputes Committees not able to keep pace with the increasing number of insurance cases in Saudi Arabia. This causes an accumulation of cases that impede a timely verdict by the Committees. In some cases, it could also influence the quality of judgments issued by the Insurance Dispute Committees.

Furthermore, there is a challenge concerning the independence of the Insurance Disputes Committees due to their work within the framework of SAMA which is an executive body. Another challenge that the current system faces is the multiplicity of the supervision of the insurance sector. This causes discrepancies among some of the rules governing the functions of the Violations Committee of the Health Insurance Law in CCHI and the Insurance Dispute Committees in SAMA, which, in turn, confuses some insured individuals who are trying to decide who is responsible for receiving their complaints.

Moreover, the criticism by legal jurists of the existence itself of quasi-judicial committees, such as the Insurance Committees, is it's a challenge for the current system based on two reasons. Firstly, the existence of a quasi-judicial committee, rather than courts, is inconsistent with the principle of the unity of the judiciary, which is to exclusively be exercised by the Sharia courts and the Board of Grievances. Secondly, the members of these quasi-judicial committees do not enjoy the independence of the judiciary and its guarantees that protect their impartiality.

Having examined the value of the current system of resolving insurance disputes, as well as existing challenges, it is now possible to examine some of the proposed solutions to improve the current system in order to keep pace with the expected growth of the insurance sector in the future.

## **IV. Chapter Four: The Proposed Solutions to Improve the Current System for Resolving Insurance Disputes**

### **○ Introduction**

Despite the remarkable progress in the current system for resolving insurance disputes since 2005, the challenges described in the previous chapter have yet to be addressed. As examined in the previous chapter, these challenges may cause negative implications for the effectiveness of the current system, and this could be more apparent in the future. Therefore, several steps and measures should be taken to address these matters and to further develop the mechanism for resolving insurance disputes in the Kingdom of Saudi Arabia. These steps and measures should ultimately aim to push this mechanism forward as an essential supporter of the development of the insurance industry in order to improve access to dispute resolution and increase the confidence of the parties of the insurance contract, especially the insured individuals.

These steps can include restructuring jurisdiction over insurance disputes, granting this jurisdiction to Sharia courts, as well as qualifying judges to be familiar with the technical and legal details of insurance contracts so they may adjudicate disputes arising from such contracts. These steps can also include the establishment of a unified insurance authority to assume all supervisory functions over the insurance sector, which should include the development of reconciliation efforts to end insurance disputes besides the judiciary.

The achievement of these steps would result in substantial changes to the mechanism for resolving insurance disputes in the Kingdom of Saudi Arabia, as well as in facilitating litigation procedures. These steps would also contribute to the activation of constitutional principles adopted by the Saudi laws, such as the guarantee of a right to litigation for all.

This chapter focuses on examining the feasibility and possibility of these proposed steps which aim to improve the mechanism for resolving insurance disputes and also for reducing the existing challenges. In doing so, the chapter consists of two main sections. The first section examines the proposal of transferring the jurisdiction over insurance disputes from the quasi-judicial committees to the Sharia courts, taking into consideration a proposed model and the obstacles that may be encountered. The second section examines the proposal of establishing a unified insurance authority, highlighting the advantages and challenges of this step.

## **A. Section One: Transfer the Jurisdiction from Quasi-Judicial Committees to Sharia Courts**

The transfer of jurisdiction over insurance disputes from current quasi-judicial committees to Sharia courts is one of the most substantial steps that should be examined to improve a number of challenges related to the existing structure of insurance litigation in the Kingdom of Saudi Arabia. This step contributes to the realization of the constitutional principles stipulated in Saudi laws that ensure the judiciary's independence, represented by granting Sharia courts and the Board of Grievances jurisdiction over all civil, administrative, and criminal disputes in the Kingdom of Saudi Arabia. Accordingly, Article 49 of the Basic Law of Governance provides that “[s]ubject to the provisions of Article 53 herein, the courts shall have jurisdiction to adjudicate all disputes and crimes.”<sup>433</sup>

This is one of the constitutional principles underlying the increasing demand to address the status of quasi-judicial committees in the Kingdom. This refinement includes not only insurance committees, but also a number of quasi-judicial committees working within the executive bodies. However, the majority of these committees need to be studied and examined carefully before transferring them to the relevant judicial authority.

In general, the transfer of the quasi-judicial committees achieves several benefits, including the following:

1. Achieving the principle of the judicial authority's unity.

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<sup>433</sup> *The Basic Law of Governance, supra* note 6, art. 49.



2. Alleviating conflicts of jurisdictions between quasi-judicial committees themselves or between these committees and the Saudi courts.<sup>434</sup>

3. Addressing the issue of non-recognition of some of the committee's decisions, as well as their implementation in foreign countries that do not consider these committees' judicial decisions as judgments.

## **1. Determining the Proposal of Transfer the Jurisdiction over Insurance**

### **Disputes to Sharia Courts**

Unlike most legal systems in the world, the Saudi legal system grants jurisdiction over insurance disputes to quasi-judicial committees, which operate outside the firm structure of the judiciary.<sup>435</sup> The other legal systems do not identify a specialized administrative body for the exclusive resolution of insurance disputes, but rather, based on each country, it entrusts this jurisdiction to the judiciary of civil or commercial courts.<sup>436</sup> Countries such as Egypt, Jordan, and the United Arab Emirates provide exclusive jurisdiction over insurance disputes to the courts, but have simultaneously created specialized committees that help settle insurance disputes through a less formal process than the courts do.<sup>437</sup>

The proposal of transferring the jurisdiction over insurance disputes in the Kingdom of Saudi Arabia, from the current quasi-judicial committees to Sharia Courts, seeks to grant to the Sharia Courts the exclusive judicial jurisdiction over such disputes. In other

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<sup>434</sup> The multiplicity of quasi-judicial committees usually causes dispersion among individuals, institutions, and government agencies in determining the competent authority to receive their dispute. Also, it sometimes causes a conflict of jurisdiction between the committees and courts.

<sup>435</sup> See Almuataq, *supra* note 171, at 44.

<sup>436</sup> *Id.*

<sup>437</sup> *Law No. 10 of 1981*, the Executive Regulation of Supervision and Control of Insurance Law in Egypt, FRA, [http://www.fra.gov.eg/jtags/efsa\\_en/Grievances\\_eisa\\_en.jsp](http://www.fra.gov.eg/jtags/efsa_en/Grievances_eisa_en.jsp). See also Al-Mehadeen, Wael Salah Salameh, *Insurance Disputes Resolutions Methods in the Jordanian Legislation*, at 15. Al al-Bayt University (2016).

words, this means that the Sharia Courts would possess the authority to apply formal judicial procedures to insurance disputes without the interference of other non-judicial bodies, such as the current Committees. This would grant to parties within an insurance dispute the option of resorting to the judiciary, along with the possibility of already existing alternative dispute resolution methods. Resorting to these alternative methods could be used whether these methods mandatory or optional for the parties in settling their dispute prior to the court's resolution. This would have several positive impacts on the matter of the accumulation of cases, as well as the difficulty in access to the Committees, as will be examined later.

However, this change in the transfer of jurisdiction over insurance disputes to the Sharia Courts is a major project, and a proposed plan in long-term that would require significant financial and human resources. Specifically, it may require an increase in the number of judges, as well as the number of administrative staff of the courts. This change may also call for the amendment of some rules and laws concerning pleading requirements before Sharia Courts. Further, this proposal may also entail resorting to the expertise of members of the current Insurance Dispute Committees and legal advisors in the General Secretariat of these committees, in order to support Sharia Courts in managing this type of jurisdiction, as was the case with labor disputes that have recently been granted to Sharia Courts.<sup>438</sup>

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<sup>438</sup> Labor disputes were considered by quasi-judicial committees similar to Insurance Committees called Labor Committees. These Labor Committees had exclusive jurisdiction over all labor disputes in Saudi Arabia. However, in 2018, the jurisdiction of these committees to hear labor disputes was transferred to the Sharia Courts represented by the Labor Courts. In the following subsection, I will examine this experience as a model that can be used to achieve the transfer of jurisdiction over insurance disputes to Sharia Courts.

As a result, some insurance experts argue that relatively less difficult measures can be taken to improve the current mechanism for resolving insurance disputes, before granting this extensive and exclusive jurisdiction to Sharia courts. For example, Al-Enzi<sup>439</sup> pointed out that although it is important to transfer jurisdiction to Sharia courts, other steps can be taken in the short term to address the problem of case accumulation before current committees. Al-Enzi pointed out that it is possible to establish additional primary committees in Riyadh and Jeddah, so that each of these cities has two Primary Committees instead of one. He suggests that this change would contribute in alleviating the accumulation of issues before the current committees, especially the Riyadh and Jeddah Committees, which receive a higher number of cases. He further added that the establishment of such additional committees is achievable under Article 20 of CICCL, which did not specify a particular number of committees, rather authorizing the establishment of more than one committee by a decision of the Council of Ministers.<sup>440</sup>

Despite the effectiveness of this proposed solution, which calls for the expansion of the establishment of additional committees, it addresses limited challenges within the current system of resolving insurance disputes. It would only slightly mitigate the matter of case accumulation. In contrast, although transferring the jurisdiction to the Sharia Courts requires a longer time to achieve, it would have positive effects beyond reducing the backlog of cases before the Insurance Committees, by addressing the fundamental challenges underlying the current system of resolving insurance disputes in Saudi Arabia.

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<sup>439</sup> A Saudi attorney interviewed for this dissertation in the Summer of 2018.

<sup>440</sup> Article 20 of CICCL provides that “One (or more) Preliminary Committee(s) shall be formed based on a resolution by the Council of Ministers and shall be composed of not less than three specialized members...” *The Cooperative Insurance Companies Control Law, supra* note 1, art. 20.

**a. How the Transfer of the Jurisdiction would Positively Impact the Current Mechanism of Resolving Insurance Disputes?**

The transfer of jurisdiction over insurance disputes to the Sharia Courts, rather than existing quasi-judicial committees, would have several positive impacts on the Saudi legal system, both in general and on the insurance dispute environment in Saudi Arabia in particular. These positive effects include providing more accessible opportunities for individuals to the judicial procedures of the courts, reducing the accumulation of insurance cases, and supporting the principle of judicial unity stipulated in Saudi laws.

**i. Facilitate Access to the Judicial Procedures**

As presented in the previous chapter, one of the challenges faced by the current system of resolving insurance disputes is the difficulty of access to Insurance Committees for insured individuals living in remote areas. Insured individuals in some northern or southern cities need to travel long distances to present their case. This is because the Insurance Committees, which possess exclusive jurisdiction over insurance disputes, exist only in three major cities: Riyadh, Jeddah, and Dammam.

Hence, transferring the jurisdiction over insurance disputes to the Sharia Courts would help insured individuals gain better access to the judicial procedures of the courts, and it would allow them to exercise their option to litigate before Saudi courts. Importantly, this option is one of the principles stipulated in the Saudi laws, as stated in Article 47 of the Basic Law of Governance, which states that "[t]he right of litigation shall be guaranteed equally for both citizens and residents in the Kingdom."<sup>441</sup> Moreover, granting Sharia Courts this jurisdiction would facilitate the exercising of this right by many individuals.

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<sup>441</sup> *The Basic Law of Governance, supra* note 6, art. 47.

This is because Sharia Courts are found in most cities of the Kingdom, with more than 250 First Instance Courts within all regions of the Kingdom and more than 1200 judges present in these courts. As a result, insured individuals living in remote areas would not have to travel long distances to present their case, as they need to do with current quasi-judicial committees.

**ii. Reduce Case Accumulation**

Moving towards transferring insurance disputes to the Sharia Courts would positively address the matter of case accumulation currently faced by the Insurance Committees. Insurance cases received by the three Primary Committees are increasing steadily as the insurance sector grows and the number of insured people increases year by year. For instance, in 2014, the Insurance Committees received 1,200 cases; in 2017, this number rose to 1,700. This indicates a nearly 50% increase in the number of cases registered before the Insurance Committees, a growth which may outweigh the absorptive capacity of the three Committees, and perhaps, in some cases, resulting in difficulty reaching a timely decision.

Therefore, transferring jurisdiction over insurance disputes to Sharia Courts would help to reduce the accumulation of cases and to reach a timelier verdict for two reasons. First, the number of Sharia Courts currently outnumber the existing Insurance Committees, making Sharia Courts more capable of coping with the growing number of insurance cases. Secondly, the geographical distribution of Sharia Courts would allow the territorial jurisdiction of these courts to play an intrinsic role in redistributing insurance cases according to the residence of litigants, and ultimately end the concentration of cases in only the main cities, as is the case with the current Insurance Committees.

As a result, litigants would find themselves equipped with a smother mechanism to resolve their insurance disputes within a reasonable timeline.

**iii. Support the Principle of Judicial Unity**

Transferring the jurisdiction over insurance disputes to the Sharia Courts would also support the principle of the judiciary's unity referred to in Article 49 of The Basic Law of Governance.<sup>442</sup> This principle states that the courts should be independent in the exercise of their jurisdiction over all disputes, without competition from any entity outside the judiciary.

It then follows that the existence of Insurance Committees in their present form seems inconsistent with this principle. This is because these Committees work within the framework of the executive authority, SAMA, and exercise a judicial position by ending the insurance disputes through a final decision that cannot be appealed to any judicial authority. Therefore, transfer the jurisdiction over insurance disputes to Sharia Courts would support the principle of judicial unity.

It should be noted that the transfer of jurisdiction over insurance disputes does not translate to the abolition of Insurance Committees entirely. Rather, it consists of removing judicial power from these Committees and granting them a role in contributing to the settlement of insurance disputes, which does not prevent litigants from resorting to the judiciary.

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<sup>442</sup> Article 49 of the Basic Law of Governance states that "Subject to the provisions of Article 53 herein, the courts shall have jurisdiction to adjudicate all disputes and crimes."

## **b. The Position of the Saudi Legislature Regarding Transfer the Jurisdiction over Insurance Disputes to Sharia Courts**

The Saudi legislature has a serious desire to rectify the status of quasi-judicial committees in the Kingdom of Saudi Arabia and to transfer their jurisdictions to the national courts, thus achieving the principle of the unity of the judiciary. This desire evidently emerged with the issuance of the new judiciary law in 2007<sup>443</sup> and with the adoption of the Executive Mechanism of the Judicial Law in the same year.

In regard to the new Judiciary Law, it was formed to create a new phase embracing the expansion of the jurisdiction of the Saudi courts. This law established five specialized courts as First Instance Courts, namely General Courts, Commercial Courts, Personal Status Courts, Criminal Courts, and Labor Courts.<sup>444</sup> These specialized courts aim to provide specially qualified judges experienced in these types of disputes, as well as to address the matter of quasi-judicial committees operating under the supervision of certain executive bodies.<sup>445</sup>

In regard to the Executive Mechanism of the Judicial Law, it emphasized the need to address the status of quasi-judicial committees and indicated how such committees could be transferred to the courts.<sup>446</sup> According to the instructions included in this document, several quasi-judicial committees have been transferred to the specialized courts. The Labor Committees working under the Ministry of Labor is the one most recently

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<sup>443</sup> *The Law of the Judiciary*, *supra* note 91.

<sup>444</sup> *Id.* art. 23.

<sup>445</sup> Mohammed bin Saud Jazlani, *Bayn Allijan Alqadayiyat 'Aw Almahakim Alnaweia* [Between Judicial Committees and Courts], ALRIYADH (Sep.19, 2018), <http://www.alriyadh.com/1705282>.

<sup>446</sup> *The Executive Mechanism of the Judicial Law*, Royal Decree No. M/78, 19/9/1428H (2007), art. 9/1, published in *Umm al-Qura* No. 4170, 30/9/1428H (2007).

transferred to the specialized courts. This transfer of the Labor Committees to the Sharia Courts is one of the successful models in this regard, as will be discussed later.

However, with regard to the Insurance Committees, the Executive Mechanism of the Judicial Law excluded the Insurance Committees and four other quasi-judicial committees from transitioning to the judiciary. The Executive Mechanism considered this exception to be temporary until the Saudi Supreme Judicial Council submits studies on the status of these committees and the possibility of transferring them to the courts. This has not yet been declared.

## **2. Examining the Transfer of Labor Disputes to Sharia Courts, as a Model**

The transfer of jurisdiction of the Labor Committees to the Labor Courts is an appropriate step, that could be used as a model for the proposed step of transferring insurance disputes to the Sharia Courts. This is due partially to the similarity of these two Committees. The Labor Committees was one of the quasi-judicial committees which operated under an executive body, i.e. the Ministry of Labor.<sup>447</sup> This Committee also consisted of Primary Committees and an Appellate Committee, exercising full judicial power in issuing final judgments that may not be appealed to any judicial or administrative body.<sup>448</sup>

However, at the end of 2018, the Labor Committees were abolished, and their jurisdiction was transferred to Labor Courts, which now adjudicate this kind of dispute through more effective and smoother procedures. This transition was a major project which began with introductory steps. A number of judges had to be trained to qualify

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<sup>447</sup> *The Labor Law*, Royal Decree No. M/51, 23/8/1426H (2005), art. 211, published in *Umm al-Qura* No. 4068, 27/9/1426H (2005).

<sup>448</sup> *Id.* art. 210.



this work. Next, a cooperative agreement was signed between the Ministry of Labor and the Ministry of Justice. Finally, there was a formal issuance of the mechanism for filing labor disputes before the Labor Courts.

### **a. The Introductory Steps**

#### **i. The Process for Qualifying Judges**

When the legislature announced its desire to establish specialized labor courts to replace quasi-judicial committees, the Ministry of Justice worked early on a strategy to provide appropriate administrative staff and to qualify a sufficient number of judges for Labor Courts. At the beginning of 2017, the Judicial Training Center of the Ministry of Justice, in cooperation with the Supreme Judicial Council, organized diploma programs on labor litigation.<sup>449</sup> The first course of this diploma was attended by around 70 assistant judges, who were appointed to serve in Labor Courts.<sup>450</sup>

This diploma program covered 200 hours of studying several legal aspects related to labor litigation.<sup>451</sup> It included studying the work of Labor Courts and understanding the new mechanism approved by the Supreme Judicial Council to deal with labor cases.<sup>452</sup> In addition, the program also included studying the judicial principles of labor litigation, the Labor Law, the Social Insurance Law, and other laws related to labor disputes.

Moreover, the Ministry of Justice and the Supreme Judicial Council organized workshops and seminars for the appointed judges, assembling these judges with

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<sup>449</sup> *Wizarat aleadl tunazim diblum alqada' aleummalii l(69) mulazim qadayiy bialriyad [The Ministry of Justice organizes a diploma about labor judiciary for (69) judges in Riyadh]* MINISTRY OF JUSTICE, NEWS 1, 27 (2018), <https://www.moj.gov.sa/ar/MediaCenter/News/Pages/NewsDetails.aspx?itemId=280>.

<sup>450</sup> *Id.*

<sup>451</sup> *Id.*

<sup>452</sup> *Id.*

specialists of labor law and employment contract disputes.<sup>453</sup> They also gave the appointed judges of Labor Courts the opportunity to train in Labor Committees for at least a month, so they could gain practical experience along with theoretical knowledge, before serving in the Labor Courts.<sup>454</sup>

This introductory step of qualifying judges has positively impacted the progress towards transferring the jurisdiction of the Labor Committees to the Labor Courts. This step also facilitated the beginning of cooperation between the Ministry of Justice and the Ministry of Labor, in order to achieve full transferring of the jurisdiction of the Labor Committees to the Labor Courts.

**ii. Cooperation Between the Ministry of Justice and the Ministry of Labor**

After the Ministry of Justice educated and trained the essential human cadre represented by judges, it signed a cooperation agreement with the Ministry of Labor on August 8, 2018.<sup>455</sup> The purpose of this agreement was to facilitate the transfer of the jurisdiction of the Labor Committees to the Labor Courts.

This agreement emphasized the necessity of continuous coordination between these two ministries, to ensure the success of the Labor Courts and to overcome the obstacles that may be faced by these courts in exercising their new jurisdiction.<sup>456</sup> The agreement also included the formation of a joint team, which includes representatives from the Ministry of Justice and the Ministry of Labor, to oversee the progress towards the activation of the Labor Courts. Besides the formation of the joint team, this agreement

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<sup>453</sup> *Id.*

<sup>454</sup> *Id.*

<sup>455</sup> *Wazarata aleadl waleml twqqean mudhakiratan taawun liaintiqal alqada' aleummalii wa'iitlaq mahakimih [The Ministries of Justice and Labor sign an agreement of cooperation for the transition of the labor judiciary and the launch of its courts]* SPA (Aug. 8, 2018), <https://www.spa.gov.sa/1795677>.

<sup>456</sup> *Id.*

proposed the formation of several supplementary teams, such as the labor dispute settlement team and the technical support team.<sup>457</sup>

Beyond this, the cooperation between the Ministry of Justice and the Ministry of Labor extended to include the transfer of several members of the Labor Committees, both Appellate and Primary, to work in Labor Courts under the Executive Mechanism of the Judicial Law.<sup>458</sup> This transfer allowed the members of the Labor Committees, who did not meet the conditions for being judges, to work instead in the Labor Courts as consultants and labor dispute resolution experts.<sup>459</sup> This particular step ensured that the Labor Courts maintained the consistency of the Labor Committees, which has been ongoing since 2005 and benefits from the experience of its members in hearing labor disputes.

#### **b. The Issuance of the Mechanism for Filing Labor Disputes**

After the accomplishment of the introductory steps, which included educating and training judges and coordination between the Ministry of Justice and the Ministry of Labor, the jurisdiction over all labor disputes was officially granted to the Labor Courts in early November of 2018.<sup>460</sup> This change authorized the Labor Courts to exercise exclusive jurisdiction over labor disputes by a new mechanism issued by a decision of the Council of Ministers No. (M/14) on November 2, 2018.<sup>461</sup> Through this new mechanism, labor disputes go through two basic phases: the settlement phase, before the Labor Offices, and the hearing phase, before the Labor Courts.

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<sup>457</sup> *Id.*

<sup>458</sup> *The Executive Mechanism of the Judicial Law*, *supra* note 446, art. 9/2.

<sup>459</sup> *Id.*

<sup>460</sup> Mubarak Al Akash, *bad' 'aemal almahakim aleumaliat fi 'anha' almamlaka* [the Labor Courts Start its Work Throughout the Kingdom], AL-RİYADH (Oct 30, 2018), <http://www.alriyadh.com/1714186>.

<sup>461</sup> *The Mechanism for Filing Labor Disputes*, The Council of Ministers No. M/14, 24/2/1440H (2018).

i. The Settlement Phase, before the Labor Office

The new mechanism for filing labor disputes required that the dispute propose an amicable settlement, prior to presenting the case before the Labor Courts.<sup>462</sup> This is done by filing the dispute electronically by the employee or employer to Labor Offices in their area to study the dispute and conduct a friendly settlement within 21 days.<sup>463</sup> The settlement is conducted by qualified staff, and in accordance with the settlement rules issued by the Minister of Labor.<sup>464</sup>

The settlement procedure ends before the Labor Office either by acceptance of the settlement's outcome by all parties or rejection by one of the parties.<sup>465</sup> In case the settlement outcome is accepted, the conciliator prepares the final version of the agreement in compliance with a form specified by the Ministry of Labor.<sup>466</sup> The agreement is then signed by both parties to the dispute, as well as the conciliator. These signatures convert the settlement into an enforceable document, under Article 9 of the Enforcement Law.<sup>467</sup> However, in case a settlement cannot be reached, the conciliator at the Labor Office electronically submits the cases to the Labor Court, including a summary of the dispute and the reasons for the failure to settle the dispute, which begins the second stage before the Labor Courts.<sup>468</sup>

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<sup>462</sup> *Id.* art. 1.

<sup>463</sup> *The Rules and Procedures for the Settlement of Labor Disputes*, Ministerial Decree No. 321, 25/1/1435H (2013), art. 14.

<sup>464</sup> *Id.* art. 4.

<sup>465</sup> *Id.* art. 19.

<sup>466</sup> *Id.*

<sup>467</sup> Article 9 of the Enforcement Law lists the Enforcement documents, and it states that "The settlement documents issued by competent bodies endorsed by courts." *The Enforcement Law*, Royal Decree No. M/53, 13/8/1433H (2012), art. 9.

<sup>468</sup> *The Rules and Procedures for the Settlement of Labor Disputes*, *supra* note 463, art. 19.

ii. The Hearing Phase, before the Labor Courts

Once attempts of settlement before the Labor Offices fail, Labor Courts receive the dispute. This is done through 25 Labor Courts and panels that have been inaugurated across the Kingdom in 2018.<sup>469</sup> Procedurally, these courts deal with labor disputes as a matter of urgency in accordance with the Law of Civil Procedure and the Mechanism for Filing Labor Disputes.<sup>470</sup> Objectively, Labor Courts adjudicate labor disputes in accordance with the Labor Law, its executive regulations, and the provisions of Sharia.

Since the initiation of the Labor Courts, the Courts have been successful in overcoming the problem of case overload, that litigants and the Labor Committees had previously suffered. The Ministry of Justice emphasized the positive impact of the new mechanism of resolving labor disputes, which sets a time limit of 30 days in reaching a timely verdict. This can be attributed to the electronic processes of the settlement procedures and the subsequent hearing of the case by Labor Courts.

Dr. Abdulaziz Al-Naser<sup>471</sup> indicates that the establishment of the Labor Courts is a successful step in creating a developed environment for labor litigation and facilitating access to the judicial procedures of the courts. This is due to the development of the mechanism of filing the case and further reliance on the compulsory settlement stage to reduce the number of disputes brought before the Labor Courts. He also indicates that the experience of the Labor Courts in accepting their new jurisdiction is a successful model that can be used in transferring jurisdiction over insurance disputes to the Sharia Courts.

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<sup>469</sup> Shabraw Adnan, *Mahkamat Eamaliat Tubashir [25 labor courts are in operation]* OKAZ 25 (Oct. 30, 2018), <https://www.okaz.com.sa/article/1682134>.

<sup>470</sup> *The Mechanism for Filing Labor Disputes*, *supra* note 461, art. 3/b.

<sup>471</sup> Undersecretary of the Ministry of Justice for Regulations and International Cooperation interviewed for this dissertation in the Summer of 2018.

This experience of qualifying judges and establishing settlement procedures is a useful model in assessing and understanding how to overcome the obstacles that may be faced if and when insurance disputes are transferred to the Sharia Courts.

To summarize the experience of the Labor Courts, the process began with two introductory steps. The first step consisted of providing intensive programs on labor litigation to judges who were nominated to work in the Labor Courts. The second step was the signing of a cooperation agreement between the Ministry of Justice and the Ministry of Labor, in order to facilitate the granting of the new jurisdiction to the Labor Courts, instead of the Labor Committees in the Ministry of Labor. After that, the activation of the Labor Courts was achieved through the issuance of the new mechanism for filing labor disputes. This mechanism included two important components; first, it requires settlement as an initial step before sending the case to the Labor Courts; second, it adopted the electronic process in most labor cases, either at the settlement phase or in litigation. Hence, there exists a wealth of experience that could guide the accomplishment of the proposed step of transferring insurance disputes to the Sharia Courts.

The following sub-section will discuss the obstacles that may hinder the proposal to transfer jurisdiction over insurance disputes to the Sharia Courts. Further, the section below also examines the possibility of benefiting from the experience of Labor Courts that overcame these obstacles.

### **3. Obstacles to Transferring the Jurisdiction over Insurance Disputes to Sharia Courts**

As mentioned earlier, the proposed move to transfer the jurisdiction over insurance disputes to Sharia Courts is a major project that may face several obstacles and requires

time to achieve it. At the present time, these obstacles could include the lack of awareness of some judges regarding the technical aspects of insurance activity, the possibility that the number of insurance disputes exceeds the ability of the Sharia Courts, and the possibility that some judges would be unwilling to hear insurance cases based on some jurisprudential views and fatwas.

**a. Insufficient Awareness of Most Judges on the Technical and Legal Aspects of Insurance Activity**

Besides the insurance industry is new in Saudi Arabia, it has many technical and legal aspects that may be still unfamiliar to most judges in Sharia Courts. One important aspect is the basic principles of insurance contracts, which inevitably need to be considered in adjudicating any insurance dispute. These principles include the principle of insurable interest, the principle of utmost good faith, the principle of subrogation, the principle of proximate cause, the principle of contribution, and the principle of indemnity.<sup>472</sup>

Moreover, each of these principles contains technical details that determine how the principle is applied and the limits of this application. For instance, the principle of insurable interest indicates a legal and financial relationship between the insured and the subject of the insurance, so that the insured benefits from the absence of damage to the subject of insurance, but on the other hand, he would suffer a financial loss in the event of damage.<sup>473</sup> Insurable interest arises from ownership or possession of the subject matter of insurance. Thus, this principle, with slight differences in some cases, is required in issuing all types of insurance policies. For example, marine insurance requires an

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<sup>472</sup> See Justin McMinn, the 7 Principles of Insurance Contracts: When You Need A Lawyer (Jan. 12, 2018), <https://www.mcminnlaw.com/principles-of-insurance-contracts/>

<sup>473</sup> *Id.*

insurable interest in the event of damage, but life insurance requires an insurable interest when the insurance policy is purchased.

Generally speaking, the technical aspects of insurance activity, such as those mentioned above, and its applications, are not yet familiar to most judges in Sharia Courts. The reason for this is that judges in all Sharia Courts are graduates of Sharia Colleges, which do not offer any units of study or training on insurance.<sup>474</sup> Therefore, the insufficient knowledge of the Sharia Courts' judges about insurance activity may make them unable to adjudicate insurance disputes with an informed outlook. This insufficient knowledge is considered a substantial obstacle facing the project of transferring insurance disputes to Sharia Courts at present.

However, this obstacle can be overcome through qualifying judges in scientific and practical terms, as was done prior to the establishment of the Labor Courts. Such qualification can include the provision of a diploma for judges in the Sharia Courts to introduce them to Cooperative Insurance Companies Control Law as well as its executive regulations, and the necessary technical aspects for insurance activity. It may also include providing judges with the opportunity to serve for a specific period in Insurance Dispute Committees to gain practical experience along with theoretical knowledge.

Moreover, this obstacle can be overcome by relocating some legal advisers in Insurance Committees to work in the Sharia Courts as experts in insurance disputes. This relocation could be achieved through coordination between the Ministry of Justice and SAMA, as a supervisor of the general insurance sector and an incubator for the Insurance Disputes Committees.

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<sup>474</sup> *The Law of the Judiciary, supra* note 91.



## **b. The Possibility of Inability of the Sharia Courts to Cope with the Increasing Number of Cases**

The transfer of jurisdiction over insurance disputes places an additional burden on the Sharia Courts, besides their current caseload. Currently, Sharia Courts, with its five types, receive a large number of various cases, including real estate, commercial, criminal, and personal status cases. For instance, the 2017 Ministry of Justice report indicates that the number of cases filed before the First Instance Courts in the Kingdom was 481,228.<sup>475</sup> Therefore, transferring of insurance disputes to the Sharia Courts would increase the burden on the Sharia Courts. This could lead to the Sharia Courts facing a challenge in keeping up with a large number of received cases, whether they pertain to insurance or other areas.

However, despite the seriousness of this challenge, the Sharia Courts are likely to be able to overcome this challenge for two reasons. The first reason is that the Ministry of Justice has been seeking for several years to replace traditional means of conducting a settlement and filing cases with modern means of technology, in order to reduce bureaucracy and facilitate speedy litigation. Labor litigation serves as an apt example. Most steps of labor litigation are conducted electronically, from filing a dispute with Labor Offices to reaching an amicable settlement until the case is transferred to the Labor Courts for judgment. The second reason is that the Ministry of Justice has recently made great strides in regulating alternative dispute resolution, such as reconciliation, which would further alleviate the burden of the Sharia Courts in dealing with an increased caseload.

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<sup>475</sup> *The Annual Report of 2017, supra* note 98.

On August 1, 2019, the Minister of Justice issued, based on the authority entrusted to him, the Rules of Operation of Reconciliation Centers.<sup>476</sup> The purpose of these rules is to regulate the process of reconciliation for disputes submitted to the Sharia Courts.<sup>477</sup> These rules have defined certain types of disputes which must be referred to Reconciliation Centers before being registered in the Sharia Courts, including family, traffic, financial, and real estate disputes.<sup>478</sup> Moreover, these rules granted the President of the Court the authority to refer such other cases as he deems appropriate to reconciliation processes, provided that they were not registered in the court.<sup>479</sup>

Additionally, these rules allowed the Reconciliation Center to hire conciliators from outside the Ministry of Justice.<sup>480</sup> The rules permitted the possibility that the conciliators be from the government, private, or non-profit sector, upon fulfilling certain conditions such as passing a test given by the center, attending a specified number of training hours, and passing a personal interview.<sup>481</sup> Moreover, in order to motivate the parties and encourage them to pursue the option of reconciling, the reconciliation can be carried out either in attendance by the parties or electronically through modern means of communication.<sup>482</sup>

Accordingly, the Ministry of Justice's efforts to adopt modern technology as far as possible in dealing with the cases received would facilitate reaching timely verdicts and would help reduce the accumulation of cases before the Sharia Courts. Further, the establishment of the Reconciliation Centers in the Sharia Courts, and the organization of

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<sup>476</sup> *The Rules of Operation of Reconciliation Centers*, supra note 154.

<sup>477</sup> *Id.* art. 2.

<sup>478</sup> *Id.* at the Preamble.

<sup>479</sup> *Id.*

<sup>480</sup> *Id.* art. 6.

<sup>481</sup> *Id.*

<sup>482</sup> *Id.* art. 14/2.

their work, would contribute to reducing the number of cases heard by the Sharia Courts. All these factors increase the capacity of the Sharia Courts and render them more capable of accommodating jurisdiction over other areas in the future, such as insurance disputes.

**c. The Possibility of Some Judges being unwilling to Hear Insurance Disputes**

As explained earlier, the insurance contract is one of the modern contracts in the Islamic world, as well as one of the matters on which there are various jurisprudential interpretations. Some Islamic scholars believe that the insurance contract is prohibited in all its forms, whether it is cooperative or commercial, because it contains a great *gharar*, i.e. uncertainty that makes it difficult to know the value of compensation and the timing of the risk. Other scholars acknowledge the permissibility of all types of insurance contracts, considering that it is one of the contracts that protect the interests of individuals and institutions, and that *gharar* in it does not rise to the level of invalidating the contract. Some others, such as the Saudi Council of the Senior Ulema, view the permissibility of cooperative insurance only, instead of commercial insurance, on the pretext that cooperative insurance is based on donations that are not affected by the existence of *gharar*.

Consequent to this diversity of jurisprudential interpretations of the insurance contract, some judges in the Sharia Courts may be reluctant to hear insurance disputes based on a jurisprudential view, such as the 1977 fatwa. This is similar to what happened with some judges on the Board of Grievances in the past, when they had the authority to hear the decisions of Insurance Committee on appeal.<sup>483</sup>

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<sup>483</sup> See Al-Ghamdi, *supra* note 173, at.

However, this obstacle should not impede the transferring of jurisdiction over insurance disputes to the Sharia Courts, since the insurance contract is one of the modern contracts for which there is no explicit provision in the Qur'an and the Sunnah. Also, this should not serve as an obstacle because the views on the insurance contract, such as the 1977 fatwa, are jurisprudential opinions that cannot be considered binding provisions for all.

In this context, Dr. Abdulaziz Al-Naser<sup>484</sup> provided the following analysis. He believes that jurisprudential views on the insurance contract cannot be considered as obstacles to the transfer of jurisdiction over insurance disputes to the Sharia Courts. This is because insurance is a new matter that scholars have given different rulings on, and there is no binding *Ijma* (consensus) on it. In addition, the adoption of one jurisprudential view by the ruler or the legislature is considered the end of the jurisprudential conflict in practice. He further added that the current insurance companies operate in accordance with regulations issued by the legislature governed by the general principles of Sharia. On the other hand, he argues that the biggest challenge for transferring insurance disputes to the Sharia Courts, at this time, lies in the insufficient awareness among most judges regarding the technical and legal aspects of the insurance contract.

Besides the analysis of Dr. Al-Naser, there is another fact to consider. Although the experience of the Board of Grievances in the past included the unwillingness of some judges to hear insurance disputes, there were several judges who, upon being presented with insurance disputes, issued judgments emphasizing the necessity of hearing such disputes. One of the judgments referred to the necessity for the judiciary to hear insurance

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<sup>484</sup> Undersecretary of the Ministry of Justice for Regulations and International Cooperation interviewed for this dissertation in the Summer of 2018.

litigation because the judiciary aims for the protection of legitimate rights and funds.<sup>485</sup> Thus, refraining from hearing insurance disputes is contrary to the responsibility of the judiciary towards people's rights.<sup>486</sup> The judgment also referred to the activity of insurance companies in the Kingdom that operate under regulations issued by the legislature, and, therefore, the insurance contract cannot be compared with the voided and unregulated contracts that include obvious prohibitions.<sup>487</sup>

In addition to that, currently, the Enforcement Courts and their branch offices, which are governed by Sharia and belong to the Sharia Courts system, exercise their power in the enforcement of the final decisions issued by the Insurance Dispute Committees under Article Nine of the Enforcement Law.<sup>488</sup> A judge interviewed for this dissertation, stated that the practice of insurance in the Kingdom is in accordance with the rules issued by the King, represented in the legislative authority. He added that the ruler's choice of one jurisprudential opinion over the other is an end to the conflict in practice. Therefore, he concluded that the Enforcement Courts appropriately exercise their role in the implementation of the decisions of Insurance Disputes Committees

In summary, the insurance contract is one of the new contracts for which there is no specific provision in the Qur'an or Sunnah and no binding jurisprudential opinion, such as *Ijma*. This contract revolves around different jurisprudential interpretations, which makes the choice of one interpretation over the other, by the ruler, the decision which ends the conflict in practice. This is what the current Enforcement Courts and some judges

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<sup>485</sup> The Board of Grievances, Ruling No. 145/d/e/16, 1431H (2010); The Insurance Disputes Committees, Case No. 2225/3/Q, 1430 (2009).

<sup>486</sup> *Id.*

<sup>487</sup> *Id.*

<sup>488</sup> The Appeals Committee for Insurance Disputes, R/L/4, 1440H (2018); Case No. 380232.

of the Board of Grievances have previously relied on when dealing with insurance cases. Therefore, these facts should reduce the possibility of the unwillingness of some judges to hear insurance disputes in the future in the Sharia Courts.

In addition to having discussed the proposed step to transfer insurance disputes to the Sharia Courts, it is worth mentioning in the next section the proposal to establish a unified insurance authority as a step that can be accomplished not only to improve the mechanism of resolving insurance disputes, but also to develop the performance of the insurance sector in general. Therefore, the following section will examine the proposal to establish a unified insurance authority as a supportive step to transfer jurisdiction over insurance disputes to the Sharia Courts.

## **B. Section Two: Establishing a Unified Insurance Authority to Supervise the Insurance Sector**

The establishment of a unified insurance authority in the Kingdom of Saudi Arabia is a substantial step that should be examined to develop the insurance sector in general, and improve some aspects related to the current mechanism of resolving insurance disputes in particular. This proposed step is one of the reforms advocated by insurance experts in the Kingdom. It centered on ending the duplication between SAMA and CCHI in overseeing the insurance sector and transferring the powers of these two bodies to a unified insurance authority, that governs all the necessary aspects of the insurance sector. These aspects include seeking to develop the rules governing all insurance activities, strengthening the supervision of the performance of insurance companies and other companies operating in the sector, and raising awareness among individuals.

However, besides these supervisory roles, there are other roles that the proposed insurance authority can assume in order to improve the reality of the insurance sector, especially concerning the settlement of insurance disputes. This section will explore the features of the proposed establishment of a unified insurance authority, including the functions it could undertake. It will also present the Insurance Authority in the United Arab Emirates (UAE) as a model for the proposed central insurance authority in the Kingdom of Saudi Arabia. Finally, this section will examine the obstacles that may face this proposed step.

### **1. Proposal of Establishing a Unified Insurance Authority**

The importance of establishing a unified insurance authority arises from the need to end the status of multiple supervisory bodies in Saudi Arabia's insurance sector. As discussed in Chapter Three, the insurance sector in Saudi Arabia faces the challenge of the duplication of supervision, where SAMA supervises the general insurance activities, and CCHI supervises the health insurance activity. This duplication has resulted in several inappropriate consequences. Hence, the establishment of a unified insurance authority is supposed to address such issues that arise from the current duplication.

Dr. Turki Al-Zumaie,<sup>489</sup> a Saudi Professor, indicated that the insurance sector in Saudi Arabia is one of the most promising sectors that is growing well year-by-year. Thus, it is necessary to pay attention and address the challenges of this sector such as the duplication of supervision. Dr. Al-Zumaie added that the establishment of an insurance authority is an important step to reform the matter of duplication in the supervision of the insurance sector in the Kingdom, and it is important to unify visions about the reality and the future

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<sup>489</sup> A Saudi scholar interviewed for this dissertation in the summer of 2018.

of this sector. He also added that a unified insurance authority should not be set up without coordinating with SAMA, because SAMA has good experience in managing the insurance sector and in laying the foundations for this sector since 2003.<sup>490</sup>

Besides the above analysis of Dr. Al-Zumaie, the proposal to establish an insurance authority means that the authority replaces SAMA and CCHI in supervising the entire insurance sector. To accomplish this, both the General Department of Insurance Control at SAMA and the Secretariat of the Insurance Disputes Committees should be transferred to the proposed insurance authority. The powers of the CCHI also should be transferred to this body, in order to enable the proposed insurance authority to exercise its supervisory functions over the entire insurance sector and to contribute to the settling of insurance disputes that may arise in various insurance activities.

## **2. The Tasks of the Insurance Authority**

To ensure the success of the insurance authority in the development of the insurance sector in general, and to improve the current mechanism for resolving insurance disputes in particular, the insurance authority should exercise two types of tasks: (1) the supervision of the insurance sector; and (2) the contribution to the settlement of insurance disputes.

### **a. The Supervision of the Insurance Sector**

The supervisory power of the proposed insurance authority should cover all legal and technical aspects of the general and health insurance sectors. In particular, this supervisory authority should focus on three main tasks. The first task is to continuously

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<sup>490</sup> SAMA supervises general insurance companies through a department called the General Department of Insurance Control. SAMA took over this task, although it is not typically their responsibility. SAMA is the central bank of the Kingdom of Saudi Arabia, primarily responsible for managing government banking affairs, the monetary policy, price stability, and the monitoring and licensing of the banks.



strive to develop the insurance industry in the kingdom of Saudi Arabia and to propose the necessary modification to achieve progress for the sector in all aspects.<sup>491</sup> This can be done by following up on the evolution of the laws governing the insurance industry in the world and then adopting what is compatible with the Saudi legal system. The second task is to supervise the performance of those involved in both the general and health insurance sectors, whether insurance or reinsurance companies or insurance-related service providers.<sup>492</sup> This task would cease current confusion resulting from duplication of oversight of the insurance sector. The third task is to raise awareness among individuals and institutions regarding the role of insurance and the rights and obligations of the parties to the insurance contract.<sup>493</sup> This can be accomplished through the provision of training courses and the intensification of seminars and awareness campaigns.

#### **b. The Contribution to the Settlement of Insurance Disputes**

To guarantee that the establishment of the proposed insurance authority has a positive impact on the current mechanism of resolving insurance disputes, the insurance authority should contribute to the settlement of insurance disputes that may arise between insured individuals and insurance companies. This could be accomplished by providing an accessible means for those who are insureds to file their complaints with the proposed insurance authority against insurance companies. After that, the insurance authority should be responsible for screening each complaint and determining whether it is about

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<sup>491</sup> Amal Al-Hamdi, *Matalib Bi'insha' Hayyat Mustaqilat Liltamina Wakhurujha Min Mizalat Muasasat Alnaqd [Demands to establish an independent insurance authority replace SAMA]*, AL EQTISADIAH, (July 25, 2011), [http://www.aleqt.com/2011/07/25/article\\_562326.html](http://www.aleqt.com/2011/07/25/article_562326.html).

<sup>492</sup> *Id.*

<sup>493</sup> *Id.*

the insurance company's breaching of the instructions and rules governing the insurance sector, or about fulfilling a certain obligation.

In case the proposed insurance authority finds that the complaint arises from practices that violate insurance sector regulations, it should handle the violation according to its supervisory authority over the insurance sector. In this regard, the insurance authority is supposed to have the power to issue fines against the insurance company or insurance-related service providers who committed the violation.<sup>494</sup>

In contrast, in case the proposed insurance authority finds that the complaint arises in regard to fulfilling a certain obligation, which means a dispute over the value or entitlement of compensation, it should contribute to the settlement of this dispute through a smooth mechanism. This could be accomplished through the establishment of a committee or central department at the insurance authority comprising of members who are qualified to settle insurance disputes amicably. This would be similar to the Center for Reconciliation established by the General Secretariat for Insurance Disputes Committees in mid-2019, to contribute to the settlement of insurance disputes received by the Insurance Committees.<sup>495</sup>

This Center for Reconciliation receives reconciliation requests from all over the Kingdom electronically. Under the center's rules of procedure, the decisions of the Center for Reconciliation issued on the insurance disputes are binding only on insurance companies and not individuals.<sup>496</sup> That means insured individuals have the right to reject

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<sup>494</sup> This role is similar to what the Customer Protection Department at SAMA does currently. *The Cooperative Insurance Companies Control Law*, *supra* note 1, art. 21.

<sup>495</sup> See Saudi Arabian Monetary Authority, *Under the Patronage of The Governor Of Sama...Inauguration Of The Resolution Center For The Settlement Of Vehicle Insurance Disputes*, SAMA (Apr. 6, 2019), <http://www.sama.gov.sa/en-us/news/pages/news24062019.aspx>.

<sup>496</sup> *The Procedures for Regulating Reconciliation in Insurance Disputes*, UM Alqura (Mar. 8, 2019), art. 2.

the decision of the Center of Reconciliation and to resort to the Insurance Disputes Committee instead. In addition, the Center's rules of procedure set out several conditions to accept the registration of the reconciliation request before the Center. First, the request for reconciliation must be submitted by individuals insured against one of the insurance companies that have a membership in the center.<sup>497</sup> Second, the request for reconciliation must be about disputes arising from the vehicle insurance contract.<sup>498</sup> Third, it must be about a claim that does not exceed SAR 50,000 (USD 13,000).<sup>499</sup>

The establishment of this reconciliation center is expected to reduce the number of cases brought before the current Insurance Committees at SAMA, by contributing to the settlement of disputes related to vehicle insurance. Therefore, the proposed insurance authority should contain such an existing center in order to continue making a contribution to settle insurance disputes. It is also supposed to expand this contribution by including a list of mediators and arbitrators for insurance disputes.

### **3. Insurance Authority of the United Arab Emirates, as a Model**

The Emirates Insurance Authority was established in Abu Dhabi city by the Establishment of the Insurance Authority Law issued in 2007.<sup>500</sup> The purpose of establishing this Authority was to regulate the insurance sector in the UAE.<sup>501</sup> Consequently, it undertakes supervisory duties for the insurance sector and contributes to

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<sup>497</sup> *Id.*

<sup>498</sup> *Id.*

<sup>499</sup> *Id.*

<sup>500</sup> The UAE Insurance Authority, *Federal Law No. 6 of 2007 on Establishment of the Insurance Authority & Organization of its Operations*, art 6/2 (Feb. 28, 2007), available at <https://ia.gov.ae/en/Documents/Federal%20Law%20No.6%202007.pdf>

<sup>501</sup> *Id.* art. 7.

settling insurance disputes submitted by beneficiaries against insurance companies in the UAE.

With regard to supervisory tasks, the Insurance Authority works to increase the performance of insurance companies and monitors their compliance with the rules governing the insurance industry in the UAE.<sup>502</sup> It also provides proposals and plans aimed at developing the insurance sector in all areas.<sup>503</sup> These proposals and plans are based on continuous studies and research on developments in the insurance industry around the world. The Insurance Authority also works to protect the rights of the insured, by monitoring the solvency of the companies.<sup>504</sup>

With regard to contributing to settling insurance disputes, the UAE Insurance Authority has established a committee dedicated to this task. This committee is concerned with settling disputes submitted by the insured or the beneficiaries against insurance companies in all insurance businesses, irrespective of their value.<sup>505</sup> The committee attempts to end the dispute by reconciliation within fifteen working days.<sup>506</sup> If the parties accept the result of the reconciliation, they must ratify it in order to be enforceable. However, if reconciliation efforts fail, the committee undertakes the task of ending the insurance dispute by issuing a decision that can be appealed before the First Instance Court competent jurisdiction within 30 days.<sup>507</sup> This makes the method of the UAE

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<sup>502</sup> *Id.* art. 7/2.

<sup>503</sup> *Id.* art. 7/4.

<sup>504</sup> *Id.* art. 7/1.

<sup>505</sup> The UAE Insurance Authority, *the Regulation of the Committees for the Settlement and Resolution of Insurance Disputes*, available at [https://ia.gov.ae/en/Documents/Insurance%20Authority%20Board%20Resolution%20No.%20\(33\)%20of%202019.pdf](https://ia.gov.ae/en/Documents/Insurance%20Authority%20Board%20Resolution%20No.%20(33)%20of%202019.pdf).

<sup>506</sup> *Id.* art. 11/3.

<sup>507</sup> *Id.* art. 12, 16/3.

Insurance Authority in contributing to settling insurance disputes slightly different from the method proposed to the insurance authority in the Kingdom of Saudi Arabia.

Therefore, it is possible to benefit from the experience of the Emirates Insurance Authority in unifying the supervisory authorities in the insurance sector and providing an accessible way to settle all types of insurance disputes through reconciliation.

#### **4. Obstacles Toward Establishing a Unified Insurance Authority in Saudi Arabia**

After examining the features of the proposal to establish a unified insurance authority that supervises all the insurance sector and contributes to settling insurance disputes in the Kingdom of Saudi Arabia, it remains to understand the obstacles achieving this proposed step.

In order to establish a unified insurance authority in the Kingdom of Saudi Arabia, it is necessary to have a sufficient number of qualified and specialized cadres in the field of insurance to be able to activate the role of the proposed insurance authority at the required level. This is considered one of the most important challenges that may face the proposal to establish a unified insurance authority at present, as the insurance sector in the Kingdom of Saudi Arabia, in general, suffers from a lack of Saudis specialized in insurance. For example, Dr. Turki Al-Zumaie<sup>508</sup> provides the following analysis. He believes there are two main reasons for not having enough insurance specialists in the Kingdom of Saudi Arabia. The first reason is that the insurance sector is new in the Kingdom, as it officially began with the issuance of CICCL in 2003, which is considered the first insurance law in the Kingdom. The second reason is the jurisprudential debate over the insurance contract and its compliance with the Sharia. This is what has caused a

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<sup>508</sup> A Saudi scholar interviewed for this dissertation in the summer of 2018.

number of Saudi universities to delay providing insurance courses and fields. Therefore, he concludes that the insurance authority may face difficulties, at the present time, in having sufficient specialized cadres to operate the insurance authority.

However, besides the above analysis, recently several Saudi universities such as Al-Imam University, King Faisal University, as well as some private universities, established insurance- and risk- management departments.<sup>509</sup> This would reinforce the proposal to establish a unified insurance authority by providing cadres capable of managing the insurance sector in general and activating the insurance authority, in particular, to take over the tasks proposed to it in the near future.

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<sup>509</sup> In 2012, Imam Muhammad ibn Saud Islamic University opened an insurance department. This department contains 62 units within the College of Economics. *See College of Economics and Administrative Science*, KINGDOM OF SAUDI ARABIA, <https://units.imamu.edu.sa/colleges/en/Economics/profile/Pages/default.aspx>

## ○ **Conclusion**

The proposed measures to address the challenges of the current mechanism for resolving insurance disputes in the Kingdom of Saudi Arabia are summarized in two main steps. The first step is to restructure the jurisdiction over insurance disputes by transferring this jurisdiction to the Sharia Courts. The second step is to end the duplication of supervision of the insurance sector by establishing a unified insurance authority in the Kingdom.

With regard to the first step, it relies on granting exclusive jurisdiction over insurance disputes to the Sharia Courts instead of the current quasi-judicial committees. This step would facilitate access to the judicial procedures and would address the matter of the accumulation of insurance cases. This is due to the existence of the Sharia Courts in most cities of the Kingdom, as well as to the high level of the capacity of these courts to handle more cases, which exceeds the capacity of quasi-judicial committees. However, in order to achieve this proposed step over the coming years and to overcome the obstacles that may be faced, judges should be qualified in the scientific and practical terms of insurance and the development of reconciliation procedures within the courts.

With regard to the second step, its success lies in the establishment of a unified insurance authority to oversee all insurance sectors and contribute to settling insurance disputes outside the judiciary. This could be done by providing an accessible way for individuals to file complaints against insurance companies in search of a reconciliation that ends the dispute. That could also include providing a list of mediators and arbitrators for insurance disputes. However, in order to achieve this proposed step in the near future and overcome the difficulties, it is necessary to support qualified and specialized cadres

in the field of insurance by expanding the teaching of insurance specialization in Saudi universities and educational institutions.



## ❖ Conclusion

The quality of the insurance dispute resolution mechanism that may arise from the insurance contract is one of the fundamental guarantees, playing an important role in incentivizing individuals and institutions to enter insurance contracts. Therefore, this study aimed to examine the current mechanism for resolving insurance disputes in the Kingdom of Saudi Arabia. It assessed various procedural aspects of the insurance litigation in the Kingdom in detail to identify the problems and challenges facing these procedures, as well as possible opportunities for their development. This was accomplished through four main chapters.

Chapter One provided an overview of the Saudi legal framework within which the examination and the proposed solutions of this study must be compatible. This overview included the concept of Sharia as the primary source of legislation in the Kingdom and the State's legislative, executive, and judicial authorities. Moreover, this chapter provided to the reader the concept of an insurance contract and how it is viewed by Islamic jurisprudence scholars.

Chapter Two provided a detailed description of the current mechanism for resolving insurance disputes through three sections. The first section focused on the concept of insurance litigation in the Kingdom of Saudi Arabia and its historical development in the pre-regulation stage and post-regulation stage. The second section examined the organizational structure and functions of insurance dispute committees, along with the third section, which explored practical procedures for resolving insurance disputes before insurance committees.

Chapter Three provided an analytical critique of the current mechanism for resolving insurance disputes in the Kingdom of Saudi Arabia. Specifically, this chapter revealed five challenges with this mechanism. The first challenge was the difficulty for individuals to access the Insurance Dispute Committees. The second challenge centered on the insufficient number of these committees, in order to accommodate the increasing number of insurance cases each year. The third challenge revolved around the lack of complete independence of the Insurance Dispute Committees. The fourth challenge emphasizes the duplication in supervising the insurance sector and the disputes that may arise from the insurance contract. The fifth challenge focused on the existence itself of quasi-judicial committees to hear insurance disputes, instead of a court.

Chapter Four examined the proposed steps that can be taken to develop the current mechanism for resolving insurance disputes in the Kingdom of Saudi Arabia. These steps included restructuring the jurisdiction over insurance disputes and granting it to the Sharia Courts. Reform efforts also included the establishment of a unified insurance authority that would contribute to settling insurance disputes in the Kingdom. This chapter examined these approaches while taking into consideration their resulting obstacles, how to overcome them, as well as mentioning successful models that can be used for each step in this process.

Through the completion of these four chapters, the study reached several outcomes and recommendations, as outlined below.

#### **A. Results**

1. An insurance contract is a relatively new contract in the Islamic world. Therefore, there is no specific provision in the Qur'an or the Sunnah, and no binding

jurisprudential opinion, such as *Ijma*, that explicitly mention it or provide instructions as to how to approach it.

2. Initial insurance practices in the world began in the fourteenth century, where they were limited to marine insurance between European countries.
3. The Great Fire of London in 1666 is a significant event that contributed to the expansion of the insurance industry and the emergence of insurance lines of business that we are witnessing today, such as fire insurance, vehicle insurance, and liability insurance.
4. In the Islamic world, there are various jurisprudential interpretations of the insurance contract, and they can be divided into three main opinions. The first opinion prohibits all types of insurance. The second opinion believes in the permissibility of all types of insurance, whether cooperative or commercial. The third opinion only deems cooperative insurance permissible and prohibits commercial insurance through a fatwa in 1977.
5. Insurance practices in the Kingdom of Saudi Arabia began, to a limited extent, after the fatwa of 1977, with the establishment of the National Insurance Company, "Tawuniya," in 1985.
6. The issuance of the Cooperative Insurance Companies Control Law in 2003 is considered the official beginning of the insurance industry in the Kingdom of Saudi Arabia.
7. The issuance of the Cooperative Insurance Companies Control Law has brought about a fundamental change in the insurance industry in the Kingdom, as it has defined an

institutional body to supervise the insurance sector and set up a mechanism for resolving insurance disputes.

8. Under the Cooperative Insurance Companies Control Law, the Saudi Arabian Monetary Authority assumes the supervision of the general insurance sector in the Kingdom of Saudi Arabia.
9. According to Article 20 of the Cooperative Insurance Companies Control Law, Insurance Committees are authorized to hear insurance disputes that may arise from the insurance contract between insurance companies and their clients. They are also authorized to hear cases of violations that may be committed by insurance companies or other institutions operating in the insurance sector.
10. Insurance Dispute Committees exercise exclusive jurisdiction over insurance disputes as quasi-judicial committees that operate within the general framework of SAMA as an executive body.
11. Insurance Dispute Committees consist of the General Secretariat, three Primary Committees in Riyadh, Jeddah, and Dammam, as well as a singular Appeals Committee in Riyadh. The decisions of these Committees are binding and cannot be appealed to any other judicial or administrative body.
12. Insurance Disputes Committees function in adherence with the Working Rules and the Procedures of the Insurance Dispute Committees and the Law of Civil Procedures.
13. Insurance Dispute Committees face an increasing number of cases registered before them year by year, and this growth is affected by the expansion of the sector and the number of insured persons.

14. Because Insurance Disputes Committees are centralized in three main cities, litigants who live in remote cities find it difficult to access the Committees and present their cases.
15. The Council of Cooperative Health Insurance is responsible for applying the Cooperative Health Insurance Law, which aims to provide and organize health care for beneficiaries, who are employees of the private sector and their families.
16. The division in the supervision of the insurance sector between SAMA and CCHI has caused conflict between some of the rules governing insurance disputes.
17. Alternative dispute resolution is an effective method in settlement of insurance disputes and should, therefore, be taken into consideration when trying to develop an insurance dispute resolution mechanism.
18. The Saudi legislature has a serious desire to end the existence of the quasi-judicial committees, and this is evident through the issuance of the new judiciary law and the adoption of the Executive Mechanism of the Judicial Law in 2007.
19. The restructuring of jurisdiction over insurance disputes means granting the Sharia Courts the exclusive judicial jurisdiction over all insurance disputes in the Kingdom. The restructuring of jurisdiction over insurance is a significant project that will take time and will require starting with preparatory steps.
20. The proposal of granting the Sharia Courts exclusive jurisdiction over insurance disputes does not translate to an inability to establish committees that contribute to settling insurance disputes through ADR.
21. At the present time, there is insufficient awareness on the part of the judges regarding the technical and legal aspects of the insurance contract, which is considered to be

one of the most important challenges of transferring insurance disputes to the Sharia Courts.

22. Currently, the enforcement courts exercise their power in enforcing final decisions issued by the Insurance Dispute Committees.
23. The insurance industry in the Kingdom is subject to the rules issued by the King, represented by the legislative authority, and the idea that the ruler's decision ends the jurisprudential conflict in practice.
24. The stages of transferring labor disputes from the Committees to the Sharia Courts indicate a successful model that can be used to implement the proposal suggesting the transfer of insurance disputes to the Sharia Courts in the future.
25. The establishment of unified insurance authority is one of the demands advocated by insurance experts in the Kingdom, in order to unify visions of the future of the insurance sector, especially in light of the Kingdom's 2030 vision.
26. The most substantial roles for the insurance authority, in terms of proposals, is to contribute to settling insurance disputes through accessible means of reconciliation, as well as to provide a list of mediators and arbitrators for insurance disputes.

## **B. Recommendations**

1. Supporting training programs that aim to raise awareness of the technical and legal aspects of the insurance contracts for the public and others who are interested.
2. Adopting courses focused on insurance law for students of the Sharia and Law Colleges to be able to develop the industry, especially as it currently suffers from a lack of specialists.

3. Activating the role of ADR to resolve insurance disputes, either within the current mechanism or within the proposal to transfer jurisdiction to Sharia courts.
4. Draw on the experience of the Saudi Arabia Monetary Authority in managing the insurance sector when establishing a unified insurance authority.
5. Supporting the necessary preparatory steps for achieving in the future the project of granting the Sharia Courts exclusive jurisdiction over insurance disputes similar to what is found in the labor disputes.

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