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The International Comparative Legal Guide to:

Securitisation 2012

A practical cross-border insight into securitisation work

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### The International Comparative Legal Guide to: Securitisation 2012

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Chapter 31

Saudi Arabia

King & Spalding LLP

1 Receivables Contracts

1.1 Formalities. In order to create an enforceable debt obligation of the obligor to the seller, (a) is it necessary that the sales of goods or services are evidenced by a formal receivables contract; (b) are invoices alone sufficient; and (c) can a receivable “contract” be deemed to exist as a result of the behaviour of the parties?

In theory, a contract could be deemed to exist as a result of the behaviour of the parties and/or with the provision of evidence in the form of invoices. Oral contracts are a recognised form of contractual agreement in Saudi Arabia. Nevertheless, this approach is not advisable as the interpretation of a contract, which is not evidenced in writing, will be left to the discretion of the relevant adjudicating system. In the absence of the concept of precedent, each dispute is decided on its individual merits, which is unpredictable. Any assignment of receivables needs to be executed by all three parties, the obligor, obligee and original party. In order to avoid a claim that the signature was fraudulently obtained, a contract should be executed and witnessed by two Muslim males.

1.2 Consumer Protections. Do Saudi Arabia’s laws (a) limit rates of interest on consumer credit, loans or other kinds of receivables; (b) provide a statutory right to interest on late payments; (c) permit consumers to cancel receivables for a specified period of time; or (d) provide other noteworthy rights to consumers with respect to receivables owing by them?

Under the Shari’ah, which is the paramount body of law in Saudi Arabia, the charging and payment of interest are prohibited, in light of this questions 1.2(a) and 1.2(b) above are not applicable. In respect of questions 1.2(c) and 1.2(d) above, there is no specific applicable consumer protection legislation in Saudi Arabia, but the Ministry of Commerce & Industry does advise businesses to follow some basic consumer protection guidelines, which in themselves are guidelines and not enforceable.

1.3 Government Receivables. Where the receivables contract has been entered into with the government or a government agency, are there different requirements and laws that apply to the sale or collection of those receivables?

In an agreement with a governmental entity, a governmental entity will require that such contract is governed by Saudi Arabian laws and regulations, that the agreement is in Arabic and that any dispute will be heard by the local courts rather than arbitration in or outside of Saudi Arabia.

2 Choice of Law – Receivables Contracts

2.1 No Law Specified. If the seller and the obligor do not specify a choice of law in their receivables contract, what are the main principles in Saudi Arabia that will determine the governing law of the contract?

If no law is specified, the assumption is that the laws and regulations of Saudi Arabia apply.

2.2 Base Case. If the seller and the obligor are both resident in Saudi Arabia, and the transactions giving rise to the receivables and the payment of the receivables take place in Saudi Arabia, and the seller and the obligor choose the law of Saudi Arabia to govern the receivables contract, is there any reason why a court in Saudi Arabia would not give effect to their choice of law?

It is difficult to envision a scenario where a court in Saudi Arabia would not give effect to the fact that both parties are resident in Saudi Arabia, the contract is governed by the laws of Saudi Arabia and the contract relates to the payment of receivables in Saudi Arabia.

2.3 Freedom to Choose Foreign Law of Non-Resident Seller or Obligor. If the seller is resident in Saudi Arabia but the obligor is not, or if the obligor is resident in Saudi Arabia but the seller is not, and the seller and the obligor choose the foreign law of the obligor/seller to govern their receivables contract, will a court in Saudi Arabia give effect to the choice of foreign law? Are there any limitations to the recognition of foreign law (such as public policy or mandatory principles of law) that would typically apply in commercial relationships such that between the seller and the obligor under the receivables contract?

Saudi Arabia follows the Shari’ah and more importantly the Hanbali School/Guild which generally permits freedom of contract to the extent such does not violate the Shari’ah or a specific Saudi law. Saudi courts and other adjudicatory authorities do not traditionally recognise the choice of foreign law regardless of whether one of the parties is not resident in Saudi Arabia.
With respect to enforcement of foreign law judgments, the Board of Grievances would ordinarily require that the party seeking recognition demonstrate: (i) either that Saudi Arabia and the relevant foreign law jurisdiction are parties to a bilateral or multilateral agreement for the reciprocal interpretation or enforcement of judgments or, in the absence of such agreement, that such country would recognise and enforce a Saudi judgment in the same manner as a domestic judgment; (ii) that the Saudi judgment debtor was accorded due process in the foreign proceeding, including due notice and the opportunity to appear in and defend itself in such proceeding; (iii) that such foreign judgment is final in the country where it was issued; and (iv) that such foreign judgment contains nothing that contravenes the Shari’ah or the public policy of Saudi Arabia.

With the exception of judgments issued by the courts of Arab League and GCC countries (that are subject to the 1983 Convention on Judicial Co-operation between States of the Arab League (the Riyadh Convention)), Saudi courts are not likely to recognise foreign judgments. However, in our experience, for example, we are aware of Bahraini and other GCC judgments (and arbitral awards) being enforced in Saudi Arabia, but not any non-GCC foreign judgments (or arbitral awards).


At the time of writing this chapter, Saudi Arabia has not yet ratified the United Nations Convention on the International Sale of Goods.

### 3 Choice of Law – Receivables Purchase Agreement

#### 3.1 Base Case. Do Saudi Arabia’s law generally require the sale of receivables to be governed by the same law as the law governing the receivables themselves? If so, does that general rule apply irrespective of which law governs the receivables (i.e., Saudi Arabia’s laws or foreign laws)?

In effect, the laws of Saudi Arabia do require the sale of receivables to be governed by the same law as the law governing the receivables themselves, as the Saudi courts and other adjudicatory authorities do not traditionally recognise the choice of foreign law regardless of whether the sale contract or the receivables themselves are governed by foreign law.

#### 3.2 Example 1: If (a) the seller and the obligor are located in Saudi Arabia, (b) the receivable is governed by the law of Saudi Arabia, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of Saudi Arabia to govern the receivables purchase agreement, and (e) the sale complies with the requirements of Saudi Arabia, will a court in Saudi Arabia recognise that sale as being effective against the seller, the obligor and other third parties (such as creditors or insolvency administrators of the seller and the obligor)?

If both the receivables and the purchase agreement are governed by the laws of Saudi Arabia, then the Saudi courts will recognise the choice law and apply Saudi law exclusively. If all formalities have been adhered to, and the sale complies with local law requirements, then the sale, in theory, should be recognised as being effective against the seller, the obligor and other third parties.

### 3.3 Example 2: Assuming that the facts are the same as Example 1, but either the obligor or the purchaser or both are located outside Saudi Arabia, will a court in Saudi Arabia recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller), or must the requirements of the obligor’s country or the purchaser’s country (or both) be taken into account?

If the receivables and the purchase contract are governed by the laws of Saudi Arabia, then the location of one of the parties outside of Saudi Arabia is irrelevant. Saudi courts and other adjudicatory authorities will interpret the sale from a Saudi law perspective and apply Saudi law exclusively. Adherence to foreign law requirements of the parties based outside Saudi Arabia will not be taken into account unless such requirements are compatible with the laws of Saudi Arabia.

If all formalities have been adhered to and the sale complies with local law requirements, then the sale, in theory, should be recognised as being effective against the seller and other third parties.

### 3.4 Example 3: If (a) the seller is located in Saudi Arabia but the obligor is located in another country, (b) the receivable is governed by the law of the obligor’s country, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of the obligor’s country to govern the receivables purchase agreement, and (e) the sale complies with the requirements of the obligor’s country, will a court in Saudi Arabia recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller) without the need to comply with Saudi Arabia’s own sale requirements?

As previously mentioned, Saudi courts and other adjudicatory authorities do not recognise the choice of foreign law. Regardless of whether the sale complies with the requirements of the obligor’s country, there is no guarantee that such sale will be recognised as being effective under the laws of Saudi Arabia. The Saudi courts will consider the sale from a Saudi law perspective.

In circumstances where a judgment has been enforced in the obligor’s and purchaser’s country in respect of the sale, the ability of the obligor to enforce a foreign judgment will be subject to the discretion of the Board of Grievances. The parameters as to how they exercise their discretion were outlined above in question 2.3.

### 3.5 Example 4: If (a) the obligor is located in Saudi Arabia but the seller is located in another country, (b) the receivable is governed by the law of the seller’s country, (c) the seller and the purchaser choose the law of the seller’s country to govern the receivables purchase agreement, and (d) the sale complies with the requirements of the seller’s country, will a court in Saudi Arabia recognise that sale as being effective against the obligor and other third parties (such as creditors or insolvency administrators of the obligor) without the need to comply with Saudi Arabia’s own sale requirements?

Saudi courts and other adjudicatory authorities do not recognise the choice of foreign law. Regardless of whether the sale complies with the requirements of the seller’s country, there is no guarantee that such sale will be recognised as being effective under the laws of Saudi Arabia. The Saudi courts will consider the sale from a Saudi law perspective.

In circumstances where a judgment has been enforced in the seller’s country in respect of the sale, and despite Saudi Arabia being a...
4.4 Obligor Notification or Consent. Must the seller or the purchaser notify obligors of the sale of receivables in order for the sale to be effective against the obligors and/or creditors of the seller? Must the seller or the purchaser obtain the obligors’ consent to the sale of receivables in order for the sale to be an effective sale against the obligors? Does the answer to this question vary if (a) the receivables contract does not prohibit assignment but does not expressly permit assignment; or (b) the receivables contract expressly prohibits assignment? Whether or not notice is required to perfect a sale, are there any benefits to giving notice - such as cutting off obligor set-off rights and other obligor defences?

In order to give effect to a sale of receivables and for such sale to be effective, the obligor must be issued with notice and provide the seller and/or purchaser with an acknowledgment of such notice accepting the terms and conditions of the sale. This acknowledgment must then be returned to the purchaser.

The answer is also dependant upon the underlying agreement in respect of the receivables. If the receivables contract is silent then it is customary for notice to be provided as a means to achieve assumed compliance, enforceability and good customer relations. If the receivables contract expressly prohibits an assignment, then such a prohibition can only be circumvented with the express permission of the obligor.

4.5 Notice Mechanics. If notice is to be delivered to obligors, whether at the time of sale or later, are there any requirements regarding the form the notice must take or how it must be delivered? Is there any time limit beyond which notice is ineffective - for example, can a notice of sale be delivered after the sale, and can notice be delivered after insolvency proceedings against the obligor have commenced? Does the notice apply only to specific receivables or can it apply to any and all (including future) receivables? Are there any other limitations or considerations?

This will depend entirely upon the notice provisions of the underlying receivables, there is no legislation pertaining to notice mechanics in Saudi Arabia.
Assignments are very much a feature of commercial agreements in the Saudi market.

In order to give effect to an assignment of contract receivables, an assignment agreement must be put in place. The standard approach under Saudi law is to have a three-party agreement or a fairly basic assignment agreement executed and a notice then sent to the third party, requesting that a fairly detailed written acknowledgment accepting the terms and conditions of the assignment be returned addressed to the new beneficiary. Preferably there is a three-party agreement.

An assignment implemented along these lines would give rise to a contractual obligation requiring the third party to fulfil his/her contractual obligations. In the event that the third party does not honour his/her agreement and pays the previous beneficiary rather than the assignee, the assignee should have a claim against the third-party.

4.7 Identification. Must the sale document specifically identify each of the receivables to be sold? If so, what specific information is required (e.g., obligor name, invoice number, invoice date, payment date, etc.)? Do the receivables being sold have to share objective characteristics? Alternatively, if the seller sells all of its receivables to the purchaser, is this sufficient identification of receivables?

Each receivable being sold should be documented with all available information pertaining to the relevant receivable. Needless to say, this will largely depend upon the nature of the receivables contract itself. For a sale to be effected, it must be possible to definitively determine the assets which are being sold.

4.8 Respect for Intent of Parties; Economic Effects on Sale. If the parties denominate their transaction as a sale and state their intent that it be a sale will this automatically be respected or will a court enquire into the economic characteristics of the transaction? If the latter, what economic characteristics of a sale, if any, might prevent the sale from being perfected? Among other things, to what extent may the seller retain (a) credit risk; (b) interest rate risk; and/or (c) control of collections of receivables without jeopardising perfection?

As previously mentioned, in the absence of the concept of precedent, each dispute is decided on its individual merits as there is no case law from which to take definitive guidance. To the extent that the parties have denominate the transaction as a sale and clearly stated their intentions in the agreement, the only determination of the court would be as to whether the contract adheres to local law requirements.

If elements of the contract are unclear or the contract has not adhered to the requirements of Saudi Arabia, it is more likely that the economic characteristics of the transaction will be examined more closely.

In respect to the retention of control, this is not possible for the seller as under the laws of Saudi Arabia, the sale must constitute a true sale and a divestment of the seller’s interest.

4.9 Continuous Sales of Receivables. Can the seller agree in an enforceable manner (at least prior to its insolvency) to continuous sales of receivables (i.e., sales of receivables as and when they arise)?

Continuous sales of receivables as and when they arise are not possible in Saudi Arabia, as such a sale is not arguably Shari’ah compliant. Shari’ah requires that, for an asset to be sold, the seller must have a right, title or interest in the asset at the time of sale.

4.10 Future Receivables. Can the seller commit in an enforceable manner to sell receivables to the purchaser that come into existence after the date of the receivables purchase agreement (e.g., “future flow” securitisation)? If so, how must the sale of future receivables be structured to be valid and enforceable? Is there a distinction between future receivables that arise prior to or after the seller’s insolvency?

Future sales of receivables as and when they arise are arguably not possible in Saudi Arabia as such a sale is not Shari’ah-compliant. Shari’ah requires that, for an asset to be sold, the seller must be in possession of the asset at the time of sale. However, it is common to assign receivables that are to be received as a matter of practice.

4.11 Related Security. Must any additional formalities be fulfilled in order for the related security to be transferred concurrently with the sale of receivables? If not all related security can be enforceably transferred, what methods are customarily adopted to provide the purchaser the benefits of such related security?

Both the security and the receivables must pass concurrently, however it should be noted that this will depend on the nature of the underlying receivables.

There are currently very limited codified regulations in Saudi Arabia governing secured transactions or mortgages, pledges and assignments, and the ability to create a legal, valid, binding and enforceable security interest is limited.

There are effective mortgage regulations in relation to ships. There are, however, regulations in relation to mortgage/pledge of movables but the registration mechanism has not yet been implemented.

5 Security Issues

5.1 Back-up Security. Is it customary in Saudi Arabia to take a “back-up” security interest over the seller’s ownership interest in the receivables and the related security, in the event that the sale is deemed by a court not to have been perfected?

This will be transaction-specific and dependent upon the credit analysis of the transaction as well as the legal opinion, if or where relevant.

5.2 Seller Security. If so, what are the formalities for the seller granting a security interest in receivables and related security under the laws of Saudi Arabia, and for such security interest to be perfected?

Any security taken in Saudi Arabia will have to adhere to the Commercial Mortgage Regulations established under Royal Decree No. M/75 dated 21/11/1424H (corresponding to 27 February
Saudi Arabia

2004G) and supplemented by the implementing regulations issued by the Minister of Commerce and Industry, Decision No. 6320 dated 18/6/1425H (published in Umm Al Qura edition no. 4016 dated 29 October 2004G).

The commercial mortgage regulations establish a statutory framework applicable to mortgages and pledges over movable property. However, the extent to which the Commercial Mortgage Regulations apply in practice, and the procedures required of a person seeking to comply with the Commercial Mortgage Regulations in order to perfect security, is not yet in effect.

5.3 Purchaser Security. If the purchaser grants security over all of its assets (including purchased receivables) in favour of the providers of its funding, what formalities must the purchaser comply with in Saudi Arabia to grant and perfect a security interest in purchased receivables governed by the laws of Saudi Arabia and the related security?

Please see question 5.2 above.

5.4 Recognition. If the purchaser grants a security interest in receivables governed by the laws of Saudi Arabia, and that security interest is valid and perfected under the laws of the purchaser’s country, will it be treated as valid and perfected in Saudi Arabia or must additional steps be taken in Saudi Arabia?

Please refer to question 2.3 in relation to interpretation of foreign law in Saudi Arabia.

5.5 Additional Formalities. What additional or different requirements apply to security interests in or connected to insurance policies, promissory notes, mortgage loans, consumer loans or marketable debt securities?

Security interests against pledged collateral can only be enforced after obtaining an order from the Board of Grievances. To do so, the lender would apply to the Board of Grievances to sell all or part of the pledged collateral, after having given the pledgor-debtor three business days’ notice to pay amounts due and owing. The order of the Board of Grievances may only be executed five days after the Board of Grievances notifies the debtor-pledgor of the place, date and time of the public auction sale. The Commercial Pledge Regulations also contemplate circumstances where an application may be made for an immediate sale (such as when the pledged assets may be likely to be destroyed, or are very costly to maintain).

5.6 Trusts. Does Saudi Arabia recognise trusts? If not, is there a mechanism whereby collections received by the seller in respect of sold receivables can be held or be deemed to be held separate and apart from the seller’s own assets until turned over to the purchaser?

Saudi Arabia does not recognise common law trusts and the concept of a security trustee, as such, does not exist in Saudi Arabia. Under the Shari’ah, however, the concept of an “adl” (a trustee-arbitrator) or agency does exist, and there is some overlap between the concept of a “security trustee” and that of an “adl”.

In light of the above, an “adl” can be used as a security agent in certain Shari’ah-compliant structured transactions in Saudi Arabia rather than using a security trustee.

5.7 Bank Accounts. Does Saudi Arabia recognise escrow accounts? Can security be taken over a bank account located in Saudi Arabia? If so, what is the typical method? Would courts in Saudi Arabia recognise a foreign-law grant of security (for example, an English law debenture) taken over a bank account located in Saudi Arabia?

Saudi law generally upholds pledge/retention agreements related to bank accounts. From a practical viewpoint, lenders in the Saudi market tend to rely heavily on flow-through accounts that would be pledged in their favour and include a right of set-off. Note there is not the possibility of a floating pledge of a bank account. The relevant documentation must make it clear that the lender will have a right of set-off over the relevant account, since such a right must be created contractually as a matter of Saudi law.

6 Insolvency Laws

6.1 Stay of Action. If, after a sale of receivables that is otherwise perfected, the seller becomes subject to an insolvency proceeding, will Saudi Arabia’s insolvency laws automatically prohibit the purchaser from collecting, transferring or otherwise exercising ownership rights over the purchased receivables (a “stay of action”)? Does the insolvency official have the ability to stay collection and enforcement actions until he determines that the sale is perfected? Would the answer be different if the purchaser is deemed to only be a secured party rather than the owner of the receivables?

Liquidation of companies is dealt with briefly under certain provisions of the Saudi Companies Law. However, these provisions do not address a number of issues that arise in relation to the bankruptcy of companies, and tend to focus on voluntary liquidation. Bankruptcy under Islamic law focuses more on personal rather than corporate bankruptcy and several of its provisions are difficult to interpret definitively. Accordingly, it is unclear to what extent the CCR bankruptcy provisions would be applied by a Saudi court (and whether such provisions would be applied to a corporate entity). In the limited cases where bankruptcy proceedings have been filed under the CCR, it appears that the courts have relied primarily on Islamic law principles of fairness.

6.2 Insolvency Official’s Powers. If there is no stay of action under what circumstances, if any, does the insolvency official have the power to prohibit the purchaser’s exercise of rights (by means of injunction, stay order or other action)?

Please see question 6.1 above.

6.3 Suspect Period (Clawback). Under what facts or circumstances could the insolvency official rescind or reverse transactions that took place during a “suspect” or “preference” period before the commencement of the insolvency proceeding? What are the lengths of the “suspect” or “preference” periods in Saudi Arabia for (a) transactions between unrelated parties and (b) transactions between related parties?

The laws of Saudi Arabia do not make any reference to “suspect periods”, however a Saudi court may set aside a disposal or the grant of a security interest that it considers to be fraudulent.
6.4 Substantive Consolidation. Under what facts or circumstances, if any, could the insolvency official consolidate the assets and liabilities of the purchaser with those of the seller or its affiliates in the insolvency proceeding?

Please see question 6.1 above.

6.5 Effect of Proceedings on Future Receivables. What is the effect of the initiation of insolvency proceedings on (a) sales of receivables that have not yet occurred or (b) on sales of receivables that have not yet come into existence?

Please see question 6.1 above.

7 Special Rules

7.1 Securitisation Law. Is there a special securitisation law (and/or special provisions in other laws) in Saudi Arabia establishing a legal framework for securitisation transactions? If so, what are the basics?

The securitisations market in Saudi Arabia is in its very early stages. The legislation governing securitisations would be the Capital Markets Law and such securitisations would be regulated by the CMA.

7.2 Securitisation Entities. Does Saudi Arabia have laws specifically providing for establishment of special purpose entities for securitisation? If so, what does the law provide as to: (a) requirements for establishment and management of such an entity; (b) legal attributes and benefits of the entity; and (c) any specific requirements as to the status of directors or shareholders?

There are no special purpose entities for a securitisation.

7.3 Non-Recourse Clause. Will a court in Saudi Arabia give effect to a contractual provision (even if the contract’s governing law is the law of another country) limiting the recourse of parties to available funds?

It is impossible to determine the court’s interpretation of a non-recourse clause, as this has not yet been tested in Saudi Arabia.

7.4 Non-Petition Clause. Will a court in Saudi Arabia give effect to a contractual provision (even if the contract’s governing law is the law of another country) prohibiting the parties from: (a) taking legal action against the purchaser or another person; or (b) commencing an insolvency proceeding against the purchaser or another person?

It is impossible to determine the court’s interpretation of a non-petition clause, as this has not yet been tested in Saudi Arabia.

7.5 Independent Director. Will a court in Saudi Arabia give effect to a contractual provision (even if the contract’s governing law is the law of another country) or a provision in a party’s organisational documents prohibiting the directors from taking specified actions (including commencing an insolvency proceeding) without the affirmative vote of an independent director?

It is impossible to determine the court’s interpretation as this has not yet been tested in Saudi Arabia.

8 Regulatory Issues

8.1 Required Authorisations, etc. Assuming that the purchaser does no other business in Saudi Arabia, will its purchase and ownership or its collection and enforcement of receivables result in its being required to qualify to do business or to obtain any licence or its being subject to regulation as a financial institution in Saudi Arabia? Does the answer to the preceding question change if the purchaser does business with other sellers in Saudi Arabia?

Any entity which is involved in the purchase, ownership or collection of receivables in Saudi Arabia with a view to securitisation must be licensed to do so by the CMA. The entity will also be regulated in its activities by the CMA. If the purchaser does business with or via other sellers in Saudi Arabia rather than directly purchasing, owning and collecting the receivables, then these sellers must be appropriately licensed and authorised by the CMA to participate in such activities.

8.2 Servicing. Does the seller require any licences, etc., in order to continue to enforce and collect receivables following their sale to the purchaser, including to appear before a court? Does a third party replacement servicer require any licences, etc., in order to enforce and collect sold receivables?

Any entity which is involved in the servicing of receivables in Saudi Arabia as part of a securitisation must also be licensed to do so by the CMA. A third party replacement must be also appropriately licensed and authorised by the CMA to participate in such activities.

8.3 Data Protection. Does Saudi Arabia have laws restricting the use or dissemination of data about or provided by obligors? If so, do these laws apply only to consumer obligors or also to enterprises?

Saudi Arabia restricts data that may be held outside of Saudi Arabia. Any data collected should be at the express written consent of the concerned person or party.

8.4 Consumer Protection. If the obligors are consumers, will the purchaser (including a bank acting as purchaser) be required to comply with any consumer protection law of Saudi Arabia? Briefly, what is required?

There is no official consumer protection legislation in Saudi Arabia but the Ministry of Commerce does advise businesses to follow some basic consumer protection guidelines, which in themselves are not enforceable.
8.5 Currency Restrictions. Does Saudi Arabia have laws restricting the exchange of Saudi Arabia’s currency for other currencies or the making of payments in Saudi currency to persons outside the country?

There are currently no currency restrictions in Saudi Arabia, except in relation to Israeli shekels, restricting the exchange of currency for other currencies.

9 Taxation

9.1 Withholding Taxes. Will any part of payments on receivables by the obligors to the seller or the purchaser be subject to withholding taxes in Saudi Arabia? Does the answer depend on the nature of the receivables, whether they bear interest, their term to maturity, or where the seller or the purchaser is located?

Payments by a company or individual from a source in Saudi Arabia to a non-resident of Saudi Arabia are subject to withholding tax of between 5% and 20% depending on the nature of the business. The withholding tax does not apply to payments made on contracts for goods, but does apply to payments made for services, and at the rate of 5% on interest payments under loan agreements.

9.2 Seller Tax Accounting. Does Saudi Arabia require that a specific accounting policy is adopted for tax purposes by the seller or purchaser in the context of a securitisation?

All accounting matters in Saudi Arabia are monitored by SOCPA who set the rules and regulations for GAAP of Saudi Arabia. All companies in Saudi Arabia are required to comply with GAAP of Saudi Arabia. Standards set by the government are through the MOCI, and the accounting standards issued by SOCPA.

9.3 Stamp Duty, etc. Does Saudi Arabia impose stamp duty or other documentary taxes on sales of receivables?

Taxation in Saudi Arabia is administered and regulated by the DZIT and governed by the Income Tax regulations issued pursuant to Royal Decree No. M/1 dated 15/1/1425H.

There is no stamp duty in Saudi Arabia, however Zakat is payable by entities incorporated in Saudi Arabia that are wholly owned by Saudi or GCC nationals. The computation of Zakat is complicated, but it is essentially an assessment of 2.5% of the net wealth of the relevant entity.

If there is a sale of receivables, payments by a company or individual from a source in Saudi Arabia to a non-resident based outside of Saudi Arabia will be subject to withholding tax.

9.4 Value Added Taxes. Does Saudi Arabia impose value added tax, sales tax or other similar taxes on sales of goods or services, on sales of receivables or on fees for collection agent services?

There are no value added taxes in Saudi Arabia. Please see question 9.3 above in relation to Zakat for income taxation.

9.5 Purchaser Liability. If the seller is required to pay value added tax, stamp duty or other taxes upon the sale of receivables (or on the sale of goods or services that give rise to the receivables) and the seller does not pay, then will the taxing authority be able to make claims for the unpaid tax against the purchaser or against the sold receivables or collections?

There are no value added taxes or stamp duties in Saudi Arabia.

9.6 Doing Business. Assuming that the purchaser conducts no other business in Saudi Arabia, would the purchaser’s purchase of the receivables, its appointment of the seller as its servicer and collection agent, or its enforcement of the receivables against the obligors, make it liable to tax in Saudi Arabia?

This will largely depend on the location of the purchaser and the extent of its activities. If the purchaser is based in Saudi Arabia and receives proceeds from the servicer and collection agent or from the enforcement against the obligors then this income stream is likely to be subject to Zakat.

If the purchaser is not based in Saudi Arabia and receives proceeds from the servicer and collection agent or from the enforcement against the obligors then this income stream, if repatriated to the purchaser from Saudi Arabia is likely to be subject to withholding tax.

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Nabil Issa is a partner in the Middle East and Islamic Finance Group of King & Spalding, working from the Dubai and affiliated Riyadh offices. Prior to joining King & Spalding, Mr. Issa worked for leading law firms in Dubai and Riyadh and was also an adjunct professor of business law at the University of Sharjah’s College of Business and Management. Mr. Issa also completed secondments in Houston and Washington, D.C., with Baker Botts LLP prior to joining King & Spalding.

Mr. Issa’s experience includes work in the areas of banking and finance, Shari’ah-compliant funds, private equity, international investments, healthcare industry transactions, and Islamic finance issues.

Mr. Issa has been recognised in the 2006 and 2007 editions and is highly ranked in the 2008, 2009, 2010 and 2011 editions of Chambers Global: The World’s Leading Lawyers for Business for his work in both Saudi Arabia and the U.A.E., in addition to investment funds in the Middle East. In the 2011 edition of Chambers Global, Mr. Issa is ranked in Band 1 for his work in Saudi Arabia and in Band 2 for his work on investment funds in the Middle East. Mr. Issa is also recommended as a leading lawyer in banking and financing matters in the Legal 500 Europe, Middle East & Africa and was named among the “Leading Lawyers” by Islamic Finance News in all 15 categories. Moreover, Mr. Issa is included in the inaugural 2008 and 2010 editions of Euromoney’s “Guide to the World’s Leading Islamic Finance Law Firms” and 2010 edition of Euromoney’s “Guide to the World’s Leading Emerging Markets Lawyers”.

Martin Forster-Jones is an Associate in King & Spalding’s affiliated Riyadh office and a member of the firm’s Global Islamic Finance and Investment Group. Mr. Forster-Jones has experience in Structured Finance, Equity and Debt Capital Markets, Asset Finance and Derivatives and Structured Products. Prior to joining the firm, Mr. Forster-Jones worked for another global firm’s structured finance practice in London, Hong Kong and Moscow.
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