

SCHLUTER GRAF

# Liability For International Transport Damages in Saudi Arabia: A Legal Analysis

**The international transport of goods is a central component of global trade and Saudi Arabia, as one of the largest economic centres in the Middle East, plays a significant role in this. As part of Vision 2030 and in line with the country's national transport and logistics strategy, the transport of goods is to be further diversified by 2030 and capacities by land, sea and air are to be massively expanded.**

The country's main exports are oil, gas, petrochemical products and chemical products. The main imports are food, vehicles, machinery and electronics. In 2023, goods worth an estimated USD 211 billion were imported into Saudi Arabia. German direct investment in Saudi Arabia mainly takes place in energy and infrastructure projects.

International trade is usually associated with transport damages, which can lead to considerable financial losses for exporters and importers. Legal liability in such cases is often complex and can arise from numerous legal bases. This article is intended to provide an overview and shall highlight the most important issues in connection with international transport damages in Saudi Arabia.

## I. INTERNATIONAL CONVENTIONS

Global trade is strongly characterised by international conventions, which provide a legal framework for the international transport of goods and can be used as a legal source for liability issues.

### SEA TRANSPORT



The area of maritime transport is regulated by the International Maritime Organisation (IMO) and the International Convention for the Unification of Certain Rules relating to Bills of Lading (Hague Rules).

The latter contains provisions regarding liability in maritime transport. Among other things, a limitation of liability for carriers is provided for. This limitation is often a certain amount per unit of weight of the damaged goods, unless the shipper has declared a higher value of the cargo and recorded this in writing, or the transport damage is due to intent or gross negligence on the part of the carrier. The respective contracts should therefore take these regulations into account accordingly.

## RAIL TRANSPORT



Regarding rail transport, the Convention concerning National Railway Traffic (COTIF) is central to this. The agreement applies in Europe, in some Maghreb states and in parts of the Middle East. Saudi Arabia is not yet a member of the agreement, which is also due to the fact that the country's railway infrastructure has not yet been fully developed. Saudi Arabia has published plans to triple the national rail network in 2022 by building more than 8,000 kilometers of track, which could make the issue more relevant in the future.

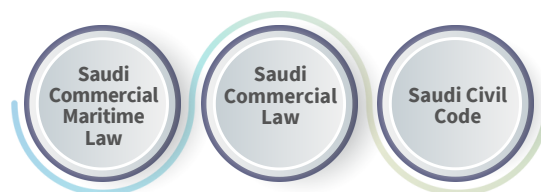
## AIR TRANSPORT



When it comes to air transport, the so-called Conventions on International Air Transport (initially the 'Warsaw Convention', later replaced by the 'Montreal Convention') must be taken into account. The Montreal Convention regulates liability issues in international civil air transport and therefore also covers cargo transport in addition to passenger transport. Saudi Arabia is a party to this convention, which means that it applies to all relevant matters in this context. Specifically, the liability of the contractual air carrier for damage to persons, baggage or cargo is regulated. The convention introduces clear maximum liability limits and exemptions from liability, which must be taken into account when drawing up contracts for the transport of passengers or goods by air.

## II. NATIONAL LEGISLATION

However, the most important point of reference for the question of liability in international transport is the respective national law. With the recently modernized Saudi Commercial Maritime Law, there is a special national legal basis for maritime trade in addition to the applicable international agreements. In addition to provisions on registration and rights in rem at sea, it also contains detailed regulations on maritime contracts, including the carriage of passengers and goods by sea under bills of lading.



In addition, road transport in particular, which still plays a fundamental role in global trade alongside other transport routes, has so far been largely subject to Saudi Arabia's national legislation. In this context, the Saudi Commercial Law and the Saudi Civil Code, which came into force at the end of 2023, are particularly relevant.

Both laws contain provisions that can be applied in connection with transport damages. They therefore form the primary basis for the legal assessment of claims for damages in Saudi Arabia. In addition, many regulations, e.g. the Regulation for Transport of Goods, Freight Forwarders and HGV Hire on Land Roads (Regulation for Transport of Goods), contain technical legal provisions on the transport of goods, which could be also considered as a breach of duty in contractual relationships and can therefore help determine liability issues.

Which regulations apply always depends on the structure of the respective contractual relationships in each individual case.

## THE CONTRACT OF CARRIAGE

The contractual agreements between the shipper (importer or exporter) and the carrier generally form the basis for liability in the event of damage. The so-called duties of care of the carrier are particularly important here. It should be clearly and comprehensibly regulated in the contract to what extent the carrier must control and monitor the proper transport of goods and to what extent he is responsible for what damage. It is also important to keep an eye on the rights and obligations of subcontractors and transport assistants in order to be able to quickly and legally resolve constellations with several companies involved.

## LIABILITY OF THE CARRIER

If the contract of carriage or freight contract does not contain any special provisions, Saudi Arabian law generally stipulates that a carrier is liable for damage to the transported goods if he does not transport them properly and safely. The decisive factor here is whether the damage was caused by the fault of the carrier or its vicarious agents. According to the new regulations of the Saudi Civil Code, a hypothetical calculation of damages is possible for breaches of contractual obligations, which now expressly includes loss of profit.

The Saudi Civil Code also contains the possibility of agreeing liquidated damages. This gives the parties the opportunity to map financial risks at the beginning of the contractual relationship - e.g. by means of staggered lump sums for certain scenarios - without the amount of the claim for damages having to be subsequently determined by a court. However, the court seized retains the right to adjust the damages upwards or downwards at its discretion if the situation so requires. In addition, the prohibition of interest (riba) in Saudi Arabia, which is based on Sharia law, also applies in connection with transport damage.

## EXCLUSIONS AND LIMITATIONS OF LIABILITY

In order to limit the liability of the carrier or other companies involved, exclusions or limitations of liability are often contractually agreed between the parties.

From the carrier's point of view, it is advantageous to reduce its liability to a minimum or to be able to pass it on to other companies involved.

From the commissioning company's perspective, on the other hand, it should be ensured that the exclusions and limitations of liability are only moderate. Of course, this always depends on the respective negotiating position of the parties.

In this context, however, it should be noted that contractual clauses can be deemed invalid by Saudi courts if they unreasonably disadvantage one of the two parties or violate Sharia principles in the opinion of the court. In addition, limitations of liability can be cancelled if transport damage is due to gross negligence or willful misconduct on the part of the carrier.

In addition to contractual limitations, there are also statutory exclusions of liability that are directly enshrined in Saudi law. For example, a carrier can be exempted from liability if the damage was caused by external influences such as force majeure, acts of war or natural disasters. Another liability privilege relates to damage caused by inadequate packaging or insufficient labelling on the part of the shipper. Here too, the carrier's liability may be limited.

### III. INTERNATIONAL COURT AND ARBITRATION PROCEEDINGS

In addition to the question of the carrier's liability, the extent to which clauses on applicable law and jurisdiction can be effectively agreed and then enforced is particularly important in the case of transport damage in international trade.

In principle, the Saudi Civil Code does not recognise any private international law or corresponding conflict of laws rules. Consequently, a Saudi court seized will generally always apply Saudi law and will not recognise a choice of law clause in an international contract. International law is only applied within the framework of the UN Convention on Contracts for the International Sale of Goods, which was recently also recognised in Saudi Arabia, and when arbitration clauses are agreed.

With regard to the enforcement of foreign judgements, there are still no bilateral agreements between Saudi Arabia and Germany or other European countries. The enforcement of such judgements is therefore still subject to extreme legal uncertainty. In contrast, foreign arbitration awards are increasingly being recognised by Saudi courts, even if Sharia law and a comprehensive ordre public reservation linked to it do not yet allow for a fully secure recognition practice.

### IV. INSURANCE TOPICS

Finally, a key aspect in dealing with transport damage is the role of the respective insurance company, which covers the insolvency and enforcement risk of any claims that may arise. In the best case scenario, appropriate insurance policies fully cover both national and international risks during the transport of goods.

Companies should therefore make absolutely sure that their freight is adequately insured, especially when transporting high-priced goods or goods with a high risk potential. As the injured company can assert claims in Saudi Arabia both directly against the carrier and against the insurer, it is advisable for the carrier to take out appropriate public liability insurance to protect itself against major financial risks.

### CONCLUSION

Liability for transport damage requires a careful legal assessment based on the relevant international and national legal sources. Economic operators should always inform themselves about the applicable laws and regulations and - as far as legally possible - define clear liability provisions in their contracts. This not only helps to minimise financial losses, but also to avoid legal disputes in the event of damage.

Due to the rapid economic and legal developments in Saudi Arabia, it is to be expected that the handling of transport damage will continue to be a major topic in the legal practice of lawyers in the Middle East and in Saudi Arabia in particular. Companies should therefore familiarise themselves comprehensively with the relevant regulations and respective structuring options.

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