

KSA: The Role of a Court Appointed Custodian in cases of Disputed Assets

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The Shariah Procedures Law promulgated by Royal Decree No. 21 on 20/5/1421H (corresponding 21/08/2000) (the “SPL”) contains provisions which are intended to facilitate the preservation and protection of assets which are subject to legal disputation.

Central to these provisions is the power of the court to make an order appointing an asset custodian (“Custodian”) on an urgent basis. This is to ensure that the interests of litigants are preserved pending the dispute being resolved.

The power of the court to make such an order is not confined to disputes between individuals. Often such an order is made in disputes between companies too.

Applications for an order appointing a custodian can be made to either the General Court or the Board of Grievances.

The application may be made in respect of both moveable and immovable property.

Appointment of the Custodian

In the first instance, the parties to the dispute may seek to agree on the appointment of the Custodian. If the parties are not able to reach an agreement, then the presiding judge has the authority under article 240 of the SPL to make that appointment.

The Rights and Duties of the Custodian

The order for the appointment of the Custodian should specify the rights and duties of the Custodian. If the appointment order is silent as to those rights and duties, they will be determined by the SPL.

In accordance with article 243 of the SPL, the Custodian is entitled to receive payment for acting in the role as asset custodian. The amount to be paid to the Custodian should be agreed to by the parties to the dispute or determined by the presiding judge. The Custodian has the option of waiving his/her entitlement to payment.

Article 241 of the SPL states that the Custodian’s duties include the maintenance and management of funds and other assets entrusted under his/her protection. The Custodian must exercise care ordinarily expected of a person carrying out the role. This suggests that the Custodian may be expected to have skills over and above that of an ordinary person. Also, his legal duties extend to more than simply retaining possession of the assets and appear to approach those of a trustee rather than simply a possessor of property.

Article 244 of the SPL requires the Custodian to keep orderly books of accounts and, when required by the presiding judge, the books of account must carry the seal of the court. At intervals specified by the judge (annually is the minimum), the Custodian must provide an accounting report to the parties supported by documents relating to receipts and expenditures. A copy of the accounting report must also be filed with the court’s administrative office.

Termination of the Appointment

According to article 245 of the SPL, the Custodian's role will end by either the agreement of all the parties concerned, or by a judgment of the court, should the parties not be able to reach such an agreement. Upon expiration of appointment, the Custodian must then return the relevant assets in accordance with directions given by the parties or the presiding judge (as the circumstances require).

Synopsis

- A Custodian may be appointed either by agreement of the disputing parties or by the Court.
- The overriding objective is to preserve the rights of litigants pending their dispute being resolved (either by agreement or by order of the court).
- Moveable or immovable property may be held by the Custodian.
- The Custodian has legal rights and duties arising out of his appointment.