would be accurate. However, as the application was for the enforcement of a final arbitral award, the *Diwan* should not have intervened in such a discriminatory way. In a case where the party seeking the enforcement of the arbitral award insisted on the full enforcement of the award, the *Diwan* gave the option of referring the whole case to the competent authority, i.e., the Committee for the Settlement of Banking Disputes, which was supposed to be the second option after looking at the award. The *Diwan* declined to look at the award in the first stage on the grounds of having banks as parties to the arbitration. In another case, after the parties to the dispute spent a great deal of time and money, the award was set aside by the *Diwan* even though none of the parties challenged it. This last case shows the main difference between arbitration under the *Diwan* and the judgments of the Committee for the Settlement of Banking Disputes, which are binding on the parties if they are not opposed by the parties before issuing the award, as will be seen below.

It can be assumed that the *Diwan* follows one of the opinions under the Hanbali school, which considers contracts related to prohibited subject matters as null and void – there is therefore no real dispute because the whole transaction is of no value at all.[77] Nonetheless, the *Diwan*'s practices led to a movement among banks to avoid the jurisdiction of the Saudi authorities over their transactions, as will be discussed below. Yet, the high level of legal risk also encouraged banks to move toward Islamic banking, which seems to be ethically acceptable for customers and judges and has proved to be more profitable and less risky for banks in Saudi Arabia.

In international banking transactions where at least one of the parties to the dispute is considered to be a foreign party, even though it is not, parties to the contract can stipulate to arbitrate anywhere outside Saudi Arabia, which is usually their first preference. In any scenario, Shari′a secures its position by not allowing the enforcement of arbitral awards contradicting it, as the enforcement order must be filtered by the *Diwan* in the light of Shari′a ruling. However, arbitration is not the favourite dispute settlement mechanism, as in most cases the parties to the contract stipulate that English law or the law of New York is the proper law of the contract and therefore that London or New York is the appropriate forum. This tactic is mainly preferred by banks because there are no impediments to the enforcement of interest and other prohibited or disputed sale contracts like in Saudi Arabia. By doing so, the Saudi court will not be involved in the dispute by any means; however, if the arbitration award is brought to Saudi Arabia for the sake of enforcement, it will be regarded as invalid and the *Diwan* will consider it a circumvention to avoid the jurisdiction of the Saudi judiciary. In most cases, the parties to the dispute are wholly Saudis but the legal entity is incorporated somewhere outside Saudi Arabia, so they would be considered as foreign parties, as in the following example. The case of *Islamic Investment Company of the Gulf (Bahamas) Ltd v Symphony Gems NV and others* is a clear example of such tactics of circumvention to avoid the application of Shari′a law on transactions where the

77 Supra n. 46, Alzaylai′e, Vol. 4, p. 101.

application of Shari'a could affect the parties' right to receive interest. In this case, the English court quoted: 'The fact that the claimant was based in Saudi Arabia, and the offer made in that country was insufficient to bring into play the illegality principle, on the assumption that the agreement was contrary to Saudi law.'[78]
It was noted that a great deal of care was put into the drafting agreements concerning international conventional banking. They tried to find a way to render the law of Saudi Arabia inapplicable to the transaction, even though the actual parties to the contract were of Saudi nationality and Saudi Arabia was the place of characteristic performance and conclusion of the contract. Some Saudi businessmen adopted this attitude because of the pressure put on them by foreign parties, as adjudication under any law other than Saudi law is more convenient for both of them.

In *Midland International Trade Services Ltd and Others v. Al-Sudairy and Others* the English court decided on a case related to their actions in Saudi Arabia. The agreement provided for the Saudi company to pay interest on the sums advanced and to repay the third plaintiff by honouring bills of exchange payable in Riyadh. The agreement was expressly to be governed by, and construed in accordance with, English law and the parties to it agreed to submit their disputes to the jurisdiction of the English courts without prejudice to the right of the third plaintiff to sue the Saudi company in Saudi Arabia. The case was first brought to the Committee for the Settlement of Negotiable Instruments Disputes in Riyadh, where interest was not awarded. Then a claim was initiated in London, where the English court concluded by awarding interest to the second and third plaintiffs.[79]

From current practice it can be noted that, in the absence of good faith, there are a few ways to avoid the intervention of the courts of Saudi Arabia in arbitration, which can be summarized as follows:

- The party benefiting from the banking facilities should incorporate a business entity outside the kingdom of Saudi Arabia with total independence from other Saudi corporations, as in the above case of *Islamic Investment Company of the Gulf (Bahamas) Ltd v. Symphony Gems NV and Others.* By doing so, the Saudi authorities would have no way to intervene in the arbitral process and there would be no need to resort to the *Diwan* for enforcing the award, as everything would be done outside Saudi Arabia provided that the parties have enough assets outside the jurisdiction of the Saudi court.
- Foreign banks can deal with Saudi parties safely by having a well-drafted agreement wherein the foreign bank is assured that Saudi Arabia is not the applicable forum for the settlement of any dispute. Such assurance can be obtained through the following steps:

78 See *Islamic Investment Company of the Gulf (Bahamas) Ltd v. Symphony Gems NV and Others* [2002] All ER (D) 171 (Feb.).

79 *Midland International Trade Services Ltd v. Al-Sudairy* (QBD, 11 April 1990), *The Financial Times*, 2 May 1990.

- The Saudi party establishes a branch in the home country of the bank to carry out business activities and have a permanent address.
- The place of the characteristic performance should be that of the home country of the bank, which means that if there is a dispute it will be outside Saudi Arabia and therefore out of the reach of the Saudi judiciary. The Saudi judiciary would not be competent to decide on it unless both parties were of Saudi nationality. In this case, arbitral awards should be enforced in the place where the contract was executed.
- Finally, the bank providing the facilities should retain sufficient collateral against the debt within its own legal system to avoid forum shopping in case the debtor defaults. If that happened, the bank would have to resort to the Saudi judiciary to recover its claims and would encounter the problem of interest being contrary to public policy.

Banking Disputes in Neighbouring Countries

Neighbouring states that have laws based on principles similar to those of Saudi Arabia, such as Egypt and the United Arab Emirates, still have a different approach to the issue of banking interest in general.[80] It should be noted that the Constitution of the UAE followed the Kuwaiti model and that both constitutions were drafted by Egyptian scholars and inspired by the Egyptian Constitutions, especially the Constitution of 1971.[81] The approaches adopted by neighbouring countries reflects their tolerance of interest in arbitral awards, as in some cases interest has been treated as being totally compliant with public policy, for example, in the UAE; and in other cases interest is allowed with certain restrictions, such as in Egypt. In Egypt, the law has recently been hesitant with regard to banking interest. Apart from the UAE and Oman, other GCC states do not have a clear answer to the question of whether interest is contrary to public policy. The uncertainty is owing to the fact that interest contradicts the constitutions of all these countries, including the UAE itself; however, they do allow interest to be charged either on loans or as delay damages in commercial transactions.

In Egypt, as the pioneer of modern statute law in Arab countries, the issue of interest in general and in arbitral awards in particular has become theoretically vague in the last two decades as a result of the 1980 amendment of the constitution

80 W. Ballantyne, 'The States of the GCC: Sources of Law, the Shari'a and the Extent to which it Applies', *Arab Law Quarterly*, 3 (1986), pp. 1–18.

81 See, generally, Butti, Al-Muhairi, 'The Position of Shari'a within the UAE Constitution and the Federal Supreme Court's Application of the Constitutional Clause concerning Shari'a', *Arab Law Quarterly*, 11 (1996), pp. 219–44. The Kuwaiti Constitution was drafted by Abdulrazzaq Al-Sanhuri and the UAE Constitution was drafted by Professor Wahid Ra'fat; both are well-known Egyptian jurists.

and because the decisions of the commercial court contradict each other.[82] For instance, article 227 of the Civil Code of 1949 stipulated that contracting parties could agree on interest rates of up to 7 per cent. Based on the amended constitution of 1980 identifying Shari′a as the principal source of legislation, the Sheik of Alazhar brought a claim before the Supreme Constitutional Court pleading against a lower court judgment obliging Alazhar to pay a debt and the 4 per cent interest on it according to the relevant article of the Civil Code of 1949. The court dismissed the case, arguing that 'the Shari′a rulings cannot be applicable to the already existing legislation retroactively without creating confusion and instability for the commercial and judicial process'.[83] However, the Sheik of Alazhar himself, in his well-known fatwa, allowed interest on banking deposits, as he said: 'riba is haram but banking interest is halal'. Sheik Alazhar Muhammad Sayed Tantawi was the first respectful figure in the Islamic world to give such an opinion. The fatwa itself can also be regarded as a shift in the attitude of many Muslims toward banking interest, even though the Sheik himself put restrictions on the application of interest in various contracts where the main condition is not to take advantage of the hardship of debtors and also not to enhance the difference between the classes of society.[84]

The Sheik of Alazhar's fatwa encouraged Islamic banks to adopt various methods for calculating interest charged on loans, covering it with different names – a practice that resulted in a similar interest rate to conventional loans or even a higher rate on some occasions.[85] Another opinion of Egyptian scholars with regard to banking interest reveals a misunderstanding of the mechanism of interest. This opinion suggests that a fixed interest rate is prohibited but that a variable interest rate is permissible. It might be thought that the two rates cannot differ substantially as interest is charged in both cases, albeit calculated differently, but instead of determining the rate at the beginning of the agreement, the interest would be reviewed at the beginning of each sub-period into which the loan is divided.[86] The decisions of the Egyptian courts, even after the claim of the Sheik

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82 S. Habachy, 'Commentary on the Decision of the Supreme Court of Egypt Given on 4 May 1985 Concerning the Legitimacy of Interest and the Constitutionality of Article 226 of the New Egyptian Civil Code of 1948', *Arab Law Quarterly*, 1 (1985), pp. 239–41.

83 F. Nomani, 'The Problem of Interest and Islamic Banking in a Comparative Perspective: The Case of Egypt, Iran and Pakistan', *Review of Middle East Economics and Finance*, 1/1 (2003), pp. 37–70.

84 See the fatwa of *Majma' Albohouth Al Islamiya Bil Azhar*, 'the Islamic Research Committee of Alazhar', concerning banking interest dated 23/09/1423 H. 28/11/2002, Cairo, Egypt.

85 One of the methods is called 'cost plus profit', where the bank estimates the real value of the principal on the maturity date and adds what it considers as administrative fees, which sometimes result in a rate that is higher than the conventional rate; however, according to this method, banks are not allowed to charge any additional fees after the maturity date.

86 Supra n. 32, El Diwany, p. 137.

of Alazhar, did not pay any consideration to the argument that interest violates the Constitution. The court of first instance at the south of Cairo decided that the Egyptian Government, representing the Ministry of Finance and the Taxation Department, should pay an operator of a hotel the amount of 33,320.13 Egyptian pounds as compensatory interest for late payment of three years.[87] The confusion created by the amendment of the Constitution did not apply to the legal system, as courts continued to regard charging interest as part of the public policy of Egypt.

Conversely, the legality of the practice of charging interest in the UAE is not disputed. The law has integrated it as a fundamental practice to the extent that charging interest is not a matter of conflict; if there is a dispute, it will only be about when to charge interest and how much the rate will be. For instance, article 76 of Federal Law No. 18 of 1993, known as the Commercial Transactions Law, emphasizes the right of a commercial debtor to charge interest, stating:

> A creditor is entitled to receive interest on a commercial loan as per the rate of interest stipulated in the contract. If such rate is not stated in the contract, it shall be calculated according to the rate of interest current in the market at the time of dealing, provided that it shall not exceed 12% until full settlement.[88]

The structures of the economy and the ruling system have contributed to the relaxed regulatory attitude toward many traditionally controversial issues and have caused riba to be represented as a normal and even necessary practice in the economic life of the UAE.[89] As a result, interest has become an established principle within UAE law; it is not considered as a religious dilemma and is not even faced with opposition, as it is in Saudi Arabia or Egypt.[90] Furthermore, it has been argued that the Dubai International Financial Centre enjoys actual independence in the fields of civil and commercial law, with the express authorization of the amended UAE Constitution, which introduced common law-based regulations. The legislators did that hoping to attract foreign investment, even at the expense of the established principles of the society. Some commentators added that Law No. 18 of 1993 concerning commercial transactions is an attempt to circumvent the application of Shari'a in commercial matters.[91]

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87 The Court of First Instance at the South of Cairo, decision No. 4615 of 1992. See also, The Supreme Court of Egypt decisions No. 93/6/7 of 1996 and decision No. 26/16/8 of 1996.

88 The UAE Federal No. 18 of 1993, Commercial Transactions Law, article 76.

89 H. Tamimi, 'Interest under the UAE Law and as applied by the Courts of Abu Dhabi', *Arab Law Quarterly*, 17 (2002), pp. 50–52.

90 This is owing to the various degrees of influence of the religious institutions on the regulatory bodies and on the public. It can be said that Shari'a has no influence on the commercial law of the UAE.

91 A. Carballo, 'The Law of the Dubai International Financial Centre: Common Law Oasis or Mirage within the UAE?', *Arab Law Quarterly*, 21 (2007), pp. 91–104.

One of the similarities between the mechanisms banks employ in paying interest on deposits in the UAE and Saudi Arabia is the way of stipulating. As a general rule, banks in Saudi Arabia and the UAE do not pay interest unless the client requests it; however, the main difference is that in Saudi Arabia there are no certain rules for regulating interest – everything is based on market practice and the terms of the contract. Regarding loan agreements in the UAE, the law provides for the interest rate to be determined by agreement between parties – in the case of not specifying the interest rate, the rate would be determined by the common interest rate in the market provided that it did not exceed 12 per cent.[92]

Bearing in mind that the UAE is a Muslim state with Shari′a as a principal source of legislation, it has been noted that economic necessity led it to change its view of interest, which in turn led to its first allowing interest in commercial loans and then allowing interest as an ordinary practice in all areas of commercial activity. As an obvious violation of Shari′a, UAE law allowed for what some scholars call ‘obvious riba’, or ‘riba aljahiliyah’, which is the ‘riba alnasi′ah’ discussed above. This kind of riba cannot be circumvented and the law allowing it reads as follows: ‘Where the contract stipulates the rate of interest and the debtor delays payment, the delay interest shall be calculated on the basis of the agreed rate until full settlement.’[93] Another article in the same law states clearly that the debtor is obliged to pay interest over the debt to the creditor subject to their agreement.[94] Consequently, charging interest is not disputed at all and the latter ceiling for the interest rate is upheld by case law. In the absence of an agreement between parties as to the interest rate, UAE law allows simple interest to be charged on all financial transactions within the limit of 12 per cent per annum. The same rule also applies to delay interest as a means of compensation, known in Shari′a as ‘riba aljahiliyah’.

In a case decided in 1980, the Federal Supreme Court considered certain provisions of the Abu Dhabi Code of Civil Procedure that expressly allowed interest. The statutory language under review in 1980 provided that the rate of interest determined by the court may not exceed the rate of interest agreed upon by the parties, or upon the basis of which they transacted, and that in the absence of an agreement the court may determine the rate provided that it does not exceed 12 per cent with respect to commercial transactions and 9 per cent with respect to non-commercial transactions. In its 1980 judgment, the Federal Supreme Court held that these statutory provisions were constitutional, but that banks would not be permitted to charge rates of interest in excess of 12 per cent and that only simple interest would be allowed. In this particular case, the Federal Supreme Court first considered an objection by the borrower that all interest-bearing transactions were void pursuant to article 714 of the Civil Code (promulgated pursuant to Federal Law No. 5 of 1985). Article 714 provides that if a contract of loan provides for

92 Commercial Transactions Law of the UAE article 399.1.a.

93 Ibid., article 77. See also article 7 of the Federal Constitution of the United Arab Emirates of 1971.

94 Ibid., article 409.3.

a benefit in excess of the essence of the contract, then such a provision will be void. However, the Federal Supreme Court held that the Civil Code did not apply to banking transactions, which were commercial by nature and were therefore governed by the Commercial Code. The Federal Supreme Court therefore held that the borrower's challenge to the entirety of the interest owed to the bank could not be sustained. However, the Federal Supreme Court agreed with the borrower's challenge to the bank's attempt to collect interest in excess of 12 per cent and held that the interest rate ceiling established by the 1980 judgment would continue to apply.[95] In the decision of the Federal Supreme Court of Abu Dhabi No. 245/20 dated 7 May 2000, the Court established that charging interest in excess of the statutory ceiling of 12 per cent per annum is permitted as long as all parties agree to it. In accordance with article 76 of the Commercial Transactions Law of 1993, the Court did not distinguish between interests charged before or after the maturity date and the Court argued that the statutory limit should apply in the absence of such an agreement.[96] The scope of judicial review under UAE law is very limited compared to that of Saudi Arabia. Apart from the general grounds provided in article 5 of the New York Convention of 1958, no obvious obstacles for the enforcement of arbitral awards can be found in Saudi Arabia, which might be owing to the fact that the economic situation in that country forces the legal regime to be more tolerant in this respect.[97]

To sum up, interest is not considered as an impediment to arbitration at all in the UAE as it has become an essential element of both the economy and the legal system. Some may argue that arbitral awards providing for interest can be challenged in Egypt on the grounds of their contradiction of the Constitution, i.e., Islamic Shari'a. This argument is still only theoretical, however, and setting aside an arbitral award in Egypt on the grounds of interest is unlikely to happen, as Egyptian courts have their own rules of determining and enforcing interest obligations.[98]

The Committee for the Settlement of Banking Disputes

The Committee for the Settlement of Banking Disputes is the only authority in Saudi Arabia that recognizes charging interest as a valid practice. The Committee is competent to settle disputes arising out of the conduct of banking business

95 Ibid.

96 Supra n. 91, Tamimi. See also the UAE Supreme Federal Court decision dated 6 September 1983.

97 N. Angell and G. Feulner, 'Arbitration of Disputes in the United Arab Emirates', *Arab Law Quarterly*, 3 (1988), pp. 19–32.

98 See *Southern Pacific Properties (Middle East) Limited [SPP(ME)] v. Arab Republic of Egypt*, Case No. ARB/84/3. ICSID report (1st edn., Cambridge University Press, 1995), p. 242.

between banks and customers, and disputes between commercial banks in Saudi Arabia. Settlement of cheques and negotiable instruments disputes were excluded from the jurisdiction of the Committee as they fall under the jurisdiction of the Committee for the Settlement of Negotiable Instruments Disputes and, in some cases, Shari′a courts. If *Diwan Almazalim* finds an arbitral award to be contrary to public policy and the dispute relates to banking business, the *Diwan* will refer the whole case to the Committee to be decided anew as one of the remedies available to the parties to the dispute. In the following paragraphs, the procedure of the Committee will be described with reference to the available cases and materials.

First of all, it should be noted that the Committee was established as a compromise between Shari′a and economic interest in order to remove the burden from judges who faced a religious dilemma when deciding on disputes related to banking business. The dilemma occurred because of the gap between the legal right of the bank to collect the amount of interest in full, as stipulated in the agreement between the parties following the principle of *Pacta Sunt Servanda*, on the one hand and the fact that the whole transaction is unacceptable under Shari′a on the other. It should also be noted that there are no statutory rules of procedure for the Committee and proceedings rely fully on practice.[99]

In Saudi Arabia, legal prosecution concerning banking disputes or financial claims in general may be brought initially to one of the departments of the Ministry of Interior, known as Alhoqooq Almadaniyah, which in its turn will refer the case to the Committee for the Settlement of Banking Disputes. The claim can be initiated directly to the Committee or raised through the Regional Governorate, called Al Imarah. Any of these bodies will refer the case to the Committee. In the case of bringing the claim before the Alhoqooq Almadaniyah, the Department has the right to take action against the debtor to force him to pay off the debt if it finds the claim to be genuine. If the debtor challenges the claim either in full or in part, the whole case is sent to the competent authority, which would be the Committee for the Settlement of Banking Disputes in the case of banking disputes.

After obtaining approval to look at the dispute, the secretary of the Committee will then notify the respondent of the claim, attaching a copy of the claim and asking him to respond to it within one month. All claim notifications must be in writing and in full detail. Such details include the names of the parties, the nature of the relief or order applied for or the directions sought from the Committee, the names and addresses of the persons on whom it is intended to serve the application and the applicant’s address for service, in addition to the signature of the applicant or his representative. The applicant may state the amount of his claim in foreign currency. Notifications of claims, hearings and decisions are sent through the claimant’s bank to the respondent if he is a customer; in the case of having another bank as a respondent, the secretary will notify him directly. The secretariat prepares a report about the suit and in some cases an accountant is called by the Committee to check the amount of the claim. The Committee may also order a deposit by

99 Supra n. 67, Alameldin.

way of security for the administrative fees. It has been noted that accountants mainly admit banking service charges, as a substitute term for interest, until the end of the facility agreement between the parties. In this way, no tacit renewal of the facility can be claimed unless it is proved that an amount was withdrawn by the customer after the end of the facility agreement. In such cases interest can be granted up to the date of the later withdrawal. The Committee used to consider such an accountancy report as final and binding on parties without giving parties the chance to challenge it or even to know its content; the Committee gave the parties notice of it during the hearing only. The Committee appoints a venue for the hearing, which is usually the headquarters of the Saudi Arabian Monetary Agency in Riyadh. The hearings are held in private and the attendance is restricted to the parties to the disputes or their authorized lawyers; however, any power of attorney must contain the right to settle and transact on behalf of the principal. The Committee looks at the case as it was on the day of its presentation to the Alhoqooq Almadaniyah or to the Committee, but the amount of the claim can be amended. A written record of the examination is made and signed by both plaintiff and defendant, which is considered as evidence against any statement that the debtor makes during the examination.

According to the royal decree providing for the establishment of the Committee, the Committee was formed in order to find solutions for banking disputes. In the case of not reaching a fair settlement between the parties, the Committee should refer the case to the competent authority because the Committee is not a judicial body.[100] In practice, the Committee does not follow the instructions of the royal decree and tries to impose its own view on parties even if all parties or any one of them rejects the proposed solution. If the parties accept the proposed, or sometimes imposed, settlement and the parties conclude a transaction agreement, the Committee will add the following statement to the award: ‘This decision is considered an injunction enforceable by the authorities legally competent.’ Nonetheless, if the parties or one of them refuses the proposed solution, the award will not include the latter statement, which shows the conciliatory nature of the Committee’s decisions. In other words, the Committee’s decisions are treated in the same way as conciliation awards, which are non-binding on the party that rejects it. As a general rule, the decisions of the Committee are binding and enforceable; however, it has been noticed that the Alhoqooq Almadaniyah found difficulties executing the decisions of the Committee either because of a lack of clear instructions or because of the unwillingness of debtors to pay off their debts. All of this might be owing to the fact that the Committee is not a judicial body. Another reason for the weakness in the decisions of the Committee is the possibility that the decisions of the Committee can be challenged before *Diwan Almazalim* on the grounds of contradicting public policy. In one of the *Diwan*’s cases, the losing party, i.e., the debtor to the bank, argued that SAMA, when instructing the losing party to pay interest, did not violate only Shari′a but even its own charter that prohibits SAMA from acting in

100 See the Circular of the Minster of Interior No. 10207 of 07/02/1407 H. (1987).

any manner contradictory to Shari'a. The *Diwan* did not issue a decision for this dispute as the plaintiff requested a stay of proceedings – the plaintiff then reached a settlement with the bank outside the *Diwan*.

As an attempt to add strength to the decisions of the Committee, the Minister of Finance advised the Ministry of the Interior that the decisions of the Committee are final, enforceable and unchallengeable, asking the Minister of the Interior to put on more pressure to oblige debtors to pay off their debts, because the delay in the payment would have a negative effect on local banks and on the economy as a whole. Nonetheless, the enforcement of the Committee's decisions through the Ministry of the Interior faced many obstacles, which led the Ministry of Finance to impose its own measures to ensure the enforcement of the decisions of the Committee. As a remedy, a plaintiff can ask the Committee to place a defendant's name on a blacklist in order to prevent him from travelling abroad and thereby obtaining new facilities from banks. Moreover, the Committee can freeze or seize the defendant's banking assets, although it is disputed whether the Committee can freeze or seize all the moveable and immovable property of a defendant. In most cases the Committee cannot order a seizure of the defendant's non-banking assets unless it is pledged as a security against the debt, for the reason that such orders must be made through one of the bodies of the Ministry of Justice or *Diwan Almazalim*, and these bodies will not usually approve such actions if the seizure is to be made to recover a claim of banking interest. However, if the claim is brought to recover the principal only, the *Diwan* or Shari'a court will usually approve it. Appeals can be made through the Governor of the Saudi Arabian Monetary Agency, the Minster of Finance or to the Committee directly.

Since it was founded in 1987, the Committee has been facing some problems, making it unable to serve the objectives of its establishment. First is the absence of clear procedural rules – there are no procedural rules for the working of the Committee and all the proceedings are done in a vague manner. Second is the lack of enforceability of the Committee's decisions, which is the biggest problem. This issue makes the Committee totally dependent on other governmental bodies such as the Ministry of the Interior, the Ministry of Justice and *Diwan Almazalim*. Dependence on other governmental bodies for enforcing the judgments of the Committee is not a problem on its own as all other judicial bodies rely on other authorities to enforce their decisions; the problem occurs as a result of the contradiction between the principles applied by the other bodies, i.e., the Ministry of Justice and the *Diwan*, and the principles applied by the Committee. For instance, in cases where a real property is pledged to the debt, the enforcement of the agreement will face great difficulties when authenticating the agreement at kitabat aladl and when reaching *Diwan Almazalim* to obtain the order to sell the pledged property, since the *Diwan* might not approve the selling of such property for the recovery of interest.[101] Moreover, banks have some problems with securities

101 See for details the Commercial Mortgage Act, Royal Decree No. M/75 dated 21/11/1424 H. (2004). *Umm Alqura Gazette*, issue No. 3981 dated 07/01/1425 H. (2004).

other than real property, especially in the case of guarantees. Guarantees under Saudi law can be classified into two types: presence guarantee, called ‘kafalah hodouriya’, is where the guarantor guarantees the presence of the debtor before the official authorities only; and full guarantee, ‘Kafalat Ghorm wa Ada′’, gives the bank the option of claiming the debt from the guarantor directly. The main problem associated with such guarantees arises when the amount of the claim is not stated in the letter of guarantee provided by the guarantor. The guarantee will be considered void and of no effect or the amount claimed by the guarantor will be considered as the correct amount.

Third, as with conciliation, acceptance of the award by the parties is an essential condition for the enforcement of any award, showing the conciliatory nature of the Committee’s decisions. Fourth, in addition to the absence of clear procedural and substantive rules and owing to the fact that none of the members of the Committee have a legal background, the Committee cannot function as a judicial body. Some of its decisions even seem to be impractical and harmful to parties, as in the case of rescheduling a debt in annual instalments for 20 years with a fixed interest. In this case, a debtor refused to pay his instalments because of financial difficulties. The defendant presented an official document issued from the Shari′a court stating that he was unable to pay off his debt and that he should enjoy very flexible terms of repayment.[102] The Committee calculated the amounts claimed by the bank and divided it by 20 years instead of five years. The decision was accepted by both parties as being the last resort for the bank.[103] In another case, the Committee totally cancelled the interest in exchange of the repayment of the principal in cash. The decision is seen to be reasonable in normal circumstances, but in this case the bank had to accept the decision after more than two years of not receiving any payment for the facilities granted to the defendant, which means that the defendant enjoyed an interest-free loan.

It has been noted that in many of its decisions the Committee rescheduled debt claims for various periods ranging from five years to up to 30 years. Nonetheless, the Committee can issue relaxed decisions if it finds the defendant willing to pay the full amount in cash. Such relaxations include discounting part of the interest as in the following example: a businessman borrowed an amount of SR 19,000,000 from one of the commercial banks in Jeddah. The parties stipulated on charging interest at the rate of 5.5 per cent per annum for five years. Following the market depression in the late 1990s, the businessman was unable to pay the instalments for 14 months owing to financial difficulties. The bank brought a claim before

102 This kind of document is known as Saq E′isar; one of the main advantages of obtaining such a deed can be the very relaxed repayment terms as such documents are issued for insolvent persons.

103 This case and the following cases have been provided by one of the commercial banks in Saudi Arabia and the author is not allowed to disclose any information that might give any assumption of the identity of the parties to the dispute, by either providing numbers, dates or names, etc.