



The Middle Eastern and African Arbitration Review 2021

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Saudi Center for Commercial Arbitration (SCCA)
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The Middle Eastern and African Arbitration Review 2021

A Global Arbitration Review Special Report

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Prefacevi

Overviews

Damages in the Middle East and Africa: Trends from Recent Cases and Some Challenges 1

Fabrizio Hernández, Timothy McKenna and Ralph Meghames

NERA Economic Consulting

Energy Arbitrations in the Middle East 9

Thomas R Snider, Khushboo Shahdadpuri and Aishwarya Suresh Nair

Al Tamimi & Company

Investment Arbitration in Africa 22

Théobald Naud, Ben Sanderson and Maxime Desplats

DLA Piper

Mining Arbitrations in Africa 33

Audley Sheppard QC, Amanda Murphy and Karolina Rozycka

Clifford Chance

Remote Hearings and the Use of Technology in Arbitration 42

Mohamed Hafez

CRCICA

The Covid-19 Factor: the Impact of Covid-19 on Damages Assessments 51

James Church-Morley and Ting Ting Liew

FTI Consulting

Country chapters

Angola 55

Filipe Vaz Pinto, Ricardo do Nascimento Ferreira and Frederico de Távora Pedro

Morais Leitão, Galvão Teles, Soares da Silva & Associados and ALC Advogados

Egypt 62

Amr Abbas and John Matouk

Matouk Bassiouny & Hennawy

Lebanon 77

Nayla Comair-Obeid

Obeid Law Firm

Mozambique 84

Filipe Vaz Pinto, Joana Galvão Teles and Paula Duarte Rocha

Morais Leitão, Galvão Teles, Soares da Silva & Associados and HRA Advogados

Nigeria 92

Uzoma Azikiwe and Festus Onyia

Udo Udoma & Belo-Osagie

Saudi Arabia 98

Hamed Hassan Merah and James MacPherson

Saudi Center for Commercial Arbitration (SCCA)

Turkey 109

Utku Coşar, İpek Sumbas Çorakçı and Hakan Yakışık

Coşar Avukatlık Bürosu

United Arab Emirates 117

Charles Lilley and Richard Dupay

Bryan Cave Leighton Paisner LLP

Welcome to *The Middle Eastern and African Arbitration Review 2021*, one of *Global Arbitration Review's* annual, yearbook-style reports.

Global Arbitration Review, for those not in the know, is the online home for international arbitration specialists everywhere. We tell them all they need to know about everything that matters.

Throughout the year, GAR delivers pitch-perfect daily news, surveys and features, organises the liveliest events (under our GAR Live and GAR Connect banners) and provides our readers with innovative tools and know-how products.

In addition, assisted by external contributors, we curate a series of regional reviews – online and in print – that go deeper into the regional picture than the exigencies of journalism allow. *The Middle Eastern and African Arbitration Review*, which you are reading, is part of that series. It recaps the recent past and provides insight on what these developments may mean, from the pen of pre-eminent practitioners who work regularly in the region.

All contributors are vetted for their standing before being invited to take part. Together they provide you the reader with an invaluable retrospective. Across 128 pages they capture and interpret the most substantial recent international arbitration developments, complete with footnotes and relevant statistics. Where there is less recent news, they provide a backgrounder – to get you up to speed, quickly, on the essentials of a particular seat.

This edition covers Angola, Egypt, Lebanon, Mozambique, Nigeria, Qatar, Saudi Arabia, Turkey and the UAE, and has overviews on energy arbitration, investment arbitration, mining arbitration, damages (from two perspectives) and virtual hearings.

Among the nuggets you will encounter as you read:

- a helpful chart setting out the largest awards affecting Africa and the Middle East, recently;
- the admonition to expect a wave of restructurings of energy projects locally, and even formal insolvency proceedings;
- a data-led breakdown of investor-state disputes in Africa starting from 2013;
- the revelation that a number of Africa-related mining disputes-opted to pause proceedings rather than attempt virtual hearings when the pandemic struck;
- a brisk summary of the extra considerations that covid-19 has introduced into damages calculation;
- an in-depth analysis of Angola's BITs and the modernisation of BITs in the region more generally; and
- a clear-eyed commentary on recent Nigerian court decisions, some of which are 'not entirely satisfactory'.

Plus, much much more.

We hope you enjoy the review. I would like to thank the many colleagues who helped us to put it together, and all the authors for their time. If you have any suggestions for future editions, or want to take part in this annual project, GAR would love to hear from you. Please write to insight@globalarbitrationreview.com.

David Samuels

Publisher

May 2021

Saudi Arabia

Hamed Hassan Merah and James MacPherson
Saudi Center for Commercial Arbitration (SCCA)

In summary

This article discusses how local and international alternative dispute resolution (ADR) has transformed access to justice. It also discusses the convergence of innovative local legal infrastructure with best international statutes; modernisation; and the key contributors to the transformation of the Saudi ADR ecosystem.

Discussion points

- Government support
- Diversification of ADR
- Judicial support
- Institutional leadership

Referenced in this article

- The Arbitration Law enacted by Royal Decree No. M/34 dated 16/04/2012G and its Implementing Regulations issued by Cabinet Decree No. 541 dated 22/05/2017G
- Royal Decree No. 28004, dated 19 January 2019
- The Franchise Law enacted by Royal Decree No. M/22, dated 08/10/2019G
- The Bankruptcy Law enacted by Royal Decree No. M/50, dated 14/02/2018G
- The Government Tenders and Procurement Law enacted by Royal Decree No. M/128 dated 16/07/2019G and its Implementing Regulations amended by Cabinet Decree No. 3479 dated 04/04/2020G
- The Commercial Courts Law enacted by Cabinet Decree No. 511 dated 08/04/2020G
- Cabinet Decree No. 103 (the Conciliation Center Statute)
- The United Nations Convention on International Settlement Agreements Resulting from Mediation 2019 (the Singapore Convention)

Introduction

Improving ADR and access to justice in Saudi Arabia
The complete transformation of Saudi Arabia's commercial ADR ecosystem over the last decade has dramatically altered the way those doing business in Saudi Arabia operate and access justice. The legal reforms and initiatives have been so comprehensive, fundamental and substantive in their rapid implementation, uptake and impact that a survey of the more consequential ones is beneficial.

All companies and their counsels – whether learning or briefing, part of their due diligence, legal or risk management, contract negotiation and drafting, project management, litigation management, dispute management and resolution – will find this a useful primer. This chapter will provide vital information needed to be briefed on the development and current state of Saudi ADR and includes viewpoints from leading ADR practitioners working in the region.

The main conditions in which ADR has increased access to justice in Saudi Arabia are reviewed, outlined and discussed. The requisite need for understanding how ADR works and its reliance on a range of different types of dispute resolution mechanisms, the comprehensive use of dispute resolution system design and the adoption of the appropriate legislation and regulation for both mediation and arbitration processes (and in a complementary, mutually reinforcing and effective way) has been undertaken and put in place in Saudi Arabia.

Highlighted here as the most important preconditions for realising the potential of ADR to provide access to justice in Saudi Arabia.

Four sections:

The four key contributors to the transformation of the Saudi ADR ecosystem are the following:

Government support	Legislative and procedural reforms, and opting-in to ADR investing in transformation
Diversification of ADR	SCCA partnering with government and the private sector to diversify, deliver and promote ADR across sectors
Judicial support	SCCA collaborating with all judicial entities and courts on ADR enforcement
Institutional leadership	Sophisticated international standard service provider, responsive innovation and professionalisation

Unlocking the potential of ADR

The Saudi government recognises the value and game-changing power of ADR. The level of coordinated activity – whether legislatively or initiatives invested in and undertaken across the board in the Kingdom – reflects their comprehensive commitment to fully realising the many benefits of commercial ADR. The solutions and their impact on businesspeople have also been effectively linked into a winning narrative.

The Saudis invested strategically in basic long-term support which, although relatively modest, have been highly impactful on the development, growth and sustainability of their ADR Sector.

Importantly, they have brought together the various stakeholders to get behind a unified vision and narrative: 'Ours is an ADR friendly and innovative jurisdiction'.

National ADR awareness campaign

All three Ministers of Justice, Finance and Commerce, in partnership with other government, semi-government and private sector partners, announced in mid-February 2021 that they would be leading a major coordinated, national ADR push – the latest example of the depth of commitment and sustained strategic value placed on dramatically improving the quality and access to justice in Saudi Arabia.

Institutions participating in the national campaign to raise awareness about ADR include government and semi-government entities such as the Ministry of Justice, Ministry of Commerce, Ministry of Finance, Ministry of Media, National Competitiveness Centre (NCC), the Small and Medium Enterprises General Authority; the Council of Saudi Chambers as a private sector representative; the Saudi Bar Association and the SCCA.

Coordinated legislative reforms

ADR is playing an increasingly important role in managing and resolving disputes since the 'new' Arbitration Law in 2012 kicked off reforms of the commercial legal system of Saudi Arabia. Some of the key legislation and implementing regulations that have changed the ADR landscape in Saudi Arabia that will be discussed include:

- the Arbitration Law 2012;
- the Arbitration Implementing Regulations 2017;
- Royal Decree No. 28004, dated 19 January 2019 (Circular to all ministries, government authorities, state-owned companies, and affiliated bodies encouraging all government entities and state-owned companies to settle their disputes with foreign investors through arbitration, making specific mention of SCCA in particular as a first option);
- the Bankruptcy Law 2018;
- the Franchise Law 2019;
- the Government Tenders and Procurement Law 2019;
- the Government Tenders and Procurement Implementing Regulations 2020;
- the Commercial Courts Law 2020, introducing several new measures to improve the efficiency of the judicial system, with certain claims now be mediated or conciliated before seeing a judge (court-mandated conciliation or mediation);
- Cabinet Decree No. 103 – Conciliation Center Statute; and
- the Singapore Convention – the United Nations Convention on International Settlement Agreements Resulting from Mediation 2019.

Although in the past arbitration in Saudi Arabia has not been as popular as elsewhere, 'the recently enacted legislation, in particular the Arbitration Law and the Enforcement Law, and the opening of the SCCA, a modern arbitration centre, provides a reason for cautious optimism that the judiciary's familiarity with arbitration and the trend for increasingly favouring arbitration as an effective method of dispute resolution in the KSA' will continue.¹ The key is to sustain and maintain this positive momentum.

Targeted legislative reform: to meet local and international standards

Minister of Justice Walid Al Samani was very precise in regarding which aspect of judicial performance he felt his reforms were

meant to zero in on when he stated that the 'new laws will be limiting the role of the courts in applying the statutory text'.

The Herbert Smith Freehills Middle East ADR team in Dubai concluded that:

[the] aim to bring the KSA legal system in line with both international standards and Shari'ah, by creating a more transparent legal framework. We understand that new mechanisms will also be introduced, so there are fewer discrepancies in Court decisions. . . This is a significant step towards more certainty for those accessing the KSA legal system and the announcement is a welcome step both for legal practitioners and those doing business in the Kingdom.²

Government support opting-into ADR and making it happen

Circular of the Royal Decree No. 280004 to all ministries, government authorities, state-owned companies, and affiliated bodies was to encourage them to resolve their disputes with foreign investors through arbitration, making specific mention of SCCA in particular.

Saudi Finance Minister Mohammed Al-Jadaan announced the impact of the government's streamlined process and its categorical embrace of ADR:

Recourse to arbitration has now become a right of ministries with the agreement of the Ministry of Finance. Whereas recourse to arbitration was previously an exception, now, this is a clear confirmation by the government of the importance of arbitration and the government's commitment to participate in more rapid, cost-effective dispute resolution.³

Testament to Saudi's commitment include the ministries that actively embraced the opportunity of the availing themselves of the SCCA Model Clause, among them:

- Minister of Finance approved 14 unified governmental contracts, providing for the SCCA's Model Clause as its default ADR mechanism.
- SCCA Module Clause has been included in a number of the model contracts issued by the Ministry of Commerce.

The Government Tenders and Procurement Law

In December 2019, the new Government Tenders and Procurement Law (the GTP Law), along with the Implementing Regulations, came into force. The GTP Law specifically encouraged government ministries and agencies involved in tenders and procurement to strategically avail themselves of appropriate ADR mechanisms.

The Franchise Law

Similarly, the Franchise Law promotes ADR by expressly stating that 'it is permissible to agree to settle disputes that arise from the franchise agreement or the application of the law by alternative means, such as Arbitration, Mediation and Conciliation'.

Third-party funding: lawsuits

Significantly, the ADR market has been largely rendered into a modern, permissive, party-centric and supportive context. The legislation and regulations deliberately allowing great flexibility in terms of process, as well as also including such modern features as third-party funding. In fact, when litigating or arbitrating in Saudi Arabia, 'there are no restrictions on the types of lawsuits in which a third party may fund a party's costs.'⁴

The Singapore Convention: mediation agreement enforcement in Saudi Arabia

In order to enhance the effectiveness of commercial mediation, Saudi Arabia was among the 46 founding signatory countries to the Singapore Convention and the fourth country to ratify it globally.

Entering into force in Saudi Arabia on 5 November 2020, the Singapore Convention is a major development with implications for those doing business internationally. Applying to international mediated settlement agreements, the Convention establishes a harmonised enforcement mechanism to invoke cross-border mediated settlement agreements and to enforce them among its signatories, ‘thereby bringing more certainty and stability to mediation procedures between international parties’, notes John Barlow, HFW in Riyadh and Dubai:⁴

If a party can show that the settlement agreement falls within the scope set out . . . a relevant court or other competent authority in a signatory country has limited grounds for refusing enforcement . . . [the competent authority] will likely rely on the SCCA Mediation Rules, which provide a code of ethics for mediators, potentially the Execution Law, any other applicable laws.⁵

Party autonomy and choice: appointments, representation and more

Under the Saudi Arbitration Law, parties can appoint any arbitrator, mediator, lawyer, expert or other representative regardless of gender, nationality or religion.

Parties are availing themselves of their freedom of choice and are retaining women ADR and legal professionals among others, local and foreign. For example, in addition to parties having female legal representation in SCCA mediation, the SCCA appointed its first female mediator in February 2020. Also this year, the SCCA received a request for mediation where women legal representatives have signed as party representatives on the submission to mediate at the SCCA. All are very promising indicators for women professionals and all clients.

A review of the notice taken of ADR appointments also points to a string of successes with regard to arbitration and mediation. There have been official press releases regarding the confirmed appointment of two female arbitrators from the courts of appeal in Saudi Arabia. The Court of Appeal in Dammam approved the appointment of Saudi female arbitrator, Shaima Aljubran in the field of commercial disputes. Further, the Court of Appeal in Makkah Province confirmed the appointment of Rabab Ahmed Al-Ma’bi as an arbitrator to settle commercial disputes between two companies in Jeddah.⁶ Also in Riyadh, the Commercial Court of Appeal approved the appointment of Saudi female arbitrator, Sara Alkhunaizan in the field of commercial disputes.

Given the confidential nature of commercial ADR, whether mediation or arbitration, as well as the fact that ad hoc ADR remains quite widespread in Saudi Arabia and therefore less conducive to observation, when it comes to tracking and analysis we only have the above-noted appointments in the public domain. Others may not have been publicised. Thankfully, there is ever more publicly available information related to court judgments and increasing local and foreign media scrutiny and coverage – all contributing to a more accessible and transparent justice system, including, it is anticipated, more news of female appointments.

While SCCA officially signed the ERA Pledge to ensure the engagement of men and women of all ages across the professional spectrum and regions of Saudi Arabia, SCCA’s multi-year efforts

have yielded promising results. Fortunately, given the centrality of comprehensive diversity to realising the full potential of ADR for all stakeholders, the response has been overwhelmingly positive in terms of enrolment, overall participation and an ever-growing pool of talent. In order to sustain the requisite awareness and buy-in needed to see diversity among arbitrators and mediators, counsels and parties themselves, SCCA is providing a platform and a service for all.

Diversification of ADR

SCCA partnering with government and private sector to diversify, deliver and promote ADR across sectors

Court-mandated mediation has been instituted and launched to provide better resolution and enhanced access to justice. Saudi Arabia is increasingly providing in general a more ADR friendly jurisdiction while instituting court-mandated mediation in particular being tasked with transforming the way ADR is accessed, its profile, use and overall embrace across the spectrum of disputes among litigants.

The Commercial Courts Law (CCL)

Among the legislative reforms most welcomed by practitioners was the 2020 CCL. As Clyde & Co’s Dubai and Riyadh ADR team noted:

The CCL represents a bold step in the modernization of the court system in KSA. It introduces a wide range of new measures to expand and refine the jurisdiction of the Commercial Courts, streamline the service and administration of claims, provide flexibility in relation to the production of evidence and expand the enforcement powers of the Commercial Courts . . . [and] expressly permits Commercial Courts to utilize the services of the private sector in relation to: Alternative dispute resolution such as reconciliation and mediation . . .⁷

Mandatory conciliation/mediation

The CCL encourages parties to resort to alternative dispute resolution (‘ADR’) and will make ADR mandatory in some cases (which will be identified in accordance with the Implementing Regulations) . . . Any initiative by the Commercial Courts to encourage ADR is to be welcomed in our view. For too long, litigation has been the first port of call for the parties to a dispute across the Gulf. Making mediation mandatory in some cases may serve to raise awareness of ADR in the Kingdom and reduce the amount of unnecessary litigation.⁸

Aware of the important role that ADR plays in resolving speedily and cost-effectively commercial disputes, the salutary way it enhances the culture of resolving disputes amicably and its resulting alleviation of the burden on commercial courts, the Saudi government enacted the recent Commercial Courts Law (CCL) and related Implementing Regulations (the Regulations). Combined, these measures mandated that litigants, in cases determined by the Regulations, are to attempt to resolve their disputes through reconciliation or mediation before they would be able to resort to the Commercial Court. In order to resort to the court, litigants must provide evidence that no resolution has been reached through reconciliation or mediation during the 30 days from their attempt to mediate.

Such cases include (within the amounts specified in the Law):

- claims between merchants because of their original or dependency business against merchant in commercial contracts disputes;

- claims relating to appointed public trustee, liquidator, bankruptcy secretary and expert provided that disputes is within the competence of the court;
- claims for damages arising from disputes previously litigated in the court;
- compensation for damages arising from disputes previously litigated in the court;
- claims between shareholders or partners in a *Mudarabah* company;
- claims where the parties are married or are related up to the fourth degree; and
- claims in relation to contracts that include written agreements to conciliate, mediate, and amicable settlements before resorting to litigation.⁹

MOJ mediation: how it works

The MOJ's major ADR initiatives were recently outlined in a comprehensive report released in February 2021. Among the highlights are the following.

Launching Taradhi platform

The MOJ launched the Taradhi platform 'for the remote provision of mediation services from filing the case up to reaching the mediation result, without having to visit the court.' Already, in less than one year, 'over 300,000 claims have entered the Taradhi system with over 53,000 mediated deeds.'¹⁰ The MOJ has introduced several divisions and departments, including its own Conciliation Centre, and empowered notaries to notarise mediated settlement agreements.

Empowering presiding judges to refer cases to mediation offices

Saudi Justice Minister Walid al-Samaani issued an order empowering presiding judges to refer cases to mediation offices before referral to judicial panels.¹¹

If no agreement is reached within a month, the case is referred to the competent judicial panel.

Implementing mediation system

The MOJ has implemented the mediation system through a series of services and decisions, aiming to increase the percentage of successfully mediated cases. The goal is to reduce the influx of lawsuits, fast-track decisions, and provide means for ADR through non-profit organisations and the private sector – including the SCCA.¹²

Men and women can register as mediators or conciliators.¹³

Approving mediation and conciliation rules

Within the initiative for implementing the mediation system, the MoJ has approved new procedural rules for mediation and conciliation offices, aiming to make mediation a viable option for resolving disputes.

Mediation records recognised as enforcement instruments

The MOJ has recognised mediation records as 'enforcement instruments' after approval by the Conciliation Center. The step enhances mediation and conciliation procedures in Saudi Arabia, and promotes the resolution of disputes through mutual consent.¹⁴

Expanding the Najiz portal and app

The MOJ's Najiz.sa portal now offers over 120 e-services related to the judiciary, enforcement, notarisation, mediation, training and law practice, with over 70,000 daily visits to access over services.¹⁵

Its overall objectives include:

- making MOJ services easily available;
- fast-tracking performance and achieving justice;
- enhancing transparency;
- enabling quick access to information; and
- saving time and effort for clients.

MOJ Commercial Court Mediation Programme

After an initial limited pilot project in Riyadh's courts, the SCCA-MOJ Mediation Programme has been widened to include courts in areas across Saudi Arabia.

With parties' agreement, commercial cases are transferred from Commercial Court by its judges to the SCCA for administration.

After an initial pilot in the Riyadh Commercial Court, the pilot programme was rolled out to include other courts across Saudi Arabia.

Cases can include any and all types of commercial disputes, with parties including individuals and commercial entities. To increase access and utility, the mediation can take place in any language the parties wish.

The average court-connected mediated case life was 35 days, with a respectable settlement of cases rate exceeding 61 per cent. Important features include both gender diversity – both men and women can register as mediators – and the innovation of formally making recorded mediation settlement agreements recognised as enforcement instruments.¹⁶

The first mediation case, in which both parties were represented by Saudi female lawyers, was mediated by Saudi female mediator and resulted in a settlement during the first hearing.

Several of the SCCA-MoJ Mediation Programme cases, which occurred during the covid-19 pandemic, were fully mediated virtually with SCCA.

Conventional and virtual arbitration and mediation

While the underlying legal and professional services infrastructure has been transformed in Saudi Arabia, recent circumstances have also made alternatives even more attractive. The case for ADR in Saudi Arabia was made even more compelling by the global pandemic and the resulting social, economic and commercial challenges.

Virtual ADR, offered in recent years by the world's leading ADR institutions, was fully introduced by SCCA in KSA in 2020. SCCA's remote online mediation and arbitration provides parties with virtual proceedings, tailored timelines, ability to opt for a 'Proceeding based on Documents' under the SCCA's Expedited Procedure Rules, a paperless process option (including electronic filing and document sharing), party-specified remedies – all while maintaining the requisite confidentiality and overall procedural flexibility parties have grown accustomed to.

ADR was already taking off in KSA – and the covid-19 pandemic has given it new impetus and momentum. The results continue to demonstrate and validate the efforts. Local, regional and international parties have shown their confidence in ADR in Saudi and the SCCA in all its manifestations, and the increasing caseloads signal a new era for arbitration in Saudi Arabia and for those doing business there or merely seeking to enforce a foreign judgment or arbitral award.

Saudi-seated arbitrations have become increasingly expedited by the dramatic reduction in the formerly interventionist powers of Saudi Courts. Instead, according to the practical experience of Saudi-seated arbitrations under the newest Arbitration Law (2012) – and the amendments and clarifications – proceedings are being conducted expeditiously. The statute also met the expectations

of users of arbitration, including all the key provisions, for example, local and foreign nationals can both represent parties and be appointed as arbitrators.

Further, arbitrations conducted under SCCA Arbitration Rules benefit from case management and clear, international standard provisions. Many users express their enthusiasm for institutional arbitration's beneficial ability to reign in 'wild-west' ad hoc arbitration.

Parties may now have the expectation that dispute resolution services and service providers will include the requisite rules, and that those charged with resolving disputes as mediators or rendering binding awards as arbitrators will include those with the requisite skills and expertise, including highly specialised knowledge of the relevant substantive issues in contention.

SCCA Mediation is administered under the rules promulgated per its own procedures, from applying for mediation, to its proceedings, fees and the role of the mediator. SCCA Mediation is essentially 'professionally facilitated negotiation' with the Mediator providing neutral, skilled facilitation. Mediation works and these Guidelines will help parties to make the most of this opportunity.

The transformative initiatives have yielded overwhelmingly positive results with regard to strengthening key features of ADR like party autonomy, diversity and transparency. Further, the legal infrastructure has been completely overhauled with all the underlying legislation, implementing regulations and institutional practice guides that have been adopted to best international standards.

SCCA to make mediated settlements enforceable

To help reduce the covid-19 pandemic's impact on the business sector, SCCA launched the 'COVID-19 Emergency Mediation Program' (EMP), an innovative, cost-effective programme providing remote, online mediation with innovative enforceable outcomes. The EMP delivers a high-level of reliability for resolving disputes in accordance with institutional rules that ensure neutrality and optimal efficiency throughout the mediation process. Parties access a practical and effective approach to mediation, enabling a fair and amicable settlement, that notably provides parties the ability to convert their own mediated settlement agreement into an executive title (bond) to add certainty and resume their business activities quickly.

The launch of EMP is part of the SCCA's efforts to reduce the pandemic's impact on the business sector. By means of amicable resolutions backed by a settlement agreement convertible into a final and enforced title (bond), parties with contractual relationships can prevent commercial disputes escalating into lengthy and costly litigation.

The SCCA developed the EMP in consultation with its Rules Advisory Committee, consisting of 14 high-level international experts from 11 countries, including well-known arbitrators, legal advisers, senior attorneys and law professors. The design of EMP is based on the SCCA's existing and time-tested Mediation Rules, modified to meet the demand created by this crisis for a swift, effective and comprehensive alternative resolution mechanism. This involved rethinking the way mediation is conducted and offering a state-of-the-art videoconferencing platform and an affordable fee schedule. It also necessitated re-training mediators to guarantee their readiness to meet the current challenges related to the pandemic's effects.

In this context, the Conciliation Center (Mosalha), under the auspices of the Ministry of Justice, is undertaking important efforts to develop and support the Kingdom's conciliation and mediation system. The SCCA is the first licensed Conciliation Office within that system, enabling the SCCA to convert settlements resulting

from SCCA Mediation into enforceable titles (bonds). This is a significant milestone for the alternative dispute resolution industry in Saudi Arabia. On a more global level, the SCCA is the first of ADR centre to offer such a comprehensive solution at an institutional level and fully embraces the spirit and intent of what the Singapore Convention has accomplished at the international level.

Mediation facilitation service

ADR institutions are uniquely qualified to make an overture to an undecided party about the process of mediation and its many merits. Now, one party can avail itself of the new Mediation Facilitation Service in which the SCCA will make up to five written or oral attempts to contact the other party within 30 days of the registration of the request.

If successful, the SCCA initiates the mediation process once any outstanding Administrative Fees for Mediation are paid. The otherwise non-refundable 1,000 Saudi riyals (US\$267) in service fees already paid by the requesting party will be credited towards its share of the SCCA Administrative Fees for Mediation if the parties wish to keep their mediation with the SCCA. The mediation will be administered as set forth in the EMP, modifying the SCCA Mediation Rules.¹⁷

Judicial support all forms of ADR enforcement

Judgments

For almost two decades, there has been an increasingly steady flow of appropriate judicial actions and judgements. As Al-Tamimi's Head of Arbitration Thomas Snider has observed:

Consistent with this evolution towards a more arbitration-friendly legal environment, courts in the KSA have been adopting more pro-arbitration judgments (issued both prior to and following the 2012 Arbitration Law).¹⁸

In 2017, all commercial disputes were transferred to the then newly formed Saudi Commercial Courts 'at the same time widening the definition of commercial disputes to include construction cases and commercial property disputes'. Both the enforcement of judgments and arbitration have been reformed most recently, when the procedures of the Commercial Courts were overhauled by the Commercial Courts Regulation, Royal Decree No M/93 entered into force on 16 June 2020.¹⁹

Enforcement: arbitral awards and tribunals

Although there may be some lingering uncertainty internationally about non-Muslim arbitrators and their arbitral awards, those who have first-hand experience and closely follow local and foreign arbitration activity in the kingdom are more sanguine: 'To date, no one has heard of a foreign arbitration award not being enforced in the Kingdom on the grounds that said award was rendered by a tribunal chaired by a non-Muslim arbitrator', notes Freshfields' Riyadh-based Jean Benoit Zegers.

Importantly, there is also the long-standing practice in the kingdom that any portion of an arbitral award deemed by a Saudi Enforcement Court to run counter to public policy or Shariah law can be set aside or otherwise deemed unenforceable, but without affecting the rest of the award. However, if one wishes to ensure that an arbitral award does not contain provisions contrary to public policy or Shariah law, 'out of an abundance of caution it is important to consider having a tribunal member or chair familiar with Saudi law draft or review the award before it is issued', adds Zegers.

The Enforcement of foreign arbitral awards has indeed been consistent for several years. In a recent webinar, HSF's Dubai-based Stuart Patterson noted:

*[the] considerable increase in the enforcement of foreign award, with 600 applications made in 2018 from all over the world, and reports suggesting numerous examples of success enforcement against Saudi companies in the Kingdom, including an ICC award issued in Malaysia against a private Saudi university and an award against a Saudi gold mining company issued by a China-seated tribunal.*²⁰

Partial enforcement: foreign judgments and arbitral awards

Among the many international norms recognised in Saudi law and upheld by Saudi courts is partial enforcement. As Riyadh-based practitioner Sultan Al Masoud has noted:

*Saudi law recognizes the principle of partial enforcement of foreign judgment or award, meaning that if a part of the judgment or award contradicts Saudi law (e.g. contains payment of interest) that part would not be enforced, while the rest of the judgment or award would be enforceable in accordance with the Enforcement Law.*²¹

It may also be useful to highlight and dispel certain misapprehensions some have expressed in the past with regard to concerns related to gender or religious background with regard to expert testimony or other evidence provided in hearings in Saudi Arabia. Jean Benoit Zeggars summarised it well in a recent exchange:

Generally the admissibility and assessment of evidence, including witness testimony in Saudi commercial disputes (before courts or arbitral tribunals) is not dependent on gender, race or creed, but on the relevance of the evidence submitted, and credibility of the witness, as the case may be.

Enforcement: building a solid track record

In February 2021, the Saudi MOJ released a report outlining dramatic statistics pointing to the success of its coordinated, multi-level strategy. 'These figures stress the governmental, legislative and judicial support for Alternative Dispute Resolution (ADR), including the issuance of several laws, such as the Arbitration Law, the Enforcement Law, and the Government Tenders Law.' The Ministry also reinforcing its role as a purposeful proponent of ADR with 'several royal orders have promoted ADR solutions due to their key role in boosting the business environment and encouraging local and foreign investment'.

The sheer volume of activity and commensurate results was impressive with the enforcement courts having 'handled a total of 75,000 arbitration awards and conciliation deeds [aka mediation agreements], with a total value of 7.6 billion riyals [over US\$2 billion]. They include 25,000 awards worth 4.7 billion riyals [over US\$1.25 billion], and 50,000 conciliation deeds worth 2.9 billion [over US\$7.7 billion]'.

The local and international import of these figures was underscored by the MOJ, noting 'These figures reflect the Saudi enforcement judiciary's effectiveness in implementing local awards issued by the Saudi Center for Commercial Arbitration, as well as foreign arbitration awards'.

The MOJ also revealed that the enforcement of arbitration awards has increased over the past five years from 930 awards enforced to 8,946 in the past year. 'The ministry is working to streamline and fast-track procedures whether for local or international arbitration awards.'

In February 2021, a major campaign was kicked-off by the MOJ, Ministry of Finance, Ministry of Commerce and the SCCA to bring national attention to the importance and effectiveness of ADR in Saudi Arabia. 'Through its various initiatives and media channels, the ministry has sought to enhance mediation and conciliation, and promote the conciliation/mediation culture,' said Sulaiman Al-Olayan, deputy minister's assistant for court affairs and supervisor of the Conciliation Center. The MOJ has 'upgraded conciliation procedures by launching the Conciliation Center and digitizing the conciliation process through the Taradhi platform'.

Al-Olayan added that mediation and conciliation are among the most effective options for the amicable resolution of disputes as they achieve swift justice and reduce litigation costs and effects. 'Under Article 9(3) of the Enforcement Law, a conciliation [mediation] deed is recognized as an enforcement instrument that cannot be challenged or appealed.'²²

Continuing research to knowledge of court decisions and practices

Although there is no system of binding precedent in the Saudi Court system, decisions are generally considered by judges to be persuasive, and therefore an important guide to lawyers and litigants. These decisions continue to reinforce the welcome advances and developments across in the entire Saudi court system for arbitration in the country.

2021 Saudi Arbitration Index: building a caselaw database with analysis

Among the most beneficial developments of recent years has been the tremendously important role played by the Saudi judiciary. The modern era of arbitration in Saudi Arabia kicked off by the Arbitration Law 2012 has been marked by the vital cooperation and support for arbitration of the Saudi judiciary.

Now, building on its first comprehensive research into the analysis of Saudi courts and arbitration released in 2018, SCCA's new Saudi Arbitration Index (SAI) 2021 will provide a vital tool for all those considering or undertaking arbitration in the country.

With the direct support and contributions of the various relevant courts across Saudi Arabia, facilitated by the judiciary and MOJ, and selected for their touching upon local and foreign arbitrations (whether challenging arbitrator appointments, clauses, interim measures or enforcement of awards, etc) over 600 judgments from 2018–2020 are under review.

The 2021 SAI will be downloadable from the SCCA site in the third quarter of 2021 and will consist of all 'new' arbitration law cases along with providing current, accurate, detailed analysis of 32 key judgments in both Arabic and English.

The SAI will:

- provide ongoing research to enhance knowledge of court decisions and practices;
- foster open dialogue with the judiciary; and
- build understanding and trust in institutional ADR within the business and legal communities.

The SCCA team has worked to address the lacuna of case law that pertains to arbitration and various meetings have been held to define the scope of the project. The SCCA researched and identified possible sources of judgments and conducted an initial review of materials for quality and project feasibility. The activities and deliverables can be summarised as follows.

Analytical framework

The SCCA's goal is to review all available relevant cases for 2020 and previous years. It aims to review over 600 judgments to then identify trends and principles

The SAI analyses and evaluates whether and how judicial actions and judgments are steering Saudi Arabia's overall commercial ADR climate. Guided by the normative international standards and expertly assessing against those standards and the publicly stated objectives, ADR experts assess the extent to which norms have been met for each of the relevant cases. These expertly reviewed and indexed cases provide assessments that comprise the record.

To date, the Saudi courts performance has been exemplary, even when compared to the best regional and international jurisdictions. The incremental and sustained indexing and analytical process makes relevant comparisons of cases and provides indicators of the effectiveness of the national reform policies and initiatives, as well as the partnerships with the SCCA and its local, regional and international networks of ADR, legal and corporate and consumer experts. The SAI tracks and highlights the technical aspects of the judicial work on and with arbitral processes and award enforcement.

Institutional leadership

Leading Saudi ADR: the SCCA strategy

Since its inception, the SCCA's board and its diverse stakeholders have understood the need to transform the domestic ADR landscape and how it is perceived internationally. Only through a comprehensive, substantial and strategic overhaul that engages and invests in all aspects of professionalising the nascent ADR industry could the evolutionary changes take hold and be seen to enhance the way commercial disputes are managed and resolved in the Saudi Arabia.

Institutional ADR

SCCA has devised a methodology in line with current and best international practices in alternative dispute resolution, the application of governance standards, the worldwide scope of SCCA and its team as well as the promotion of neutrality, independence, and institutionalisation.

With an international roster of ADR professionals that reflects the diversity required to meet the demands of its global clientele, the SCCA has arbitrators with over 24 different nationalities and 19 languages, and over 20 substantive areas of practice and industry experience.

Increase in overall caseloads: arbitration, mediation and a la carte services

In almost four years since the SCCA's inception to the end of 2020, 116 cases have been registered, which includes arbitration, mediation, and limited services, by an increase in 2020 to 2019 by 178 per cent. The parties of the cases are from 13 countries from North America, Europe, Middle East, and Asia. These 116 cases are distributed into 18 industries: 55 per cent of the construction industry cases and then the banking and capital market, education, aviation, entertainment, etc.

In 2020, the SCCA attracted over 75 cases (arbitration, mediation and limited service cases) which in a fifth year of operations bespeaks an impressive record among ADR providers.

With the introduction of court-mandated cases, the vast numbers of contracts in which the SCCA has been named as the institutional ADR provider by parties across Saudi Arabia, regionally, and internationally, the caseloads should grow commensurately.

Mediation

Referring mediation cases from the various commercial courts to the SCCA

The Commercial Courts Law states there will be a mandatory referral of cases to mediation and conciliation – requiring proof of good faith facilitation attempted by a neutral third party are eased by having the centre SCCA provide a confirmation.

Arbitration 'limited services'

SCCA also nominates arbitrators to the appeal courts for ad-hoc cases – already requests received and nominations have been provided. As an approved training provider, the SCCA develops training materials on ADR to be conducted for hundreds of judges from across Saudi Arabia.

Track record: provision of innovative services

The SCCA instituted the provision of its arbitrators nomination services to the Appeal Committee for Resolution of Securities Disputes on Capital Market Ad-Hoc Cases.

Saudi ADR milestones: 2020

The first institutional arbitration emergency award rendered in Saudi Arabia was completed in 2020 under the SCCA arbitration rules by an SCCA-appointed emergency arbitrator within only 14 days on a substantial claim.

While the SCCA appoints male and female arbitrators and mediators, importantly in August 2020, the first female arbitrator, Sara Alkhunaizan, in the field of commercial disputes, was appointed by a Saudi court, upon nomination by SCCA: the Appeal Court in Riyadh.

International best practices: rules and administrative practice

SCCA Rules Advisory Committee: 14 international experts

In order to ensure that all the institutional ADR services, including the products, practices and case administration of the SCCA are developed and implemented to the highest international standards, the SCCA Rules Advisory Committee consists of a high-level, elite group of prominent international arbitrators.

The creation of this committee bolsters the trust SCCA has earned at the national and international levels. Its 14 members include independent international arbitrators, legal advisers who have worked in prominent international arbitration centres, top attorneys from major international law firms, and law professors from several international universities. The Committee's members, who come from across the spectrum of international commercial arbitration, reflect the international reputation of the SCCA and the services it offers clients in Saudi Arabia and abroad.

The Committee will provide the SCCA with technical counsel and industry insights through outstanding expertise and international best practices from across the spectrum of commercial arbitration practice based on the specialised experience that each member brings to the Committee. This will enable the SCCA to continue enhancing its operations and upgrade its services to make it the ideal international partner in the region and the preferred regional option for ADR services.

The SCCA Committee for Administrative Decisions (CAD) To diversify and further institutionalise key aspects of SCCA case administration, SCCA created a new committee to render determinations related to disputes that pertain to arbitrator challenges, place of arbitration disputes and the number of arbitrator disputes. The SCCA Committee for Administrative Decisions (the Committee) serves the purpose of giving parties in SCCA-administered, or ad hoc non-SCCA-administered cases where the parties have so agreed, access to a neutral and highly qualified expert decision-making authority that efficiently determines certain issues that arise in an arbitration proceeding.

The Committee comprises five members, including high-level SCCA executives and neutral external members with extensive international commercial ADR and case administration experience to this decision-making process. Committee meetings may be held in person, via video conference, by telephone, or any other appropriate means of communication.

The current members of the Committee are Mohamed Abdel Raouf, Jennifer Kirby, Christian P Alberti and two other SCCA executives.

Consistent with similar reputable, international ADR institutions, the dual-language services include skilled professional staff support. The SCCA-CAD has already held various meetings and decided a total of three challenges with differing outcomes (two removals and one reaffirmation). It provides its services free of charge for SCCA-administered cases, and at a reasonable service fee for non-SCCA-administered ad hoc cases.²³

Next generation Arab ADR professionals

Arab commercial arbitration moot programme

Importantly, the next generation of arbitration professionals are being engaged and trained in the world's first Arab-language international Commercial Arbitration Moot. This investment in developing young Arabs has been a runaway success with over 500 Saudis and, from this year, non-Saudi Arabs participating in the first two years (2020–2021). By providing the requisite arbitration advocacy skills and experience, as well as the networking to provide vital professional links with peers and experienced practitioners across Saudi Arabia and the wider region, it is on track to train over 2,500 young Arab lawyers by 2025.

Professional arbitrator training and accreditation in the Arab region

Through a strategic joint initiative of the international, UK-based Chartered Institute of Arbitrators and the Saudi Centre for Commercial Arbitration and its four domestic locations, over the last two years, close to 500 professionals have received comprehensive and ongoing international commercial arbitration training primarily in Arabic and English. Commercial parties and their counsel now have access to an increasingly significant pool of local neutrals who have completed the rigorous, international standard of arbitration training required to become a fellow of the Chartered Institute of Arbitrators (FCI Arb) and to join the SCCA roster of arbitrators.

The tremendous uptake and impact of this training revolution is a result of an exceptional and comprehensive training strategy comprising all facets of professional development. Key to its success is the unprecedented alliance of the country's ADR leaders, SCCA, and the pre-eminent commercial ADR accreditation body, the Chartered Institute of Arbitrators (CIArb).

Catherine Dixon, CIArb's director general of the Chartered Institute of Arbitrators, conveyed the strategic nature of the relationship:

CIArb has an excellent partner in a jurisdiction that is committed to international ADR. We are proud to be working with so many ADR professionals. Our commitment to ADR in Saudi includes continuing to contribute to scholarships for the SCCA Arab Moot 2021 - which helps to ensure a sustainable level of highly skilled ADR professionals for years to come.

Professional mediator training and accreditation

Along with its arbitration workshops, the SCCA's professional mediation training included over 200 professionals over the past five years, including many female practitioners and students who have gone on to successfully advise clients and mediate themselves.

Importantly, the next generation of arbitration professionals are being engaged and trained in the world's first Arab-language international Commercial Arbitration Moot. This investment in developing young Arabs initiative has been a runaway success with over 500 Saudis and, from this year, Gulf region Arabs participating in the first two years (2020–2021). By providing the requisite arbitration advocacy skills and experience, as well as the networking to provide vital professional links with peers and experienced practitioners across Saudi Arabia and the wider region, it is on track to train over 2,500 young Arab lawyers by 2025.

Judicial engagement and dialogue

The Saudi judiciary has been remarkably and consistently engaged in the transformation of the ADR landscape in the country. Having taken on board all the many recent developments and the related legislation, regulations and relevant standards and even international treaties, judges have been remarkably effective. Fortunately, the MOJ and Judicial Training Institute along with partners like the SCCA have been working closely to impact how a highly skilled judiciary has been able to exercise its many powers, whether appropriately and in a pro-arbitration manner or not. Specialised and current technical expertise, including general and specific principles, is paramount to ensure the court intervenes or assists as necessary or appropriate in international commercial arbitration proceedings

Given the important role of a highly skilled, ADR-savvy and sophisticated bench, the Judicial Training Institute continues to work closely with the SCCA to ensure that the requisite arbitration curriculum is in place as more Saudi judges are engaged in dialogues and ongoing professional development in the field of ADR, including a formal course of 'Commercial Arbitration and the Judiciary System'. Over the past five years, many hundreds of Saudi judges have participated in an array of local and international ADR activities, from mediation skills training, arbitration workshops and roundtables, conferences and colloquia.

Conclusion

Multi-faceted coalition of public and private sectors: commitment to stay the course for a thriving Saudi and regional ADR ecosystem

Those currently working in ADR or looking at the current state of ADR in Saudi Arabia know that the story is a remarkably good one. Yet, they encounter among some peers around the world some lingering doubts and misconceptions that no longer reflect the facts on the ground. Among them are antiquated impressions of restrictive practices related to procedure, advocacy and enforcement.

In recent years, major issues have been identified and addressed by the various, diverse relevant stakeholders in Saudi Arabia - in

particular the legislators, judiciary, practitioners and SCCA, the national ADR institution.

Transformative initiatives have yielded overwhelmingly positive results with regard to strengthening key features of ADR such as party autonomy, diversity and transparency. Further, the legal infrastructure has been completely overhauled with all the underlying legislation, implementing regulations and practice guides that have been adopted to best international standards.

Importantly, the awareness among and abilities of users, the expertise and qualifications of neutrals and the increasingly ADR-savvy Saudi bar (many with affiliations with internationally recognised firms) have made for a truly sophisticated ADR capacity in the country.

The considerable and consequential changes to the administration of justice in Saudi Arabia have been highly welcomed and beneficial the past 10 years.

This chapter outlined the transformative legislation and implementation, strategic initiatives and related actions and the consequential results of this sustained strategic direction. The commitment, uptake and popularity of the resulting changes of the last decade will sustain and ensure these trends increase and broaden – just as they increasingly yield the results of developing on the promise of commercial and court-connected ADR making a reality.

The increasingly inclusive, responsive and diverse legal and ADR services sectors in Saudi Arabia all point to a sustained transition that will continue until it is fully realised. It is also expected that, as a strategic industry for commercial development in Saudi Arabia, ADR will continue to do its part to tap into all segments of society across regions, generations, genders and professions.

Whether considering mediation or arbitration (or both in a stepped-clause fashion) for an ongoing or potential future dispute involving parties in Saudi Arabia or internationally, business leaders and their counsels have the benefit of being able to consider the country as an ADR-friendly jurisdiction with a highly supportive, professional ADR ecosystem.

With regard to how the burgeoning Saudi arbitration market is likely to perform moving forward, AlTamimi's ADR team in Dubai was bullish, predicting:

With the introduction of the Arbitration Law, which expressly allows the use of foreign arbitration centres and institutional rules, and the establishment of the SCCA in Riyadh, it is anticipated that this historical trend [of more ad hoc cases] will be reversed and institutional international arbitration will become more common than ad hoc international arbitration.²⁴

Increasingly, ADR is playing an outsized and efficacious role in increasing the quality and access to justice by individuals, families, communities and commercial enterprises. By enhancing the speed, containing the cost and creating mechanisms that are more industry-specific, culturally inclusive and relevant – while also raising the bar in terms of standards, ethics and quality as well as inclusive diversity and reach – our field of conflict management and resolution is transforming the experience and opportunities for all.

The dramatic, broad and meaningful transformation of ADR in the Kingdom to date clearly has momentum. We predict that litigants and disputants will continue to yield the qualitative and quantitative results that they have come to expect in the world's leading ADR-friendly jurisdictions.

Notes

- 1 GAR's Survey on Commercial Arbitration: Saudi Arabia, 2 April 2020. Answer contributed by Thomas Snider, Sara Koleilat-Aranjo, Meteb AlGhashayan and Sergejs Dilevka, <https://globalarbitrationreview.com/insight/know-how/commercial-arbitration/report/saudi-arabia>
- 2 'SIGNIFICANT LEGISLATIVE REFORM ANNOUNCED IN SAUDI ARABIA' Herbert Smith Freehills, 17 February 2021, Middle East Legal Briefings, Nick Oury, Nasser Almulhim and Emma Tormey. <https://www.herbertsmithfreehills.com/latest-thinking/significant-legislative-reform-announced-in-saudi-arabia>
- 3 Saudi Finance Minister Mohammed Al-Jadaan, SCCA19 International ADR Conference November 2019
- 4 Law and Practice in Saudi Arabia, Litigation 2021, 4 December 2020, Hatem Abbas Ghazzawi & Co., Andreas Haberbeck. Available at <https://practiceguides.chambers.com/practice-guides/comparison/515/6045/9468-9473-9481-9490-9498-9505-9513-9522-9524-9530-9537-9541-9545-9550>
- 5 'IMPLEMENTATION OF THE SINGAPORE CONVENTION ON MEDIATION IN SAUDI ARABIA', John Barlow in HFW: INSURANCE AND REINSURANCE | NOVEMBER 2020. At <https://www.hfw.com/downloads/002549-HFW-Implementation-of-the-Singapore-Convention-on-Mediation-in-Saudi-Arabia-Nov-2020.pdf>
- 6 Saudi Arabia: The New Saudi Commercial Courts Law: A Bold Step For The Administration Of Commercial Disputes' article of 20 May 2020 | Clyde & Co I by Richard Bell and Mohammed Aldowish Found at: <https://www.mondaq.com/saudi-arabia/trials-appeals-compensation/936928/the-new-saudi-commercial-courts-law-abold-step-for-the-administration-of-commercial-disputes>
- 7 5 KLUWER <http://arbitrationblog.kluwerarbitration.com/2016/08/29/the-first-female-arbitrator-in-saudi-arabia/> Press release on this appointment is available in Arabic and at <http://saudigazette.com.sa/article/581186>. ERA Pledge community welcomed this development and announced it on LinkedIn: https://www.linkedin.com/posts/arbitrationpledge_arbitrationpledge-erapledge-internationalarbitration-activity-6771013175660826624-LUYc/.
- 8 'Saudi Arabia: The New Saudi Commercial Courts Law: A Bold Step For The Administration Of Commercial Disputes' article of 20 May 2020 | Clyde & Co I by Richard Bell and Mohammed Aldowish Found at: <https://www.mondaq.com/saudi-arabia/trials-appeals-compensation/936928/the-new-saudi-commercial-courts-law-abold-step-for-the-administration-of-commercial-disputes>.
- 9 Report of the Saudi Ministry of Justice (MoJ) February 2021. At <https://portaleservices.moj.gov.sa/law/Downloades/MOJ5E.pdf>.
- 10 MoJ Report February 2021, p. 87, <https://portaleservices.moj.gov.sa/law/Downloades/MOJ5E.pdf>
- 11 MoJ Report February 2021, p. 84, <https://portaleservices.moj.gov.sa/law/Downloades/MOJ5E.pdf>.
- 12 MoJ Report February 2021, p. 86, <https://portaleservices.moj.gov.sa/law/Downloades/MOJ5E.pdf>.
- 13 MoJ Report February 2021, p. 7, <https://portaleservices.moj.gov.sa/law/Downloades/MOJ5E.pdf>
- 14 MoJ Report February 2021, p. 85, <https://portaleservices.moj.gov.sa/law/Downloades/MOJ5E.pdf>.
- 15 MoJ Report February 2021, p. 89, <https://portaleservices.moj.gov.sa/law/Downloades/MOJ5E.pdf>.
- 16 MoJ Report February 2021, p. Y, <https://portaleservices.moj.gov.sa/law/Downloades/MOJ5E.pdf>.
- 17 The SCCA's EMP was also prominently featured on GAR (<https://globalarbitrationreview.com/mediation/saudi-centre-make-mediated-settlements-enforceable>), and was shortlisted by GAR for its pandemic response award, paying tribute to the response by the international arbitration community to the coronavirus pandemic

- (<https://globalarbitrationreview.com/shortlist-announced-pandemic-response-award>). More information about these services in both Arabic and English can be found at <https://sadr.org/emp/?lang=en>. Offering a comprehensive online Resource Center with access to programme guides and other client and neutral resources. Parties are guided in a quick mediation request via a secure and confidential platform.
- 18 'KSA Continues Momentum in Arbitration', Thomas R Snider, Al Tamimi Insights Law Update, September 2018, <https://www.tamimi.com/law-update-articles/ksa-continues-momentum-in-arbitration/>.
 - 19 'Law and Practice in Saudi Arabia' Litigation 2021, 4 December 2020, Hatem Abbas Ghazzawi & Co, Andreas Haberbeck, available at <https://practiceguides.chambers.com/practice-guides/comparison/515/6045/9468-9473-9481-9490-9498-9505-9513-9522-9524-9530-9537-9541-9545-9550>.
 - 20 'Enforcement of arbitral awards in EMEA PODCAST SERIES – EPISODE 2: MIDDLE EAST (UAE, Saudi Arabia and Qatar) webinar', Stuart Paterson, at <https://hsfnotes.com/arbitration/2019/07/23/enforcement-of-arbitration-awards-across-emea-podcast-series-episode-2-middle-east/>.
 - 21 'The Saudi Legal System', Shearman & Sterling in association with Dr Sultan Al Masoud & Partners, 3 November 2020 at <https://www.al-maarifa.shearman.com/siteFiles/30281/Introduction%20to%20the%20Legal%20System%20of%20the%20Kingdom%20of%20Saudi%20Arabia%20IA%20031120.pdf>.
 - 22 Report of the Saudi Ministry of Justice February 2021, at URL: <https://www.moj.gov.sa/English/MediaCenter/news/Pages/NewsDetails.aspx?itemId=667>.
 - 23 Please find more information about SCCA-CAD and its services at <https://sadr.org/ADRservices-A-la-Carte-Service-CAD?lang=en>, where you can also download the brochure and the SCCA-CAD Service Request Form.
 - 24 AlTamimi 2020



James MacPherson
Saudi Centre for Commercial Arbitration (SCCA)

James MacPherson is a leading International ADR specialist with over 20 years' experience within public and private sectors as a neutral (mediator, facilitator and arbitrator), ADR trainer, adviser and systems designer.

In 2014, James was retained as special counsel and project leader establishing the first international Saudi ADR centre (SCCA), affiliated with and active on domestic and international rosters of ADR providers around the world, he also serves on the inaugural board of the Oman Arbitration Centre (OAC).

He was co-founder and inaugural CEO of the Bahrain Chamber for Dispute Resolution (BCDR-AAA) and has served as board member of the International Mediation Institute (The Hague).

Specialising in conflict management and resolution for corporate and government organisations, including designing and directing international, multilingual arbitration and mediation programmes.

He advises businesses and government agencies in Africa, Asia, Europe, the Middle East and North America on ADR systems design and training as well as legislative policy.

He has enjoyed designing and delivering ADR training in Bahrain, Canada, Germany, Hong Kong, Jordan, Kuwait, Maldives, Morocco, Oman, Qatar, Saudi Arabia, Sri Lanka, Syria, Turkey, UAE, UK and USA.

A successful bilingual (English and French), dual national (Canada and US) mediator, James works to resolve matters ranging from commercial, insurance, construction, employment, financial and IP/tech, to indigenous disputes and organisational conflict.



Hamed Hassan Merah
Saudi Centre for Commercial Arbitration (SCCA)

Hamed Merah is the CEO of the Saudi Centre for Commercial Arbitration. Hamed is also an internationally recognised leader and expert, with an extensive track record of achievements during his career encompassing banking, investment banking, insurance (*takaful*), and the development of related industry standard-setting.

As CEO and board member, he led one of the most important specialised international organisations in the Islamic finance industry, with activities and members in more than 45 countries

He has comprehensive academic qualifications, professional fellowships, and advanced training courses in law, *shariah*, leadership, compliance, governance, insurance, and capital markets. Further, he is a Harvard Business School alumni and an MCI Arb, member of the Chartered Institute of Arbitrators, UK.

He delivers courses and workshops, including as a keynote speaker, in numerous specialised conferences in more than 30 countries, and has authored two published books.

He is a member of several international advisory boards and councils, including:

- the International Monetary Fund (IMF) Interdepartmental Working Group on IF (2014–2017);
- the International Financial Reporting Standards (IFRS) IF Consultative Group (2015–2017); and
- the Advisory Council on IF of the Astana International Financial Centre, Kazakhstan (2018–2019).

He led the official delegation representing Saudi Arabia in the meetings of the United Nations Commission on International Trade Law (UNCITRAL) and is a former Secretary General and board of trustees member of the Accounting & Auditing Organization for Islamic Financial Institutions (AAOIFI), Bahrain.



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SCCA is not-for-profit organisation established by Cabinet Decree No. 257 dated 14/6/1435 H. – 15/03/2014 G. to administer arbitration procedures in civil and commercial disputes where parties agree to refer their disputes to SCCA arbitration and all in accordance with regulations in force and judicial principles of civil and commercial procedure. Disputes of personal status, administrative, criminal or matters that cannot be arbitrated are not the SCCA's jurisdiction. An independent board of directors was arbitrated by a resolution from the president of the Council of Ministers, and all Board members may not hold a government position.

The SCCA provides alternative dispute resolution services, including arbitration and mediation. SCCA services are provided in accordance with international and professional standards in Arabic and English.

SCCA also provides users with professional services by staff trained to international best practice standards, and the latest ADR technology methods and facilities – all contributing to the rapid and effective settlement of domestic and international commercial disputes.

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