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# The Power of Trust

Transcends All the World's Languages



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# Three Words



Yaseen bin Khalid Khayat

At the opening session of the second International Conference on Commercial Arbitration in Saudi Arabia, the Minister of Commerce and Investment chose three words as his top line recommendation summarizing the guidance he gave in his remarks: **"Trust, trust, trust."**

Today, we take up these three words to open this issue of our newsletter as it serves as the backbone of a key theme that encompasses a long list of national achievements delineating the new face of the arbitration and mediation industry in the Kingdom of Saudi Arabia. In just a short period, this industry has managed to change the overall image of Saudi Arabia from a country where the parties in a case must go abroad to request institutional arbitration in various capitals of the world, to an environment amenable, attractive, and promising for arbitration.

While credit rating agencies award letter grades for confidence levels, the arbitration industry can be assessed by its regulations and legislation, the professionalism of its practices in accordance with international standards, the ability to enforce awards, the effectiveness of judicial support, international presence, logistical assistance, and the prevalence of a culture of that is arbitration friendly. These and other factors give a full picture for assessing the trust in any country that seeks to be a preferred arbitration option at the regional or international level – a positive picture that the Kingdom has fully achieved and through which it has garnered the praise of many impartial international observers who celebrate the future of commercial arbitration in Saudi Arabia and commend the exceptional support the industry has received from the highest levels of the Kingdom's leadership.

These major historic successes have earned the trust of international institutions and arbitration experts from around the world. Successes not achieved overnight but as a result of dedicated people in various sectors working day and night.



## Edition Summary



### The Power of Trust

No matter how many investment indicators may emerge, and how varied they may seem, all of them are linked to a force that allows for confident decision-making. This force, recognized and sought by business and economic leaders throughout the world, is the power of trust.

Wherever investments are in process – from establishment to financing to operations to dispute resolution – the magnetism of trust is the “true north” toward which the compass of money and business points.

### 14 Experts from 5 Continents

Given the remarkable developments in commercial arbitration in the Kingdom of Saudi Arabia, SCCA has announced the creation of an Advisory Committee consisting of a high-level, elite group of prominent international arbitrators respected throughout the world.



### Professor Affaki: International Trust in Saudi Arbitration Created in 5 Years

“A vitally important achievement demonstrating that the Kingdom welcomes foreign direct investment in light of Vision 2030.”

So says Dr. Georges Affaki, an international arbitrator and professor of international law at the University of Paris, when describing the remarkable steps the Kingdom has taken toward empowering local business and enhancing the investment environment through a series of strategic legislative acts and decisions in support of the ADR industry. Dr. Affaki called for continuing on a course of promoting trust and understanding between the judiciary and arbitration in order to ensure the best possible judicial decisions on arbitration.



# The Power of Trust

No matter how many investment indicators may emerge, and how varied they may seem, all of them are linked to a force that allows for confident decision-making. This force, recognized and sought by business and economic leaders throughout the world, is the power of trust.

Wherever investments are in process – from establishment to financing to operations to dispute resolution – the magnetism of trust is the “true north” toward which the compass of money and business points.

Trust is the winning card that speaks all the world’s languages, held only by those who can transcend words and speak to the world through actions.



Decision makers in the Kingdom of Saudi Arabia realized that moving to a post-oil economy and enhancing the Kingdom's competitiveness among the world's major economies requires taking great strides to empower the investment environment and facilitate the practice of business. In recent years, this realization became a determined will. That will then became a reality, which in turn produced extraordinary results through which the Kingdom has come to lead the world in business reforms and leaped 30 spots – in one year – in the rankings in a recent World Bank report, Doing Business 2020.

Here we highlight a sector that remained largely unchanged for decades prior to becoming a foremost concern of the Saudi leadership – the ADR industry in the Kingdom of Saudi Arabia. Among decision makers' efforts to improve the investment environment, the ADR industry is now a force to be reckoned with in the Kingdom and has received strong support at all levels: legislative, executive, and judicial as well as the private commercial and legal sectors.

## Trust from Legislation

The story starts in 2012 with the enactment of the new version of the Arbitration Law, which advanced the institutional arbitration industry to an unprecedented stage consistent with the Kingdom's economic boom and business growth. The new law incorporated the latest thinking in the field of commercial arbitration and a set of rules and procedures aligned with international best practices and the UNCITRAL Model Law on International Commercial Arbitration.

In this law, decision makers granted the arbitral tribunal wide-ranging powers to manage the dispute resolution process and to speedily reach a just outcome between the parties, with judicial support from the competent court in enforcing the arbitration award rendered by the tribunal.

In the wake of on the new Arbitration Law, Institutional arbitration in Saudi Arabia took on a new dynamism - the first sign of which was the April 2014 issuance of a deci-

**“Subject to the provisions set forth in this Law, an arbitration award rendered in accordance with this Law shall have the authority of a judicial ruling and shall be enforceable.”**

**(Article 52, Saudi Arbitration Law)**

on to establish the Saudi Center for Commercial Arbitration to oversee arbitration proceedings in relevant commercial and civil disputes in which the parties agree to settlement by arbitration within the SCCA framework.

2019 was a landmark year for the Kingdom's institutional arbitration industry, marked by a series of legislative acts in support of the industry: a royal order, three laws, and an executive regulation, all of which aimed to establish a solid regulatory structure for the industry.

The Saudi Center for Commercial Arbitration Regulation was issued in April 2019, outlining the regulatory framework for SCCA's work and serving as a clear indication of national decision makers' trust in SCCA by giving it a financially and administratively independent legal personality and providing for the SCCA Board of Directors and arbitral tribunals to exercise independence in their respective functions.

Importantly, a royal decree instructed government agencies wishing to settle their disputes with foreign investors through arbitration to adopt an arbitration clause stipulating arbitration in the Kingdom at SCCA or a licensed arbitration center. Then followed the new Government Tenders and Procurement Law and its executive regulation, which transferred the power to approve the inclusion of an arbitration clause in government contracts from the Prime Minister to the Minister of Finance. The latter step reflecting a determined will to put ADR to work in the government sector in the Kingdom.

# 2019 A Year of Trust



"Government agencies wishing to settle their disputes with foreign investors through arbitration shall pursue arbitration in the Kingdom at the Saudi Center for Commercial Arbitration or a licensed arbitration center."

No. 28004  
and dated 22/05/1440

"The arbitral tribunal shall be independent (from the Board of Directors) in the exercise of its work managing proceedings for pending cases. The tribunal shall receive no instructions from the Board with regard to its work in those cases."

Article 5

"With approval from the Minister of Finance, government agencies may agree to arbitration as set out in the Regulation."

Article 92

"An agreement may be made for alternative resolution of disputes arising from the franchise agreement or the law's application. Such means of resolution may include arbitration, mediation, and conciliation."

Article 25

An arbitration agreement must:

- Be limited to contracts with an estimated value in excess of 100 million riyals\*
- Apply the Kingdom's laws to the subject of the dispute.
- Provide for arbitration and its terms in the contract documents.

Article 154

\* The Minister of Finance may amend this threshold as he deems appropriate



المركز السعودي للتحكيم التجاري  
Saudi Center for Commercial Arbitration



## A Support in the Delivery of Justice

In judging whether a country is “supportive of arbitration,” most important is the judicial system’s stance toward arbitration. The significant sums and figures published by the Ministry of Justice on the enforcement of national and foreign arbitration awards, and the courts’ judicial rulings in this regard, clearly and unequivocally demonstrate that ADR has become a pillar and a branch of the Kingdom’s judiciary and is vigorously supported as a means of speedily reaching a just outcome between the parties to commercial disputes.

This trust also has led SCCA to enter a cooperation agreement with the Justice Training Center within the Ministry of Justice with a view to initiating strategic and operational cooperation between the parties by providing specialized arbitration training. The training will continue for the long term and is founded on practical considerations related to arbitration proceedings and arbitration’s integration with the judiciary.

The agreement covers preparation of training packages on arbitration aimed at those within the Justice Training Center’s jurisdiction, including judges, prosecutors, clerks,

judicial assistants, and lawyers. It also includes preparing and providing a Judges’ Guide to Arbitration Proceedings.

This agreement is an extension of a series of workshops that SCCA organized in cooperation with the Ministry of Justice. An elite group of international experts specializing in commercial arbitration participated in the workshops, and a wide spectrum of judges from across the Kingdom attended. These workshops are scheduled to continue throughout 2020, and the Justice Training Center at the Ministry of Justice will offer 12 training programs to accommodate more than 300 judges across the Kingdom.

## Procedural Success

Although just a few years old, SCCA has achieved many times what other newly established centers have typically managed to achieve in such a short period. In record time, SCCA has earned plaudits from many impartial observers at international law firms and in the global trade press. It has also earned the trust of businesses, as major national and international companies in various sectors have incorporated SCCA’s model arbitration clause into their contracts, and cases have begun to flow to SCCA from national and foreign parties.

**Demonstrating business trust in SCCA, companies are incorporating its model arbitration clause into their contracts, and cases are beginning to stream in.**

On top of that, SCCA has committed itself to continuous development. One product of that is the launch of a package of the most up-to-date products in the ADR industry, such as arbitrator selection and appointment services, emergency arbitrators, expedited arbitration proceedings, and an electronic arbitration protocol and platform.

# SCCA Carries the Message of Trust from the Kingdom to the World

The Kingdom of Saudi Arabia was a prominent presence in 2019 at international forums on developing the ADR industry. The year also saw a number of strategic partnerships with the world's largest arbitration institutions to advance the industry in Saudi Arabia.

Below is an overview of the most significant international forums and partnerships in which SCCA played the role entrusted to it by the Council of Ministers -- representing the Kingdom of Saudi Arabia locally and internationally in the field of commercial arbitration.

Vienna - April 2019

## Willem C. Vis International Commercial Arbitration Moot



SCCA participated in the 26th Willem C. Vis Moot as an official sponsor of this international "marathon" competition held annually at the prestigious University of Vienna. It features dozens of competing teams from various international universities, including Harvard, Oxford, and the Sorbonne, as well as seasoned professionals contributing from the most well-known international law firms and arbitration centers.

London - April 2019

## Partnership agreement with the UK's Chartered Institute of Arbitrators (CI Arb)



The Saudi Center for Commercial Arbitration signed an agreement to launch the International Pathway in Commercial Arbitration, a training program that is the first of its kind in the Kingdom of Saudi Arabia. It is offered in partnership with the United Kingdom's Chartered Institute of Arbitrators (CI Arb), the world's top international professional educational center in this field of ADR, with more than 100 years of experience in developing ADR services for commercial disputes.

New York - July 2019



AMERICAN ARBITRATION ASSOCIATION®

## Renewal of strategic cooperation with the American Arbitration Association (ICDR-AAA)

SCCA renewed its strategic cooperation with the International Centre for Dispute Resolution at the American Arbitration Association (ICDR-AAA), a step that will strengthen the evolving strategic partnership between the parties and move it into a new stage of bilateral cooperation. This will strengthen SCCA's local and regional standing in the institutional arbitration industry and enhance its authority to set standards for the provision of ADR services in the Kingdom and the region.

New York - July 2019



HIGH-LEVEL POLITICAL FORUM  
ON SUSTAINABLE DEVELOPMENT

## High-Level Political Forum on Sustainable Development

Among the Forum events that the Kingdom's Permanent Mission to the UN organized in coordination and partnership with MCI Plus, and including SCCA, was a meeting to highlight the Kingdom's legislative and procedural contributions to facilitating business and developing the local and foreign investment environment -- a major contribution to implementation of the Sustainable Development Goals and one of the most important themes of the Forum's discussions this year.

Singapore - August 2019



## Signing of the UN mediation convention

SCCA was part of a high-level Saudi delegation at the signing ceremony for the United Nations Convention on International Settlement Agreements Resulting from Mediation, held in Singapore. The Kingdom is thus in the vanguard of signatories to the first international convention of its kind in the field of resolving cross-border commercial disputes through mediation.

Vienna - September 2019



## 70th session of UNCITRAL's Dispute Settlement Group

Over the course of five days and 10 work sessions, SCCA represented the Kingdom alongside member states' representatives to participate in drafting a provision on expedited arbitration and reviewing the Permanent Court of Arbitration's report on sole arbitrator appointment procedures and appointing authorities' experiences in evaluating the quantitative and qualitative aspects of cases. At the conclusion of the session, the Group adopted a report to be submitted at the upcoming UNCITRAL meeting in New York in June 2020.

## SCCA Advisory Committee

# 14 Experts from 5 Continents



Given the remarkable developments in commercial arbitration in the Kingdom of Saudi Arabia, SCCA has announced the creation of an Advisory Committee consisting of a high-level, elite group of prominent international arbitrators respected throughout the world.

The creation of this Committee was announced to bolster the trust SCCA has earned at the national and international levels. Its 14 members include independent international arbitrators, legal advisors who have worked in prominent international arbitration centers, top attorneys from major international law firms, and law professors from several international universities.

The Advisory Committee will provide 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 specialized experience that each member brings to the Committee. This will enable 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.

SCCA Chairman Mr. Yaseen Khayyat welcomed the new Advisory Committee's guidance and other contributions for the ongoing improvement of SCCA's rules and procedures and noted that it will be charged with monitoring

international trends in the arbitration industry and consulting with SCCA on the introduction of new innovative services or the review of all existing services.

**The Committee provides  
SCCA with outstanding  
expertise and international  
best practices of the commercial  
arbitration industry**

Mr. Khayyat added that SCCA is proud of the eminence of the Advisory Committee's members, who come from various corners of the international commercial arbitration environment, including prominent international arbitrators and former officials of prestigious arbitration centers around the world. And a further reflection of the great international trust in SCCA and the services it offers its clients in the Kingdom and abroad.



# Advisory Committee\*

01  **Mr. Alec Emmerson**  
Independent Arbitrator and Mediator, ADR  
Management Consultancies  
Dubai-based



02  **Judge Dr. Abdulaziz Al Nasser**  
Judge at the Court of Appeals in Riyadh  
Riyadh-based



03  **Mr. Ben Cowling**  
Partner, Clyde & Co  
Riyadh-based



04  **Mr. Bernardo M. Cremades Sanz-Pastor**  
Founding Partner, Cremades y Asociados  
Madrid-based



05  **Ms. Chiann Bao**  
Independent Arbitrator and Mediator,  
Arbitration Chambers  
Hong Kong-based



06  **Ms. Erin Miller Rankin**  
Partner, Freshfields Bruckhaus Deringer LLP  
Dubai-based



07  **Dr. Fahad Abuhimed**  
Managing Partner, Abuhimed Alsheikh Al-  
hagbani, in co-operation with Clifford Chance  
Riyadh-based



08  **Prof. Franco Ferrari**  
Professor of Law, New York University  
School of Law  
New York-based



09  **Prof. Georges Affaki**  
Independent Arbitrator, AFFAKI  
Paris-based



10  **Mr. Michael Patchett-Joyce**  
Counsel and Independent Arbitrator, Ely Place  
Chambers British  
London-based



11  **Dr. Mostafa Abdel Ghaffar** Judge  
at the Court of Appeals in Cairo  
Cairo-based



12  **Mr. Richard Naimark**  
Principal, NaimarkDisputeResolution  
New York-based



13  **Mr. Timothy Martin**  
Managing Director, Northumberland  
Chambers  
Calgary-based



14  **Mr. Toby Landau QC**  
Counsel and Independent Arbitrator,  
Essex Court Chambers  
Singapore-based



## Professor Affaki: International Trust in Saudi Arbitration Created in 5 Years



**“A vitally important achievement demonstrating that the Kingdom welcomes foreign direct investment in light of Vision 2030.”**

So says Dr. Georges Affaki, an international arbitrator and professor of international law at the University of Paris, when describing the remarkable steps the Kingdom has taken toward empowering local business and enhancing the investment environment through a series of strategic legislative acts and decisions in support of the ADR industry. Dr. Affaki called for continuing on a course of promoting trust and understanding between the judiciary and arbitration in order to ensure the best possible judicial decisions on arbitration.

Dr. Affaki, who was recently appointed as a member of the SCCA Advisory Committee, said SCCA aspires to rise to the highest ranks of institutional arbitration by attracting experts from five continents to work hand in hand with SCCA’s leadership to continue developing its rules and practices.



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**The Saudi government recently issued a series of laws and executive decisions in support of ADR. What is your reading of this legislation, and how do you anticipate it will impact the commercial arbitration industry in the Kingdom?**

I am privileged in having experienced arbitration in the Kingdom both before and after the enactment of the Arbitration Act in 2012. I consider the Act to be a giant leap forward towards transparency and efficiency in arbitration. The change both in the procedural aspects before arbitral tribunals sitting in the Kingdom and in enforcement before the Saudi courts is noticeable.

**The recent legislation complements the openness to ADR that was initiated by the Arbitration Law.**

I also welcome the recent legislative changes which complement the Act. The legislator should be commended for remaining attentive to the needs of the users and prompt to enact the necessary amendments to ensure optimal efficiency of the law. I recommend that the recent legislative

changes be publicized locally and internationally as broadly as possible through all means of communication.

I can tell you that the vast majority of international arbitrators and specialist counsel who advise investors on their investments in the Kingdom are unaware of the liberalization of Article 10(2) of the Arbitration Act that initially required the approval of the Prime Minister for any State instrumentality to enter into an arbitration agreement. The prospects for sheer economic growth through the Vision 2030 merit this ambition.

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**In 2019, you spoke about the concept of “the sword and the shield” in describing the relationship between commercial arbitration and the judiciary, and you made some suggestions for developing that relationship. What is your assessment of the relationship between the judiciary and the institutional arbitration industry in the Kingdom and how it has evolved?**

Courts must trust arbitral tribunals and reciprocally. This is the linchpin of any safe seat, anywhere. Where needed, courts must lend their imperium to arbitrators to ensure the efficiency of the proceedings and the effectiveness of

## The recent legislation complements the openness to ADR that was initiated by the Arbitration Law.

legitimate awards. Conversely, they must refrain from interfering in arbitral proceedings absent public order offenses. I have witnessed a remarkable change over the past few years in the attitude of Saudi judges towards arbitration. From an initial wariness, judges opened to what makes arbitration so attractive to businesses all over the world.

The merit is largely due to the SCCA. Through its regular invitation of judges to open dialogue, a climate of mutual trust ensued. It is visible both in recent arbitration-related court judgments that are aligned with international standards, and in international conferences where Saudi judges share with Saudi and international arbitrators fascinating panels.

It can but benefit a broader opening to arbitration in the various economic sectors in the Kingdom.

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You were recently named as a member of SCCA's Advisory Committee, along with 13 other experts from around the world. What are your thoughts about this development, and how can this Committee contribute to strengthening SCCA's national and international standing?

In the competitive world of institutional arbitration, only institutions with the most efficient rules and services can survive. And the standards are constantly changing in line with the changing expectations of the users. The SCCA's decision to empanel an advisory board, populated with most distinguished practitioners from five continents, and entrust it with the task of advising the Center on international arbitration practice is a tribute to the vision, the ambition and the modesty of the Center's leadership.

I feel privileged to be part of that Board and look forward to working with the Center's leadership and staff on their projects.

**Advisory Committee will support SCCA in earning litigants' trust in the quality of its rules and the excellence of its services.**



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**Participants at SCCA’s International Conference noticed your name among the Conference’s many prominent international participants in both its first and second years. From your observations, how would you describe this international event now held for a second straight year?**

Both conferences were an amazing success by all accounts. From the very inception, the unqualified endorsement of the Center and of the Kingdom’s openness to arbitration echoed by the most senior Ministers in the Government set the tone for the rest. The remarkable turnout and the impeccable organization of the panels, the quality of the panelists (all of them, without exception),

**The SCCA conference is distinct from others in that it combines the academic dimension with the precision of successful organization.**

the breadth of the media coverage, and the flawless logistical organization of the event made the conference a truly memorable event. Congratulations to all the organizers and the sponsors for a remarkable achievement. I look forward to the Third Conference.



**Professor Georges Affaki**

- ICSID arbitrator
- International Chamber of Commerce member
- Recently named a French Foreign Trade Advisor by a decree of the French Prime Minister



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