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A progress report on Saudi Arabia's arbitration-friendliness

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IN SUMMARY

Saudi Arabia has undergone a transformation in recent years on its path towards becoming a globally recognised arbitration seat. With strong judicial and governmental support, the jurisdiction is measuring itself against international standards, attracting expertise from within the country and beyond and attracting an increasing number of international arbitration filings.

DISCUSSION POINTS

- Benchmarking Saudi Arabia as an effective, efficient and safe international arbitration seat
- Recent SCCA business-focused initiatives
- SCCA board and committee appointments increasing diversity and expertise
- SCCA caseload and judicial enforcement record

REFERENCED IN THIS ARTICLE

- Chartered Institute of Arbitrators, London Centenary Principles 2015
- Saudi Arbitration Law enacted by Royal Decree No. M/34 dated 16 April 2012G and its Implementing Regulations issued by Cabinet Decree No. 541 dated 22 May 2017G.
- Cabinet Resolution No. 541/1438 issuing the Executive Regulations implementing the Arbitration Law
- World Economic Forum's Competitiveness Report (2019)
- SCCA Arabic Moot
- SCCA Arbitration Rules 2016
- SCCA Code of Ethics

Introduction

Arbitration in Saudi Arabia is continuing its transformation in a concerted effort by the jurisdiction to restructure the economy as part of the kingdom's Vision 2030. The following article looks at how the jurisdiction measures up against internationally recognised factors for safe arbitral seats, considers recent initiatives to assist parties to arbitration, the appointment of expert international professionals to the main arbitration centre's committees and some statistics revealing how the judiciary is supporting arbitration in the kingdom.

Benchmarking Saudi Arabia as an arbitral seat

In 2015 an eminent working group of the Chartered Institute of Arbitrators (CIArb) developed a set of ten principles constituting the required elements for a safe arbitral seat, creating a framework for their evaluation.¹ The following section measures recent initiatives in the kingdom to promote the country as an arbitral centre against the London Centenary Principles of the Chartered Institute of Arbitrators (CIArb), considering each principle in turn in the Saudi Arabian context.

Law

According to the London Centenary Principles, good seats require an arbitration law that sets out a procedural framework, limits judicial intervention and strikes a balance between transparency and confidentiality. The Saudi Arabia Arbitration Law, Royal Decree No. M/34, (the Saudi Arbitration Law) is broadly modelled on the UNCITRAL Model Law on International Commercial Arbitration and has paved the way for a more arbitration-friendly era. It provides for, among other things, party autonomy in the key areas of the applicable law, the rules governing the dispute, the place and language of arbitration, party representation, and the appointment of the arbitral tribunal. Under the Saudi Arbitration Law, parties may appoint any arbitrator, mediator, lawyer, expert or other representative regardless of gender, nationality or religion. The law also grants protection to arbitral awards and confines any challenges to a limited number of grounds (including sharia principles) and without review of the merits.

1 <https://www.ciarb.org/resources/features/a-framework-for-evaluating-the-best-arbitral-seats/>.

Independent commentators believe that the Saudi Arbitration Law includes several arbitration-friendly principles with ‘provisions of the new law that . . . will provide litigants with a viable arbitration alternative for their disputes in the Kingdom’.²

Judiciary

The London Centenary principles require a judiciary that is independent, competent and efficient, with expertise in international commercial arbitration and respectful of the parties’ choice of arbitration as their method for settlement of their disputes. According to the World Economic Forum’s Global Competitiveness Report (2019), Saudi Arabia achieved a global ranking of 16th in ‘judicial independence’, 17th in ‘efficiency of legal framework in settling disputes’ and 11th in ‘legal framework’s adaptability to digital business models’.³

Article 8 of the Saudi Arbitration Law and article 2 of the accompanying Executive Regulations⁴ stipulate that the competent court for the purposes of the Arbitration is the Court of Appeal. Furthermore, article 17 of the Executive Regulations ensures that the Supreme Court hears appeals regarding validity of arbitral awards.

Critically, the Saudi judiciary, including its ongoing strategic engagement with the Saudi Centre for Commercial Arbitration (SCCA), continues to meaningfully invest in enhancing and broadening the judiciary’s considerable expertise in international arbitration. Further, the performance of the judiciary has garnered considerable recognition and praise from local and international law firms.⁵

Legal expertise

The professional legal community in Saudi Arabia includes a network of highly experienced, sophisticated and independent local and international lawyers providing expertise to those doing business, litigating and arbitrating in Saudi Arabia and beyond. The Saudi Bar Association in 2019 launched the Saudi Accreditation

2 <https://www.jonesday.com/en/insights/2012/09/the-new-saudi-arbitration-law>.

3 World Economic Forum, The Global Competitiveness Report 2019, available at <https://www.weforum.org/reports/how-to-end-a-decade-of-lost-productivity-growth>.

4 Executive Regulations of the Arbitration Law, dated 22 May 2017.

5 See, for example, Scott Hutton et al, ‘Saudi Arabia’, The Construction Disputes Law Review: ‘The Saudi court system is also supporting the growth of arbitration by recognising arbitration agreements and enforcing arbitral awards. Arbitration is currently the preferred choice for many in the construction industry and it is anticipated that this will be a substantial growth area in Saudi Arabia.’ available at <https://thelawreviews.co.uk/title/the-construction-disputes-law-review/saudi-arabia>.

Standards for Lawyers, describing it as a ‘set of processes endeavouring to set national legal profession standards meeting international best practices and maintaining a high level of professionalism’. Initiatives such as this are ensuring that Saudi lawyers will be competitive domestically and internationally – and will be effective as counsel in mediation and arbitration.

The SCCA and its UK partner, CIArb, have been committed to ongoing professional development and deepening of expertise in international arbitration through years of workshops, training and accreditation of arbitration specialists.

Education

Saudi Arabia and the SCCA have redoubled their commitments and investments in ADR education across the spectrum of stakeholders and practitioners: from counsel, arbitrators and mediators to experts, users and students.

To provide practitioners with an opportunity to enhance their skills and have a locally and internationally recognised accreditation designation, the SCCA partnered with CIArb to create a fully Arabic programme for arbitrator and mediator accreditation (along with offering an English version) for all those wishing to avail themselves of the SCCA-CIArb Pathways to Fellowship.

The SCCA Arab Moot Competition is a particularly impactful education initiative attracting Arabic speaking university students from across the Arab world and beyond. Now, in its third edition, there are 84 teams with 586 students and academics from 14 countries. With its focus on SCCA international standard clauses, rules, procedures and guides, this international competition is cultivating the next generation of international commercial arbitration experts. The Arab Moot Competition case drafting committee was chaired by Emirati arbitrator and mediator Fatima Balfaqeeh.

Rights of representation

The concept of party autonomy is paramount. Both the Saudi Arbitration Law and the institutional arbitration rules of the SCCA allow parties to be represented by any legal representative they wish, both local and foreign. Registration is not required. Further, and contrary to some misconceptions, under the Saudi Arbitration Law, parties can appoint any arbitrator, mediator, lawyer, expert or other representative regardless of gender, nationality or religion. Under article 14 of the Saudi Arbitration Law, however, sole arbitrators and panel chairs must hold a degree in sharia or law.

Accessibility and safety

Parties, counsel, experts and arbitrators have generally had easy accessibility to the Saudi seat, including being ‘free from unreasonable constraints on entry, work and exit’ as required by the London Centenary Principles. Adequate safety and protection of the participants, their documentation and information are also generally assured. Arbitrators have access to everything related to the case and ensure confidentiality and non-disclosure of information and documents.

Facilities

The SCCA has its own purpose-built, state-of-the-art facilities across several locations in Jeddah and Riyadh, among others, and offers, inter alia, transcription services, hearing rooms, document handling and management services, and translation services.

Ethics

The SCCA has adopted and implemented codes of ethics for arbitrators, mediators, parties and their representatives, board members and staff. The code of ethics for arbitrators sets out a number of standards intrinsic to their functions. The code of ethics for parties sets out 12 standards of conduct by which they and their representatives should abide.

All the SCCA Codes of Ethics – for arbitrators, mediators, parties and representatives, board members and staff – are reviewable and downloadable in Arabic and English.⁶

Enforceability

Arbitral awards are enforced in accordance with simple, prompt and effective procedures. Under the Enforcement Law, an arbitral award, to which an enforcement order is appended, is considered a writ of enforcement for which compulsory enforcement is permitted. In addition, Saudi Arabia is a signatory to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards; Saudi courts are therefore required to give effect to private arbitration agreements and the recognition and enforcement of arbitral awards made in other contracting states.

⁶ <https://www.sadr.org/arbitrators-code-of-conduct?lang=en>.

Recent business-focused initiatives at the SCCA

An independent, not-for-profit arbitral institution, the SCCA is recognised as a full and complete administrative ADR service provider with tested rules and procedures that follow international best practices and standards.

Since its launch in October 2016, the SCCA has registered 211 filings totalling US\$1.01 billion involving domestic and international parties.

Regarding appointments, parties can authorise the SCCA to perform one of three services to select and appoint one or more arbitrators. First, parties can request the SCCA to provide a list of experienced and qualified candidates from which to choose their arbitrator (list-only service). Second, parties can authorise the SCCA to appoint one or more arbitrators using its list method (list-and-appointment service). Finally, parties can authorise the SCCA to directly appoint one or more arbitrators without any further intermediary steps (administrative appointment service).

To support the business sector and promote investment, the SCCA introduced measures to make its range of services more accessible and cheaper, including a reduction in arbitrator fees of up to 30 per cent, halving the initial costs for initiating proceedings and allowing parties to agree to alternative fee arrangements based on arbitrators' hourly rates.

The SCCA board of directors' approved several amendments to Appendix I of the SCCA Arbitration Rules⁷ to broaden its institutional arbitration offering across diverse sectors and with parties of any size and nationality.

From 1 September 2021, the amendments to Appendix 1 of the SCCA Arbitration Rules streamline the process and make it more affordable. For example, the SCCA has eliminated its filing fee. A filing party now need only advance a flat rate registration fee of US\$1,350 that will later be credited towards administrative fees. This also reduces the initial cost in starting the arbitration proceeding by 50 per cent for claims above US\$107,000. In addition, the administrative fees start at a flat rate of US\$540 for proceedings under the Online Dispute Resolution (ODR) Protocol and are capped at a maximum of US\$80,000 for any other arbitration proceedings.

Further review of arbitrator fees resulted in and reduced them by up to 30 per cent. To provide more transparency, the SCCA has also introduced three pricing levels: minimum, maximum and average. The SCCA fixes the arbitrator fees case by case

⁷ SCCA Arbitration and Mediation Rules, October 2018, as amended, available at <https://sadr.org/awareness-publications?lang=en>.

depending on the complexity of the matter and the time and effort required to determine the case. Instituting minimum and maximum fees enables the parties to project the costs of arbitration before proceedings commence.

The SCCA also introduced the option for parties to agree to alternative fee arrangements based on hourly arbitrator rates. This method is available alongside the SCCA's existing ad valorem method, which will remain the default mechanism in case the parties cannot agree on an hourly rate.

The SCCA reduced the cost of its ODR service by 40 per cent to make it more accessible to all businesses, especially innovators, entrepreneurs and those operating small and medium-sized enterprises.

Additional flexibility for parties now includes options to facilitate the advancement of deposits for SCCA and arbitrator fees, including instalment plans and bank guarantees for larger amounts (as outlined in the amendments to Appendix I of the SCCA Arbitration Rules).

Clients can also estimate the costs of their arbitration by accessing SCCA's online interactive calculator,⁸ which provides a preliminary assessment of the arbitration costs while comparing the various SCCA arbitration services. Based on the service selected and the number of arbitrators, the costs may range between by 25 to 200 per cent.

The amendments to Appendix I ensure the utility of innovative arbitration services SCCA offers alongside standard arbitration, such as expedited arbitration,⁹ which provides a quick path to dispute resolution at a cost 20 per cent lower than standard arbitration, and online arbitration, which enables the parties to settle their dispute remotely within 30 days of the arbitrator's appointment.

Recent appointments of international experts

In 2021, the SCCA added high-profile ADR experts to its board of directors, rules advisory committee and committee for administrative decisions as part of its objective to provide first-class rules and services that are responsive to industry needs while being transparent and consistent, and that adhere to international best practices.

8 SCCA Fee Calculator, available at https://sadr.org/ADRService-Arbitration-Fee_Calculator?lang=en.

9 See https://sadr.org/ADRService-Expedited_Procedures?lang=en.

A Royal Decree was issued on 23 March 2021 appointing the third independent board of directors of the SCCA chaired by Walid Abanumay with Toby Landau appointed the vice-chair. The diverse board includes eminent international arbitration experts from Saudi Arabia, Egypt, France, the United Kingdom and the United States, including experts in law and sharia as well as business sector leaders.

Half of the incoming board members are leading international arbitration experts, and all are leaders from the business, legal and finance and banking sectors. The new board now reflects more diversity in terms of specialisations, gender and nationalities – with foreign experts comprising 40 per cent of the board, and a foreign vice-chair. This diversity enhances and promotes international best practices of the SCCA while also reinforcing SCCA neutrality and independence from the public sector.

This decree further implements the SCCA's Statute¹⁰ stipulating that the SCCA must have an independent board of directors serving for a term of three years and is renewable once.

To ensure the independence of the SCCA committees, three new members, (James Hosking, Matthew Secomb and Mohamed Abdel Wahab) with long-standing experience in institutional arbitration and who are not Saudi nationals joined the SCCA rules advisory committee, which now has 15 members.

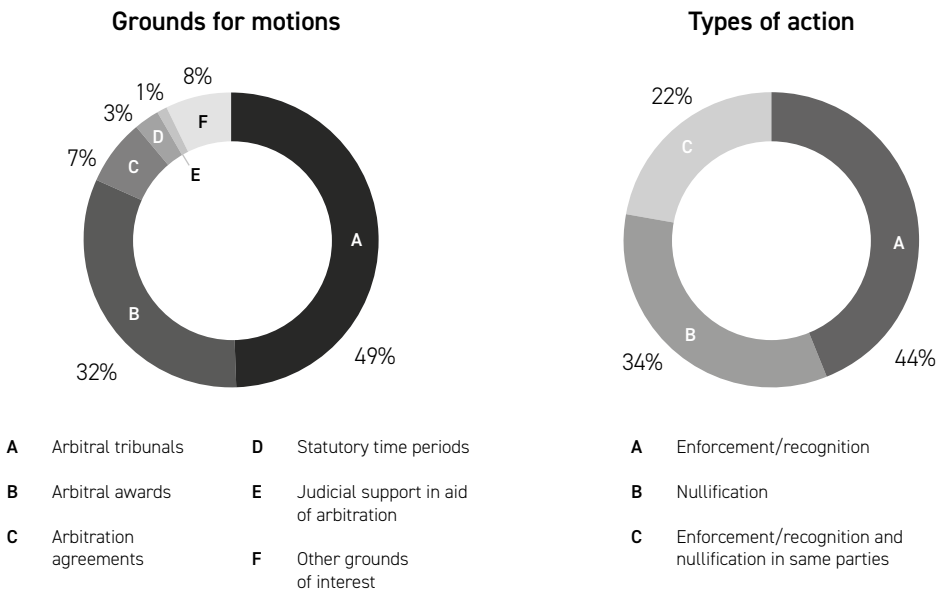
Three new members (Ziad Bin Abdulrahman Al-Sudairy, Annette Magnusson and Sarah Lancaster) who have held senior positions in some of the most preeminent arbitral institutions in the world joined the committee for administrative decisions. The committee was established in September 2020 to provide parties access to a neutral and specialised decision-making authority that makes consistent, transparent and expedited decisions to keep the arbitration on track. Its decision-making authority encompasses the determination of arbitrator challenges, disputes concerning the place of arbitration and disputes concerning the number of arbitrators in both SCCA-administered and ad hoc arbitration proceedings.

Caseload and judicial enforcement

In 2021, courts in Saudi Arabia enforced 204 domestic and foreign awards representing an aggregate value of US\$2.1 billion, with enforcement proceedings being resolved on average within two weeks. Since the Saudi Arbitration Act in 2012 there have been approximately 35,000 applications for enforcement with an aggregate value

10 Statute of the Saudi Centre for Commercial Arbitration, Council of Ministers Resolution No. 488, 30 April 2019, available at <https://www.sadr.org/about-ADR.in.sa-laws-and-regulations?lang=en>.

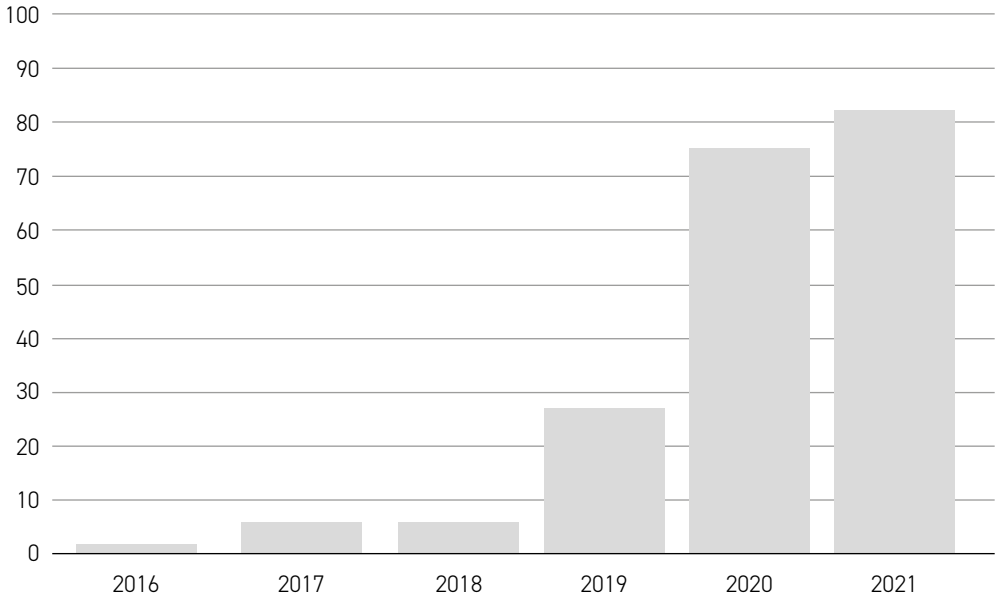
of enforced arbitral awards coming in at just over US\$6.16 billion. In 2019, more applications for enforcement were filed than had been filed between 2013 and 2018. An SCCA study of Saudi case law related to arbitration published between 2017 and 2021 indicated that 540 judgments were issued and 603 motions registered with the appellate courts, nearly a third of these related to enforcement or nullification of arbitral awards. Only 6 per cent of motions to annul an award were granted and half of the successful applications for annulment were granted on sharia and public policy grounds.¹¹



The SCCA has registered 198 filings totalling over US\$897 million involving domestic and international parties from sectors including banking and finance, capital markets and investment, construction and engineering, and arts and entertainment.

11 Royal Decree No. 44682 of 28 August 2021 limits the definition of public policy to general rules of Islamic law based on the *Quran* and the *Sunnah*.

Growth in the number of cases at the SCCA



Conclusion

The decade-long transformation of all aspects of the Saudi ADR practice, profession and industry outlined in this article has been profound, comprehensive and likely to endure. Importantly the Saudi judiciary has a solid record of skilfully and consistently adjudicating matters related to arbitration; and providing the judicial support required for a consistent record of successful enforcement of local and foreign arbitral awards. With its now well established local, regional and international reputation as a first-rate ADR institution, the SCCA benefits from operating in an arbitration-friendly jurisdiction – reflected in its rapidly increasing caseloads.



JAMES MACPHERSON

Saudi Center for Commercial Arbitration

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). He is affiliated with and active on domestic and international rosters of ADR providers around the world and 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).

He specialises 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, the Maldives, Morocco, Oman, Qatar, Saudi Arabia, Sri Lanka, Syria, Turkey, the UAE, the UK and the 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.



المركز السعودي للتحكيم التجاري
Saudi Center for Commercial Arbitration

The Saudi Center for Commercial Arbitration (SCCA) is a not-for-profit organisation established by a Saudi minister council decision in 2014 to administer alternative dispute resolution (ADR) procedures in commercial disputes where parties agree to refer their disputes to SCCA arbitration and mediation, all in accordance with regulations in force and judicial principles of civil and commercial procedure.

An independent well-known foreign and national expertise board of directors is formed by a high order from the prime minister. No board members may hold a government position.

The SCCA's ADR services, including arbitration and mediation, are provided in accordance with international and professional standards in Arabic and English.

The SCCA also provides customers with professional institutional services by a 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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