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2024

Saudi Arabia

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The Middle Eastern and African Arbitration Review 2024 contains insight and thought leadership from 34 pre-eminent practitioners from the region. It has grown into one of the best resources anywhere for tracking significant cases and arbitration-related court rulings unfolding in the region, along with developments that may give rise to disputes.

This edition offers backgrounders on numerous key seats, as well as overviews on energy, mining, telecoms, construction and Saudi Arabian projects. All articles are supported with footnotes and relevant statistics.

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Saudi Arabia

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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 a strong private sector, judicial and government support, the jurisdiction is measuring itself against international standards, attracting expertise from within the country and beyond, as well as an increasing number of international arbitration filings.

DISCUSSION POINTS

- SCCA: A decade transforming the Saudi ADR ecosystem
 - Engagement and thought leadership: RIDW and SCCA24
 - Professional development and capacity building
 - New Civil Transaction Law
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REFERENCED IN THIS ARTICLE

- Internal Rules of the SCCA Court
- SCCA Arbitration Rules 2023
- Singapore Convention
- CISG
- Civil Transactions Law 2023

INTRODUCTION

When the *Financial Times* declared that ‘US firms Latham and Watkins, Greenberg Traurig and Squire Patton Boggs [were] flocking to the world’s largest oil exporter, alongside Dentons and UK-based Clifford Chance and Herbert Smith Freehills’ and that, within a few months, several other major law firms had opened offices in Riyadh, including Kirkland & Ellis, ‘the world’s largest law firm by revenue’, it was clear where the action was.^[1]

In the past decade, Saudi Arabia has engaged comprehensively with the alternative dispute resolution (ADR) community and is now also home to major international ADR industry events, namely the Saudi Center for Commercial Arbitration (SCCA) International Conference and the SCCA Arabic Moot, with both events being part of one of the world’s largest disputes weeks – the Riyadh International Disputes Week (RIDW).

This article explores key ADR-related developments in Saudi Arabia making clear this growth is the result of strategic thinking and hard work that shows no signs of letting up from those

in the public and private sectors who are fostering this evolution in commercial dispute management and resolution.

SCCA: A DECADE TRANSFORMING THE SAUDI ADR ECOSYSTEM

The SCCA is a not-for-profit, non-governmental organisation established by Saudi Cabinet Decree No. 257 of 15 March 2014. It was established to administer arbitrations, mediations and other ADR proceedings where the parties agree to refer their matter to the SCCA. Its services are provided in accordance with international standards and best practices in Arabic and English.

The SCCA operates in an ADR-friendly environment alongside the judicial system. It has the full endorsement and support of the government for its work; however, to reinforce the SCCA's independence from the government, its board, which comprises non-government officials appointed by the prime minister, is given full operational autonomy.

Since its launch in October 2016, the SCCA has registered a significant number of cases, with claims involving domestic and international parties from industries such as banking, capital markets and construction. It aims to maintain this growth through careful stewardship and strategic engagement across all stakeholder groups – users, lawyers, experts, neutrals, academics and the next generation of people coming up to take those roles.

RIDW24

The inaugural RIDW (RIDW24) was created with the intention of establishing an annual week of events that connects the global community of judges, lawyers, and arbitration and mediation practitioners and promotes the best in professional and academic debate. It aims to promote Riyadh as a international leader in commercial ADR and litigation.

RIDW24 was held from 3 March 2024 to 7 March 2024. It was supported and sponsored by 54 local and international organisations involved in commercial dispute resolution.^[2] It gathered stakeholders in the dispute resolution ecosystem, including governments, international and local institutions, legal experts, arbitrators and lawyers, allowing for the '[support of] industry opportunities in the MENA region and [contributing] to facilitating the exchange of knowledge and experiences'.^[3]

More than 4,500 individuals from over 79 countries attended, and there were more than 90 events organised by 105 organisations. Among the events was the SCCA24 conference entitled 'Dispute Resolution in a Changing World: New Trends, New Opportunities', which originated from the SCCA's role in advancing the field both locally and regionally to explore opportunities in the MENA's largest economy.

Several agreements and strategic partnerships in law, arbitration and consultancy services for dispute resolution were signed during the conference. Among other agreements, cooperation agreements were signed between the SCCA and other local and international entities, including the International Centre for Settlement of Investment Disputes, the Chartered Institute of Arbitrators (CI Arb) and the Singapore International Arbitration Centre.^[4]

These agreements reflect Saudi Arabia and the SCCA's commitment to improving the business and investment environment, enhancing confidence and transparency in the legal and arbitration environment, and increasing the region's attractiveness as an investment destination. According to the chair of the SCCA board, Walid bin Sulaiman Abanumay:

This trend obliges us to contribute to shaping the future, and to strive to enable the business environment and the flow of investments, not just from the Kingdom to the world, but also to be an influential international player in the arbitration industry and ADR mechanisms, with our distinct and global unique identity.^[5]

The final rounds of the fifth edition of the SCCA Arabic Moot also took place during RIDW24. For the first time in its history, the competition was held in person, with 134 participating teams, comprising 921 students and academics from 111 universities in 27 countries.^[6]

The diverse events and the large attendance of RIDW24 reflect the progress that Saudi Arabia has made in developing ADR and the calibre of its international reputation as a leading destination and a safe seat for arbitration.^[7]

PROFESSIONAL DEVELOPMENT AND CAPACITY BUILDING

Launch Of The CIArb's Saudi Branch

At RIDW24, the CIArb launched its Saudi Arabia branch, linking Saudi Arabia's growing number of ADR practitioners with the more than 17,500 members of the CIArb.^[8] The launch could be seen as a natural progression of the increasing number of Saudi ADR professionals, which has grown to over 270 members.

At the launch, the CIArb CEO, Catherine Dixon, highlighted the commitment to continue to build 'private dispute resolution' capacity in Saudi Arabia and the wider MENA region, noting that 'the interest and enthusiasm shown during Riyadh International Disputes Week 2024 (RIDW) demonstrates a real appetite to embed private dispute resolution, an integral part of an effective justice system'.^[9]

During the signing ceremony, the chair of the CIArb Saudi Arabia branch, Hamed Merah, commented:

The launch of the Ciarb Branch in the Kingdom of Saudi Arabia is a positive step forward as we continue to cultivate private dispute resolution in the Kingdom. The discussions and relationships built at Riyadh International Disputes Week 2024 (RIDW24) will put us in good stead for the years to come. I look forward to working closely with Ciarb to ensure our success. I would like to thank our members and our partners for their support and encouragement.^[10]

Education

Saudi Arabia and the SCCA have intensified their commitments and investments in ADR education across 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 certification, the SCCA partnered with the CIArb to create a fully Arabic programme for arbitrator and mediator accreditation (along with an English version) for all those wishing to avail themselves of the SCCA-CIArb Pathways to Fellowship.^[11]

The SCCA Arabic Moot is a particularly impactful education initiative, attracting Arabic-speaking university students from across the Arab world and beyond. 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 fifth edition was held during RIDW24.

ECZA And SCCA Collaborate To Provide ADR Services

As it continues to build strategic partnerships to further the ADR field in Saudi Arabia and throughout the MENA region, the SCCA has concluded a series of memoranda of understanding (MOUs) with key institutions, agencies and international bodies.

In May 2023, the SCCA entered into a cooperation agreement with Saudi Arabia's Economic Cities and Special Zones Authority (ECZA), the umbrella regulator of Saudi Arabia's economic cities (ECs) and special economic zones (SEZs).^[12] The agreement establishes a procedural framework for providing ADR services in both ECs and SEZs that follows international standards and best practices, thereby strengthening the zones and making them an attractive destination for local and foreign investment.

The SEZs in Riyadh, Jazan, Ras Al-Khair and King Abdullah Economic City operate under special legislation and regulations that are designed to make them highly competitive in attracting investments. The SCCA will also establish an office in the headquarters of King Abdullah Economic City after the SEZs become operational to provide institutional arbitration services and other ADR services. Additional offices could be established in other zones as needed.^[13]

The SCCA and the ECZA will also cooperate in designing a procedural mechanism for providing arbitration and other ADR services to investors in the SEZs. A list of arbitrators with expertise in SEZs will be created to enable parties in disputes to choose the most suitable arbitrators. Cooperation will also include raising awareness among investors, venture capitalists and project owners about the progress of the Saudi arbitration field, including through introductory meetings, educational materials and responses to questions the ECZA receives about ways to resolve commercial disputes.^[14]

Cooperation Between Arbitration Centres Of Saudi Arabia And China

The SCCA entered into an MOU with the China International Economic and Trade Arbitration Commission (CIETAC) during the 2023 China Arbitration Summit and the Third Belt and Road Arbitration Institutions Forum, in which the SCCA participated as a supporting entity and a keynote speaker.^[15]

The MOU provides for cooperation between the SCCA and the CIETAC to provide support for arbitration cases administered by the two organisations. This involves providing hearing rooms, nominating arbitrators from each centre's roster, exchanging functional expertise and seconding staff.

A channel was established to enable the SCCA and the CIETAC to cooperate in promoting arbitration and other means of ADR for resolving commercial disputes; to exchange information on arbitration, trade and investment; and to do research and hold professional development programmes about ADR.

The signing of the MOU comes in the context of burgeoning relationships between Saudi Arabia and China, as reflected in the growth in the volume of trade and investment between the two countries.

NEW CIVIL TRANSACTION LAW

Characterised by many commentators as the most profound legislative advancement impacting commercial matters in a number of years, the new Civil Transactions Law encourages the use of mediation and arbitration to efficiently and amicably resolve civil disputes.^[16] It 'encourages alternative dispute resolution, including mediation and arbitration, to efficiently and amicably resolve civil disputes. It promotes a more expedited and cost-effective dispute resolution process'.^[17]

Accession To The CISG

In 2023, Saudi Arabia announced its accession to the United Nations Convention on Contracts for the International Sale of Goods (CISG), becoming the 96th party to the Convention. In alignment with Saudi Vision 2030, the announcement will enhance the ease of doing business for foreign investors from other jurisdictions.

The CISG will be adopted in its entirety, with a reservation or opt-out of Part III. The 95 other parties to the CISG have similarly acceded with their own reservations in place.

When the CISG comes into effect in Saudi Arabia on 1 September 2024, it 'will introduce legal certainty in international trade involving the KSA and thereby simplify the resolution of resulting disputes'.^[18]

MEDIATION

Saudi Arabia has taken major steps to promote the adoption and use of commercial mediation. In 2022, it was a founding signatory of the United Nations Convention on International Settlement Agreements Resulting from Mediation (the Singapore Convention), which aims to ensure the enforceability of agreements to mediation.

In 2023, Saudi Arabia published the draft of its first mediation law, which was created to bring Saudi Arabia in line with its commitments under the Singapore Convention and to promote mediation in Saudi Arabia as a form of dispute resolution. The draft law generally received positive reviews. It lays out a framework for mediation and outlines the requirements that parties must meet to participate in this process. It requires that mediation proceedings be kept confidential, which some commentators have noted is 'a welcome development, as it will help parties to be candid with one another and will allow for more efficient dispute resolution'.^[19]

INTERNAL RULES OF THE SCCA COURT

To further promote transparency, the SCCA published the Internal Rules of the SCCA Court, which came into effect 1 July 2023.^[20] The Internal Rules cover several aspects of the SCCA Court's work, including its composition and the appointment of members, the powers and functions entrusted to it, and how the it convenes and issues its decisions.

Under the Internal Rules, the Court can, among other functions, consolidate two or more arbitrations, adjudicate disputes over the number of arbitrators, appoint arbitrators, determine arbitrator challenges, determine the place of arbitration, review arbitral awards, assess advance deposits to fund cases, and fix the fees and expenses to be paid to the SCCA and the arbitral tribunal.

The SCCA Court acts independently of the SCCA, and the court members are appointed for three-year terms, which can be renewed once. The decisions of the SCCA Court are final and binding unless the SCCA Arbitration Rules provide otherwise.

The president of the SCCA Court cannot serve as an arbitrator or counsel in cases administered by the SCCA. Further, the SCCA Court cannot appoint any of its members as an arbitrator in such cases, and Court members perform their duties without compensation.

The implementation of the Internal Rules is intended to ensure the consistency and long-term continuity of key administrative decisions in the SCCA's caseload. The Rules are also intended to embrace the diversity of its members' nationalities and backgrounds to ensure the decision-making process can be viewed from multiple perspectives.

REVISED SCCA ARBITRATION RULES

The revised SCCA Arbitration Rules were published on 1 May 2023 following an extensive review and a public consultation process in Saudi Arabia and internationally, as well as the approval of the final text by the SCCA board of directors.^[21] According to the SCCA vice chair, Toby Landau, the Rules 'embody cutting-edge innovations with established best practices' and provide 'a first-class, state-of-the-art framework for international arbitration'.^[22] The Rules apply to all arbitrations filed on or after 1 May 2023.

The Rules introduced the SCCA Court, which is in charge of making key administrative decisions related to SCCA-administered arbitrations. The SCCA Court comprises 15 members^[23] from 12 countries who have decades of arbitration court experience. Among the members are international arbitrators, academics and former leaders of arbitral institutions.

One important feature of the Rules is the general promotion of the use of technology to file documents and manage cases, particularly smaller claims. The Online Dispute Resolution Procedure Rules have been incorporated as an opt-out option in cases where the aggregate amount in dispute does not exceed 200,000 Saudi riyals.

The arbitral tribunal's discretionary powers were expanded to allow the tribunal to, among other things, determine the most effective format for hearings, reject changes in party representation as a procedural safeguard, encourage parties to resort to mediation where appropriate and limit the length of written statements or requests. Two more reasons for arbitrator challenges were also added: failure to perform and manifest lack of party-agreed qualifications.

The Rules address several emerging practices and issues in international arbitration, such as arbitrations in multiparty and multi-contract disputes, consolidation and coordination of parallel arbitrations, third-party funding, and cybersecurity, privacy and data protection.

The Rules have received a widespread, favourable reception across the local and international arbitration community.^[24]

SHARIA LAW

At the Third Saudi Commercial Arbitration Conference, Saudi Minister of Justice Walid Al Samaani shared that 90 per cent of arbitral awards have been honoured among over 4,000 annulment applications.^[25] Out of the 88 annulment applications received in 2022, only five resulted in annulment in part or in full, with none of those annulment decisions being based on violations of sharia law or public policy.^[26]

At the same conference, Youssef Al Farraj, head of the Saudi Court of Appeal and chair of the committee that drafted the new Civil Transactions Law, remarked that foreign parties operating in Saudi Arabia are under the mistaken impression that sharia law is 'too proud to be controlled' and that it remains largely uncoded.^[27] He said the new Civil Transactions Law has clarified the elements of sharia law that the Saudi courts will enforce in commercial contracts so ADR users will be aware of 'the parameters and the approaches adopted by the kingdom'.^[28]

The revised SCCA Arbitration Rules 2023 removed mandatory application of sharia law: whereas the Arbitration Rules 2016 made compliance with sharia law mandatory in any SCCA arbitration irrespective of the applicable law chosen by the parties, the Arbitration Rules 2023 removed references to sharia law. Nevertheless, sharia principles 'remain the

foundation of Saudi law and apply to the enforcement of KSA-seated and foreign arbitral awards in the Kingdom through the gateway of public policy'.^[29]

JUDICIAL ENFORCEMENT

Saudi 2022 Case Law Relating To Arbitration

The latest SCCA study of Saudi case law on arbitration between 2017 and 2022 indicated that of 720 judgments examined, there were 814 grounds based on which parties approached the courts. Of those grounds, 256 related to motions regarding awards (both to enforce and annul). Of those 256 grounds, 131 were related to motions to annul, with 120 being denied, leaving an 8 per cent success rate (11 motions). Of these 11 motions, seven were granted in full and four only in part. Of the 24 sharia grounds identified, only five were successful.^[30]

These findings have not only been generally well received by the parties involved in each case, but they have also proven to be compelling and reassuring for local and foreign parties and counsel assessing Saudi Arabia as a place to do business and, if needed, enforce arbitral awards.

Lise Bosman, the executive director of the International Council for Commercial Arbitration, praised the Saudi Appeal Court's 'excellent track record' of enforcing domestic arbitration awards, as well as the inclusion of the SCCA arbitration clause in government contracts as a 'proven technique' for building a caseload.^[31]

CONCLUSION

The decade-long transformation of all aspects of the Saudi ADR practice, profession and industry outlined in this article has been profound and comprehensive and is likely to endure. 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 ADR-friendly jurisdiction, as reflected in its expanding international relationships and rapidly increasing caseloads.

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