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Navigating the Evolution of Arbitration in Saudi Arabia: Historical Contexts, Legislative Reforms, and International Conventions

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Abstract:

This paper examines the evolution and contemporary landscape of arbitration in Saudi Arabia, analyzing key legislative developments and international engagements that have shaped its arbitration framework. Beginning with a historical overview, the paper explores the challenges faced by arbitration in the Kingdom, including jurisdictional conflicts and procedural uncertainties. It then delves into the legislative reforms, such as the 1983 Arbitration Regulation and the 2012 Saudi Arbitration Law, highlighting their impact on arbitration practice and investor confidence.

Furthermore, the paper discusses Saudi Arabia's accession to international arbitration conventions, notably the New York Convention, and its involvement in regional arbitration initiatives like the GCC Commercial Arbitration Centre. Despite these advancements, challenges persist, particularly regarding the enforcement of arbitral awards and the interpretation of public policy grounds.

Through a comprehensive analysis, this paper elucidates the trajectory of arbitration in Saudi Arabia, emphasizing the Kingdom's dual commitment to modernizing its arbitration framework while preserving its unique legal traditions. It concludes by advocating for ongoing dialogue, collaboration with international partners, and a commitment to transparency and fairness to further enhance the Kingdom's arbitration environment and attract domestic and foreign investment.

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التنقل في تطور التحكيم في المملكة العربية السعودية: السياقات التاريخية، والإصلاحات التشريعية، والاتفاقيات الدولية

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الملخص:

تناولت هذه الورقة تطور ومشهد التحكيم في المملكة العربية السعودية، محللاً التطورات التشريعية الرئيسية والمشاركات الدولية التي شكلت إطارها للتحكيم. بدايةً بنظرة عامة تاريخية، استكشفت الورقة التحديات التي واجهت التحكيم في المملكة، بما في ذلك الصراعات القضائية وعدم اليقين الإجرائي. ثم انتقلت إلى استعراض الإصلاحات التشريعية، مثل لائحة التحكيم لعام ١٩٨٣ وقانون التحكيم السعودي لعام ٢٠١٢، مسلطة الضوء على تأثيرها على ممارسة التحكيم وثقة المستثمرين.

وفيما يتعلق بذلك، ناقشت الورقة انضمام المملكة العربية السعودية إلى المعاهدات الدولية للتحكيم، لا سيما اتفاقية نيويورك، ومشاركتها في مبادرات التحكيم الإقليمية مثل المركز الخليجي للتحكيم التجاري. على الرغم من هذه التطورات، لا تزال التحديات قائمة، خاصة فيما يتعلق بتنفيذ الأحكام التحكيمية وتفسير أسباب السياسة العامة.

من خلال تحليل شامل، توضح هذه الورقة مسار التحكيم في المملكة العربية السعودية، مؤكدة التزام المملكة بتحديث إطارها التحكيمي بينما تحافظ على تقاليدها القانونية الفريدة. وتختتم بالدعوة إلى مواصلة الحوار والتعاون مع الشركاء الدوليين، والالتزام بالشفافية والعدالة لتعزيز بيئة التحكيم في المملكة وجذب الاستثمارات المحلية والأجنبية.

الكلمات المفتاحية:

التحكيم ، الإصلاحات التشريعية، اتفاقية نيويورك، التحكيم الإقليمي، تنفيذ الأحكام التحكيمية.

Introduction

This paper explores the dynamic landscape of arbitration in Saudi Arabia, tracing its historical development, legislative reforms, and the interaction with international arbitration conventions. From the early days of the Commercial Court Regulation of 1931 to the sophisticated frameworks introduced by the 2012 Saudi Arbitration Law, the Kingdom has made significant strides toward modernizing its arbitration system. This evolution is contextualized within the broader goals of enhancing legal frameworks to support economic diversification and integration into the global economy.

In examining these developments, the paper will delve into several key legislative milestones and international commitments that have shaped the current state of arbitration in Saudi Arabia. This includes the establishment of the GCC Commercial Arbitration Centre, the Kingdom's accession to the New York Convention in 1958, and the implementation of the ICSID Convention. Each of these steps reflects Saudi Arabia's efforts to align its arbitration practices with international standards while maintaining adherence to Islamic law and local customs.

Moreover, the paper will discuss the challenges and implications of these reforms for international investors and the global arbitration community. By providing a comprehensive analysis of Saudi Arabia's arbitration laws and their practical effects, this paper aims to offer insights into the balancing act between embracing global arbitration norms and respecting sovereign legal traditions. Through this exploration, we seek to understand not only the legal transformations within Saudi Arabia but also their significance in the broader context of international law and global commerce.

I. Evolution and Challenges of Early Commercial Arbitration Regulations in Saudi Arabia:

Initially, the Kingdom of Saudi Arabia (KSA) displayed a keen interest in arbitration. However, following the 1954 ruling in the Aramco case, this attitude shifted towards hostility, as detailed in the following Sections. In response, the KSA government launched several initiatives perceived as antagonistic towards arbitration. From the 1970s onward, significant commercial pressures, especially within the KSA, catalyzed continual reforms aimed at creating a more arbitration-

friendly environment[1]. A pivotal amendment to the KSA arbitration system occurred in 2012, which addressed and resolved many issues and ambiguities present in the previous 1983 system. The effectiveness of this new act in dismantling the barriers of the former system is crucial for enhancing international confidence in the Saudi legal framework. The incremental development of the KSA reforms towards arbitration will be discussed in the next sections.

I.A. The 1931 Code of Commercial Courts

The 1931 Code of Commercial Courts of Saudi Arabia marked the inception of regulatory provisions governing commercial arbitration within the Kingdom. It comprised a concise set of rules, encapsulated in nine articles, designed to manage arbitration proceedings among private entities. Notably, Article 493 permitted disputants to initiate arbitration through a certified written deed.[2] This regulation allowed parties significant autonomy in selecting arbitrators, defining the arbitration timeline, and choosing the decision-making process—either by unanimity or majority. Additionally, once arbitrators were appointed

(1) Baamir, A. Y., and Bantekas, I. (2009).
(2) Baamir, 2013.

with court approval, their removal was restricted, although parties retained the right to contest the award in court as stipulated in Article 496. The regulation also endorsed institutional arbitration, mandating that proceedings operate under the oversight of the Commercial Court,(1) and dictated that arbitrators adhere to Sharia procedural norms and the terms of the arbitration agreement.(2)

Despite these provisions, the regulation was largely ineffective in practice for several reasons. Courts often declined to recognize arbitration agreements, and even when such agreements were acknowledged, the enforcement of awards remained discretionary.(3) The lack of enthusiasm for arbitration among parties was further exacerbated by jurisdictional conflicts between the Commercial and Sharia courts[2], contributing to the regulation's ineffectiveness.

(1) (Article 493)
(2) (Article 494)
(3) Albejad, 1999).

I.B. The 1952 Arab League Convention on the Enforcement of Judgments

The Convention of the Arab League of Nations on the Enforcement of Judgments, established in 1952, laid foundational principles for cross-border judicial cooperation among Arab nations. Although superseded by the 1983 Riyadh Convention for Judicial Cooperation, a brief exploration of the original Convention remains pertinent. The Kingdom of Saudi Arabia (KSA) was the first to ratify this Convention, formalized through the Council of Ministers Resolution No. 50 in June 1960, with ratification taking place on July 18, 1954.[1] The Board of Grievances was designated to oversee the enforcement of judgments from the Arab League, marking a significant empowerment and expansion of its jurisdiction. Subsequently, Royal Decree further broadened the Board's mandate,[2] encompassing the enforcement of all foreign arbitration awards and judgments, and explicitly prohibiting discrimination between arbitral awards from Arab and non-Arab member states. This progression underscored the Kingdom's

(1) Council of Ministers Resolution No. 50, June 1960.
(2) No. M/51 of 1982.

commitment to upholding the principles of judicial cooperation and fairness in the enforcement of international judgments.(1)

I.C. The Riyadh Convention 1983: Bridging Legal Frameworks for Arab Commerce and International Arbitration

The Riyadh Convention of 1983 was ratified in response to the growing demand for Arab countries to liberalize their legal frameworks for commerce to facilitate greater international engagement.(2) As a signatory to both the Washington Convention (WC) and the New York Convention (NYC), Saudi Arabia utilized the Riyadh Convention as a mechanism to recognize and enforce judgments and arbitration awards between Arab states in a manner akin to that provided for NYC member states.(3) Often regarded as the Arab League's counterpart to the NYC, the Riyadh Convention is more expansive, covering not only arbitration awards but also court rulings, thereby providing a more comprehensive enforcement mechanism.

Article 37 of the Riyadh Convention mandates that all arbitral awards issued in one member state be recognized and enforced by all

(1) Baamir, A. Y., and Bantekas, I. (2009).
(2) John, 2004.
(3) Mohd and Al Mulla, 1999.

others, albeit with certain exceptions. These include cases involving void or expired arbitration agreements, incompetence of the arbitrator, parties not being duly summoned, and violations of the public policy of the recipient state, as specified in Articles 28 and 30 of the convention. These exceptions have been invoked by Saudi Arabia as reasons for refusing to recognize or enforce awards from other Arab League nations. Similar to the NYC, the Riyadh Convention specifies exceptions related to public policy, non-arbitrable disputes, incapacity, and invalidity. However, it also includes unique exceptions not found in either the NYC or the WC, particularly the implicit requirement for conformity with Sharia law, as public policy in Saudi Arabia mandates adherence to Sharia.[1]

II. The Saudi Arabia v. Aramco Case of 1954: A Complex Intersection of National Law and International rbitration

The 1954 legal dispute between Saudi Arabia and the Arabian American Oil Company (Aramco), originally the Standard Oil Company of California, centered on the interpretation of a concession agreement from May 29, 1933. The conflict was precipitated by a

(1) John, 2004.

Saudi governmental decree (Royal Decree No. 5737 of April 9, 1954), which compelled Aramco to adhere to a subsequent agreement with Saudi Arabian Maritime Tankers Ltd (SATCO), granting SATCO priority in transporting Saudi oil for 30 years. Aramco resisted this order, arguing that it conflicted with the exclusive transport rights granted under its existing concession agreement.(1)

The legal framework outlined in Article 4 of the arbitration agreement specified that disputes should be resolved according to Saudi law when within its jurisdiction, and according to the law of the arbitration tribunal if beyond. Notably, Saudi law, as applied, follows the principles of the Hanbali School of Islamic jurisprudence.(2)

Aramco advocated for the application of general principles of law recognized internationally, citing the global nature of the 1933 agreement. In contrast, the Saudi government contended that the SATCO agreement aligned with both the original concession agreement's stipulations and with Sharia, as well as with the general

(1) Saudi Arabia v Aramco, 1954.
(2) Ibid.

principles of law recognized by what were then considered 'civilised states' and international law.(1)

Despite the agreed arbitration venue outside Saudi Arabia, the arbitration panel ruled that proceedings involving a sovereign state could not be subjected to another state's law, reflecting established international norms about state sovereignty.(2) The panel ultimately rejected the application of Saudi law, highlighting the lack of detailed provisions within Hanbali law concerning oil concessions. The tribunal emphasized that principles from one Islamic school could not be integrated into another without explicit authoritative action.(3)

This decision has been criticized for demonstrating a lack of understanding of Sharia law principles, which encompass rules governing all types of agreements and allow for the application of analogical reasoning (Qiyas) to draw from other Islamic schools in addressing specific legal issues.(4) The panel's refusal to apply Saudi law, opting instead for principles recognized in UK and Swiss practice, suggested an implicit bias and a misunderstanding of the

(1) Ibid.
(2) Baamir, 2013.
(3) Ibid.
(4) Baamir, 2013.

comprehensive nature of Islamic law as applicable to international commercial agreements.

II.A. Saudi Arabia v. Aramco 1954: A Legal Commentary on International Arbitration and Language Barriers"

The case between Saudi Arabia and the Arabian American Oil Company (Aramco) in 1954 is a landmark in the history of international law and arbitration. This dispute was deeply rooted in the symbiotic yet complex relationship between the KSA government and Aramco. While the Kingdom recognized the US need for oil and facilitated Aramco's operations within Saudi Arabia, Aramco understood the Kingdom’s financial needs, assisting with loans, infrastructure construction, and training and employment for Saudi citizens.(1) The discord arose when Aramco objected to a government decree favoring Saudi Arabian Maritime Tankers Ltd (SATCO) with preferential treatment for oil transport, a move that Aramco perceived as detrimental to its financial and operational agreements with the Kingdom.(2)

(1) Baamir, 2013..
(2) Holden, 1981.

The arbitration panel included one arbitrator from each party, who jointly selected Swiss Sauser-Hall, a renowned professor of international law and member of the Permanent Court of Arbitration. However, concerns were raised about Sauser-Hall's familiarity with Sharia law and the Arabic language, the latter being crucial for accurately interpreting key terms in the concession agreement.(1) This language barrier was critical, particularly in the interpretation of terms such as "Motlag" and "Moa'malat", where nuances in translation could significantly alter the contractual obligations.

In its decision-making, the panel referred to the precedent set by the case of Petroleum Development Ltd. v. Sheikh of Abu Dhabi (1951), where restrictive interpretations of contractual commitments by a government to a private entity were rejected.(2) However, the reliance on this precedent was questionable given the distinct legal and sovereign contexts of Abu Dhabi and Saudi Arabia at the time. The arbitrator in the Abu Dhabi case dismissed the application of local law, criticizing it as unsophisticated for modern commercial agreements and

(1) Ibid.
(2) Ruler of Abu Dhabi v Saudi Arabia, 1956, p.251-252.

instead applying English law principles as those commonly practiced by 'civilised nations'. This approach highlighted a misunderstanding and underestimation of Islamic legal principles, which were fully applicable in the Aramco case.(1)

The outcome of Saudi Arabia v. Aramco had profound implications for the Kingdom. It exposed the inexperience of Saudi Arabia in handling international legal disputes and underscored the importance of a robust legal framework capable of protecting national interests. The case ultimately served as a catalyst for Saudi Arabia to enhance its legal structures and approach to international contracts, especially in sectors critical to national sovereignty such as oil production[5]. The case also influenced Saudi Arabia's cautious stance in subsequent international legal commitments, including reservations in joining the ICSID Convention.(2)

The Saudi Arabia v. Aramco case remains a significant study in the challenges of international arbitration, particularly in the context of

(1) Ibid.
(2) Baamir, 2013.

language barriers, legal frameworks, and the complexities of applying Islamic law in international disputes.

II.B. Impact of the Aramco Award on Saudi Legal Practices: Council of Ministers Resolution No. 58 of 1963"

The arbitration decision in the case of Saudi Arabia v. Aramco had a profound impact on Saudi legal practices, particularly in the realms of international arbitration and economic policy. In response to the outcome of this case, the Saudi government, through the Council of Ministers, took a decisive step in 1963 by enacting Resolution No. 58. This resolution prohibited the government and its agencies from engaging in international arbitration, reflecting a shift towards a more controlled approach to dispute resolution with both international and domestic entities.[1]

Prior to this resolution, arbitration had been a commonly utilized mechanism for resolving disputes in Saudi Arabia. However, the Aramco case underscored potential risks and complexities associated with international arbitration, particularly those involving state sovereignty and international legal interpretations. This led to a

(1) Ibid.

cautious stance towards arbitration, aimed at safeguarding national interests and ensuring disputes were managed within the Saudi legal framework.[1]

Further solidifying this approach, a circular issued by the Ministry of Commerce in 1979 complemented the 1963 resolution by imposing stricter controls on arbitration agreements. The circular declared unequivocally void any clauses in the articles of association of national companies that stipulated arbitration proceedings outside of Saudi Arabia. Additionally, it mandated that articles containing such clauses would not be approved or registered, thus reinforcing the country's stance on maintaining legal proceedings within its own jurisdiction.[2]

These legislative measures illustrate Saudi Arabia's response to the challenges faced in the Aramco arbitration, highlighting a significant transition in its legal landscape towards more stringent control over arbitration practices, particularly in safeguarding against the implications of international disputes on national policy and sovereignty.

(1) Ibid.
(2) Ministry of Commerce, 1979.

II.C. The Founding of OPEC in 1960: A Strategic Response to International Arbitral Awards and Sovereign Control Over Natural Resources"

The establishment of the Organization of Petroleum Exporting Countries (OPEC) in 1960 marked a pivotal moment in the history of international relations and economic policy among oil-producing nations. This initiative was largely driven by the need to protect national sovereignty over natural resources following significant arbitral awards such as the Aramco and Petroleum Development decisions, which highlighted vulnerabilities in concession agreements with foreign entities. Notably, until the mid-1950s, the revenues from taxes paid to the US government from oil extracted in Saudi Arabia exceeded the share received by the Kingdom itself, underscoring the imbalances in such agreements.[1]

The concept of OPEC was originally proposed by Juan Pablo Pérez Alfonso, then Oil Minister of Venezuela, and Frank Hendryx, an experienced industry professional affiliated with the Saudi oil ministry. Alfonso advocated for the creation of OPEC as a means to assert national control over oil fields and to ensure equitable sharing of profits

(1) Holden and John, 1981

with foreign concessionaires. Hendryx contributed to the strategy by suggesting that oil agreements should be periodically renegotiated to reflect changing conditions or whenever they ceased to be mutually beneficial.(1)

Formed in 1960, OPEC served as a collective bargaining tool that significantly enhanced the negotiating power of oil-producing countries in a consumer-dominated market.(2) Although the influence of OPEC on oil prices has somewhat diminished due to factors such as market speculation, political instability, and significant oil production by non-OPEC countries, the organization still plays a critical role in the global energy sector. The psychological impact of OPEC's statements and decisions continues to be a major influence on market dynamics.(3)

In their approaches to managing foreign-owned concessions, some Arab states, including Libya and Algeria, opted for incremental participation, which allowed for a gradual increase in control over national resources. This approach was deemed technically efficient and

(1) Maugeri, 2006.
(2) Ibid.
(3) Baamir, 2013.

politically prudent.[1] Conversely, Saudi Arabia took a more assertive step by acquiring full ownership of Aramco in 1980, purchasing all assets from its US owners[4]. This move was a direct consequence of the experiences with foreign control highlighted by the Aramco arbitration, prompting a shift toward complete nationalization and prohibition of foreign investments in its oil industry as a matter of public policy.[2]

III. Saudi Arabia's Engagement with the International Centre for Settlement of Investment Disputes (ICSID) Convention"

In the 1970s, Saudi Arabia embarked on an economic transformation, aiming to diversify its economy beyond oil into an industrial sector with a focus on petrochemicals. This shift required not only regulatory flexibility but also robust protection for foreign investments. One critical aspect of creating a favorable investment climate was ensuring a fair and neutral dispute resolution mechanism, which became particularly pertinent following the 1975 agreements on

(1) Ibid.
(2) Aramco, 2016..

guaranteed private investment in public sector contracts and investments with the US.[1]

To further bolster investor confidence and attract foreign investment, Saudi Arabia joined the International Centre for Settlement of Investment Disputes (ICSID) in 1979. This move was accompanied by a series of national legislative amendments aimed at modernizing the Kingdom's arbitration system. ICSID, an independent international entity closely linked to the World Bank, was established in 1966 to provide member states and investors with options for conciliation or arbitration in disputes involving investments. Membership in ICSID implied that disputes could not be unilaterally withdrawn once initiated, and all arbitral decisions by ICSID must be enforced by member states.[2]

ICSID's jurisdiction and facilities have been recognized as vital tools for securing investor trust and encouraging further investments.[3] Upon signing the convention in September 1979, which was ratified by the Council of Ministers Resolution No. 372 and came into effect in

(1) Baamir, 2013.
(2) ICSID, 1966; Council of Ministers Resolution No. 372.
(3) Lew and Mistelis, 2003.

June 1980, Saudi Arabia leveraged this international framework to safeguard and promote foreign investments within its borders.(1)

However, upon joining ICSID, Saudi Arabia made specific reservations under Article 25(4) of the Convention, indicating its right to exclude certain types of claims related to oil or acts of sovereignty from being subjected to ICSID's arbitration or conciliation.(2) This selective engagement with the ICSID framework underscores the Kingdom's cautious approach in balancing its sovereign interests with the benefits of international arbitration.

The Kingdom's arbitration laws were governed by the Arbitration Act of 1983 until the introduction of a new Arbitration Act in 2012, which further aligned national laws with international standards. The first significant test of ICSID's framework for Saudi Arabia came with the Ed. Züblin AG v. Kingdom of Saudi Arabia case in 2003, concerning the construction of university facilities. Although the arbitration panel was convened, the dispute was settled amicably before

(1) Ibid.
(2) Delaume, 1983.

formal proceedings began, demonstrating the practical utility of arbitration in resolving investment disputes.(1)

IV. Overview of the 1983 Arbitration Regulation in Saudi Arabia: Enhancing Commercial Dispute Resolution.

The 1983 Arbitration Regulation, enacted by Royal Decree No. M/46, marked a significant shift in the legal landscape of Saudi Arabia, particularly in the field of commercial arbitration. This legislation replaced relevant articles of the Commercial Court Code of 1931, introducing a comprehensive set of rules accessible to foreign investors and their legal counsel.(2) The aim was to alleviate concerns regarding the previous lack of judicial and legislative support for commercial arbitration within the Kingdom.(3)

One of the primary achievements of the 1983 Regulation was the establishment of government oversight over arbitration proceedings. This was mandated through requirements for supervision by government agencies, courts, or the Chambers of Commerce and

(1) Case number ARB/03/1, ICSID
(2) Allam, 1985.
(3)Ibid.

Industry.[1] Such measures were intended to instill confidence among participants by ensuring fairness and adherence to the rule of law.

The Regulation facilitated a flexible framework for commercial arbitration, positioning it as a viable and effective alternative to traditional dispute resolution methods. Prior to this, arbitration had been largely theoretical within the Kingdom for various reasons. Courts often did not recognize arbitration agreements or clauses, and enforcement of arbitral awards was voluntary, leading to limited recourse to arbitration.[2] Additionally, jurisdictional conflicts between the Commercial and Sharia courts had rendered the arbitration process both ineffective and protracted.[3]

The implementation of the 1983 Regulation was further detailed in a subsequent Royal Decree two years later, which provided the necessary rules for its application.[4] Despite the advancements, the regulation still presented challenges, particularly in terms of enforceability of arbitration clauses if one party failed to cooperate when disputes arose. The ambiguity over the application of Saudi law

(1) Baamir and Bantekas, 2009.
(2) Albejad, 1999.
(3) Ibid.
(4) Royal Decree implementing the 1983 Arbitration Regulation.

to the substance of disputes and the grounds on which an arbitral award may be set aside or not enforced continued to pose significant concerns.(1)

The enforceability of arbitration clauses was recognized under the Regulation, which allowed parties to arbitrate a specific existing dispute or any dispute arising from the performance of a contract. However, the requirement to file an arbitration document with the Authority raised questions about the process if one party later reneged on their agreement to arbitrate.(2) The 1985 Rules attempted to address these issues but also introduced complexities, such as the authority's role in appointing arbitrators and the potential for intervention during proceedings, which could undermine the autonomy typically afforded by arbitration.(3)

Furthermore, the Regulation stipulated that certain disputes, such as those involving criminal acts or those beyond the arbitration panel’s jurisdiction, would lead to the suspension of arbitration proceedings

(1) Sayen, 2003.
(2) Ibid.
(3) Article 1, 1983 Arbitration Regulation; Sayen, 2003.

until a final judgment was issued by the concerned authority.[1] This could potentially delay the resolution of commercial disputes, impacting the overall efficacy of the arbitration process.[2]

Overall, while the 1983 Arbitration Regulation represented a significant step forward in developing a more structured and reliable framework for arbitration in Saudi Arabia, it also highlighted the complexities and challenges of integrating such a system within the existing legal and judicial norms of the Kingdom. The regulation's impact on the practicality and attractiveness of arbitration in Saudi Arabia continued to evolve, influenced by both domestic considerations and the broader international legal environment.

V. The Gulf Cooperation Council (GCC) Commercial Arbitration Centre: Enhancing Arbitral Practices in the Gulf Region"

The GCC Commercial Arbitration Centre was established as an independent, non-profit organization during the 14th Gulf Cooperation Council Summit held in 1993 in Riyadh, Saudi Arabia. With operational bases in Saudi Arabia and Bahrain, the Centre issued its

(1) Articles 10, 12, 1985 Rules; Sayen, 2003.
(2) Article 37, 1983 Arbitration Regulation.

arbitration rules in 1994 and became fully functional by 1995.[1] This Centre has emerged as the busiest arbitration venue in the Arabian Gulf region, largely due to its adherence to the legal systems of the GCC member states.

The establishment of this Centre reflects the region's commitment to providing an effective arbitration framework that aligns with international standards while respecting local legal contexts. This is particularly advantageous for international parties seeking enforcement of awards within the GCC, as the Centre's procedures are designed to facilitate such processes efficiently.[2]

Under Article 36 of the Centre's rules of procedure, an award issued by the Tribunal is deemed binding and final upon the issuance of an enforcement order by the relevant judicial authority in any GCC member state.[3] This provision ensures that awards are not only recognized across the Gulf region but are also enforceable, thereby enhancing the Centre's appeal to international businesses and investors.

(1) Baamir, 2013.
(2) Ibid.
(3) Rules of Procedure, GCC Commercial Arbitration Centre, Article 36.

However, the same article also outlines conditions under which an arbitral award may not be enforced. Non-enforcement criteria include cases where the award is rendered without an arbitration agreement or based on a void agreement.(1) These stipulations underscore the importance of proper legal groundwork before entering arbitration, reflecting the Centre's dedication to upholding legal integrity and contractual validity in arbitration proceedings.

The GCC Commercial Arbitration Centre plays a crucial role in fostering a supportive environment for dispute resolution within the Gulf, providing a mechanism that balances the nuances of local legal systems with the demands of international commerce. This alignment has not only bolstered the region's arbitration capabilities but has also contributed to its economic resilience and attractiveness to foreign investment.(2)

(1) Baamir, 2013.
(2) Baamir, 2013.

VI. The New York Convention 1958 and Its Implementation in Saudi Arabia: Balancing International Standards and National Policies"

The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, commonly known as the New York Convention, was established in 1958 to facilitate the global enforcement of arbitration awards. Saudi Arabia ratified this Convention in 1994, becoming the 94th contracting state. A crucial provision of this Convention, Article 5.2, allows contracting states to refuse enforcement of international awards under specific conditions: Article 5.2(a) if the dispute is not arbitrable under its national law, and Article 5.2(b) if enforcement would contravene the state's public policy.[1]

This flexibility is significant for Saudi Arabia, where public policy considerations are deeply intertwined with Sharia law, providing broad leeway to reject awards that conflict with national norms and values. Critics argue that Saudi Arabia's broad interpretation of Article 5.2(b) potentially undermines the Convention's effectiveness, suggesting a need for a narrower application to enhance the practical impact of the

(1) The New York Convention 1958.

Convention.[1] Despite historical resistance to foreign arbitration, the Kingdom's accession to the New York Convention aligns with its efforts to modernize its arbitration system while maintaining its unique legal and religious standards.[2]

The convention serves dual purposes for Saudi Arabia: it facilitates the recognition and enforcement of foreign arbitral awards, advancing the Kingdom's arbitration system to international standards, and provides a safeguard through Article V(2)(b). This article allows Saudi Arabia to withhold recognition of international awards that contradict its public policy, thereby balancing integration into the international arbitration framework with adherence to national principles.[3]

For foreign investors and contractors, the Kingdom's ratification of the New York Convention was meant to signal reliability in arbitrating commercial disputes within a recognized international framework. Article 3 of the Convention ensures that arbitration awards made in one contracting state will be enforceable in others, including Saudi Arabia, which should theoretically boost confidence among international

(1) Ibid.
(2) Ibid.
(3) Ibid.

businesses dealing with Saudi entities.(1) However, the broad discretion allowed under public policy grounds for refusing enforcement could undermine this confidence, as Saudi courts might easily decline to enforce foreign awards that clash with domestic laws and policies.(2)

This aspect of the New York Convention reflects a broader challenge faced by international arbitration agreements: balancing the enforcement of arbitral awards with respect for the diverse legal systems and policies of different nations. For Saudi Arabia, Article 5.2(b) facilitates this balance but also poses risks to the perceived efficacy of the Convention in fostering a truly global standard for the enforcement of arbitration awards.(3)

VII. The 2012 Saudi Arbitration Law: Modernizing Arbitration Practices in the Kingdom

Enacted by Royal Decree No. M/34, the 2012 Saudi Arbitration Law signifies a major advancement in the Kingdom of Saudi Arabia's arbitration framework. Accompanied by detailed Implementation Regulations issued in 2013, this legislation is part of Saudi Arabia's broader initiative to align its dispute resolution mechanisms with

(1) Ibid.
(2) Ibid.
(3) Ibid.

international standards. This alignment is intended to enhance the Kingdom's global economic competitiveness and its appeal to foreign investors.(1)

The law was designed to address and rectify the limitations of previous arbitration regulations deemed outdated and incompatible with international norms. It introduces adherence to principles found in modern arbitration regimes such as those outlined in the UNCITRAL Model Law on International Commercial Arbitration.(2) Notably, it simplifies the arbitration process by setting clear guidelines on the appointment of arbitrators, the arbitration procedures, and the enforcement of awards, thereby granting parties greater autonomy in decision-making concerning arbitration terms.(3)

Implementation Regulations further detail the procedures, clarifying aspects such as the submission of arbitration agreements, timelines for proceedings, and criteria for enforcing arbitration awards within Saudi Arabia.(4) These regulations emphasize expedited procedures for commercial disputes where timing is crucial and

(1) The 2012 Saudi Arbitration Law.
(2) Nesheiwat, F., & Al-Khasawneh, 2015.
(3) Ibid.
(4) Ibid.

reinforce the confidentiality of arbitration proceedings, a feature valued by international businesses seeking discretion.

Since its enactment, the 2012 law has played a crucial role in creating a more favorable environment for international arbitration in the Kingdom. It ensures that both domestic and international arbitration awards are recognized and enforced more reliably, aligning with the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, to which Saudi Arabia is a signatory.[1]

The modernized law has boosted the confidence of foreign investors and contractors in the Saudi legal system and has encouraged the resolution of disputes through arbitration, thereby easing the burden on Saudi courts. This shift supports Saudi Arabia's vision of becoming a regional hub for commercial arbitration.

Despite these positive changes, the integration of Sharia principles with international arbitration standards presents ongoing challenges. The stipulation that arbitration agreements and awards must not contravene public policy or Islamic law introduces a level of legal uncertainty, especially for non-Muslim parties unfamiliar with Sharia.

(1) Aleisa, 2016.

While the law promotes the enforcement of arbitral awards, potential conflicts with public policy or moral values can still lead to non-enforcement, occasionally resulting in inconsistencies and impacting the predictability vital for international arbitration.

Overall, the 2012 Saudi Arbitration Law marks a significant step toward modernizing the Kingdom's arbitration system, offering a more robust and internationally compliant framework. As Saudi Arabia continues to integrate its economic activities into the global market, the ongoing evolution of its arbitration laws will be crucial in ensuring it remains an attractive destination for international business and investment.

Conclusion:

The evolution of arbitration in Saudi Arabia reflects a complex interplay of historical, legislative, and international factors. From the early challenges of jurisdictional conflicts and procedural uncertainties to the modernization efforts through legislative reforms and international engagements, Saudi Arabia has demonstrated a commitment to enhancing its arbitration framework.

The enactment of the 2012 Saudi Arbitration Law marked a significant milestone in this journey, providing a more robust legal infrastructure for arbitration proceedings and bolstering investor confidence. Additionally, the Kingdom's accession to international arbitration conventions such as the New York Convention and its involvement in regional arbitration initiatives like the GCC Commercial Arbitration Centre further underscore its commitment to aligning with global arbitration standards.

However, challenges remain, particularly concerning the enforcement of arbitral awards and the interpretation of public policy grounds. The broad discretion afforded to Saudi courts under Article 5(2)(b) of the New York Convention raises questions about the consistency and predictability of enforcement decisions, potentially impacting the confidence of international investors.

Despite these challenges, Saudi Arabia's arbitration landscape continues to evolve, driven by a dual ambition to embrace international best practices while preserving its unique legal traditions. As the Kingdom continues on this path, ongoing dialogue, collaboration with international partners, and a commitment to transparency and fairness

will be essential in fostering a robust and trusted arbitration environment conducive to both domestic and foreign investment. Through these efforts, Saudi Arabia can further solidify its position as a key player in the global arbitration arena, contributing to the broader advancement of international dispute resolution mechanisms

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