

Saudi Arbitration Policies in the 21st Century

الدكتور

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سياسات التحكيم السعودية في القرن الحادي والعشرين

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ملخص البحث:

يهدف البحث إلى تحديد الجوانب المهمة لنظام التحكيم الحالي في المملكة العربية السعودية لعام ٢٠١٢م، مقارنة مع نموذج لجنة الأمم المتحدة لقوانين التجارة الدولية الأونسيترال الذي يدعمه المجتمع الدولي للشركات ويتبناه، حيث تؤيد المملكة العربية السعودية حالياً هذا النظام العالمي في محاولة لفتح اقتصادها التجاري للمستثمر الخارجي، مع الإشارة إلى أحد الجوانب المهمة في نظام التحكيم السعودي لعام ٢٠١٢؛ ألا وهي عدم مخالفة هذا النظام لأحكام الشريعة الإسلامية التي يعتمد عليها نظام الحكم في المملكة العربية السعودية. كما أن الهدف الأساسي هو معالجة لمشكلة المستثمرين الخارجيين الغير ناطقين باللغة العربية لكي يوقر هذا البحث مرجعاً لمعرفة خيارهم البديل عن الذهاب للمحاكم في حال نشوب خلاف متعلق باستثماراتهم في المملكة العربية السعودية وذلك لأهمية التحكيم بالنسبة للمستثمرين الخارجيين حيث أن من أول ما يستفسر عنه المستثمرين هو نظام التحكيم في الدولة المراد الاستثمار فيها. وقد اعتمدت الدراسة على المنهج الوصفي التحليلي؛ من خلال وصف وتحليل النصوص الواردة في القانون النموذجي للجنة الأمم المتحدة لقوانين التجارة الدولية (الأونسيترال) وقانون التحكيم السعودي لعام ٢٠١٢م، بالإضافة إلى استعراض الآراء الفقيه في هذا الشأن لغايات الوصول إلى نتائج وتوصيات الدراسة، والتي يأتي في

مقدمتها التأكيد على أن التحكيم من أفضل الخيارات المتاحة في المملكة العربية السعودية امتثالاً للقواعد الدولية، وقد اقتضى المقال تقسيمه إلى أربعة فصول، تناول فيها اعتماد المملكة العربية السعودية لبعض مفاهيم القانون النموذجي الأونسيترال، والضوابط الإجرائية لقانون التحكيم السعودي لعام ٢٠١٢م، وسياسات التحكيم الأكثر تعقيداً وأنواع العقود المتأثرة بالشريعة الإسلامية، وفوائد التحكيم في المملكة العربية السعودية.

الكلمات المفتاحية: القضاء، تسوية المنازعات، نظام التحكيم السعودي، الشريعة الإسلامية.

Saudi Arbitration Policies in the 21st Century

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Abstract:

The purpose of this article is to delineate the critical aspects of Saudi Arabia's Arbitration Law of 2012 as it compares to the United Nations Commission on International Trade Laws (UNCITRAL) model that the global community of businesses supports and follows. Saudi Arabia now subscribes to these principles and in doing so has opened up its own commercial trade economy. One interesting aspect of the 2012 Arbitration Law has been the decision not to violate Sharia law that was previously observed in trading transactions and regulations within the kingdom of Saudi Arabia. In preparing this article, the study relied on the descriptive analytical method, by describing and analyzing the texts contained in the (UNCITRAL) Model Law and the Saudi Arbitration Law 2012. As well as reviewing the jurisprudence's opinions in this regard for the

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purposes of reaching the results and recommendations of the study are that arbitration is one of the best options available in Saudi Arabia complying with international rules. The article will address this study through four chapters: The first Chapter about the Saudi Arabia Adopts Certain UNICITRAL Model Law Concepts, the second Chapter about the Procedural Guidelines of the 2012 Arbitration Law, the third Chapter about More Complex Arbitration Policies and Types of Contracts Impacted by Sharia Law and the fourth Chapter about the Benefits of Arbitration in Saudi Arabia

Keywords: Judicial, Settlement of Disputes, Saudi Arbitration Law, Islamic Sharia.

Introduction

In keeping abreast of international business trends, Saudi Arabia has updated its interpretation of the most popular form of conflict resolution, the arbitration process, with the 2012 Arbitration Law. This law reflects the language of the United Nations Commission on International Trade Laws (UNCITRAL) Model Law (Nijhoff & Najjar, 2018). The international character of the Saudi Arbitration Law was intended to attract and assure global businesses that their investments would be safe in Saudi commercial ventures, regardless of the nationality of the entrepreneur. Saudi legislators hoped that by relaxing the arbitration rules and making them more consistent with the UNCITRAL Model Rules, international business and trade investment would expand in Saudi Arabia. All of this hinged on the kingdom's adoption of arbitration as the basic default method of resolution that international businesses take for granted, especially when the disputes involve more complex technological issues.

Saudi Arabia has thus evolved in its recognition and incorporation of international arbitration. Article 3 of the Saudi Arbitration Law of 2012 states: "Arbitration shall be international under this law if it is related to an international trade dispute." This new arbitration law was enacted to serve both Saudi and foreign investors, since arbitration has become the preferred mechanism for settling commercial disputes internationally. The law also incorporates national and international terminology as long as these terms are not contrary to Sharia principles. This law is similar to arbitration laws of U.S. courts stipulating that arbitral agreements must not be oppressive, illegal, or contrary to public policy. Even though the UNCITRAL Model Law was enacted to serve

international arbitration, Saudi Arabia adopted the Model Law language to govern both internal and external arbitrations (Sevadi, 2017).

The Article Importance:

The importance of this article is present the options available for foreign entrepreneurs in care of dispute occurs to their investments. Moreover, this paper to provide is to provide an English reference to those who does not speak or read the Arabic language. The article is also to reflect that Saudi Arabia as the same of other counties advancing the rules to serve businesses locally or when involving international parties, since arbitration is one of the best options for investors. Also, arbitration gives parties control over their disputes by choosing the arbitrators with experience needed and the procedural law.

Research Methodology:

In preparing this article, the study relied on the descriptive analytical method, by describing and analyzing the texts contained in the United Nations Commission on International Trade Laws (UNCITRAL) Model Law and the Saudi Arbitration Law 2012. As well as reviewing the jurisprudence's opinions in this regard for the purposes of reaching the results and recommendations of the study are that arbitration is one of the best options available in Saudi Arabia complying with international rules.

Study Plan:

The article will address this study through the following chapters:

Chapter 1: Saudi Arabia Adopts Certain UNICITRAL Model Law Concepts

Chapter 2: Procedural Guidelines of the 2012 Arbitration Law

مجلة البحوث الفقهية والقانونية * العدد الثامن والثلاثون * إصدار يوليو ٢٠٢٢ م - ١٤٤٣ هـ (١٢١٣)

Chapter 3: More Complex Arbitration Policies and Types of Contracts Impacted by Sharia Law

Chapter 4: Benefits of Arbitration in Saudi Arabia

Chapter1: Saudi Arabia Adopts Certain UNCITRAL Model Law Concepts

Historically, the UNCITRAL Model Law was drafted to assist countries in reforming and conceptualizing their own arbitration laws according to the nature and needs of the international commercial community. The UNCITRAL first established the Model Law in 1985, and it was later amended in 2006. Over 70 countries have issued their own arbitration laws to reflect its provisions.

Importantly, the amended UNCITRAL Model Law made significant changes with respect to the parties' rights of self-determination over their disputes without the involvement of courts. In contrast, the previous Model Law permitted the courts to interfere in the arbitration process from the initial approval until the very end of authenticating the arbitral award. The new Saudi Arbitration Law is similar to the Model Law in that it allows arbitration to proceed without court involvement. However, the amended UNCITRAL Model Law includes provisions for all facets of the arbitration process, touching on such basic procedures as: drafting the arbitration agreement, choosing the arbitrators, specifying the jurisdiction of the arbitral tribunal, defining the scope of court intervention, and recognizing and enforcing arbitral awards. Indeed, the Model Law projects a wide-angle view of countries with variable judicial and economic systems united on the key aspects of the international arbitration practices. The UNCITRAL Model Law was developed to unify commercial arbitration practices around the world, and countries were cautioned to avoid making any significant changes to the Model Law when integrating it into their legal systems (Bachand &

Gélinas, 2013). Some countries fully embraced the Model Law into their judicial system, whereas other countries, such as Saudi Arabia, made only incremental adjustments to fit within their domestic laws.

Similar to the UNCITRAL Model Law's procedures and practices, the 2012 Arbitration Law enhanced the scope of the arbitrators chosen to serve on the arbitral tribunal of a case, who, in conjunction with the parties involved, decide the specific aspects of the arbitration agreement. These aspects include a wide range of policies, such as: (1) the specific applicable law, (2) the seat of arbitration, (3) the time frame, (4) rules about attendance of the parties, (5) witnesses and evidence, (6) expert assistants, (7) interim measures, and (8) implementation of the arbitral award.

Chapter 2: Procedural Guidelines of the 2012 Arbitration Law

Choosing the Procedural Guidelines: One of the more dramatic changes brought about by the 2012 Arbitration Law was allowing the parties to choose the specific arbitral steps in arbitration sessions. By allowing the parties to select their own rules, this provision permitted licensed third-party arbitrators (whether individuals, commissions, or organizations, inside or outside Saudi Arabia) to apply the choices of the disputants (Easteal, 2014). Saudi Arabia incorporated this aspect into its new arbitration law so that parties no longer had to obtain permission from the Saudi Board of Grievances to proceed with the arbitral process.

In fact, parties may choose to take their dispute to the International Chamber of Commerce (ICC) or other arbitration institutions such as the American Arbitration Association (AAA); in doing so, the parties are then subject to the procedural rules of the chosen institution (Warwas, 2017). In the event that disputants prefer to apply the Saudi procedural rules, such arbitration can be conducted by ad hoc arbitration firms or other private arbitrators, which again allow parties to select their own procedural stipulations (Arbitration Law, Art. 38, 2012). If the parties cannot agree on the procedural rules, the arbitral tribunal can offer other choices. In addition, Saudi arbitration laws designated default procedural rules that include provisions on the proceedings, reports, and pleadings based on the UNCITRAL Model Law (Arbitration Law, Art. 38, 2012).

Among the resources available to disputants and the arbitral tribunal is the courts' assistance in summoning witnesses or conducting discovery (Arbitration Law, Art. 36, 2012). As in

litigation, the arbitral tribunal may also seek interim measures of protection to guarantee assets and the preservation of evidence that may impact the subsequent arbitral award. These protections and assistance are also granted under the Saudi law (Arbitration Law, Art. 23, 2012). The Saudi arbitration law allows either of the parties to go to the Saudi courts seeking interim measures even before the commencement of the arbitral proceedings (Arbitration Law, Art. 22, 2012).

The Saudi arbitration law also stipulates that when the arbitral tribunal seeks experts' opinions, the parties must be provided with copies of their reports (Arbitration Law, Art. 36, 2012). The arbitral tribunal must provide disputants equal time to defend their side of the dispute and under the same conditions.

Another area of difference in procedures under the Saudi arbitration law is the time frame for rendering arbitral awards. If the arbitral agreement does not contain a deadline for completing the arbitration proceedings, the timeframe for the arbitration tribunal to proclaim its final decision under the new Saudi law is 12 months from the commencement of the arbitration process. Furthermore, the arbitral panel is allowed to extend the arbitration for an additional six months, which is a more reasonable amount of time to settle complicated commercial disputes. Another factor is the timeline offered to the parties to present their evidence (Arbitration Law, Art. 27, 2012). The Saudi arbitration law also states that the arbitration proceedings begin from the day they are requested by one of the parties and received by the other party (Arbitration Law, Art. 26, 2012).

Subsequently, the arbitral tribunal has additional power to announce an interim or final decision signed by the majority of the

arbitrators, which must be confidential unless the parties agree otherwise (El-Awa, 2018). The final award must be in writing, reasoned, and signed by arbitrators (Arbitration Law, Art. 42, 2012). Arbitral awards necessitate inclusion of the names and addresses of both the parties and arbitrators, an abstract of the arbitration agreement, a report including the pleadings, the fees of the arbitrators, and the date and the location of the issue (Arbitration Law, Art. 42, 2012). If one of the parties does not attend after being notified of the hearing time, the arbitral tribunal has the right to proceed to issue the final arbitral decision (Arbitration Law, Art. 35, 2012). Arbitration processes are allowed to move forward even when one party fails to appear or files a defense.

The regulations regarding monetary arrangements of arbitration, such as fee structures and arbitrators' wages, emphasize that the parties are required draft an independent contract for the fees and the methods of payment (Arbitration Law, Art. 24, 2012). If the competent court, meaning the court that has jurisdiction over the subject matter of the dispute, in Saudi Arabia is asked to select the arbitrators, it will also designate the arbitrators' fees when parties fail to select arbitrators or cannot reach an agreement regarding arbitrators' fees. In addition to the arbitrators' wages, fees for relevant expenses such as travel, office needs, and the like also need to be delineated (Arbitration Law, Art. 24, 2012).

In regards to selecting arbitrators, the Saudi arbitration law leaves this task to the parties involved. However, if the parties have not selected arbitrators and cannot agree on how to appoint arbitrators, the Saudi arbitration law would intervene to nominate arbitrators following the policies stipulated in the UNCITRAL

Model Law. The mechanism of nominating arbitrators may be modified depending upon the number of available arbitrators. When the parties agree to have only one arbitrator, the court will then appoint that arbitrator. However, when the arbitration agreement calls for more than one arbitrator, each party would select an arbitrator, and then the two arbitrators would elect the third arbitrator if needed. However, if neither the arbitrators, nor the parties can reach a consensus on the third arbitrator, the competent court would nominate the third arbitrator.

Chapter 3: More Complex Arbitration Policies and Types of Contracts Impacted by Sharia Law

Arbitrator Qualities: Under the previous arbitration laws, the arbitrators were required to be male, Muslim, hold a degree from a Sharia college, be experienced, have a good reputation in society, be of legal age, and be competent in mental capacity. Such stipulations have all but disappeared. In addition, Article 3 of the Arbitration Law of 1985 did not require the arbitrator to be Saudi, but retained the mandates of being a Muslim who is an expert in Hanbali jurisprudence, the Saudi legal system, and have the qualifications of a judge (Warwas, 2017). In contrast, the new law allows the parties to appoint Muslims as well as non-Muslims as arbitrators. It also offers opportunities to secular law school graduates, not just those from Sharia colleges, to be arbitrators. In addition, the new law falls silent about gender, and females are allowed to be arbitrators according to the arbitration law. The only requirement to be an arbitrator is to demonstrate good personal conduct and legal capacity (e.g., of legal age and mentally capable). The new arbitration law furnishes an arbitral tribunal with broad discretion in determining competence to perform functions within its jurisdiction.

Appointment of Arbitrators: Under the old arbitration law, the Board of Grievances supervised the arbitral tribunal's conduct, including nominating other arbitrators when the parties could not agree on the tribunal members and replacing arbitrators when necessary. The new arbitration law, similar to the UNCITRAL, leaves the appointment of arbitrators to the parties without court intervention. The new law also provides a process for selecting arbitrators when the parties fail to nominate them (Arbitration Law,

Arts. 13 & 15, 2012). The arbitral tribunal may consist of one or more members, as long as there is an odd number of arbitrators.

Separability: The Saudi Arbitration Law of 2012 provides that the arbitration agreement is separate from the original contract (Arbitration Law, Art. 21, 2012). This is the concept of “separability.” Since the arbitration clause is a separate agreement from the contract itself, the arbitration clause would still be viable in the event that the contract is judged invalid.

Applicable Law: In discussing the applicable law under the new arbitration law, the parties have the freedom to choose the substantive law for their contract, and the arbitrators are obligated to apply it (Watt et al., 2019). If the parties do not agree on the substantive law, the arbitral tribunal can choose the most relevant law. According to Islamic jurisprudence, choosing a law other than Sharia is permitted when one of the parties is non-Muslim. If the parties choose an arbitration law other than the Saudi arbitration law, and they plan to enforce the arbitral award in Saudi Arabia, they must include the applicable law in their contract to avoid the risk of the Saudi courts refusing to enforce the award. The new arbitration law also states that the court has jurisdiction to enforce the verdict and issue an order for execution.

When an arbitrated case has been completed and a decision reached, the arbitral tribunal issues the outcome to the parties and the courts within 15 days of reaching the decision (Arbitration Law, Art. 44, 2012). The purpose of this timeline is fairness, giving the losing party the chance to challenge the arbitral award. Failing to inform the parties in a timely manner will result in the unenforceability of the arbitral award (Arbitration Law, Art. 44.1, 2012). If the losing party challenges the arbitral outcome, they

must file their objection with the court of jurisdiction within 60 days from the date the arbitral outcome was announced (Arbitration Law, Art. 50.1, 2012). The law puts the onus on the losing party to challenge the outcome. Finally, the tribunal must provide the court of jurisdiction with the following documents: a copy of the arbitration agreement, a copy of the arbitral award, and, if written in a foreign language, an authenticated translation of the paperwork by an accredited department, such as the Saudi Foreign Ministry or the Saudi Embassy.

After the competent court verifies the arbitral award, enforcement is ordered for the prevailing party (Arbitration Law, Art. 52, 2012). The next step is the collection of restitution from the losing party. Saudi legislators enacted the Execution Law and created “execution circuits” in the Saudi general courts, a substantial advancement for the Saudi legal system, especially for international arbitration. These execution courts will enforce arbitral awards when such awards are approved by a court enforcement order.

In analyzing changes in the enforceability of arbitral awards, the new arbitration law maintains the same stipulations as the old law of 1985: To be enforceable, the arbitral award must not contravene Sharia law or public policy. Yet, under the previous arbitration law, the arbitral award would be enforced only when ratified by the supervisory court, the Board of Grievances. Further, the Board of Grievances investigated the merits of disputes and heard any objections raised by either party. The authority of the Board of Grievances encompassed consideration of the merits of the dispute at the enforcement phase, a potentially risky time since it could nullify the arbitral award and impose its own decision. The new

Arbitration Law of 2012 states that an arbitral award is valid and enforceable, having the power of a judicial judgment. The competent court does not have the authority to revisit the facts or the subject matter of the dispute (Arbitration Law, Art. 53, 2012).

Vacating Arbitral Awards: There are very few grounds for vacating an arbitral award. Under Article 49 of the 2012 Arbitration Law, any arbitral award issued in compliance with this arbitration law is irrevocable. However, Article 50.1 provides other grounds for setting aside an arbitral award. The court itself will not investigate the facts of the dispute or re-hear the case; rather, it will only consider whether the outcome is consistent with Sharia law. However, there are a few reasons for which arbitration participants can raise an objection and ask for termination of an arbitral award. The losing party may allege that no arbitration agreement existed or that it was invalid, that the original contract is not authentic, or that the time limitation for the arbitration has elapsed. Additionally, an arbitration award can be overturned if one of the parties was not legally competent to enter into a contract, one of the parties was not given sufficient time to appoint an arbitrator, if the arbitrators overlooked the applicable law chosen by the parties, or the arbitral tribunal composition was not consistent with the agreed upon form. An objection can also be raised if one of the parties could not present their defense due to a lack of sufficient notice by the institution of arbitration proceedings, appointment of arbitrators, or arbitration hearings (Arbitration Law, Art. 50.1, 2012). The Saudi arbitration law regards an arbitral award to be on the same level as a court judgment.

On the other hand, the new Saudi Arbitration Law deems that some types of disputes are inappropriate for arbitration, some of

which include personal status conflicts like marriage, custody, and alimony, and criminal cases such as murder, burglary, manslaughter, and the like (Arbitration Law, Art 2, 2012). In addition, if a case has already been litigated in court and received a verdict, it cannot be subsequently arbitrated. The new law continues to prohibit Saudi governmental entities from entering into a contract that has an arbitration clause without permission from the Saudi Cabinet (Arbitration Law, Art. 55.2, 2012).

Other aspects of the 2012 Arbitration Law are attractive to foreign investors. The law allows contracts to be written in Arabic, English, or any other language, lessening the burden of translation issues and complicated interpretations (Thomas & Wright, 2016). However, Article 29 still requires parties and arbitrators to conduct the arbitration in Arabic unless the parties have agreed otherwise or the tribunal decides to use another language for both verbal and written correspondence. The Saudi arbitration law, in fact, requires fewer requirements to be followed when the parties decide to choose a language other than Arabic. The choice of language should be included in the arbitration agreement. The translation of the arbitral award must be authenticated by the accredited authority approved by the Saudi Ministry of Commerce and Industry.

When difficulties arise, whether jurisdictional disputes or an inability to arrive at consensus for arbitration procedures, the parties may need to periodically resort to the courts. The new Saudi arbitration law describes the court with jurisdiction over arbitration as the “competent court,” and this term is used in the amended UNCITRAL Model Law. The competent court in Saudi Arabia for international arbitration is the Court of Appeals located in Riyadh (Arbitration Law, Art. 8, 2012). However, for domestic

commercial arbitration, the court of appeals has jurisdiction and maintains original jurisdiction to hear the particular case (Arbitration Law, Art. 8.1, 2012).

Even though Saudi Arabia has adopted the UNCITRAL Model and has committed to this form of arbitration by passing the 2012 Arbitration Law, Sharia law continues to be characterized as paradoxical and peculiar by international participants. In fact, this law is no more peculiar than laws in other regions of the world.

Chapter 4: Benefits of Arbitration in Saudi Arabia

An expeditious resolution is intrinsically attractive to parties when choosing arbitration over litigation. Arbitration can prove to be a faster and more effective tool for resolving conflict without the delays or complex legal maneuvers that are inherent in litigation (Halket, 2021). For the most part, the arbitration process provides an efficient system for issuing decisions more quickly than the courts are able to accomplish. The arbitral proceedings may also be shorter than those in court trials because the rules of evidence are relaxed, and the process is adjusted as agreed to by the parties. Therefore, the parties are prevented from prolonging the arbitration period. Arbitral tribunals are obligated by procedural rule in both the United States and Saudi Arabia, to settle disputes within designated time periods, and the parties can specify the timeline.

In addition to speed, efficiency, and flexibility, arbitral awards are deemed final, and the possibility of reversing a decision is rare. Arbitration is not subject to court authority, and an arbitral award is always final. In Saudi Arabia, although the competent court must affirm the arbitral award, it cannot examine the facts of the dispute; its inquiry is limited to investigating the outcome. The court cannot act by itself to vacate an award. The competent court may only determine that the arbitral award is not tainted by one of the grounds of invalidity enumerated in the Saudi arbitration law, yet the parties have the burden of proof to provide the reasoning for setting aside an arbitral award.

One of the most significant advantages of arbitration in contrast to litigation is the confidentiality of arbitral proceedings (Stephenson, 2017). Arbitration fulfills the parties' need to

maintain privacy over the proceedings. This is important for protecting the parties' reputations as well as commercial secrets and the details of their business transactions. Arbitration laws stress the importance of confidentiality in the process unless parties have agreed to other arrangements.

Impartiality, as well as judicial expertise, of judges is crucial, all of which should be contained in arbitration agreements so that arbitrators are selected who are well versed in the subject matter of their dispute. The expenses of hiring experts are negated when the arbitrators are already experts in the field of the dispute. In litigation, in contrast, parties have no control over the judge who will hear their dispute. When weighing arbitral expertise versus the civil jury system, many parties prefer dealing with expert arbitrators than the free-for-all of a jury trial or even judges in official courts.

Another advantage of arbitration is the wide latitude accorded to the parties by the Saudi arbitration laws in conjunction with UNCITRAL. Parties are given the freedom to agree on the applicable laws, procedures, language, seat of arbitration, and time limitation for issuing the arbitral award during the arbitral proceedings (Moses, 2018). Although parties may come from various jurisdictions and different legal backgrounds, working together they can tailor the arbitral process to their needs by choosing the language, location, and workable time periods that they deem appropriate.

Furthermore, arbitration is a favorable option for resolving disputes when there is an unanticipated change in the law, particularly in unstable or foreign countries. This is especially relevant when companies are involved in long-running contracts in

industries such as construction. Arbitration could potentially secure the companies' rights to complete the contracted projects.

Although the practice of arbitration has become popular and profitable in the last few decades for resolving disputes between parties, arbitration also has some disadvantages. Indeed, some of arbitration's advantages can also be perceived from another perspective. For example, arbitration allows evidence from documents and testimonies that would not be admissible in a court under the more formal rules of evidence; strategically, the standard required for evidence in court is more authentic than the one used by an arbitral tribunal (Kian, 1998). Arbitration also does not allow parties to appeal the tribunal's decision. The courts are not allowed to examine the facts of a dispute when the arbitrators make errors interpreting facts or laws. In Saudi Arabia, although there are several reasons for which the parties can request the courts to vacate an arbitral award, proving these conditions can be insurmountable and untenable. Further, in seeming contradiction to widespread beliefs about arbitration, it may be more expensive for the parties than litigation. This increased cost becomes a distinct disadvantage, particularly in Saudi Arabia where the arbitral panel may consist of more than one arbitrator in the international arena. But compared to the costs of litigation, especially in large complex cases, the costs of arbitrators could be considered insignificant.

Another area that illustrates some of the disadvantages of arbitration relates to the arbitrators' lack of power in arbitral proceedings. Some arbitration sessions may start out more slowly than an accelerated court trial when the selection of the arbitrators and the specific procedures are being proposed. Yet arbitration can be a much speedier process than getting to trial, at least in major

metropolitan areas in the United States. Unlike adjudication, arbitral tribunals are committed and obligated to the extent of the terms in the arbitration agreements. Arbitrators also do not have the right to discovery unless provided for in the arbitration agreement or agreed to by the parties. In addition, the arbitral tribunal itself cannot subpoena parties, nor does it have the power to bring multiple parties into a joint session. The arbitral tribunal must seek the competent court's assistance in bringing such parties to the arbitral proceedings (Crowter, 2020).

Additionally, arbitration's efficiency can be compromised. Although arbitration is seemingly more efficient in unraveling controversies, some cases involving arbitration agreements may be greatly decelerated. In complex cases, trivial and superfluous requests and motions may delay the arbitration proceedings, resulting in a protracted timeline that can impede the quick and effective spirit of arbitration.

Finally, the potential for corruption and fraud is a concern with regard to arbitration proceedings. Unsavory behaviors and transactions have become more and more rampant, particularly in international arbitrations, to the extent that such corruption has increased concerns among some arbitration proponents. Even in many sophisticated countries, corruption has influenced the arbitration processes when tribunal members bribe a witness or the arbitrators' appointments are influenced by the possible outcome (Chaisse & Nottage, 2018).

The difficulty with obtaining recourse for corruption lies in the high standards of proof required for such allegations. International arbitration institutions, like the ICC, demand precise evidence, whether the arbitration takes place in Saudi Arabia or the U.S.

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Conversely, the standard applied in civil cases for proving fraud is “clear and convincing evidence,” making proof of corruption in arbitration arduously difficult.

Conclusion

Around the world, people have long resorted to arbitration, a third-party adjudicative process, to resolve disputes by employing strategies to produce outcomes that are fiscally viable, more informal and private in comparison to litigation. The legal world's adoption of arbitration created an overhaul in the methods of sorting out entanglements and disputes between parties and transcended some of the adversarial nature of traditional prosecution and defense tactics in litigation. On the other hand, others are somewhat critical of the arbitration process which ultimately comes down to the hiring of a private judge to decide, even when parties are adversarial. In many instances, court-prescribed rituals have produced a skewed picture of justice surrounded by lengthy, costly, and emotional battles that impede any hope of reaching mutual consensus, often resulting in unseemly expense. In contrast, arbitration provides disputants with a measure of self-determination over their conflicts and promulgates resolution without imposed legal chess moves and penalties dictated by judges and court precedents.

The article presented the option of arbitration available to resort to when conflict interrupts business. Investors prefer arbitration to litigation to have more control over their disputes. This article has shone the specific details that needed about the Saudi arbitration as a reference for foreign and local investors in English words.

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