

Introducing the Saudi Center for Commercial Arbitration

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3 November 2016



Majed Al Rashid

The first institution of its kind in Saudi Arabia, the Saudi Center for Commercial Arbitration (SCCA), was established by cabinet decree two years ago and had its soft launch on 2 Muharram 1438, corresponding in the Islamic calendar to 2 October 2016. *GAR* speaks with its CEO, **Majed Al Rasheed**.

GAR: It has been an important year for Saudi arbitration, with commentators noting a change of direction in the jurisdiction following a Riyadh court's confirmation of an ICC arbitral award and the approval of a tribunal including a woman arbitrator. Tell us about the new centre and its launch.

Majed Al Rasheed: The centre – the first of its kind in Saudi Arabia – will administer arbitration and mediation procedures in civil and commercial disputes of a domestic or international nature in Arabic and English, in accordance with international standards.

The centre was established by cabinet decree 257 in June 2014 and is overseen by an independent board of 10 directors chaired by financier Fahad AlKassim. All board members are from the private sector and

have a diverse range of experience in arbitration, business, banking, construction, development and energy, among other sectors.

No board members can be from the government; however, the centre has the sustained support of the Saudi minister of justice, minister of commerce and investment and the Council of the Saudi Chambers of Commerce in Riyadh, as well as of many Saudi and international arbitration practitioners.

We have our own rules based on the UNCITRAL rules, which we developed in partnership with the American Arbitration Association's International Centre for Dispute Resolution (AAA-ICDR). While they are in line with international standards and incorporate an array of features from the ICC and ICDR rules, we have endeavoured to make the rules reflect local expectations and our local legal and procedural framework.

The centre occupies the entire 8th floor of the premises of the Council of the Saudi Chambers of Commerce in King Fahd Road in the Al Mutamarat neighbourhood of Riyadh. Users of the centre will benefit from professional staff trained to international standards at the AAA-ICDR in New York and state-of-the art facilities and technology. We offer four hearing rooms that can accommodate between 14 and 31 parties, equipped with audio and video recording and conferencing equipment, WiFi, interpretation systems, laptops and projectors. There are also breakout rooms.

The centre was inaugurated last month in the presence of their excellencies the minister of justice **Waleed Mohammed Al Samani**, minister of commerce and investment **Majid Abdullah Al Qasabi**, minister of health **Tawfiq Fawzan Al Rabish**, minister of housing **Majed Abdullah Al Hogail** and vice president of the Board of Grievances **Ali Abdulrahman Alhammad**, along with deputy ministers. To mark the occasion, we held a conference about users' expectations of institutional arbitration and the reality.

Do you have any cases yet?

We are delighted to have achieved the milestone of our first case by the date of our launch, which is being administered by our case counsel in accordance with the centre's own rules.

Since we launched, we have become aware of several commercial parties adding clauses to their contract referring disputes to arbitration under SCCA rules or to ad hoc, UNCITRAL or other arbitration with hearings at our premises – which we are happy to arrange and host for them.

Is there a historical culture of arbitration in Saudi Arabia?

There is a long tradition of disputes being resolved through the intervention of respected senior figures who could facilitate resolution by the parties or, if necessary, craft and impose a solution.

The need for fast and effective commercial dispute resolution has been recognised for many years in Saudi Arabia and, in the past 30 years in particular, the legislature has passed a series of regulations to enhance arbitration.

The first Saudi law on arbitration was contained in the Saudi Commercial Court Law of 1931, while a 1969 law provided for arbitration of labour disputes. The first modern arbitration law, however, was passed in 1983 – to meet the demands of a rapidly developing economy. The kingdom adopted the latest version of the law in 2012, based on the UNCITRAL Model Law.

The same year also saw the passing of a new enforcement law that, among other things, created new specialist courts to enforce awards.

With these developments, interest in arbitration in Saudi Arabia has grown and many Saudi lawyers nowadays enrol on LLM programmes on ADR and international commercial arbitration at prestigious law schools around the world.

How much international arbitration has taken place in Saudi Arabia to date?

To date, parties to Saudi-related international disputes have tended to seat their arbitrations abroad, either opting for ad hoc proceedings or the rules and services of the major institutions. However, Saudi Arabia has been active on the enforcement front – the undersecretary of justice responsible for the enforcement courts reported that over the last two years they have considered some 47 foreign arbitral awards as well as hundreds of domestic awards.

We anticipate that with the recent law changes and the creation of the new centre, many parties will now consider seating their arbitrations in Saudi Arabia – and have seen enthusiasm for the idea among law firm practitioners and in-house lawyers. Our rules, team of professional staff and facilities, strong board and broad public and private sector support have been well received.

What kind of disputes do you envisage being heard at the centre?

We have had considerable interest from users in target public and private industry sectors including banking and financial services, infrastructure, construction and development and energy and mining, but any disputes of a commercial nature will be welcome.

As indicated, we will also play host to ad hoc cases and international arbitration under other rules or play any other role defined within parties' arbitration agreements.

Cases will generally be conducted in Arabic or English but we can accommodate other languages on request.

How will the new arbitration law and enforcement law help things?

The new arbitration law adopted in April 2012 goes a long way toward embodying arbitration-friendly principles of the UNCITRAL Model Law and bringing Saudi arbitration in line with international standards. It's a great step towards creating a more welcoming arbitration environment in the kingdom.

Under the new law, once an arbitral award is rendered it is final and not appealable. The scope to set aside the award is limited to specific circumstances such as where the arbitration agreement is absent or invalid; the time period for arbitration has expired; one side is incapacitated to enter an arbitration agreement; or one side did not have proper notice of the arbitration procedure or appointment of the arbitrator enabling them to argue their case.

Other situations where set aside of awards may be allowed is if the arbitrators disregarded the applicable law designated by the parties or decided on matters that are beyond the scope of the arbitration agreement or inarbitrable; if the constitution of the tribunal was contrary to the law or parties' agreement; or if the award includes provisions that violate sharia law or public policy in the kingdom.

The new enforcement law of 2012 confers jurisdiction to enforce arbitral awards on specialist enforcement courts which will lead to more consistent and predictable practice as regards the enforcement of foreign awards under the New York Convention – which the kingdom signed in 1994 – and other conventions to which the kingdom is a party like the Riyadh Convention signed by various Arab states and the Gulf Cooperation Council Convention.

To ensure consistent and accurate interpretation of such conventions, the Ministry of Justice is developing judicial training programmes and the centre is developing research and professional development activities that will open a dialogue with judges.

This month, we have published a book on enforcement of foreign arbitral awards by Saudi judge **Abdullah Ibrahim Al-Khudairy** and are considering translating it into English.

How does shariah law come into play in enforcement proceedings?

Compliance with shariah is part of public policy in Saudi Arabia. Whether the arbitration is seated here or elsewhere, the enforcement of awards is possible only if it does not violate general principles of shariah based on the Quaran and Sunna and the long tradition of associated scholarly writing.

As a shariah law jurisdiction, we must honour these principles and work to present them in a way that enhances the understanding of others. Foreign parties are encouraged to avail themselves of local legal experts to guide them and educate them.

Shariah is both accessible and predictable allowing for legal certainty. Indeed, it is said that "*wherever justice resides, the shariah is there*". When it comes to enforcement of arbitral awards, courts may uphold awards or parts of awards that do not violate shariah principles, relating to alcohol, tobacco, gambling, narcotics or interest, for example. They are not obligated to set aside the entire award.

What's your own background and what has been your role at the centre?

I have BAs in shariah law and computer and information systems from universities in Riyadh and an MA in comparative shariah law from the city's Higher Judicial Institute. I also have an MBA in accounting and finance from Cardiff University in the United Kingdom and certification from the Chartered Institute of Arbitrators, having attended its intensive course on international commercial arbitration at Oxford University.

Before becoming CEO of the centre some 18 months ago, I led a number of Islamic finance and legal initiatives within some of the largest banks in Saudi Arabia, including Bank of AlBilad and AlRajhi Bank, and in Al Qassem Law Firm, which works in cooperation with Allen & Overy, and Al-Assaf Law Firm, which was associated with Squire Sanders & Dempsey.

In the past 18 months, I've worked with our board to develop the new centre and its facilities, recruited and trained staff and spent much time working on our arbitration and mediation rules, codes of conduct and procedures as an international standard ADR centre.

I've particularly enjoyed working with our special counsel and project leader **James MacPherson**, who was the co-founder and inaugural CEO of the Bahrain Chamber for Dispute Resolution. We've also been advised by leading experts from around the world and the region and worked closely with an ICDR team led by senior vice president **Richard Naimark**.

Who are your main staff?

The centre has a head of ADR who oversees management of both arbitrations and mediations, **Mostafa Abdel Ghaffar**. Abdel Ghaffar is a former judge, international expert at the United Nations Office on Drugs and Crime and former director of the Judicial and Legal Studies Institute in Bahrain, where he led many ADR training programmes. He is assisted by a team of Saudi lawyers who have undergone 10 weeks of intensive, on-the-job training at the ICDR in New York handling real arbitration and mediation cases of significant value.

Among Mostafa's tasks will be handling any challenges to arbitrators hearing cases at the centre.

We also have a business development manager, a Saudi lawyer who has also undergone training in case management at the ICDR, and a chief operating officer who manages a team handling the financial side of the business, human resources and client support services.

How will arbitrators be appointed?

Where parties cannot agree, the centre will use the list method with strike-and-rank as popularised by the ICDR. If necessary, we will be prepared to appoint arbitrators on behalf of parties.

GAR recently reported on a Saudi court's approval of a tribunal including a female arbitrator. Will the centre be amenable to and encourage the use of female arbitrators from Saudi Arabia and abroad?

The court decision confirming the appointment of a female arbitrator indicates parties are able to appoint who they choose under the new law. The centre is developing its list of arbitrators through an independent review process, looking at potential arbitrators' experience, training and skills and letters of reference they have provided. We have many professionals under consideration including men and women applicants from within the kingdom and beyond.

How easy is it for foreign counsel and arbitrators to work in Saudi Arabia?

Parties, experts, counsel, mediators and arbitrators can apply for entry visas as business visitors and there are no bars to them performing their role in an arbitration. For over a year now, we've had meetings with and visits from professionals from across the region and the world.

What is the fee structure?

In light of a regional preference for lump sum fee payments, our fee schedule is largely based on the lump sum *ad valorem* model of the ICC International Court of Arbitration. The rates are competitive and, to assist foreign parties in their calculations, will be provided in Saudi riyals and US dollars.

Will you host conferences, training events and other outreach activities?

In just our first week of formal operations, we held our official launch event, our first arbitration forum with over 250 local and international lawyers, a round table for judges to discuss enforcement of local and foreign arbitral awards and a seminar with two dozen young practitioners and law students. We would give serious consideration to all worthwhile events, including a GAR Live.

We also reach out to users and practitioners abroad. In our first 30 days, we gave presentations at the IBA annual conference in Washington, DC, the Qatar International Center for Conciliation and Arbitration conference in Doha and an arbitration event in Kuwait. Our focus is not only on developing arbitration and mediation in Saudi Arabia but the wider region.

What is your vision for the centre in the future?

To provide professional, transparent and efficient ADR services inspired by shariah principles and meeting international standards – becoming the preferred choice of centre in the region by 2030.

To enhance ADR awareness to create a safe investment environment in Saudi Arabia that attracts both domestic and foreign investors.

To embrace the values of independence, neutrality, integrity, transparency, privacy and responsibility.

What might draw international parties to arbitrate in Riyadh?

User-focused time and cost efficient dispute resolution with clear, fast and flexible procedures; good facilities and the latest case management technology handled by staff trained to international standards; and private and confidential procedures.

As the capital of the kingdom, Riyadh is home to an array of large corporate entities including in the mining, chemicals, development and financial sectors. The city is home to over 5 million people and has direct flights to and from most cities around the world, on Air France, Air India, Cathay Pacific, British Airways, Emirates, Saudia and many other airlines.

It offers major hotels at all price points, local and international retail and culinary brands and plenty of history and cultural activities – all combined with an emphasis on warm hospitality for our guests.

Do you think there may be other arbitral centres in Saudi Arabia in the future?

We're proud to be the first international arbitration institution in Saudi Arabia but would be happy to support other initiatives.

The new centre's website is [here](#).

Saudi Center for Commercial Arbitration board of directors

- **Fahad AlKassim** (Chairman)
- **Salman AlAmri**
- **Abdulaziz AlFahad**
- **Yousef Khalawi**
- **Zeyad Koshaim**
- **Nabeel AlMansour**
- **Mohamed AlOsaimi**
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