

Kluwer Arbitration Blog

The First Female Arbitrator in Saudi Arabia

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Introduction

Saudi Arabia has changed dramatically in the past two decades, and many of those changes have potentially positive implications for international arbitration. As a crucial starting point, the Saudi government has focused intense attention and devoted vast resources to diversify the country's economy, most interestingly by investing billions of dollars to develop the education and professional skills of its people. For example, in 2005, the government launched the Custodian of the Two Holy Mosques scholarship program, which has given SR 20 billion in scholarships to thousands of promising young students to support their college education. The government hopes to reap the benefits of this investment in the years to come when students return to the Kingdom and start or join businesses, helping to build their country's economy. This kind of investment ideally is self-perpetuating; it plants seeds and creates beginnings that have no end.

Significantly, the Saudi government's investment in education supports both men and women by giving them an opportunity to participate in many different professional fields. For example, 93,248 men and 91,874 women were earning degrees in higher education in 2015, according to the Saudi General Authority for Statistics (GAS). These degrees include students enrolled in graduate schools, undergraduate bachelor programs, and pre-college degree programs. Of this count, 75,387 women and 58,446 men earned a bachelor's degree.

Developments in the field of legal arbitration in Saudi Arabia

In addition to supporting education and economic reforms, Saudi Arabia has also taken measures to develop the practice of arbitration for business disputes. The aim of these efforts is to enhance its economy by promoting investors trust and providing an opportunity for foreign and local investors to benefit from the use of arbitration as an alternative in dispute resolution. The enactment of the new Saudi Arbitration Law in 2012 was one of the most important developments. The 2012 law aims to correct certain deficits found in the old Arbitration Law (1983).

Another crucial step in developing arbitration is the establishment of the Saudi Center for Commercial Arbitration (SCCA) in 2014. Recently, the SCCA launched a [website](#), which provides information about its rules, processes, and fees. This is a promising start to providing effective dispute resolution for investors.

Although some areas in the new Arbitration Law (2012) still require further development and certain vacuums remain to be filled in, one important omission in the new arbitration law is that it does not specify any gender for arbitrators. Until this article about the appointment of a Saudi

woman as an arbitrator, the lack of women in arbitration in Saudi Arabia has been an issue of concern and (as described below) legal debate.

The global issue of underrepresentation of women in arbitration

As is already well-known to readers of this blog, the issue of the underrepresentation of female arbitrators is a global concern. According to statistics published by the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) in 2015, out of 279 appointments of arbitrators, only 39 were women. This figure is broken down as follows: of 101 arbitrators appointed by the SCC, 26.7% were women; of 168 arbitrators appointed by parties, 6.5% were women; and out of 10 co-arbitrators appointed, 10% were women. Therefore, on May, 2016, the SCC began an initiative that aims to improve the participation and representation of women in arbitration.

These statistics at the SCC are representative of larger patterns in international arbitration, according to statistics collected by Lucy Greenwood and Mark Baker in their excellent article titled [“Getting a Better Balance on International Arbitration Tribunals”](#) (Jrnl of London Ct of Int’l. Arb.). To redress the international deficit of women sitting as arbitrators, a number of initiatives have been launched, including most importantly ArbitralWomen, a group that promotes professional opportunities for women arbitrators, and more recently The Pledge, an initiative “committed to improving the profile and representation of women in arbitration.” Now, a new Saudi court case also contributes to the potential for more female arbitrators.

No legal restrictions on the gender of arbitrators in Saudi Arabia

As already noted above, the New Saudi Arbitration Law (2012) does not stipulate any gender requirements for arbitrators, nor does it contain any language that prohibits a woman from serving as an arbitrator. It is an abstract law that applies to both men and women. The Saudi Arbitration Law requires only (according to Article 14), that an arbitrator must: 1) be legally competent, 2) be of good conduct and behavior and 3) hold a degree in Islamic or legal studies. Also, if the arbitral tribunal is composed of more than one arbitrator, then the third condition is considered met if the Chairman holds the specified degree. The point, then, is that the Saudi Arbitration Law contains abstract rules that apply to both genders without discrimination.

Notwithstanding the neutrality of Saudi arbitration law, several legal scholars have assumed or speculated that women are prohibited from being arbitrators or that awards rendered by tribunals that included women would be subject to annulment or refused enforcement.

For example, in his book titled [“Shari’a Law in Commercial and Banking Arbitration: Law and Practice in Saudi Arabia”](#) (2016), one such scholar, Abdulrahman Yahya Baamir, states that: “In accordance with Shari’a ruling, women cannot be appointed as judges or arbitrators. This is not a matter for discussion in Saudi Arabia.”

Another commentator, Cyril Chern, in his works [“Chern on Dispute Boards”](#) (2008) and [“The Law of Construction Disputes”](#) (2013) concludes: “It should also be taken into consideration that Saudi Arbitration Law does not allow non-Muslims to act as arbitrators in domestic arbitrations or even international ones. Neither does it allow women to act as arbitrators.”

The appointment of the first woman arbitrator in a new groundbreaking case demonstrates that these predictions do not accurately reflect how Saudi courts will apply Saudi arbitration law.

The First Female Arbitrator in Saudi Arabia

A new era in the history of Saudi women was marked on May 10, 2016, when the Saudi administrative Court of Appeal in Dammam approved the appointment (or more precisely, did not object to it) of the first Saudi female arbitrator in the field of commercial disputes. This groundbreaking woman is Ms. Shaima Aljubran.

The Case

In 2015, the plaintiff (Mr. X) filed a suit requesting that the court require the defendant (Mr. Y) to begin the arbitration process to solve a commercial dispute that had arisen between the two parties. Article 15 (2) of the Saudi Arbitration Law states that if parties do not agree on the process of appointing arbitrators, or if the process of appointing the arbitrators is violated by either party, or if the parties do not agree on an issue about which they are required to agree, then an designated court (in this case, the administrative Court of Appeal in Dammam) has the authority to perform the required action—if one of the parties so requests. Therefore, the administrative Court of Appeal in Dammam accepted the suit, given its power of review according to Article 15 of the Saudi Arbitration Law. The Court set a hearing date for the two parties to appoint arbitrators. On the appointed day, the claimant appointed its arbitrator, and the respondent appointed Ms. Shaima Aljubran. However, the two appointed arbitrators did not agree on the chairman of the arbitral tribunal; therefore, it was written to many arbitrators after which the two parties agreed on the chairman.

The administrative Court of Appeal confirmed and approved the formation of the arbitral tribunal as described above, and consequently, it found that the case was ended.

Note that Saudi Arbitration Law, in Article 15 (4), states that the decision by the designated court (in this case, the administrative Court of Appeal in Dammam) about the appointment of an arbitrator, in accordance with Article 15 (1), (2) is final and not subject to appeal.

The finality of this decision does not preclude the possibility that challenges might arise in the future in other cases. First, while this decision is final, it is not binding to other courts. Second, as the first case to deal directly with the issue of female arbitrators, it might be too much to assume that all future cases will take a similar approach. Finally, there is also a question of whether any objection might be raised at the enforcement stage.

Jurisdiction over disputes about the procedure of appointing arbitrators

The designated court has jurisdiction over the procedure for appointing arbitrators according to Article 15 (2), which states:

If the parties of the arbitration do not agree on the procedures of choosing the arbitrators, or one [of] the parties violated them, or the appointed arbitrators do not agree on some matter where agreement is required, or if the other fails to perform what is entrusted to him in this regard, the competent court undertakes—at the request of [that party] who is concerned about acceleration—to do the procedure, or the required work, unless it is [otherwise] provided in the agreement for how to complete this procedure or work.

Because the Saudi legislature expected that disagreements may sometimes arise regarding the choice of arbitrators, Article 15 of the Saudi Arbitration Law stipulates measures that vest the designated court with the power to choose an arbitrator. Article 15 (1) of the Arbitration Law states that if the parties cannot agree on an arbitrator, the designated court is in charge of selecting such arbitrator. Article 15 (1) also defines the process of appointing the chairman of the arbitral tribunal if the two party-appointed arbitrators do not agree on the choice of the chairperson.

Again, Saudi Arbitration Law states, in Article 15 (4), that a decision made by the designated court regarding the choice of an arbitrator, in accordance with Article 15 (1), (2) is **final and not subject to appeal**.

Conclusion

There has been considerable debate over the years about whether women could serve as arbitrators in Saudi Arabia, as well as questions about the potential for challenges to arbitral awards on which a woman sat on the tribunal. This above analysis, through its discussion of Saudi Arbitration Law and provision of a case study as background information and evidence, demonstrates that there is no clear basis in Saudi law that prevents women from being arbitrators and that at least one court expressly approves of such appointment.

While this remarkable case shows that the path for woman to participate in arbitration is not blocked by any legal hurdles, time will tell whether parties will commit to appointing female arbitrators, particularly given the possibility that another court might reach a different conclusion. The author, however, hopes that in the years to come many more determined, qualified, and committed female arbitrators will be appointed to arbitrations in Saudi Arabia and involving Saudi parties, a result that will build and realize the investment of the Saudi Government in education for Saudi women.

** The author is a certified arbitrator in Saudi Arabia, and a member of Arbitrator Intelligence. He received an SJD degree in Saudi M&A Law from Penn State Law, and is also a graduate of the Penn State Law LLM Program, where this year two of the three LLM students from Saudi Arabia are women.*

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