

Kluwer Arbitration Blog

Interview with our Editors: The Saudi Center for Commercial Arbitration (SCCA) in the Spotlight with Fatima Balfaqeeh

Khushboo Shahdadpuri (Assistant Editor for the MENA Region) (Al Tamimi & Company) · Tuesday, May 16th, 2023



Fatima, thank you for joining us on the Kluwer Arbitration Blog and congratulations on your recent appointment as Director of SCCA Dubai, as SCCA opens its doors to its first regional office outside the Kingdom of Saudi Arabia (“KSA”). We are grateful to have the opportunity to share your unique perspective with our readers.

Your experience in both arbitration and mediation in the region captures a variety of perspectives, having been on all sides of the spectrum in a dispute setting: as counsel, as sole and presiding arbitrator, as co-arbitrator and as mediator. Personally speaking, we have had some thought-provoking and insightful conversations on panel discussions in the past which showcase your visionary aspiration for the arbitration, and Alternative Dispute Resolution (“ADR”) community.

1. Let’s start by speaking a little bit about your trajectory in the arbitration community. Did you consciously tailor your journey from the contracts department in government organizations, to counsel and then to arbitrator and mediator or did these pieces fall in line along your career path serendipitously?

Although my career path towards the ADR profession was not a conventional one, I believe it to be a logical progression based on my past experiences. While working as a leader in the contracts and procurement department of various government and semi-government organizations in Abu Dhabi, I became increasingly involved in contract negotiations, claims and disputes management and resolution. Despite my longstanding interest in law, it was my practical commercial experience that made me appreciate the close connection between law and business and the importance of effective dispute prevention mechanisms and mature and multi-faceted legal strategies, such as negotiation, arbitration, and mediation to resolve commercial disputes effectively and efficiently. I then decided to fully enter the legal field by obtaining my LL.B. and qualify as a lawyer. In 2018, I established my legal consultancy after qualifying as a lawyer. This subsequently evolved into a law firm in

Abu Dhabi, UAE, and presently, I also serve as director of SCCA Dubai located in DIFC. As part of my duties and responsibilities, I am involved in developing strategies to support SCCA's vision to "be the preferred ADR choice in the region by 2030" through the Dubai office.

2. SCCA has been rapidly increasing its profile and capabilities over the last two years or so. It recently updated its arbitral rules and introduced the second edition of the SCCA Rules 2023, which came into effect on 1 May 2023. Could you give our readers a brief introduction to SCCA as an arbitral center and your role as Director of SCCA Dubai? In particular, what was the impetus for SCCA to introduce a revised set of rules.

SCCA is an arbitration center based in KSA, with the goal of becoming a reputable and an influential institution in the region and worldwide.

I believe that it is essential for both regional and international arbitration institutions to regularly review and revise their rules to ensure they promote access to justice, in line with best practices. Recent years have seen significant changes in the legal and business landscapes, such as:

1. Integration of technologies into the daily practice and administration of cases; SCCA's new arbitration rules enable the enhanced use of technology in managing cases and filing documents. SCCA will also be implementing the SCCA Online Dispute Resolution ("ODR") Procedure Rules as an opt-out for smaller claims where the total amount in dispute is less than 200,000 Riyals.

2. In addition, the updated rules acknowledge the significance of establishing administrative oversight over arbitrators' awards and decisions and mediated settlements in line with global standards. To that end, the SCCA Court was established in November 2022, and the revised rules now empower the SCCA Court to issue administrative decisions for cases administered by SCCA. In recognition of the need to enhance its reputation both regionally and globally, SCCA understands the importance of being responsive and updating its rules to improve the user experience. Notably, the new rules can be applied internationally as they do not mandate a default seat.

3. What kind of parties, industries and disputes are prevalent in SCCA? In particular, has there been an uptick in disputes from UAE parties or projects, which has led to the recent opening of SCCA's office in the DIFC.

SCCA has experienced a gradual rise in its caseload, with close to 230 new arbitration requests being registered since its official launch in October 2016. These represent parties from over 20 different nationalities. Some of the top sectors represented in the arbitrations filed with SCCA are construction, real estate, banking and finance, and logistics. The statistics indicate that SCCA arbitration is widely accepted in the region, including international parties who are engaged in business in KSA.

4. Apart from the administration of arbitrations, what other initiatives does SCCA undertake to promote the use of arbitration?

I am particularly enthusiastic about one of SCCA's initiatives, which is the SCCA Arabic Language International Moot ("SCCA ALI Moot"), organized for undergraduate level Sharia and law students from around the globe. The SCCA ALI Moot has grown, from its initial participation of around 30 teams based in KSA, to over 110 teams in 2023 from both Arabic and non-Arabic speaking countries who put forward an Arabic speaking team, and is currently in its latest, fourth edition. Its objective is to train and equip the future generation of Arabic speaking arbitrators from all around the world, while also disseminating the best international practices of ADR in KSA, as well as regionally and globally. I have been involved with the SCCA ALI Moot from the previous two editions, having served as a committee member during its second edition.

Another key initiative to promote professional development is the SCCA Academy – offering an array of exceptional ADR programs and accredited courses, including those offered in partnership with the Chartered Institute of Arbitrators (CI Arb).

5. You are a firm believer of taking a sustainable approach in your arbitration practice and endorse the approach of taking smaller incremental steps towards progress, rather than aiming for perfection. How have you personally tackled sustainability related issues as an arbitrator, along with your co-arbitrators in your matters? How does SCCA intend to approach sustainability in its case management practice?

From early on in my career as an arbitrator, I have been conscious of the importance of taking a holistic and proactive approach to sustainability. Rather than merely adopting a paperless work process and claiming to be a "green arbitrator," I have sought to embrace a "progress, rather than perfection" mindset that considers sustainability in its broader context. It's worth noting that arbitration itself is inherently sustainable, as it aims to conserve valuable resources such as time and money, preserve relationships through settlement, and employs various ADR techniques such as arb-med-arb. Moreover, by adopting innovative technologies and encouraging parties to travel less, the arbitration community's carbon footprint can be further minimized. As part of this commitment to sustainability, SCCA has signed the Campaign for Greener Arbitrations' Green Pledge and is leveraging cutting-edge technologies, such as developing bespoke case management systems, in addition to using the ODR system to fully automate the expedited procedure for claims under approximately USD 50,000, with the goal of preserving resources, time and energy of parties seeking to resolve their disputes.

6. SCCA has recently undertaken several initiatives to improve its visibility on the global scale, including signing a cooperation agreement with the Permanent Court of Arbitration ("PCA") in December 2021 to promote arbitration and mediation in the region. Has this partnership helped to diversify the users of SCCA? How else has this partnership enhanced SCCA's attractiveness?

SCCA strongly believes in collaborating with reputable organizations both regionally and internationally such as the PCA. These partnerships, whether with government entities, non-profit organizations, courts, or knowledge partners, always serve the purpose of knowledge sharing, resource exchange, expertise transfer, and expands SCCA's reach to various markets and business users. SCCA is delighted to have already been appointed by the PCA as the appointing authority on an international matter in the region.

Despite being launched in 2016, SCCA has achieved remarkable success in less than 7 years, and the attention given to signing these agreements has only helped to strengthen SCCA's vision and goals, while reaping the benefits of such MOUs and cooperation agreements.

7. At the 2nd SCCA Symposium in Dubai that took place at the end of 2022, a KSA Court of Appeal's decision to refuse an annulment of an award on the ground that the claimant was not represented by a lawyer was discussed. This decision established that parties in a KSA arbitration are free to have anyone represent them as counsel, irrespective of their nationality or profession. Has this development impacted the case flow in SCCA?

I firmly believe that SCCA's efforts to ensure wide dissemination and understanding of judgments similar to the one in question, are not only crucial, but also highly effective in dispelling any misunderstandings surrounding the interpretation of the laws in KSA. Thanks to this decision, there is no longer any ambiguity about the freedom of all parties involved in arbitrations seated in KSA or administered by SCCA to select the counsel of their choice, regardless of their profession or nationality. This is in line with established practice in the international legal field. SCCA continues to have a number of cases that entail foreign representation, in line with SCCA's Rules and decisions. This decision dispels any concerns on party representation and provides the necessary clarity for parties looking to SCCA to ensure the smooth arbitration of their dispute.

8. Looking forward, can you tell us what are the top three goals you hope SCCA will have achieved by 2030 pursuant to the Vision 2030 initiative adopted by the KSA?

SCCA's unwavering vision has been the driving force behind all its endeavors thus far. With the goal of becoming the preferred ADR choice in the region by 2030, SCCA has taken tangible steps to establish itself as a thought leader in the ADR field and stay at the forefront of best practices in case management and user services, both regionally and internationally.

One of SCCA's key objectives has been to expand its reach across the region, which has been successfully accomplished through the establishment of SCCA Dubai. By opening an office in Dubai, SCCA aims to be closer to its users and reinforce that Dubai is an important seat in international arbitration, while also being in proximity to DIFC and the DIFC courts. This reinforces the idea that the SCCA Rules can be applied wherever the dispute may arise, regardless of the seat. Additionally, the SCCA Academy is another initiative aimed at building capacity in the ADR field, offering valuable and diverse programs in both Arabic and English languages to the existing and next-generation ADR practitioners in the region.

9. As a concluding remark, what advice do you have for aspiring lawyers in the arbitration community in the Middle East?

Becoming an arbitrator or arbitration counsel is a journey that comes with its own set of opportunities and challenges. As an independent arbitrator in the MENA region, I have always looked up to other role models in the industry, and I have learned many lessons that I would like to pass on to the next generation. I can share two such lessons that can be universally adopted by

aspiring lawyers in the community.

First, networking is a crucial method of building professional relationships in any industry, including the ADR industry. It is essential to get to know your peers, clients, and industry leaders and introduce yourself and your capabilities during networking events. Such events can provide opportunities to pursue mentorship, which is a highly influential tool to secure your first opportunities and to learn from throughout your career.

Second, it is crucial to continuously learn and upskill your knowledge throughout your career and remain persistent in pursuing your goals and aspirations. For my part, I continue enhancing my skillset with ongoing professional development with peers, partners and providers, including in-person workshops, webinars and industry accreditations, like becoming a Chartered Arbitrator of the CI Arb.

In conclusion, the journey to becoming an arbitrator or arbitration counsel is one that requires dedication and persistence, but with significant rewards. Aspiring lawyers in the community can benefit from shadowing established arbitrator, and having in depth conversations persistently to ensure success in the field.

Fatima, thank you for your time and perspectives – we wish you and SCCA continued success!

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