

# Kluwer Arbitration Blog

## A Decade of the 2012 Saudi Arbitration Law: Outcomes and Aims

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The development of arbitration and its associated regulatory practices in the Kingdom of Saudi Arabia (“KSA”) began with the enactment of the [2012 KSA Arbitration Law](#) (“**2012 Law**”) in March 2012. Ten years later, this post discusses the progress of arbitration in the KSA and the significant strides made by the KSA which positions it to become an arbitration-friendly jurisdiction.

### Legal Reform of the KSA’s Arbitration Law and Its Implementing Regulation

Many commentators have argued that the [1983 KSA Arbitration Law](#) (“**1983 Law**”) was not effective in improving the performance of arbitrations or providing a framework that allowed for the successful enforcement of arbitration awards in the KSA. Under Article 6 of the 1983 Law and Article 16 of its implementing regulation, the KSA courts enjoyed broad discretion to review awards and deny enforcement of awards found to be contrary to the main principles of Sharia law or general public policy principles. For instance, in the case of [Jadawel International \(Saudi Arabia\) v Emaar Property PJSC \(UAE\) 2011](#), the KSA courts refused to enforce an award on the grounds that the underlying contract, which included interest payment provisions, violated Sharia law principles prohibiting *riba* (usury or interest). The Jadawel case involved a real estate development project dispute. The KSA Board of Grievances, a judicial body responsible for administrative disputes and enforcement of foreign arbitral awards, reviewed the merits of the ICC award where the Tribunal had dismissed Jadawel’s claims of USD 1.2 billion against Emaar and ordered Jadawel to pay costs. Surprisingly, instead of either granting or declining the enforcement of the Award, the KSA Board of Grievances ordered Emaar to pay USD 1.2 billion in damages to Jadawel. This became a high-profile example that caused many foreign investors to reconsider entering into arbitration agreements in KSA or with Saudi entities.

In addition to the KSA courts’ ability to review the merits of the underlying case, Article 6 of the 1983 Law required parties to obtain the KSA courts’ approval before participating in arbitration proceedings. This restriction resulted in autonomy issues, as parties, including those transacting with foreign parties, did not have the freedom to choose any law or arbitrators without the KSA courts’ approval, which was granted at their discretion. Furthermore, according to Article 11 of the 1983 Law, Saudi parties were not allowed to seat their arbitrations outside the KSA or to choose a law other than KSA law, even when entering into agreements with foreign parties. These legal

issues under the 1983 Law prevented arbitration in the KSA from aligning with international practices. However, the enactment of the 2012 Law marked a significant step forward in the arbitration landscape.

The primary objective of the 2012 Law is to enhance KSA's arbitration environment by providing a transparent and comprehensive legal framework. This structure encourages parties to engage in arbitration procedures and promotes the acceptance of such methods for dispute resolution. Since the 2012 Law mostly adheres to international standards and is based on the [UNCITRAL Model Law](#), it has not undergone any significant revisions. With the introduction of the 2012 Law, there has been a noticeable increase in the number of arbitration cases in KSA, as domestic and international parties increasingly opt for arbitration as their preferred dispute resolution method. This trend indicates a positive impact of the 2012 Law on the arbitration environment in the kingdom.

Recently, the KSA introduced a significant reform to the 2012 Law with [Cabinet Decision Order N/45](#) on 24 August 2021 ("**Decision 45**"). In essence, Decision 45 removes the requirement for a separate contract to be concluded with an arbitrator to specify its fees, as previously mandated by the first paragraph of Article 24 of the 2012 Law and Article 7 of the [Implementing Regulations of the Law of Arbitration](#). This amendment aims to streamline the arbitrator selection process and enhance parties' autonomy in arbitrations within the KSA.

## Government and Supporting Legislation

References to arbitration as a means of dispute resolution have been added to several new laws and regulations in the KSA, further showcasing reforms in the practice of arbitration. For instance, Article 58 of the [Mining Investment Law](#) (2020) and Article 161 of its [implementing rules](#) state that the Ministry of Industry, which holds a permission to engage in mining activities in the KSA, "*may agree to settle any dispute through arbitration per the Arbitration Law.*" Additionally, Article 22 (Part 3) of the [KSA Central Bank Law](#) (2020) stipulates that the Central Bank may include references to international treaties, foreign regulations, and ADR, including arbitration as a means of dispute settlement in its contracts and agreements.

The [KSA Private Sector Participation Law](#) (2021) provides numerous rules that apply to all contracts made by the KSA ministries or other governmental entities, with the Council of Economic and Development Affairs to "*[h]aving a clause in the Contract for the settlement of any disputes arising therefrom or any other Ancillary Contract, through arbitration*". Other KSA regulations that introduce pro-arbitration provisions include:

- Articles 29, 30, 82, and 154 of the [KSA Companies Law](#) (2015) provide various provisions allowing boards' chairmen to respect the arbitration agreement before resorting to legal action in courts.
- Article 4 of the [Statute of the KSA Energy Efficiency Center](#) (2018) authorizes the center to sign an arbitration agreement after completing some necessary legal requirements.
- Articles 223 and 224 of the [KSA Commercial Maritime Law](#) (2018) indicate that if the disputing parties have agreed to arbitration, such agreement must be respected, and arbitrators must rule on "*the dispute in accordance with the provisions of the arbitration law.*"
- Article 25 of the [KSA Franchise Law](#) (2019) states, "*Disputes arising from the franchise*

*agreement or the application of this Law may be settled by alternative means, such as arbitration, mediation, and conciliation.”*

- Article 74 of the [KSA Commercial Courts Law](#) (2020) governs the rules for appealing judgments in commercial court cases and mentions that parties may appeal judgments related to the invocation of arbitration clauses before the issuance of a judgment on the merit.
- Article 5 of the [Chambers of Commerce Law](#) (2020), along with other articles, indicate that arbitration as a tool to resolve disputes in cases is now more user-friendly than before.

The KSA has extended its arbitration-related modifications to other laws, such as the [Implementing Regulation of the KSA Enforcement Law](#) (2017). According to the [KSA Royal Order No. 44983](#), starting from August 2012, the review of enforcement judges is limited to what is stated in the enforcement bond unless it contradicts public policy. This means that awards are automatically enforced unless the claimant proves otherwise. This practice indicates that even if awards contain findings that contradict KSA law, the [burden of proof](#) to demonstrate this falls on the claimant as part of their request for annulment.

Article 50 of the 2012 Law provides seven possible grounds for an award to be invalidated. The grounds to set aside an arbitration award include invalid or non-existent arbitration agreements, incompetence or incapacity of parties, inability to present a defence due to improper notification, exclusion of agreed-upon statutory rules, violations in the constitution of tribunals or appointment of arbitrators, and awards addressing matters not covered by the arbitration agreement. Parts of an award not subject to arbitration can be nullified if it is separable from the rest.

## **Procurement Law and the Government Entities**

While the [KSA Vision 2030](#) is based on several goals, one of its main aim is to attract foreign investments. To ensure neutrality in solving disputes and to gain investors’ trust, several regulations have been enacted that allow governmental entities and state-owned bodies to resolve their disputes through arbitration. This demonstrates that KSA is increasingly becoming arbitration-friendly. In 2019, a new modification to the [KSA Government Tenders and Procurement Law](#) (GTPL) was issued by Royal Decree No. M/128. Article 92 of the GTPL states that, upon the approval of the Minister of Finance, a government entity may participate in arbitration proceedings. Additionally, Article 154 of the [GTPL Implementing Regulation \(2020\)](#) sets out three conditions for a government entity to enter into an arbitration agreement. First, contracts must be valued at SAR 100 million or higher. According to the GTPL, the Minister of Finance has the discretion to modify this value as needed. Second, laws governing the merits of contracts must be KSA laws. Moreover, arbitration proceedings cannot be conducted outside KSA or in a foreign arbitration institution unless the contracts were signed with foreign parties. Third, contracts must include an explicit reference to the arbitration agreement and its conditions. Following the enactment of the GTPL and its Implementing Regulation, the KSA Minister of Finance has approved at least dozens of [special administrative contractual forms](#) containing arbitration clauses. These clauses are to be rendered under the supervision of the Saudi Center for Commercial Arbitration (“SCCA”), pursuant to the KSA Arbitration Law and its Implementing Regulation.

## The KSA Arbitration Institutions: The SCCA Arbitration as a Model

No discussion about the arbitration landscape in the KSA is complete without mentioning the emergence and development of arbitration institutions in the country. Many arbitration institutions in the KSA specialize in resolving various aspects, such as engineering, real estate, and commercial matters. [Standing Committee for the KSA Arbitration Centers](#) plays a crucial role in licensing arbitration centers, authorizing their branches' operation, and setting the criteria for arbitrators' appointments. Undoubtedly, presenting the development of arbitration in the KSA implies the need to highlight the tasks of the SCCA. The center is the heartbeat of the KSA arbitration landscape and serves as a reliable source for updated [arbitration statistics](#) and executive decisions of the approaches taken by the KSA courts. While the SCCA is the most prominent institution in the region, other bodies and organizations also contribute to the arbitration ecosystem in the KSA. These include the Ministry of Justice, which oversees the implementation of laws and regulations pertaining to arbitration, as well as local and international law firms specializing in arbitration services. Additionally, international arbitration institutions, such as the International Chamber of Commerce (ICC) and the London Court of International Arbitration (LCIA), are increasingly cooperating with the SCCA to contribute to the development of the arbitration landscape in the KSA. This collaboration further strengthens the KSA's position as an arbitration-friendly destination and encourages more foreign investors to consider the country as a viable option for resolving their disputes.

The SCCA's role in promoting arbitration in the KSA extends beyond merely resolving disputes; it also represents the KSA in many [international events](#) and to [report the KSA arbitration practices](#). At the beginning of the COVID-19 pandemic, the SCCA was one of the first arbitration institutions to announce the [availability of virtual arbitration and reduce the cost of arbitration services](#) to support businesses and encourage parties to use arbitration as a low-cost method for resolving legal issues. For instance, the SCCA deducted the arbitrator's fees by up to 30%, and parties could also benefit from new alternative fee arrangements based on arbitrators' hourly rates. The SCCA has also established [its Academy](#), specializing in training programs, and encouraging participation at the annual [International Arbitration Moot competition](#). The SCCA has opened its first office outside the KSA in the Dubai International Financial Centre as has been commented on in a previous post [here](#). These programs and partnerships have further solidified KSA's position as a reliable, efficient, and forward-thinking arbitration hub in the region and beyond.

## Conclusion

Arbitration reform is accomplished when new regulations are enacted or amended. The swift action of legislators has driven arbitration developments in the KSA. The [2012 KSA Arbitration Law](#) has been recognized for its pro-arbitration provision. The SCCA is also anticipated to become one of the top arbitration institutions in the region as evident from the latest revisions to its rules that came in force on 1 May 2023 as has been commented in a previous post [here](#). The SCCA has also been successful in attracting an increasing number of cases, with a steady growth in its caseload over the past few years. Furthermore, the SCCA's commitment to providing efficient, transparent, and impartial dispute resolution services, and its adoption of international best practices, have resulted in positive feedback from users and recognition within the global arbitration community. These factors, combined with the SCCA's strategic location in the KSA, a major economic hub in the Middle East, contribute to its growing reputation as a leading arbitration institution in the

region. The advantage that the KSA arbitration landscape has enjoyed is not solely due to the applications of the new law or the adoption of the [UNCITRAL Model Law](#); instead, it is through the stability and speed with which the government has implemented reforms to achieve the goals of Vision 2030.

It may be too early to properly assess whether KSA is a fully friendly arbitration jurisdiction. However, it is without a doubt that Vision 2030 is the critical goal that will enable dispute resolution in the KSA to reach soaring heights, further solidifying the KSA's position as an attractive destination for international arbitration.


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