

**International Commercial Arbitration  
in Saudi Arabia**

by

Dr. Ahmed A. Altawyan, LL.M.



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## About the Author

Dr. Ahmed A. Altawyan specializes in Commercial Arbitration, International Business Law, Islamic Finance, and Saudi law. He was nominated to work in the judiciary by the Supreme Judicial Council of the Kingdom of Saudi Arabia in 2011.

Currently, he serves as Assistant Professor of Law, Honorary Fellow of the International Islamic Centre for Reconciliation and Arbitration in Dubai, and Member of the Appeals Committee, formed by Royal Order to adjudicate violations and tax disputes.

He has been invited to various national and international conferences to present and publish papers on a wide range of legal topics. His academic credentials include an SJD (PhD) in Commercial Arbitration from Indiana University's Robert H. McKinney School of Law (Indianapolis, Indiana, USA); a Master's Degree in Comparative and International Law (LL.M.) from Southern Methodist University's Dedman School of Law (Dallas, Texas, USA); a Master's Degree with honors in Legal Policy and Saudi Law from the High Judicial Institute (Riyadh, Saudi Arabia); and a Bachelor's Degree with first class honors in Islamic Sharia from Al-Imam Mohammad Ibn Saud Islamic University (Riyadh, Saudi Arabia).



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*Ahmed Altaayan*

## Preface

Dr. Altawyan is a wonderful example of the fruits of the Saudi Arabian Cultural Mission scholarship program. Educated in Saudi Arabia and the United States, fluent in Sharia law, Saudi law, the U.S. legal system, as well as international business and trade law, and equally eloquent in Arabic and English, Dr. Altawyan presents this book as the first comprehensive study of the new Saudi Arbitration Law of 2012.

In Chapter 1, Dr. Altawyan provides a thorough introduction to the legal system of Saudi Arabia and the way that mediation and arbitration have not only been part of Islamic law since the days of Prophet Muhammad (PBUH) but are very much encouraged, even favored, by Sharia over more confrontational methods of dispute settlement, including litigation. This part provides essential background information for Western readers but also reminds those who are familiar with Islamic law of the important benefits of mediation and arbitration.

Since arbitration in front of privately selected experts and tribunals can not provide all of its benefit without occasional recourse to the courts, for example if documents and other evidence are not made available voluntarily to the arbitrator(s), or for the enforcement of a final award, Dr. Altawyan proceeds with an analysis of the strengths and weaknesses of the Saudi judiciary in his second Chapter. The findings are very interesting and important for his recommendations for further improvements to arbitration law in Saudi Arabia in Chapter 6.

Chapter 3 is dedicated to a careful comparison of the new Saudi Arbitration Law of 2012 with important international codifications of arbitration law, in particular the UNCITRAL Model Law, the Arbitration Rules of the International Chamber of Commerce (ICC), the Arbitration Rules of the London Court of International Arbitration (LCIA), and the Rules on the Taking of Evidence of the International Bar Association (IBA). Dr. Altawyan shows how the reforms undertaken in Saudi Arabia have broadly harmonized its law with international standards but he also shows where this is not the case and why.

In Chapter 4, Dr. Altawyan specifically analyzes awards under the Saudi rules compared to various international rules.

Taken together, Chapters 3 and 4 walk the reader step-by-step through an international arbitration conducted under the new Saudi rules to show how they are applied in practice. These parts will be particularly interesting for Western lawyers and arbitrators who may become participants in such proceedings but it is also literally a textbook for Saudi lawyers eager to learn about and become qualified in arbitration law.

Going beyond the procedural context, Chapter 5 discusses what happens if international commercial contracts and arbitration agreements are subjected to Saudi law, rather than U.S. or English or some international law, like the United Nations Convention on Contracts for the International Sale of Goods (CISG). In particular for readers who are not very familiar with Islamic law, this analysis is invaluable and will save many business parties and transactions from misunderstandings and frustrations, or even failure. This Chapter alone is well worth the purchase of this book and essential reading for anyone considering or doing business in and with Saudi Arabia!

Finally, in Chapter 6, Dr. Altawyan brings all of his research results together in a series of recommendations, all of them based on scientific findings and presented in clear and persuasive terms. Written from the perspective of a true patriot who cares deeply about his country and its development and continuing success in legal and economic terms, this Chapter is addressed to the Saudi legislature. However, judges, arbitrators, and even partisan attorneys, will equally benefit from the analysis, which puts them into a better position for making their various contributions to the system of mediation and arbitration in Saudi Arabia and other parts of the Islamic World.

As an added benefit, the book contains expansive annexes with English language versions of the Saudi Arbitration Law of 2012 and the Execution Law to the Arbitration Law of Saudi Arabia. These texts are not easily available elsewhere. Together with the preceding analysis, they turn the book into a compendium of Saudi arbitration law every practitioner in the region will want to keep close at hand.

*Frank Emmert*

## Introduction

The Kingdom of Saudi Arabia is a major Muslim and Arabic state in Western Asia that constitutes the largest part of the Arabian Peninsula. It is the birthplace of the Islamic religion and has two holy mosques, one in Mecca city and the other in Medina city. King Abd al-Aziz bin Saud founded the Kingdom in 1932. It has a land area of approximately 2,250,000 km<sup>2</sup> and overlooks both the Red Sea in the West and the Arabic Gulf in the East.<sup>1</sup>

On 5 September 2015, the Kingdom of Saudi Arabia announced that it would examine its entire trade and investment system to facilitate the business of international investors. It would also provide necessary incentives, including direct business access to the Saudi market.<sup>2</sup> Moreover, on 25 April 2016, the Kingdom announced its Vision 2030, which presents its plans for the next 15 years. One of the goals of Vision 2030 is to attract the best investments globally from major international companies.<sup>3</sup> As the Kingdom is a member of the Group of Twenty (G-20) and a major producer of crude oil in the modern world, the Kingdom of Saudi Arabia is an attractive environment for profitable foreign investments in different business areas, such as energy, banking, industry, and, more recently, the retail sector.<sup>4</sup>

As foreign investors prefer arbitration as the method to settle disputes between merchants, the Kingdom has initiated and still has to make additional changes to its legal system to meet the expectations of international investors and other businesses. The commercial arbitration process is more attractive for foreign investors because of its privacy, party control of the process, and the international recognition and enforcement of its awards.<sup>5</sup> Much more than litigation, arbitration offers the opportunity to settle differences between disputing parties by using a method that is responsive to business needs, as well as binding and enforceable in general.<sup>6</sup> Accordingly, in 1994, Saudi Arabia signed the 1958 UN

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- 1 For more information, see WAYNE H BOWEN, *THE HISTORY OF SAUDI ARABIA* 1-13 (ABC-CLIO, 2014). See also COUNTRY PROFILE: SAUDI ARABIA at the Library of Congress, available at: [https://www.loc.gov/rr/frd/cs/profiles/Saudi\\_Arabia.pdf](https://www.loc.gov/rr/frd/cs/profiles/Saudi_Arabia.pdf).
  - 2 See the Minister of Commerce and Investment website at <http://mci.gov.sa/Media-Center/News/Pages/05-09-15-01.aspx>.
  - 3 Such goals are available at the Saudi Vision website: <http://vision2030.gov.sa/en>.
  - 4 See David J Karl, *Islamic Law in Saudi Arabia: What Foreign Attorneys Should Know*, 25 GEO. WASH. J. INT'L L. & ECON., 131-133 (1991).
  - 5 See AMERICAN ARBITRATION ASSOCIATION, *AAA HANDBOOK ON INTERNATIONAL ARBITRATION AND ADR* 27 (Juris Publishing, Inc. 2010).
  - 6 See id.

Convention on the Recognition and Enforcement of Arbitral Awards, otherwise known as the "New York Convention," which became the legal framework for arbitration proceedings as a mode of resolving disputes within the Kingdom.<sup>7</sup> On 16 April 2012, Saudi Arabia issued a new arbitration law, which was inspired by the UNCITRAL Model Law. This new law offers greater independence in the arbitral process, provides arbitral tribunals with enhanced procedural powers, and also makes clearer provisions for the enforcement of arbitration agreements and awards in the Kingdom.<sup>8</sup>

Although Saudi Arabia has tried to reform its arbitration regime further, there are significant challenges that have to be overcome to make Saudi arbitration law attractive for the international community. These include the roots and role of religion in the legal environment and also the lack of support from the Saudi courts during the arbitration process. For instance, in the past, Saudi Arabia has been described as hostile toward the recognition of arbitration agreements and the enforcement of foreign awards. Indeed, many international awards were rejected by Saudi courts for different reasons, which will be explained extensively throughout the chapters of this study.<sup>9</sup> In addition to enforcement matters, there are some international arbitration cases where an international arbitral tribunal denied that Saudi law as applicable law in a contract is adequate and sophisticated enough to govern complex commercial disputes. As a consequence of such decisions, merchants tend to avoid Saudi law and subject their contracts to foreign or international trade rules instead.<sup>10</sup> Therefore, the study will shed more light on how an Islamic country like Saudi Arabia can improve its commercial law and specifically its arbitration laws within the confines of Islamic principles and roots so that they are more in line with globally accepted principles of arbitration. In the following chapters, a number of different challenges will be addressed and various suggestions will be provided for the further development of the legal environment in the Kingdom.

#### **A. Scope and Limitations of the Study**

The study will consider the challenges that must be overcome to reinforce Saudi commercial arbitration law in the international community and the possible

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7 See the New York Convention website available at: <http://www.newyorkconvention.org/countries>.

8 See R. Mithani, *Saudi Arabia: The Emerging Arbitration Landscape*, CORPORATE DISPUTE MAGAZINE 2-5(2014).

9 See also Abdulrahman Mamdoh Saleem, *A Critical Study on How the Saudi Arbitration Code Could Be Improved and on Overcoming the Issues of Enforcing Foreign Awards in the Country as a Signatory State to the New York Convention*, available at SSRN 2315728, 9 (2012).

10 See, for example, *Arbitration Between the State of Saudi Arabia and the Arabian American Oil Co*, 27 I.L.R. 117, (1963).

solutions. Hence, the study will present an overview of the history of commercial arbitration in the Middle East and the roles of religion and culture in the legal system of the Kingdom of Saudi Arabia. Moreover, the study will present an extensive discussion of the significance of the new arbitration and enforcement laws in the arbitral proceedings and for arbitral awards, and of the technical rules that govern processes as set forth by the new arbitration law. The study will also provide an analytical comparison with important international commercial arbitration rules, such as the International Chamber of Commerce (ICC) Rules of Arbitration, the Arbitration Rules of the International Centre for Dispute Resolution (ICDR), and the London Court of International Arbitration (LCIA) Arbitration Rules.

Moreover, the study analyses the Saudi court system and its role in the arbitration process and the recognition and enforcement of arbitration awards. Furthermore, the study will show to foreign investors the possible challenges that may be encountered by choosing Saudi law as applicable law in international arbitration contracts and other possible options.

## **B. Research Problem and Research Questions**

On the basis of the pertinent international literature, analysis of the primary sources of Saudi law, analysis of international arbitration rules, and interviews with legal experts in the Kingdom and in various international arbitration centers, this study seeks to answer the following questions:

- What are the characteristics of the new arbitration law in the Kingdom of Saudi Arabia?
- What are the differences between the new arbitration law and international arbitration rules?
- What are the challenges to reliable enforcement of arbitral awards in Saudi Arabia?
- What is the impact of such challenges on the appreciation and use of Saudi law in the international community?
- What is the role of religion in the legal system of Saudi Arabia, and what is its impact on the arbitration process, arbitral recognition, and enforcement?
- What are the challenges of choosing Saudi law as applicable law in the international arbitration contract and what are the possible solutions?
- What are practical solutions to reinforce Saudi arbitration law in the global community?

### **C. Significance of the Study**

This study aims at developing an optimal scenario that can help Saudi Arabia to adapt its legal system to the international community. For instance, Saudi Arabia has been opening up to trade and is welcoming foreign investment widely in the Kingdom. Therefore, the legal system must be improved to enable seamless transactions with international public and private entities. The results of this study will demonstrate how a Muslim country like Saudi Arabia can improve and reinforce its legislation to make it more compatible with the expectations of international investors and traders while at the same time avoiding a conflict with its religious roots and principles, which it has been following for centuries. As such, the research results will deliver the following benefits:

- 1) Advance the state of law and business research in the academic community by comparing existing Saudi rules with international rules which may reveal interesting points of conflict or agreement that can open up the doors for further studies.
- 2) Prepare a comprehensive and practice oriented document for foreign investors and companies regarding the arbitration process in the Kingdom and how Islamic Sharia is applied in the Saudi courts.
- 3) Define a model that can help legal researchers and policymakers in Saudi Arabia (or other Islamic countries) to transform existing laws and adapt the legal system in a way that will not conflict with Islamic roots and principles and that, at the same time, will comply with international norms.

### **D. Non-Legal Aspects of the Study**

The study will also investigate non-legal aspects of the society and the government and administration in the Kingdom of Saudi Arabia to gain more understanding of the traditional form of Islamic Sharia as applied in the Kingdom and its impact on the development of the legal environment. The interpretation of Islamic Sharia differs between Islamic countries depending on different aspects, such as culture. The differences appear in such varied fields as human rights, compatibility with democracy, and freedom of speech. Hence, the application of Islamic Sharia is affected by local cultures that led to different schools of thought in Islam. For instance, Egypt, Saudi Arabia, Iran, and Turkey are all Muslim countries, but there are significant differences between their societies and their legal systems. In the context of these differences, this study will investigate the history of arbitration in the Middle East, and the background of the Saudi judiciary and Islamic Sharia as applied in the Saudi courts. The study will also discuss sources of Islamic Sharia that may impact the legal system of Saudi Arabia.

## E. Roadmap

In addition to this introduction, the research consists of six chapters, each of which has a separate theme. These themes are related and support the central theory of the entire study:

Chapter 1 explores the legal and commercial background of arbitration in Saudi Arabia. It consists of two main sections. The first section presents an overview of the legal system of the Kingdom and its primary sources. Hence, it will shed light on Islamic Sharia, and the legislative system and how it works within the Saudi system of government. The second section is about the history of arbitration in the Middle East, its roots in pre-Islamic times, and its development from the revelation of the Quran to the modern arbitration legislation in the Kingdom. Furthermore, this chapter will provide an overview of the differences between the old Saudi arbitration law and the new one enacted in 2012, and the significance of the new law.

Chapter 2 analyzes the legal system and the strengths and weaknesses of the Saudi judiciary and how they affect commercial arbitration, including compliance with international conventions ratified by the Kingdom, in particular the 1958 New York Convention. The chapter provides a history and background of the Saudi judicial system and its structure since the establishment of the Kingdom. The qualification and independence of the Saudi courts will also be shown. Finally, the chapter will discuss Islamic Sharia as it is applied in the Saudi courts, as well as Ijtihad as a vital tool with which to extract the rules in Islamic jurisprudence, how it works, and its impact on the enforcement of arbitral awards.

Chapter 3 presents the 2012 revision of the Saudi arbitration law and compares it to a number of international arbitration laws. It focuses on the significance of the new arbitration law with regard to contracts, the peculiarities of the arbitral proceedings, and the technical rules that govern processes as set forth in the new arbitration law compared with the UNICTRAL Model Law and other international rules, such as ICC Arbitration Rules and ICDR Arbitration Rules. Furthermore, the chapter will discuss some disadvantages and challenges that remain in the arbitration process and possible alternatives that may be useful to improve the arbitration process.

Chapter 4 looks specifically at the new Saudi Enforcement Law of 2012 issued by royal decree No M/53 and the accession by Saudi Arabia to the New York Convention in 1994, along with the new Saudi arbitration law issued by royal decree No M/34 and their impacts on the arbitral awards in the Kingdom, specifically when it comes to rendering, challenging, and enforcing an arbitration award. These points will be evaluated by comparing the Saudi rules with the modern norms in international commercial arbitration practice. The chapter explains why Saudi Arabia has been described as hostile toward recognizing arbitration agreements and enforcing foreign awards and why many interna-



Ahmed A. Altawyan

tional awards were rejected. Further, the study in this chapter shows the importance of reforming the arbitration award process and enforcement regime in the Kingdom of Saudi Arabia, describes the challenges that are presented in the current laws, and discusses possible solutions.

Chapter 5 focuses on the challenges that may be encountered when choosing Saudi law as the applicable law in an international arbitration contract. First, the differences between secular law and Islamic Sharia as applied in the Kingdom will be presented, in particular their characteristics in regard to litigation, some legal doctrines, such Riba and Gharar, as well as some specifics of contract and tort law. In addition, this chapter will explain extensively the challenges that may arise in interpreting and applying a contract that involves Saudi law in international arbitration tribunals and in Western courts. Last but not least, the chapter offers recommendations for foreign investors who have to or are thinking about choosing Saudi law as the applicable law in their contracts.

Finally, Chapter 6 contains a number of suggestions and solutions to be considered for the development of Saudi arbitration laws to make them more compatible with the needs and expectations of international traders and investors without sacrificing the Islamic roots and principles underlying the Saudi legal system.

## Chapter 1

### The Legal and Commercial Background of Arbitration in Saudi Arabia

It will be easier to understand how an Islamic country like Saudi Arabia can improve its commercial arbitration laws to be in line with globally accepted principles of arbitration after an overview of the legal system in Saudi Arabia and its sources including the history and background of arbitration laws in the Kingdom. In particular for international attorneys who do not possess detailed knowledge of Islamic business law and legal systems in the Middle East, it is imperative to gain some understanding how the laws are entwined with and confined by regional customs and traditions and, in particular, the Islamic religious rules and principles.

Hence, the first chapter of the study consists of two main sections. The first section provides an overview of the legal system of the Kingdom and its primary sources. It sheds some light on Islamic Sharia as the Constitution of the Kingdom and Saudi legislation that is always subordinate to Sharia and how this works within the Saudi system of law and governance. The second section is about the history of arbitration in the Middle East, its roots in pre-Islam and its development thereafter, all the way to the modern arbitration legislation in the Kingdom. Furthermore, this chapter will provide a comparative study between the old Saudi arbitration law and the new one to show the significance of the new law.

#### A. Sources of Law in Saudi Arabia

Before King Fahd bin Abdul-Aziz (1982 - 2005)<sup>11</sup> promulgated Saudi Arabia's basic law,<sup>12</sup> Saudi Arabia did not have a written constitution.<sup>13</sup> The Basic Law of Saudi Arabia, which is equivalent to the constitution of other countries, has several articles that clearly outline the primary sources of law for the Kingdom. According to Article 1, "The Kingdom of Saudi Arabia is a sovereign Arabic Islamic State. Its religion is Islam. Its constitution is Almighty God's Book, The Holy Quran, and the Sunnah (Tradition) of the Prophet (PBUH). Arabic is the language of the Kingdom.

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11 King Fahd was the fifth king of Saudi Arabia and reigned from 1982 to 2005. The Kingdom of Saudi Arabia saw fundamental changes in the legal system during his reign. See Harvey Sicherman, *King Fahd's Saudi Arabia*, 55 ORBIS (2011).

12 The word "law", when translated into the Arabic language, is called "kanoon". However, in Saudi Arabia, it is called "nizam", because the ruler wants to distinguish Saudi laws that do not conflict with Islamic law from non-Islamic laws in other countries. See Maren Hanson, *The Influence of French Law on the Legal Development of Saudi Arabia*, ARAB LAW QUARTERLY, 289 (1987).

13 Rashed Aba-Namay, *The Recent Constitutional Reforms in Saudi Arabia*, 42 INTERNATIONAL AND COMPARATIVE LAW QUARTERLY, 295 (1993).

## Chapter 2

### The Legal System of the Saudi Judiciary and its Potential Effects on Reinforcing and Enforcing Commercial Arbitration

The modernization of the Saudi arbitration environment is more in line with modern international norms of commercial arbitration rules, embodying several "arbitration-friendly" principles of the UNCITRAL Model Law, such as competence-competence and the autonomy of the arbitrating parties. However, the new Saudi arbitration environment is still subject to certain intricacies and obstacles presented by the Saudi municipal courts during the process of arbitration. Even more common are challenges at the enforcement stage of an arbitral award in the Kingdom of Saudi Arabia. Thus, addressing such challenges posed by the Saudi courts and finding solutions through analyzing and examining the Saudi court system will help to pave the way toward creating a more welcoming arbitration environment locally and internationally and a viable choice for parties who will otherwise continue to encounter an unwelcome environment in the Kingdom.

#### A. Importance of the National Judiciary in the Arbitration Process

It is well known that investors and traders prefer the method of arbitration to settle merchant disputes both in international and national fields.<sup>246</sup> Commercial arbitration has become more attractive because of its privacy, party control of the process and the international recognition and enforcement of its awards.<sup>247</sup> Arbitration offers the opportunity to settle disputes between parties using a private method that is binding and enforceable in general. Several years ago, the Kingdom of Saudi Arabia realized that it should establish a new arbitration law in line with the rules applicable elsewhere in the international community to attract foreign companies to invest in the Kingdom. It became very clear that its old law did not meet the real legal and investment needs.<sup>248</sup> Accordingly, on April 16, 2012, Saudi Arabia issued a new arbitration law, which was inspired by the

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246 See ASSOCIATION, AAA Handbook on International Arbitration and ADR 169-172. 2010.

247 Id.

248 See Saleem, AVAILABLE AT SSRN 2315728, Article 25, 38, 55 (2012). Also, Turck, ARBITRATION INTERNATIONAL, 922 (1990).

### Chapter 3

#### Arbitration in Saudi Arabia Under the New Arbitration Law in Comparison to International Arbitration Rules

As mentioned earlier, the Saudi ruler, to improve the legal system in the Kingdom for the investment environment, established a new Arbitration Law in 2012. The provisions of the new Arbitration Law, as will be seen in this chapter, are based on the UNCITRAL Model Law on International Commercial Arbitration.<sup>380</sup> The International Model Law covers all stages of the arbitral process and was initially adopted by the United Nations Commission on International Trade Law (UNCITRAL) in 1985. Since then, it has been amended several times.<sup>381</sup> The Model Law was primarily developed to help countries to modernize their arbitration rules and to achieve a level of harmonization between the countries in the global community.<sup>382</sup> Naturally, different states have taken different approaches toward this model. Some of them adopted it verbatim, such as Australia and Scotland,<sup>383</sup> while others, such as the Kingdom of Bahrain, adopted only the international commercial arbitration section.<sup>384</sup> Other states used it as a starting point for a proprietary drafting project, such as England.<sup>385</sup> The Kingdom of Saudi Arabia accepted those parts that did not violate Islamic Sharia as applied in the Kingdom and as will be explained more extensively later.

As a result, this chapter aims to identify the most significant features of the new Saudi arbitration system through the study of its statutory provisions. Our focus will be on the fundamentals and concepts of the arbitration process and its governing controls and the freedom of parties to the conflict in the selection of laws and rules that apply to arbitral tribunals when deciding the merits of the

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380 This model law is available at: [//www.uncitral.org/pdf/english/texts/arbitration/ml-arb/07-86998\\_Ebook.pdf](http://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/07-86998_Ebook.pdf).

381 See BORTOLOTTI, *Drafting and Negotiating International Commercial Contracts: a Practical Guide* 68-69. 2013. Also, MOSES, *The Principles and Practice of International Commercial Arbitration* 45. 2012.

382 *Id.*

383 See ASSOCIATION, *AAA/ICDR Handbook on International Arbitration and ADR* 21. 2006.

384 The law is available at the Ministry of Justice, Islamic Affairs and Awqaf in the Kingdom of Bahrain website at: <http://www.moj.gov.bh/default9787.html?action=article&ID=941>.

385 ASSOCIATION, *AAA/ICDR Handbook on International Arbitration and ADR* 21. 2006.

## Chapter 4

### Arbitral Awards Between Saudi Law and International Rules

Arbitrating parties expect that the arbitration process will result in final and binding awards. To reassure foreign investors to invest in the Kingdom, the Kingdom signed the New York Convention in 1994. Despite accession to the New York Convention, Saudi Arabia has been described as a hostile country toward the recognition of arbitration agreements and enforcement of foreign awards, and many international awards have been rejected.<sup>697</sup> Hence, the Kingdom has tried to improve by reforming its arbitration regime. A new Enforcement Law came into effect in 2012 by Royal Decree No. M/53. The new Law, which replaced older provisions, and its possible impact on the enforcement of arbitral awards, should be examined in the context of domestic and international arbitration. In practice, how will the new enforcement law and the new arbitration law impact arbitral awards and avoid the flaws of the previous legislation? This study will address the arbitral award under the Saudi law by comparing it with modern trends in the international commercial arbitration practice.

#### A. Rendering an Enforceable Award

During the arbitration process, an arbitral tribunal issues different types of awards, such as partial awards and interim awards. In addition, during an arbitration the tribunal may issue certain directions and orders to manage and push the arbitration process to remain on track. The study will address this issue in several points.

##### 1. Differences Between Orders and Awards

During the arbitration process, the arbitral tribunal makes different types of decisions. Some are related to administrative matters, such as discovery issues or places and times of hearings. These kinds of decisions are generally in the form of a procedural order.<sup>698</sup>

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697 See Saleem, AVAILABLE AT SSRN 2315728, 9 (2012).

698 The terms orders and awards are used differently between the laws and rules. See JEAN-FRANÇOIS PLOUDRET & SÉBASTIEN BESSON, COMPARATIVE LAW OF INTERNATIONAL ARBITRATION 637-643 (Sweet & Maxwell. 2007).

## Chapter 5

### Choice of Saudi Law as the Applicable Substantive Law and the Impact on International Arbitration Agreements

When negotiating international commercial contracts, a crucial matter that the parties should consider carefully is the choice of the governing law that will be used and applied to interpret the contract and to determine the rights and obligations that flow from it. It is common in international arbitration that parties choose as the applicable law in their contract the law of the domicile of one of the parties. For example, in the Chromalloy case, a contract involved an American company as one party. The other party was Egyptian. Egyptian law was chosen as the applicable law.<sup>910</sup> However, choosing Saudi law as the applicable law in a contract invites different challenges that have arisen in international arbitration cases or even in the municipal courts as will be addressed in this study, together with possible solutions within the new Saudi arbitration regime. Foreign investors, who usually are not very familiar with the laws and rules of Muslim countries, such as Saudi Arabia, should know these solutions before entering into such agreement.

#### A. Overview

Choosing Saudi law as the applicable law in a commercial arbitration agreement means that Islamic Sharia will be applied, as it is the primary source of law in the Kingdom of Saudi Arabia.<sup>911</sup> An example is provided by *National Group for Communications & Computers v. Lucent Technologies International*.<sup>912</sup> National Group and Lucent Technologies agreed that Saudi law should govern the terms of their dispute. The Court acknowledged that to judge the case, it would first have to determine how Saudi law would decide the claim for loss of the plaintiff's Projects Department. In doing so, the Court analyzed tenets of Islamic Sharia. In

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910 See MATTER OF CHROMALLOY AEROSERVICES (ARAB REPUBLIC), 939 F. Supp. 907 (D.C. 1996).

911 See Arbitration between the State of Saudi Arabia and the Arabian American Oil Co., 27 I.L.R. 117 (1958).

912 NATIONAL GROUP FOR COMMUN. AND COMPUTERS LTD. v. LUCENT TECHNOLOGIES INTERN. INC., 331 F. Supp. 2d 290 (D.N.Y. 2004).