



The Middle Eastern and African Arbitration Review

2023

**A progress report on Saudi Arabia's
arbitration-friendliness**

The Middle Eastern and African Arbitration Review

2023


The Middle Eastern and African Arbitration Review 2023 contains insight and thought leadership from 15 preeminent practitioners from the region. It provides an invaluable retrospective on what has been happening in some of Europe's more interesting seats.

This edition also contains think pieces on human rights in arbitration, the mechanism's growing use in technology disputes, damages in investment disputes and the use of statistical samples.

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Explore on **GAR** 

A progress report on Saudi Arabia's arbitration-friendliness

James MacPherson and **Fatima Balfaqeeh**

Saudi Center for Commercial Arbitration

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Saudi Arabia has undergone a transformation in recent years on its path towards becoming a globally recognised arbitration seat. With strong judicial and governmental support, the jurisdiction is measuring itself against international standards, attracting expertise from within the country and beyond and attracting an increasing number of international arbitration filings.

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- Benchmarking Saudi Arabia as an effective, efficient and safe international arbitration seat
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 - SCCA caseload and judicial enforcement record
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Referenced in this article

- [Chartered Institute of Arbitrators, London Centenary Principles 2015](#)
 - Saudi Arbitration Law enacted by Royal Decree No. M/34, dated 16 April 2012G and its Implementing Regulations issued by Cabinet Decree No. 541, dated 22 May 2017G.
 - Cabinet Resolution No. 541/1438 issuing the Executive Regulations implementing the Arbitration Law
 - World Economic Forum's Competitiveness Report (2019)
 - [SCCA Arabic Moot](#)
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Introduction

Arbitration in Saudi Arabia is continuing its transformation, in a concerted effort by the jurisdiction to restructure the economy as part of the kingdom's Vision 2030. The following article looks at how the jurisdiction measures up against internationally recognised factors for safe arbitral seats, considers recent initiatives to assist parties to arbitration, the appointment of expert international professionals to the main arbitration centre's

committees and some statistics revealing how the judiciary is supporting arbitration in the kingdom.

Benchmarking Saudi Arabia as an arbitral seat

In 2015, an eminent working group of the Chartered Institute of Arbitrators (CIArb) developed a set of 10 principles constituting the required elements for a safe arbitral seat, creating a framework for their evaluation.^[1] The following section measures recent initiatives in the kingdom to promote the country as an arbitral centre against the London Centenary Principles of the Chartered Institute of Arbitrators (the London Centenary Principles), considering each principle in turn in the Saudi Arabian context.

Law

According to the London Centenary Principles, good seats require an arbitration law that sets out a procedural framework, limits judicial intervention and strikes a balance between transparency and confidentiality. The Saudi Arabia Arbitration Law, Royal Decree No. M/34, (the Saudi Arbitration Law) is broadly modelled on the UNCITRAL Model Law on International Commercial Arbitration and has paved the way for a more arbitration-friendly era. It provides for, among other things, party autonomy in the key areas of the applicable law, the rules governing the dispute, the place and language of arbitration, party representation and the appointment of the arbitral tribunal. Under the Saudi Arbitration Law, parties may appoint any arbitrator, mediator, lawyer, expert or other representative regardless of gender, nationality or religion. The Law also grants protection to arbitral awards and confines any challenges to a limited number of grounds (including sharia principles) and without review of the merits.

Independent commentators believe that the Saudi Arbitration Law includes several arbitration-friendly principles with 'provisions of the new law that . . . will provide litigants with a viable arbitration alternative for their disputes in the Kingdom'.^[2]

Judiciary

The London Centenary principles require a judiciary that is independent, competent and efficient, with expertise in international commercial arbitration and that is respectful of the parties' choice of arbitration as their method for settlement of their disputes. According to the World Economic Forum's Global Competitiveness Report (2019), Saudi Arabia achieved a global ranking of 16th in 'judicial independence', 17th in 'efficiency of legal framework in settling disputes' and 11th in 'legal framework's adaptability to digital business models'.^[3]

Article 8 of the Saudi Arbitration Law and article 2 of the accompanying Executive Regulations^[4] stipulate that the competent court for the purposes of arbitration is the Court of Appeal. Furthermore, article 17 of the Executive Regulations ensures that the Supreme Court hears appeals regarding the validity of arbitral awards.

Critically, the Saudi judiciary, including its ongoing strategic engagement with the Saudi Centre for Commercial Arbitration (SCCA), continues to meaningfully invest in enhancing and broadening the judiciary's considerable expertise in international arbitration. Further, the

performance of the judiciary has garnered considerable recognition and praise from local and international law firms.^[5]

Legal expertise

The professional legal community in Saudi Arabia includes a network of highly experienced, sophisticated and independent local and international lawyers, providing expertise to those doing business, litigating and arbitrating in Saudi Arabia and beyond. In 2019, the Saudi Bar Association launched the Saudi Accreditation Standards for Lawyers, described as a 'set of processes endeavouring to set national legal profession standards meeting international best practices and maintaining a high level of professionalism'. Initiatives such as this ensure that Saudi lawyers will be competitive domestically and internationally – and will be effective as counsel in mediation and arbitration.

SCCA and its UK partner, CIArb, have been committed to ongoing professional development and deepening of expertise in international arbitration through years of workshops, training and accreditation of arbitration specialists.

Education

Saudi Arabia and SCCA have redoubled their commitments and investments in ADR education across the spectrum of stakeholders and practitioners: from counsel, arbitrators and mediators to experts, users and students.

To provide practitioners with an opportunity to enhance their skills and have a locally and internationally recognised accreditation designation, SCCA partnered with CIArb to create a fully Arabic programme for arbitrator and mediator accreditation (along with offering an English version) for all those wishing to avail themselves of the SCCA-CIArb Pathways to Fellowship.

The SCCA Arab Moot Competition is a particularly impactful education initiative, attracting Arabic speaking university students from across the Arab world and beyond. Now, in its fourth edition, there are 110 teams with 785 students and academics from 20 countries. With its focus on SCCA international standard clauses, rules, procedures and guides, this international competition is cultivating the next generation of international commercial arbitration experts. The Arab Moot Competition case drafting committee was chaired by Emirati arbitrator and mediator Fatima Balfaqeeh.

Rights of representation

The concept of party autonomy is paramount. Both the Saudi Arbitration Law and the institutional arbitration rules of the SCCA allow parties to be represented by any legal representative they wish, both local and foreign. Registration is not required. Further, and contrary to some misconceptions, under the Saudi Arbitration Law, parties can appoint any arbitrator, mediator, lawyer, expert or other representative regardless of gender, nationality or religion. Under article 14 of the Saudi Arbitration Law, however, sole arbitrators and panel chairs must hold a degree in sharia or law.

Underscoring the Kingdom's commitment to develop the legal profession and raise efficiency, Saudi Arabia has granted foreign licences to major international law firms. In March 2023, the first foreign law firms were granted licences to operate in the kingdom. Clifford Chance, Herbert Smith Freehills and Latham & Watkins became the first three foreign law firms to be granted licences to practise law in Saudi Arabia since the Council of Ministers approved amendments to the Code of Law Practice on the subject. The ministry had previously approved implementing regulations for licensing foreign law firms. With the rule change, the Ministry of Justice aims to invigorate the legal profession, raise the efficiency of its practitioners and improve the business and investment environment in the Kingdom – including the ADR sector.

Accessibility and safety

Parties, counsel, experts and arbitrators have generally had easy accessibility to the Saudi seat, including being 'free from unreasonable constraints on entry, work and exit' as required by the London Centenary Principles. Adequate safety and protection of the participants, their documentation and information are also generally assured. Arbitrators have access to everything related to the case and ensure confidentiality and non-disclosure of information and documents.

Facilities

SCCA has its own purpose-built, state-of-the-art facilities across several locations including Jeddah and Riyadh, among others, and now including Dubai (see the section below) and offers, inter alia, transcription services, hearing rooms, document- handling and management services, and translation services.

Ethics

SCCA has adopted and implemented codes of ethics for arbitrators, mediators, parties and their representatives, board members and staff. The code of ethics for arbitrators sets out a number of standards intrinsic to their functions. The code of ethics for parties sets out 12 standards of conduct by which they and their representatives should abide.

All of the SCCA Codes of Ethics – for arbitrators, mediators, parties and representatives, board members and staff – are reviewable and downloadable in Arabic and English.^[6]

Enforceability

Arbitral awards are enforced in accordance with simple, prompt and effective procedures. Under the Enforcement Law, an arbitral award, to which an enforcement order is appended, is considered a writ of enforcement for which compulsory enforcement is permitted. In addition, Saudi Arabia is a signatory to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards; Saudi courts are therefore required to give effect to private arbitration agreements and the recognition and enforcement of arbitral awards made in other contracting states.

'The growing track record of government and court support for arbitration in Saudi Arabia', notes DLA Piper's head of litigation and ADR, Henry Quinlan, 'can only give international investors more confidence in bringing their business to the Kingdom.'

SCCA Dubai - a commitment to regional excellence in ADR

In 2014, SCCA was established as an independent, not-for-profit organisation, spearheading efforts to make Saudi Arabia an ADR-friendly jurisdiction.^[7]

SCCA has successfully established itself as a serious player in the ADR industry, through its initiatives to both raise awareness and in capacity-building across the ADR profession locally and regionally. Among these initiatives are the following.

- Launching the SCCA Court in 2022 to determine technical and administrative matters related to SCCA cases. The Court has 15 internationally recognised practitioners from 14 different countries to reflect SCCA's vision of becoming an internationally recognised centre and 'to be the preferred ADR Choice in the Region by 2030'.^[8]
- Establishing SCCA's Rules Advisory Committee (RAC), which includes 16 diverse and internationally renowned thought leaders in the legal industry from 10 different nationalities.
- Partnering with CIARB to deliver the Pathway in International Arbitration programme, as created for the first time in the Arabic language by SCCA.
- The launch of the first Arabic-language moot for students – first in 2019 with the Saudi version, then the Gulf Cooperation Council (GCC) version, and for the past two years opening it up to international universities for their Arabic-speaking students. The Fourth Edition in 2022 brought together over 100 registered teams from 20 different countries, with more than 700 students and coaches participating.

Since its establishment, SCCA has steadily increased its caseload from 2016, with a current total of 220 cases valued at US\$1.3 billion, and with the parties in cases registered with SCCA involving over 20 nationalities.

This growth is complemented with SCCA's first revision of its Rules in 2023, which will introduce some internationally benchmarked best practices. Most notably, the revised rules will have the advantage of not specifying a default seat of arbitration. This model could be ideal for many companies that operate in Saudi Arabia, the UAE or have a regional headquarters, and for international companies operating in the Middle East and beyond.

In November 2022, SCCA opened its first regional office outside Saudi Arabia in Dubai, strategically situated within the Dubai International Financial Center (DIFC). In line with the strategy and vision of SCCA, this move re-emphasises SCCA's support and belief in the DIFC as an important internationally recognised jurisdiction, and in Dubai as a seat of arbitration.

The 2021 Queen Mary Ranking had Dubai ranked 10th seat as preferred by arbitration users internationally. To date, Dubai is the only Middle Eastern seat ranked on the Queen Mary Survey, which shows the efforts undertaken in the UAE and supported regionally that allowed Dubai to be recognised as a serious contender for such a prestigious ranking.^[9]

As regional and international arbitration centres, practitioners and service providers focus on the potential of socio-economic growth in Saudi Arabia, and on Dubai as a hub of business on a global scale, it was of the utmost importance that SCCA's regional presence start with the DIFC – all in order to harness this growth and be able to demonstrate the services that it can offer on the Saudi market, and now more regionally.

SCCA Dubai officially opened their office, located in DIFC Al Fattan Currency House Towers, in February 2023. The office is not only offering support for current and future business users, parties and arbitrators through its technical case management team, but also offering a hearing facility for the arbitration community at large.

By continuing to develop and support Dubai as a leading seat of arbitration, ably serving international arbitration and ADR user communities through its case management team and capacity-building initiatives through the SCCA Academy, SCCA is delivering quality services across Saudi Arabia, regionally and beyond.

Recent business-focused initiatives at SCCA

An independent, not-for-profit arbitral institution, SCCA is recognised as a full and complete administrative ADR service provider, with tested rules and procedures that follow international best practices and standards. Regarding appointments, parties can authorise SCCA to perform one of three services to select and appoint one or more arbitrators. First, parties can request SCCA to provide a list of experienced and qualified candidates from which to choose their arbitrator (list-only service). Second, parties can authorise SCCA to appoint one or more arbitrators using its list method (list-and-appointment service). Finally, parties can authorise SCCA to directly appoint one or more arbitrators without any further intermediary steps (administrative appointment service).

To support the business sector and promote investment, SCCA introduced measures to make its range of services more accessible and cheaper, including a reduction in arbitrator fees of up to 30 per cent, halving the initial costs for initiating proceedings and allowing parties to agree to alternative fee arrangements based on arbitrators' hourly rates.

The SCCA board of directors approved several amendments to Appendix I of the SCCA Arbitration Rules^[10] to broaden its institutional arbitration offering across diverse sectors and with parties of any size and nationality.

From 1 September 2021, the amendments to Appendix 1 of the SCCA Arbitration Rules streamlined the process and made it more affordable. For example, SCCA eliminated its filing fee. A filing party now need only advance a flat rate registration fee of US\$1,350 that will later be credited towards administrative fees. This also reduces the initial cost in starting the arbitration proceeding by 50 per cent for claims above US\$107,000. In addition, the administrative fees start at a flat rate of US\$540 for proceedings under the Online Dispute Resolution (ODR) Protocol and are capped at a maximum of US\$80,000 for any other arbitration proceedings.

Further review of arbitrator fees resulted in and reduced them by up to 30 per cent. To provide more transparency, SCCA has also introduced three pricing levels: minimum, maximum and average. SCCA fixes the arbitrator fees case by case, depending on the complexity of the matter and the time and effort required to determine the case. Instituting minimum and

maximum fees enables the parties to project the costs of arbitration before proceedings commence.

SCCA also introduced the option for parties to agree to alternative fee arrangements based on hourly arbitrator rates. This method is available alongside SCCA's existing ad valorem method, which will remain the default mechanism in case the parties cannot agree on an hourly rate.

SCCA reduced the cost of its ODR service by 40 per cent to make it more accessible to all businesses, especially innovators, entrepreneurs and those operating small and medium-sized enterprises.

Additional flexibility for parties now includes options to facilitate the advancement of deposits for SCCA and arbitrator fees, including instalment plans and bank guarantees for larger amounts (as outlined in the amendments to Appendix I of the SCCA Arbitration Rules).

Clients can also estimate the costs of their arbitration by accessing SCCA's online interactive calculator,^[11] which provides a preliminary assessment of the arbitration costs while comparing the various SCCA arbitration services. Based on the service selected and the number of arbitrators, the costs may range between 25 and 200 per cent.

The amendments to Appendix I ensure the utility of innovative arbitration services offered by SCCA alongside standard arbitration, such as expedited arbitration,^[12] which provides a quick path to dispute resolution at a cost 20 per cent lower than standard arbitration, and online arbitration, which enables the parties to settle their dispute remotely within 30 days of the arbitrator's appointment.

New 2023 Arbitration Rules

After the exceptional work of the international experts on the SCCA Rules Advisory Committee, a special subcommittee of SCCA's board of directors and SCCA itself, and an extensive open and inclusive stakeholder consultation process with live roundtables in Riyadh as well as Abu Dhabi and Dubai, the new and improved SCCA Arbitration Rules will be released in the second quarter of 2023.

Recent appointments of international experts

Since 2021, SCCA has added high-profile ADR experts to its board of directors and rules advisory committee as part of its objective to provide first-class rules and services that are responsive to industry needs while being transparent and consistent, and that adhere to international best practices.

A Royal Decree was issued on 23 March 2021, appointing the third independent board of directors of SCCA, chaired by Walid Abanumay with Toby Landau appointed as vice-chair. The diverse board includes eminent international arbitration experts from Saudi Arabia, Egypt, France, the United Kingdom and the United States, with experts in law and sharia as well as business sector leaders.

Half of the incoming board members are leading international arbitration experts, and all are leaders from the business, legal and finance and banking sectors. The new board now

reflects more diversity in terms of specialisations, gender and nationalities – with foreign experts comprising 40 per cent of the board, and a foreign vice-chair. This diversity enhances and promotes international best practices of SCCA while also reinforcing SCCA neutrality and independence from the public sector.

This decree further implements the SCCA's Statute^[13] stipulating that SCCA must have an independent board of directors serving for a term of three years, and that is renewable once.





To ensure the independence of the SCCA committees, world-renowned new members with long-standing experience in institutional arbitration and who are not Saudi nationals joined the SCCA rules advisory committee, which now has 16 members and is chaired by international Arbitration expert Richard Naimark.

In November 2022, SCCA announced the creation of an independent 'SCCA Court' to determine technical and administrative matters related to its caseload, featuring leading international figures including Bahrain-based arbitrator Jan Paulsson as the first president, and two vice presidents: Ziad Bin Abdulrahman Al-Sudairy, an arbitrator and principal of the Ziad A Al-Sudairy Law Office in Riyadh and James Hosking, founding partner of Chaffetz Lindsay in New York. The 15-person court will enhance the consistency of its approach and ensure it is in line with international best practices. It will also improve its operations generally and safeguard quality services into the future.

With arbitration experts from 13 different countries, the SCCA Court is comprised of highly qualified and eminent international arbitrators, former leaders of arbitral institutions, retired appellate judges, partners of international law firms and law professors from renowned universities. All are listed below.

Independence and good governance at SCCA in Saudi Arabia

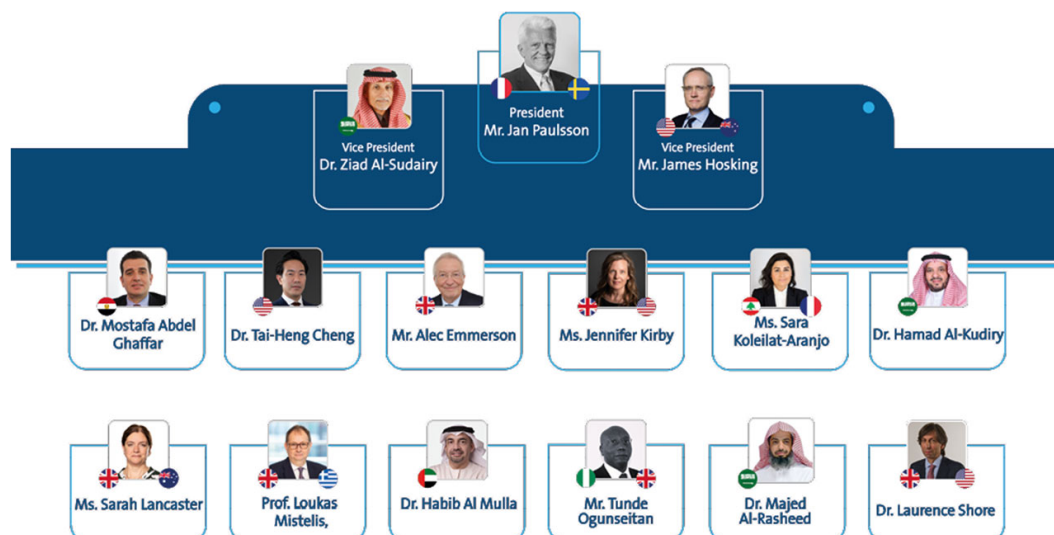
SCCA Board of Directors

	<p>Dr. Walid Abanumay Chairman Chairman and board member of various national & international companies</p>		<p>Mr. Toby Landau KC Vice Chairman Member of Duxton Hill Chambers</p>
	<p>Dr. Mohamed Abdel Raouf Head of the international Arbitration Group Abdel Raouf Law Firm</p>		<p>Prof. Georges Affaki Lawyer, Independent Arbitrator and Professor of Law University of Paris</p>
	<p>Dr. Abdullah Al-Ajian Shariah and Legal Consultant AS&H Law Firm</p>		<p>Dr. Saud Al-Ammari Lawyer and Independent Arbitrator Saud Al-Ammari Law Firm</p>
	<p>Ms. Abby Cohen Smutny Global Head of International Arbitration Practice White & Case</p>		<p>Mr. Abdullah Al-Hashim Managing Partner Al-Jadaan & Partner Law Firm</p>
	<p>Mr. Sulyman Al-Majed Chairman and board member of various of national and foreign companies</p>		<p>Dr. Ali Al-Sowailam Founder and Managing Partner The Saudi Office, Lawyers & Consultants</p>

SCCA Rules Advisory Committee (RAC)



SCCA Court



Caseload and judicial enforcement

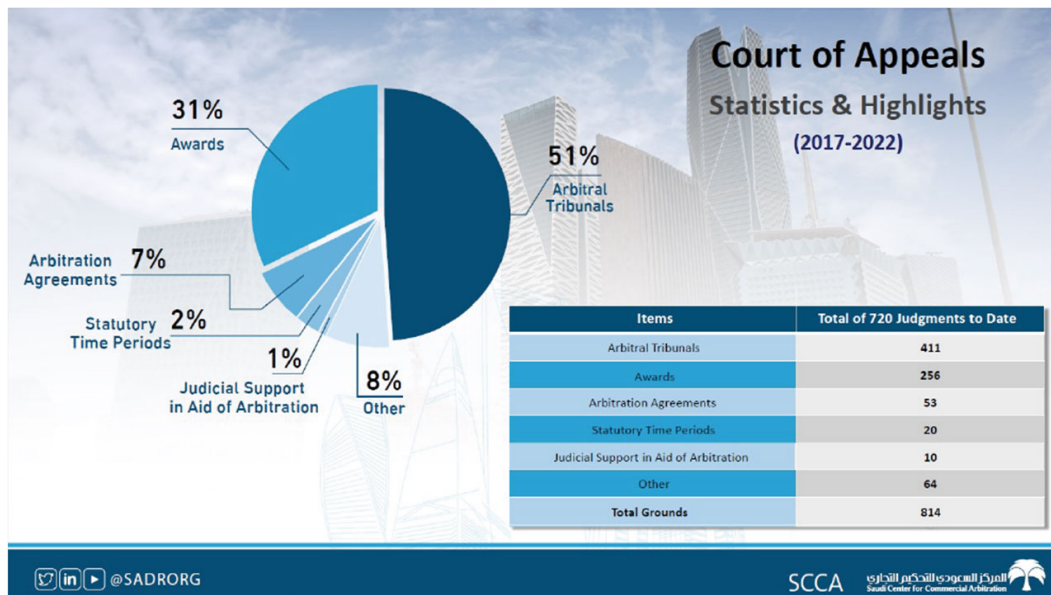
In 2021, courts in Saudi Arabia enforced 204 domestic and foreign awards, representing an aggregate value of US\$2.1 billion, with enforcement proceedings being resolved on average within two weeks. Since the Saudi Arbitration Act in 2012, there have been approximately 35,000 applications for enforcement with an aggregate value of enforced arbitral awards coming in at just over US\$6.16 billion. In 2019, more applications for enforcement were filed than had been filed between 2013 and 2018.^[14]

The latest SCCA study of Saudi case law, related to arbitration published between 2017 and 2022, indicated that of 720 judgments examined there were 814 grounds why a party approached the courts. Of those 814 grounds, 256 (or 31 per cent) related to motions

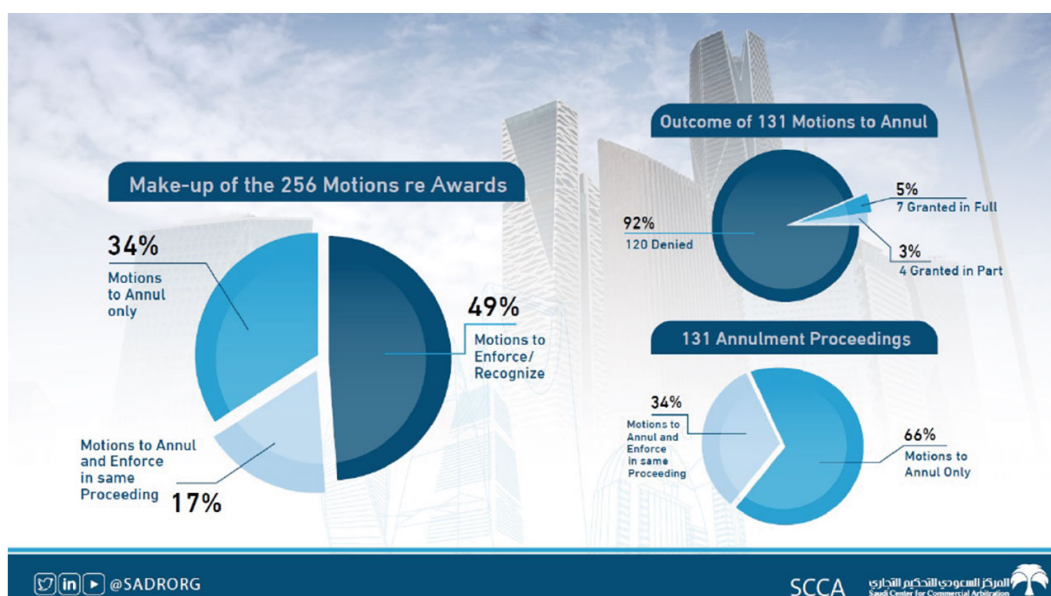
regarding awards (both to enforce and annul). Of the 256 grounds, 131 were related to motions to annul. Of those 131, 120 (or 92 per cent) were denied, leaving an 8 per cent success rate (or 11 motions). Of these 11 motions, seven were granted in full and four only in part. Of the 24 sharia grounds identified, only five were successful (or 21 per cent).

These findings have not only been generally well received by the parties involved in each case, they have also proven compelling and reassuring for local and foreign parties and their counsel assessing Saudi Arabia as a place to do business – and, if needed, enforce arbitral awards.

Saudi Court of Appeal: statistics and highlights (2012–2022)



Saudi Court of Appeal: statistics and highlights (2012–2022)



Since its launch in October 2016, SCCA has registered 211 filings involving domestic and international parties from sectors including banking and finance, capital markets and investment, construction and engineering, and arts and entertainment.

Conclusion

The decade-long transformation of all aspects of the Saudi ADR practice, profession and industry outlined in this article has been profound, comprehensive and likely to endure. Importantly, the Saudi judiciary has a solid record of skilfully and consistently adjudicating matters related to arbitration, and providing the judicial support required for a consistent record of successful enforcement of local and foreign arbitral awards. With its now well-established local, regional and international reputation as a first-rate ADR institution, SCCA benefits from operating in an arbitration-friendly jurisdiction – reflected in its rapidly increasing caseloads.

Footnotes

[1] <https://www.ciarb.org/resources/features/a-framework-for-evaluating-the-best-arbitral-seats/>.

[2] <https://www.jonesday.com/en/insights/2012/09/the-new-saudi-arbitration-law>.

[3] World Economic Forum, The Global Competitiveness Report 2019, available at <https://www.weforum.org/reports/how-to-end-a-decade-of-lost-productivity-growth>.

[4] Executive Regulations of the Arbitration Law, dated 22 May 2017.

[5] See, for example, Scott Hutton et al, 'Saudi Arabia', The Construction Disputes Law Review: 'The Saudi court system is also supporting the growth of arbitration by recognising arbitration agreements and enforcing arbitral awards. Arbitration is currently the preferred choice for many in the construction industry and it is anticipated that this will be a substantial growth area in Saudi Arabia.' Available at <https://thelawreviews.co.uk/title/the-construction-disputes-law-review/saudi-arabia>.

[6] <https://www.sadr.org/arbitrators-code-of-conduct?lang=en>.

[7] <https://www.sadr.org/?lang=en>.

[8] <https://www.sadr.org/about-scca?lang=en>.

[9] https://arbitration.qmul.ac.uk/media/arbitration/docs/LON0320037-QMUL-International-Arbitration-Survey-2021_19_WEB.pdf.

[10] SCCA Arbitration and Mediation Rules, October 2018, as amended, available at <https://sadr.org/awareness-publications?lang=en>.

[11] SCCA Fee Calculator, available at <https://sadr.org/ADRService-Arbitration-Fee-Calculator?lang=en>.

[12] See https://sadr.org/ADRService-Expedited_Procedures?lang=en.

[13] Statute of the Saudi Centre for Commercial Arbitration, Council of Ministers Resolution No. 488, 30 April 2019, available at <https://www.sadr.org/about-ADR.in.sa-laws-and-regulations?lang=en>.

[14] Royal Decree No. 44682 of 28 August 2021 limits the definition of public policy to general rules of Islamic law based on the Quran and the Sunnah.

IN SUMMARY

Saudi Arabia has undergone a transformation in recent years on its path towards becoming a globally recognised arbitration seat. With strong judicial and governmental support, the jurisdiction is measuring itself against international standards, attracting expertise from within the country and beyond and attracting an increasing number of international arbitration filings.

DISCUSSION POINTS

- Benchmarking Saudi Arabia as an effective, efficient and safe international arbitration seat
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BENCHMARKING SAUDI ARABIA AS AN ARBITRAL SEAT

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SCCA has its own purpose-built, state-of-the-art facilities across several locations including Jeddah and Riyadh, among others, and now including Dubai (see the section below) and offers, inter alia, transcription services, hearing rooms, document- handling and management services, and translation services.

Ethics

SCCA has adopted and implemented codes of ethics for arbitrators, mediators, parties and their representatives, board members and staff. The code of ethics for arbitrators sets out a number of standards intrinsic to their functions. The code of ethics for parties sets out 12 standards of conduct by which they and their representatives should abide.

All of the SCCA Codes of Ethics – for arbitrators, mediators, parties and representatives, board members and staff – are reviewable and downloadable in Arabic and English.^[6]

Enforceability

Arbitral awards are enforced in accordance with simple, prompt and effective procedures. Under the Enforcement Law, an arbitral award, to which an enforcement order is appended, is considered a writ of enforcement for which compulsory enforcement is permitted. In addition, Saudi Arabia is a signatory to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards; Saudi courts are therefore required to give effect to private arbitration agreements and the recognition and enforcement of arbitral awards made in other contracting states.

'The growing track record of government and court support for arbitration in Saudi Arabia', notes DLA Piper's head of litigation and ADR, Henry Quinlan, 'can only give international investors more confidence in bringing their business to the Kingdom.'

SCCA DUBAI - A COMMITMENT TO REGIONAL EXCELLENCE IN ADR

In 2014, SCCA was established as an independent, not-for-profit organisation, spearheading efforts to make Saudi Arabia an ADR-friendly jurisdiction.^[7]

SCCA has successfully established itself as a serious player in the ADR industry, through its initiatives to both raise awareness and in capacity-building across the ADR profession locally and regionally. Among these initiatives are the following.

- Launching the SCCA Court in 2022 to determine technical and administrative matters related to SCCA cases. The Court has 15 internationally recognised practitioners from 14 different countries to reflect SCCA's vision of becoming an internationally recognised centre and 'to be the preferred ADR Choice in the Region by 2030'.^[8]
-

Establishing SCCA's Rules Advisory Committee (RAC), which includes 16 diverse and internationally renowned thought leaders in the legal industry from 10 different nationalities.

- Partnering with CIArb to deliver the Pathway in International Arbitration programme, as created for the first time in the Arabic language by SCCA.
- The launch of the first Arabic-language moot for students – first in 2019 with the Saudi version, then the Gulf Cooperation Council (GCC) version, and for the past two years opening it up to international universities for their Arabic-speaking students. The Fourth Edition in 2022 brought together over 100 registered teams from 20 different countries, with more than 700 students and coaches participating.

Since its establishment, SCCA has steadily increased its caseload from 2016, with a current total of 220 cases valued at US\$1.3 billion, and with the parties in cases registered with SCCA involving over 20 nationalities.

This growth is complemented with SCCA's first revision of its Rules in 2023, which will introduce some internationally benchmarked best practices. Most notably, the revised rules will have the advantage of not specifying a default seat of arbitration. This model could be ideal for many companies that operate in Saudi Arabia, the UAE or have a regional headquarters, and for international companies operating in the Middle East and beyond.

In November 2022, SCCA opened its first regional office outside Saudi Arabia in Dubai, strategically situated within the Dubai International Financial Center (DIFC). In line with the strategy and vision of SCCA, this move re-emphasises SCCA's support and belief in the DIFC as an important internationally recognised jurisdiction, and in Dubai as a seat of arbitration.

The 2021 Queen Mary Ranking had Dubai ranked 10th seat as preferred by arbitration users internationally. To date, Dubai is the only Middle Eastern seat ranked on the Queen Mary Survey, which shows the efforts undertaken in the UAE and supported regionally that allowed Dubai to be recognised as a serious contender for such a prestigious ranking.^[9]

As regional and international arbitration centres, practitioners and service providers focus on the potential of socio-economic growth in Saudi Arabia, and on Dubai as a hub of business on a global scale, it was of the utmost importance that SCCA's regional presence start with the DIFC – all in order to harness this growth and be able to demonstrate the services that it can offer on the Saudi market, and now more regionally.

SCCA Dubai officially opened their office, located in DIFC Al Fattan Currency House Towers, in February 2023. The office is not only offering support for current and future business users, parties and arbitrators through its technical case management team, but also offering a hearing facility for the arbitration community at large.

By continuing to develop and support Dubai as a leading seat of arbitration, ably serving international arbitration and ADR user communities through its case management team and capacity-building initiatives through the SCCA Academy, SCCA is delivering quality services across Saudi Arabia, regionally and beyond.

RECENT BUSINESS-FOCUSED INITIATIVES AT SCCA

An independent, not-for-profit arbitral institution, SCCA is recognised as a full and complete administrative ADR service provider, with tested rules and procedures that follow international best practices and standards. Regarding appointments, parties can authorise

SCCA to perform one of three services to select and appoint one or more arbitrators. First, parties can request SCCA to provide a list of experienced and qualified candidates from which to choose their arbitrator (list-only service). Second, parties can authorise SCCA to appoint one or more arbitrators using its list method (list-and-appointment service). Finally, parties can authorise SCCA to directly appoint one or more arbitrators without any further intermediary steps (administrative appointment service).

To support the business sector and promote investment, SCCA introduced measures to make its range of services more accessible and cheaper, including a reduction in arbitrator fees of up to 30 per cent, halving the initial costs for initiating proceedings and allowing parties to agree to alternative fee arrangements based on arbitrators' hourly rates.

The SCCA board of directors approved several amendments to Appendix I of the SCCA Arbitration Rules^[10] to broaden its institutional arbitration offering across diverse sectors and with parties of any size and nationality.

From 1 September 2021, the amendments to Appendix 1 of the SCCA Arbitration Rules streamlined the process and made it more affordable. For example, SCCA eliminated its filing fee. A filing party now need only advance a flat rate registration fee of US\$1,350 that will later be credited towards administrative fees. This also reduces the initial cost in starting the arbitration proceeding by 50 per cent for claims above US\$107,000. In addition, the administrative fees start at a flat rate of US\$540 for proceedings under the Online Dispute Resolution (ODR) Protocol and are capped at a maximum of US\$80,000 for any other arbitration proceedings.

Further review of arbitrator fees resulted in and reduced them by up to 30 per cent. To provide more transparency, SCCA has also introduced three pricing levels: minimum, maximum and average. SCCA fixes the arbitrator fees case by case, depending on the complexity of the matter and the time and effort required to determine the case. Instituting minimum and maximum fees enables the parties to project the costs of arbitration before proceedings commence.

SCCA also introduced the option for parties to agree to alternative fee arrangements based on hourly arbitrator rates. This method is available alongside SCCA's existing ad valorem method, which will remain the default mechanism in case the parties cannot agree on an hourly rate.

SCCA reduced the cost of its ODR service by 40 per cent to make it more accessible to all businesses, especially innovators, entrepreneurs and those operating small and medium-sized enterprises.

Additional flexibility for parties now includes options to facilitate the advancement of deposits for SCCA and arbitrator fees, including instalment plans and bank guarantees for larger amounts (as outlined in the amendments to Appendix I of the SCCA Arbitration Rules).

Clients can also estimate the costs of their arbitration by accessing SCCA's online interactive calculator,^[11] which provides a preliminary assessment of the arbitration costs while comparing the various SCCA arbitration services. Based on the service selected and the number of arbitrators, the costs may range between 25 and 200 per cent.

The amendments to Appendix I ensure the utility of innovative arbitration services offered by SCCA alongside standard arbitration, such as expedited arbitration,^[12] which provides a quick path to dispute resolution at a cost 20 per cent lower than standard arbitration, and

online arbitration, which enables the parties to settle their dispute remotely within 30 days of the arbitrator's appointment.

NEW 2023 ARBITRATION RULES

After the exceptional work of the international experts on the SCCA Rules Advisory Committee, a special subcommittee of SCCA's board of directors and SCCA itself, and an extensive open and inclusive stakeholder consultation process with live roundtables in Riyadh as well as Abu Dhabi and Dubai, the new and improved SCCA Arbitration Rules will be released in the second quarter of 2023.

RECENT APPOINTMENTS OF INTERNATIONAL EXPERTS

Since 2021, SCCA has added high-profile ADR experts to its board of directors and rules advisory committee as part of its objective to provide first-class rules and services that are responsive to industry needs while being transparent and consistent, and that adhere to international best practices.

A Royal Decree was issued on 23 March 2021, appointing the third independent board of directors of SCCA, chaired by Walid Abanumay with Toby Landau appointed as vice-chair. The diverse board includes eminent international arbitration experts from Saudi Arabia, Egypt, France, the United Kingdom and the United States, with experts in law and sharia as well as business sector leaders.

Half of the incoming board members are leading international arbitration experts, and all are leaders from the business, legal and finance and banking sectors. The new board now reflects more diversity in terms of specialisations, gender and nationalities – with foreign experts comprising 40 per cent of the board, and a foreign vice-chair. This diversity enhances and promotes international best practices of SCCA while also reinforcing SCCA neutrality and independence from the public sector.

This decree further implements the SCCA's Statute^[13] stipulating that SCCA must have an independent board of directors serving for a term of three years, and that is renewable once.











To ensure the independence of the SCCA committees, world-renowned new members with long-standing experience in institutional arbitration and who are not Saudi nationals joined the SCCA rules advisory committee, which now has 16 members and is chaired by international Arbitration expert Richard Naimark.

In November 2022, SCCA announced the creation of an independent 'SCCA Court' to determine technical and administrative matters related to its caseload, featuring leading international figures including Bahrain-based arbitrator Jan Paulsson as the first president, and two vice presidents: Ziad Bin Abdulrahman Al-Sudairy, an arbitrator and principal of the Ziad A Al-Sudairy Law Office in Riyadh and James Hosking, founding partner of Chaffetz Lindsay in New York. The 15-person court will enhance the consistency of its approach and ensure it is in line with international best practices. It will also improve its operations generally and safeguard quality services into the future.

With arbitration experts from 13 different countries, the SCCA Court is comprised of highly qualified and eminent international arbitrators, former leaders of arbitral institutions, retired appellate judges, partners of international law firms and law professors from renowned universities. All are listed below.

INDEPENDENCE AND GOOD GOVERNANCE AT SCCA IN SAUDI ARABIA

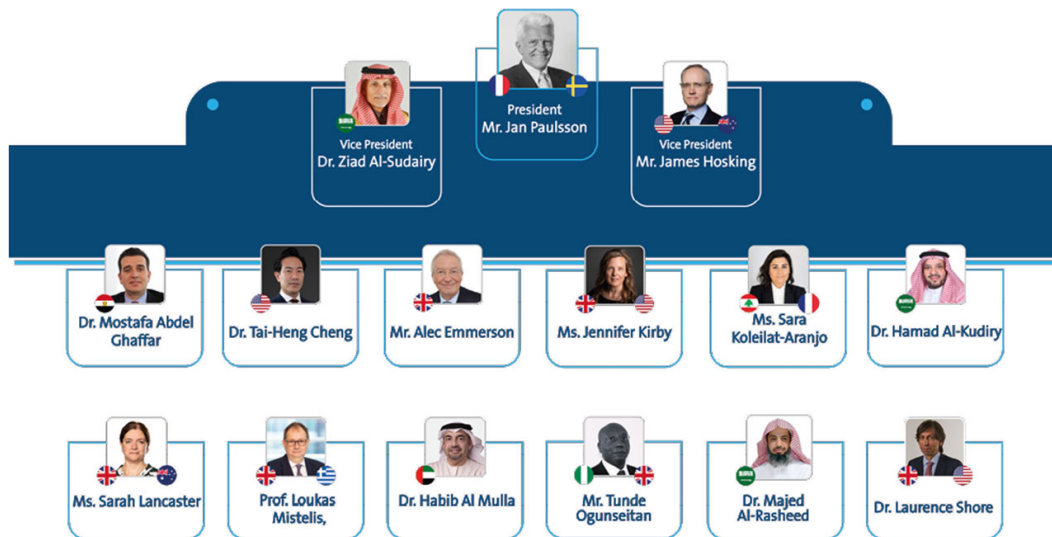
SCCA Board Of Directors

 <p>Dr. Walid Abanumay Chairman Chairman and board member of various national & international companies</p>	 <p>Mr. Toby Landau KC Vice Chairman Member of Duxton Hill Chambers</p>		
 <p>Dr. Mohamed Abdel Raouf Head of the international Arbitration Group Abdel Raouf Law Firm</p>	 <p>Prof. Georges Affaki Lawyer, Independent Arbitrator and Professor of Law University of Paris</p>	 <p>Dr. Abdullah Al-Ajlan Shariah and Legal Consultant AS&H Law Firm</p>	 <p>Dr. Saud Al-Ammari Lawyer and Independent Arbitrator Saud Al-Ammari Law Firm</p>
 <p>Ms. Abby Cohen Smutny Global Head of International Arbitration Practice White & Case</p>	 <p>Mr. Abdullah Al-Hashim Managing Partner Al-Jadaan & Partner Law Firm</p>	 <p>Mr. Sulyman Al-Majed Chairman and board member of various of national and foreign companies</p>	 <p>Dr. Ali Al-Sowailam Founder and Managing Partner The Saudi Office, Lawyers & Consultants</p>

SCCA Rules Advisory Committee (RAC)

 <p>Mr. Richard Naimark Principal Naimark Dispute Resolution</p>	 <p>Dr. Mustafa Abdel Ghaffar Judge Cairo Court of Appeal</p>	 <p>Prof. Dr. Mohamed Abdel Wahab Founding Partner Zulficar & Partners</p>	 <p>Dr. Fahad AbuHimed Managing Partner AS&H Law Firm</p>	 <p>Ms. Chiann Bao Independent Arbitrator and Mediator Arbitration Chambers</p>	
 <p>Mr. Ben Cowling Partner Clyde & Co</p>	 <p>Bernardo Cremades Sanz-Pastor Founding Partner Cremades y Asociados</p>	 <p>Mr. Alec Emmerson Independent Arbitrator and Mediator ADR Management Consultancies</p>	 <p>Prof. Franco Ferrari Professor of Law New York University School of Law</p>	 <p>Mr. James Hosking Founding Partner Chaffetz Lindsey LLP</p>	 <p>Mr. Timothy Martin Managing Director Northumberland Chambers</p>
 <p>Ms. Erin Rankin Partner Freshfields Bruckhaus Deringer LLP</p>	 <p>Sheikh Dr. Abdulaziz Al-Nasser Judge Riyadh Court of Appeal</p>	 <p>Mr. Michael Patchett-Joyce, FCI Arb Arbitrator & Mediator Barrister, The 36 Group</p>	 <p>H.E. Justice Shamlan Al Sawalehi Court of Appeal Judge and Judge in Charge of the Arbitration Division DIFC Courts</p>	 <p>Dr. Matthew Secomb Partner White & Case</p>	

SCCA Court



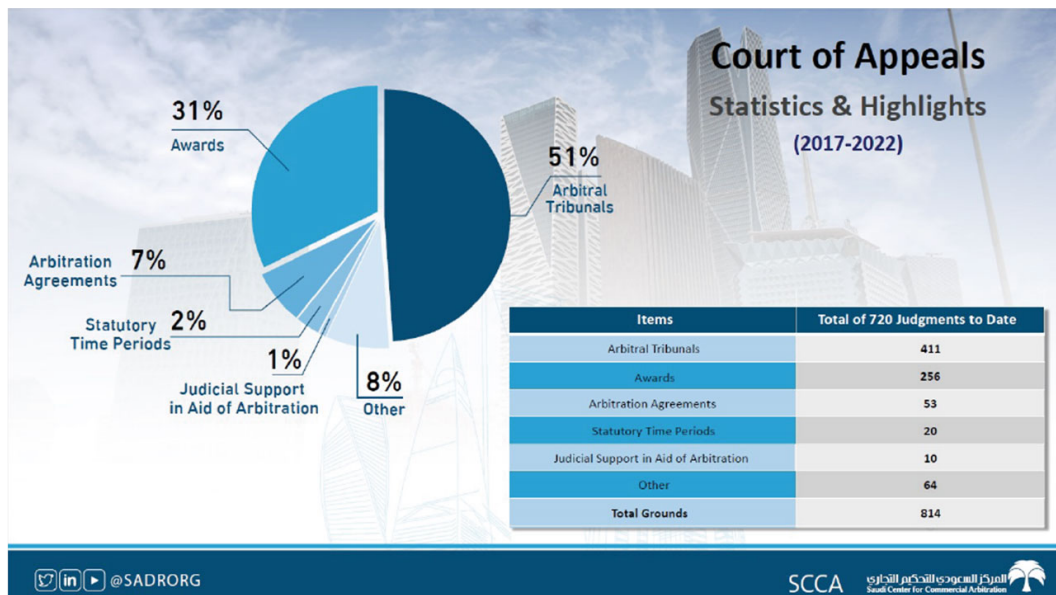
CASELOAD AND JUDICIAL ENFORCEMENT

In 2021, courts in Saudi Arabia enforced 204 domestic and foreign awards, representing an aggregate value of US\$2.1 billion, with enforcement proceedings being resolved on average within two weeks. Since the Saudi Arbitration Act in 2012, there have been approximately 35,000 applications for enforcement with an aggregate value of enforced arbitral awards coming in at just over US\$6.16 billion. In 2019, more applications for enforcement were filed than had been filed between 2013 and 2018.^[14]

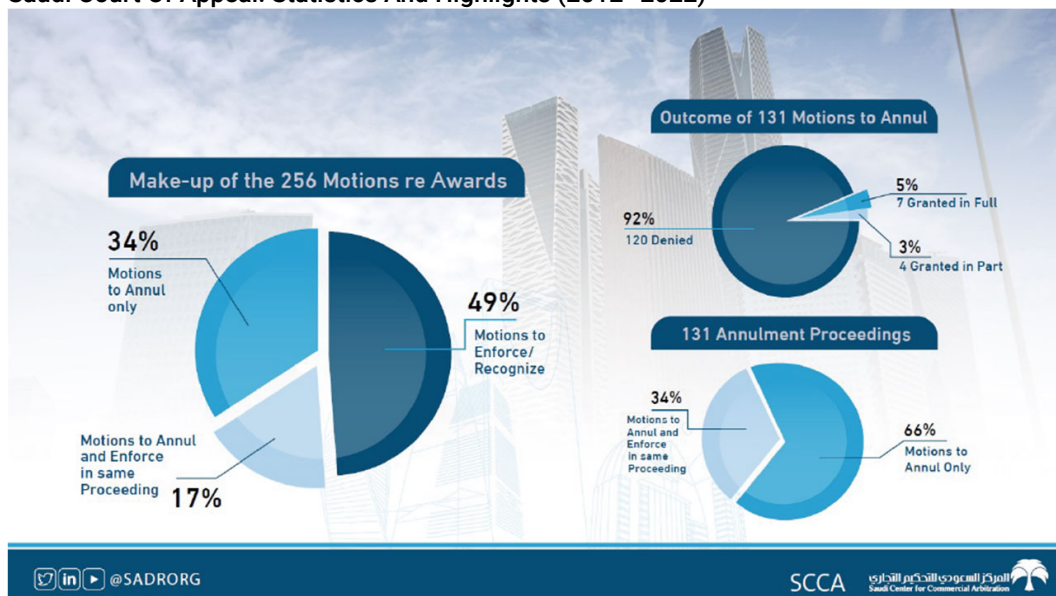
The latest SCCA study of Saudi case law, related to arbitration published between 2017 and 2022, indicated that of 720 judgments examined there were 814 grounds why a party approached the courts. Of those 814 grounds, 256 (or 31 per cent) related to motions regarding awards (both to enforce and annul). Of the 256 grounds, 131 were related to motions to annul. Of those 131, 120 (or 92 per cent) were denied, leaving an 8 per cent success rate (or 11 motions). Of these 11 motions, seven were granted in full and four only in part. Of the 24 sharia grounds identified, only five were successful (or 21 per cent).

These findings have not only been generally well received by the parties involved in each case, they have also proven compelling and reassuring for local and foreign parties and their counsel assessing Saudi Arabia as a place to do business – and, if needed, enforce arbitral awards.

Saudi Court Of Appeal: Statistics And Highlights (2012–2022)



Saudi Court Of Appeal: Statistics And Highlights (2012–2022)



CONCLUSION

The decade-long transformation of all aspects of the Saudi ADR practice, profession and industry outlined in this article has been profound, comprehensive and likely to endure. Importantly, the Saudi judiciary has a solid record of skilfully and consistently adjudicating matters related to arbitration, and providing the judicial support required for a consistent record of successful enforcement of local and foreign arbitral awards. With its now well-established local, regional and international reputation as a first-rate ADR institution, SCCA benefits from operating in an arbitration-friendly jurisdiction – reflected in its rapidly increasing caseloads.

Endnotes

- 1 <https://www.ciarb.org/resources/features/a-framework-for-evaluating-the-best-arbitral-seats/>. [^ Back to section](#)
- 2 <https://www.jonesday.com/en/insights/2012/09/the-new-saudi-arbitration-law>. [^ Back to section](#)
- 3 World Economic Forum, The Global Competitiveness Report 2019, available at <https://www.weforum.org/reports/how-to-end-a-decade-of-lost-productivity-growth>. [^ Back to section](#)
- 4 Executive Regulations of the Arbitration Law, dated 22 May 2017. [^ Back to section](#)
- 5 See, for example, Scott Hutton et al, 'Saudi Arabia', The Construction Disputes Law Review: 'The Saudi court system is also supporting the growth of arbitration by recognising arbitration agreements and enforcing arbitral awards. Arbitration is currently the preferred choice for many in the construction industry and it is anticipated that this will be a substantial growth area in Saudi Arabia.' Available at <https://thelawreviews.co.uk/title/the-construction-disputes-law-review/saudi-arabia>. [^ Back to section](#)
- 6 <https://www.sadr.org/arbitrators-code-of-conduct?lang=en>. [^ Back to section](#)
- 7 <https://www.sadr.org/?lang=en>. [^ Back to section](#)
- 8 <https://www.sadr.org/about-scca?lang=en>. [^ Back to section](#)
- 9 https://arbitration.qmul.ac.uk/media/arbitration/docs/LON0320037-QMUL-International-Arbitration-Survey-2021_19_WEB.pdf. [^ Back to section](#)
- 10 SCCA Arbitration and Mediation Rules, October 2018, as amended, available at <https://sadr.org/awareness-publications?lang=en>. [^ Back to section](#)
- 11 SCCA Fee Calculator, available at <https://sadr.org/ADRService-Arbitration-Fee-Calculator?lang=en>. [^ Back to section](#)
- 12 See <https://sadr.org/ADRService-Expedited-Procedures?lang=en>. [^ Back to section](#)
- 13 Statute of the Saudi Centre for Commercial Arbitration, Council of Ministers Resolution No. 488, 30 April 2019, available at <https://www.sadr.org/about-ADR.in.sa-laws-and-regulations?lang=en>. [^ Back to section](#)
- 14 Royal Decree No. 44682 of 28 August 2021 limits the definition of public policy to general rules of Islamic law based on the Quran and the Sunnah. [^ Back to section](#)



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