

## REVOLUTIONIZE SAUDI ARABIA AS AN ARBITRAL CENTER: LESSONS FROM THE LONDON COURT OF INTERNATIONAL ARBITRATION<sup>1</sup>

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### Abstract

International arbitration is a cynosure of all commercial and business activities, becoming a potent and effective dispute resolution mechanism. LCIA is well known for its accomplishments in resolving international disputes by means of arbitration. Impartiality, efficacy, and excellent management are the forte of this institution. Saudi Arabia is ambitious to become an international arbitration hub. Therefore, it can use the success of LCIA to make a leading arbitral seat in the Middle East and around the globe. The recent revamping of arbitration laws is the paramount step in creating an arbitration-friendly framework. Nevertheless, certain challenges are still there in order to achieve this goal, such as increasing institutional capacity, complying with Sharia law, and most importantly, building international trust. Saudi Arabia can address these challenges by learning lessons from the LCIA and positioning itself as an international arbitration hub. Therefore, this present study aims to explore how Saudi Arabia can use the success of the LCIA to launch itself as a leading arbitral seat internationally. Moreover, it provides a comparative analysis of the LCIA and Saudi arbitration frameworks, with the object of identifying the main reasons behind the LCIA's success, and recommends strategic steps for Saudi Arabia to follow these practices.

**Keywords:** Saudi Arabia, International Arbitral Center, Lessons, Arbitration, Effective Dispute Mechanism, Commercial disputes, Investors, International Trust

### I. Introduction to International Arbitration

The expansion of the world economy and global proliferation increase cross-border disputes, which need a dominant dispute resolution mechanism.<sup>2</sup> For this purpose, international arbitration is an authentic and well-accepted mode of settlement for international disputes.<sup>3</sup> It is an impartial, proficient, and effective way of settling disputes that has a preference over the conventional litigation process.<sup>4</sup> Adjustability, secrecy, and the ability to modify the rules according to the circumstances of the cases are the main characteristics of arbitration.<sup>5</sup> In today's

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<sup>2</sup> "International Arbitration: A Comprehensive Guide to Cross-Border Dispute Resolution - Blog - Publications - International SIAC Arbitrator - Dr. Andreas Respondek - Singapore," n.d., <https://www.rf-arbitration.com/publications/blog/international-arbitration-a-comprehensive-guide-to-cross-border-dispute-resolution>. (Last assessed February 23, 2024)

<sup>3</sup> Katie Shonk, "International Arbitration: What It Is and How It Works," PON - Program on Negotiation at Harvard Law School, September 6, 2024, <https://www.pon.harvard.edu/daily/international-negotiation-daily/international-arbitration-what-it-is-and-how-it-works/>. (Last assessed February 25, 2024)

<sup>4</sup> "Arbitration Vs. Litigation: Making the Right Choice," Community, n.d., [https://www.lexisnexis.com/community/insights/legal/b/thought-leadership/posts/arbitration-vs-litigation?srsId=AfmBOOrF0HB-24Z\\_sSadgbJHB9yzHoGZIP2f-Tlu841PD9bBCzbwicl](https://www.lexisnexis.com/community/insights/legal/b/thought-leadership/posts/arbitration-vs-litigation?srsId=AfmBOOrF0HB-24Z_sSadgbJHB9yzHoGZIP2f-Tlu841PD9bBCzbwicl). (Last assessed June 10, 2024)

<sup>5</sup> "What Is Arbitration?," n.d. <https://www.wipo.int/amc/en/arbitration/what-is-arb.html>. (Last assessed February 23, 2024)

world, almost all commercial covenants contain arbitration clauses that state the utilization of arbitration as a means to resolve disputes that may arise during the course of the venture.<sup>6</sup>

The most celebrated feature of the arbitration process is the freedom of choosing the arbitrators, who have the capability to decide the dispute with sagacity and prudence.<sup>7</sup> Among others, another distinguished element of arbitration is that the parties can choose rules and regulation, and a venue of their own choice that finally ends up in a binding award or decision.<sup>8</sup> This binding nature of the award can be derived from the international legislation known as the New York Convention of 1958, which makes the award binding on most of the jurisdictions in the world.

## II. Arbitration in Saudi Arabia

Saudi Arabia is a country rich in resources as well as culture, which makes it one of the most attractive resorts for foreigners. Therefore, in order to increase foreign investments and enhance economic growth, the flexibility of dispute resolution mechanisms is paramount. A recent wave of modernizing arbitration laws revolutionized the whole arbitration system in Saudi Arabia, thus making the laws updated and uniform according to international standards. Consequently, the Saudi Arbitration Law of 2012 is the latest version, based on the UNCITRAL Model Law. Hence, the purpose is to conform Saudi arbitration practices to international best standards, focusing particularly on the parties' autonomy, flexibility in the procedure, and enforceability of arbitral awards, even if foreign investors are involved. Pertinent to mention is that, while deciding arbitration as a mode of settlement the parties should consider all these factors very carefully, because it may effect the time and cost. Moreover, the arbitration seat must also be chosen with careful consideration. There are many arbitration institutions such as LCIA International Chamber of Commerce (ICC), the Singapore International Arbitration Centre, the Hong Kong International Arbitration Centre, providing services of arbitration with professionalism.<sup>9</sup>

Finally, an evolutionary measure in arbitration history of the Kingdom is formation of Saudi Center for Commercial Arbitration (SCCA) in 2016, which shows the Saudi government's seriousness to provide an authentic and resourceful arbitration hub for national and international investors and stakeholders.<sup>10</sup> The purpose of this institution is to provide a set of rules and regulations aimed at facilitating the resolution of commercial disputes.<sup>11</sup> However, there are

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<sup>6</sup> Richard Stim, "Arbitration Clauses in Contracts," [www.nolo.com](http://www.nolo.com), August 7, 2024, <https://www.nolo.com/legal-encyclopedia/arbitration-clauses-contracts-32644.html>. (Last assessed July 20, 2024)

<sup>7</sup> "The Secret to Selecting the Right Arbitrator for Your Dispute | ADR.ORG," n.d., <https://www.adr.org/blog/The-Secret-to-Selecting-the-Right-Arbitrator-for-Your-Dispute#:~:text=It%20is%20essential%20that%20your,add%20costs%20for%20the%20parties.&text=Research%20potential%20arbitrators%20to%20make,rendering%20fair%20and%20impartial%20decisions>. (Last assessed February 29, 2024)

<sup>8</sup> Stewarts, "What Is Arbitration? Processes & Steps Explained," February 15, 2024, <https://www.stewartslaw.com/expertise/international-arbitration/arbitration-process/>. (Last assessed August 6, 2024)

<sup>9</sup> Stewarts, "What Is Arbitration? Processes & Steps Explained."

<sup>10</sup> "About SCCA - Saudi Center for Commercial Arbitration | Arbitrators," n.d., <https://www.sadr.org/about-scca?lang=en>. (Last assessed February 23, 2024)

<sup>11</sup> "About SCCA - Saudi Center for Commercial Arbitration | Arbitrators."

certain challenges that need to be addressed, such as building international trust, introducing native arbitration experts, and awareness among masses.

### III. Choosing an Arbitral Seat

Choosing an arbitration seat is an important decision that is given significance by the parties.<sup>12</sup> It is crucial because it regulates the arbitration process by determining the rules and regulations and the type of judicial help and intervention parties may receive.<sup>13</sup> Moreover, selecting an arbitral seat is also significant because aspects such as enforcement, governing rules and regulations, intervention of conventional court system are dependent on it.<sup>14</sup>

The concept of the best arbitral seat works on multifarious levels by providing a supportive legal mechanism, a judicial system that upholds the principles of arbitration, and finally, a friendly environment for the parties to conduct arbitration proceedings according to their desires.<sup>15</sup> Along with that, some other elements are also important such as international conventions must be followed by the selected seat, the legal system must be unbiased, there must be experienced individuals and experts, and inter alia, transportation and better infrastructure are also imperative.<sup>16</sup>

Saudi Arabia's adherence to international best practices and norms may make it one of the preferred arbitral seats, which in turn improves its attractiveness for international trade and investment.<sup>17</sup> Moreover, it is a sign of providing an authentic and effective dispute resolution mechanism, hence developing an environment of legal certainty for local and foreign investors.<sup>18</sup>

### IV. London Court of International Arbitration (LCIA)

The London Court of International Arbitration (LCIA) is famous for its professionalism, mastery, and knowledge in the field of dispute resolution.<sup>19</sup> The formation of this esteemed institution dates back to 1892, and since then it has been working on the resolution of disputes by means of arbitration for different industries and jurisdictions.<sup>20</sup> These accomplishments are because of modernized legal frameworks, skilled and qualified arbitrators, and a standing based on unbiased, fair, and just decisions.

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<sup>12</sup> "Determining the Seat of Arbitration," n.d., <https://www.ibanet.org/determining-seat-of-arbitration>. (Last assessed July 29, 2024)

<sup>13</sup> "The Importance of Choosing an Arbitral Seat for the Parties," Fenwick Elliott, March 30, 2023, <https://www.fenwickelliott.com/research-insight/newsletters/international-quarterly/choosing-arbitral-seat-parties>. (Last assessed January 13, 2024)

<sup>14</sup> "About SCCA - Saudi Center for Commercial Arbitration | Arbitrators."

<sup>15</sup> "The Importance of Choosing an Arbitral Seat for the Parties."

<sup>16</sup> Jane Parsons, "Safety First: Choosing a Seat of Arbitration," Arbitration Blog, January 24, 2018, <http://arbitrationblog.practicallaw.com/safety-first-choosing-a-seat-of-arbitration/>. (Last assessed February 23, 2024)

<sup>17</sup> "Developments in Saudi Arabia as an Arbitral Seat | DLA Piper," n.d., <https://www.dlapiper.com/es-pr/insights/publications/2022/09/developments-in-saudi-arabia-as-an-arbitral-seat>. (Last assessed June 13, 2024)

<sup>18</sup> "Saudi Arabia," Global Arbitration Review, n.d., <https://globalarbitrationreview.com/review/the-middle-eastern-and-african-arbitration-review/2024/article/saudi-arabia>.

<sup>19</sup> Lcia, "Introduction," LCIA - the London Court of International Arbitration, n.d., <https://www.lcia.org/LCIA/introduction.aspx>. (Last assessed February 23, 2024)

<sup>20</sup> Lcia, "History," LCIA - the London Court of International Arbitration, n.d., <https://www.lcia.org/LCIA/history.aspx>. (Last assessed January 12, 2024)

The rules that regulate arbitration in LCIA were updated in 2020 and are well established to deal with the desires of parties from different legal backgrounds.<sup>21</sup> The main components of arbitration, such as confidentiality, party autonomy, and efficient case management, are particularly focused on.<sup>22</sup> For the purposes of transparency, good governances, and case management, a legal team of experts is hired from the various jurisdictions.

The geographic location is another factor that marks the success of LCIA.<sup>23</sup> London's specific strategic position offers advantages to its legal, industrial, and business sectors. It is the place that provides opportunities for local and foreign investors and possesses a legal infrastructure and a judicial system that supports arbitration.<sup>24</sup> The enforceability of arbitration awards is another factor that distinguishes LCIA from other institutions; it is possible because of the arbitration-friendly legal environment of England.

The recognition of LCIA is due to its accomplishments in the field of dispute resolution by adhering to international best practices and setting an example for other jurisdictions in order to aspire and make themselves as prominent arbitral seats.<sup>25</sup> Saudi Arabia can take insights from the LCIA in order to enhance its arbitration framework and thereby position itself as a preferable seat for international dispute resolution by means of arbitration.

#### **A. Brief History of the LCIA**

History shows different modes of dispute resolution; as time passes, different institutions aid the process; the primeval institute in this regard is the London Court of International Arbitration. This prestigious body aims to resolve international commercial disputes by means of arbitration; its foundation was laid down in 1892, initially known as the "City of London Chamber of Arbitration."<sup>26</sup> Initially the motto of the London Court of International Arbitration (LCIA) was: "This Chamber is to have all the virtues which the law lacks. It is to be expeditious where the law is slow, cheap where the law is costly, simple where the law is technical, a peacemaker instead of a stirrer-up of strife."<sup>27</sup> Consequently, in the late 19<sup>th</sup> century, it gained prominence due to the intricacy of international trade and commerce, as investors demanded an efficient and neutral mode for resolving disputes across borders. In the beginning, the LCIA was created to deal with domestic disputes within the United Kingdom; over time, it started taking international cases as the size of worldwide trade propagated, hence it's renaming as the London Court of International Arbitration in 1903.<sup>28</sup> In due course, by virtue of its neutrality and proficiency, this revered foundation attracted

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<sup>21</sup> "What Is the London Court of International Arbitration (LCIA)?," Curtis, Mallet-Prevost, Colt & Mosle LLP, March 15, 2022, <https://www.curtis.com/glossary/commercial-arbitration/london-court-of-international-arbitration-lcia>. (Last assessed February 23, 2024)

<sup>22</sup> Daniel Calvo, "A Guide to LCIA Arbitration," Eldwick Law, July 1, 2024, <https://eldwicklaw.com/guide-to-lcia-arbitration/>. (Last assessed March 3, 2024)

<sup>23</sup> Calvo, "A Guide to LCIA Arbitration."

<sup>24</sup> "The LCIAs Annual Case Report Highlights Its Position as a Forum of Choice for International Parties - Trowers & Hamlin," n.d., <https://www.trowers.com/insights/2023/july/the-lcias-annual-case-report-highlights-its-position-as-a-forum-of-choice-for-international-parties>. (Last assessed April 1, 2024)

<sup>25</sup> "The LCIAs Annual Case Report Highlights Its Position as a Forum of Choice for International Parties - Trowers & Hamlin."

<sup>26</sup> Lcia, "History," LCIA - the London Court of International Arbitration, n.d., <https://www.lcia.org/LCIA/history.aspx>. (Last assessed February 23, 2024)

<sup>27</sup> "The LCIA," n.d., <https://www.jamesclanchy.com/knowhow/the-lcia>. (Last assessed February 24, 2024)

<sup>28</sup> Lcia, "History," LCIA - the London Court of International Arbitration, n.d., <https://www.lcia.org/LCIA/history.aspx>. (Last assessed February 25, 2024)

parties from around the globe, making it one of the leading institutes for international arbitration. “The LCIA was ranked second by corporate users of arbitration in the rankings of most used arbitral institutions worldwide, both in terms of general commercial arbitration, as well as in terms of sector-specific arbitration”.<sup>29</sup> Therefore, the importance of LCIA as arbitral seat is gaining prominence with every passing day, becoming an epitome for the countries who want to learn lessons from its success. It is pertinent to look in to the factors that lead to achievements of this renowned institution. The prime factor that is to be taken into consideration is the location of the LCIA; London is a city full of opportunities and good infrastructure.<sup>30</sup> This important factor leads to foreign investments and consequently, some disputes of international nature. LCIA was initially established to deal with commercial disputes within the country, but eventually, due to its popularity, it started dealing with international disputes.<sup>31</sup> Moreover, the supportive legal framework and judicial system become a contributing factor in making London an attractive place for the resolution of disputes by means of arbitration.<sup>32</sup> In England, the Arbitration Act 1996 is the updated law that deals with arbitration.<sup>33</sup>

The success of any institution is based on how transparent and impartial it is. The arbitration process needs to be neutral and unbiased. LCIA, a revered institution, has high standards of impartiality in providing justice to the parties.<sup>34</sup> For the purpose of neutrality, the rules and regulations are designed in such a way that they ensure complete transparency in selecting arbitrators. It is a very important aspect of building confidence among the parties. The rules regarding the selection of arbitrators must be taken into consideration by the countries that seek guidance from this institution. The panel was comprised of a team of highly accomplished and competent professionals,<sup>35</sup> with expertise in the field of international arbitration. Their skill and knowledge allow them to handle complex cases with extreme dexterity and professionalism. The cases are diverse in nature, including energy, industry, Infrastructure,<sup>36</sup> and technology, and are from different parts of the world. However, the statistics show the commitment of the LCIA

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<sup>29</sup> Bigelow Nuttall Clea, London Court of International Arbitration (LCIA), JUS MUNDI, <https://jusmundi.com/en/document/publication/en-lcia> (Last assessed May 13, 2024)

<sup>30</sup> “Business and Economy,” London City Hall, n.d., <https://www.london.gov.uk/programmes-strategies/business-and-economy>. (Last assessed May 23, 2024)

<sup>31</sup> “LibGuides: International Commercial Arbitration: London Court of International Arbitration,” n.d., <https://wcl.american.libguides.com/c.php?g=599758&p=4229178>. (Last assessed June 19, 2024)

<sup>32</sup> Courts and Tribunals Judiciary, “The Commercial Court and Arbitration - Courts and Tribunals Judiciary,” November 21, 2023, <https://www.judiciary.uk/courts-and-tribunals/business-and-property-courts/commercial-court/the-work-of-the-commercial-court/the-commercial-court-and-arbitration/>. (Last assessed February 2, 2024)

<sup>33</sup> Expert Participation, “Arbitration Act 1996,” n.d., <https://www.legislation.gov.uk/ukpga/1996/23/contents>. (Last assessed July 2, 2024)

<sup>34</sup> Lcia, “Introduction,” LCIA - the London Court of International Arbitration, n.d., <https://www.lcia.org/LCIA/introduction.aspx>. (Last assessed August 14, 2024)

<sup>35</sup> Lcia, “Guidance Note (Available 6 November),” LCIA - the London Court of International Arbitration, n.d., <https://www.lcia.org/adr-services/guidance-note.aspx#7.%20APPOINTMENT%20OF%20ARBITRATORS>. (Last assessed February 23, 2024)

<sup>36</sup> “Major Infrastructure Disputes,” Global Law Firm | Norton Rose Fulbright, n.d., <https://www.nortonrosefulbright.com/en/knowledge/publications/0be84a26/major-infrastructure-disputes>. (Last assessed July 3, 2024)



team of arbitrators. Hence, it is a means to attract customers all over the world. Moreover, the institution is adept at implementing rules according to the changing international landscape.<sup>37</sup> The celerity in adopting novel situations is commendable especially in the field of sustainability, energy sector, technological changes so on and so forth. Flexibility in rules is another important area of expertise of LCIA; all these features help makes this institution one of the best in the world. The triumph of any institution is backed by a team of good administrators along with those of other related institutions. As already mentioned, the judicial system is quite supportive, and laws are well developed. This made for an efficacious and less costly settlement procedure. Along with that, the administration of LCIA comprises a team of professionals, ready to serve at the highest levels. The rise of LCIA is closely linked with the development of arbitration in England, particularly in London. The policies regarding dispute settlement by means of arbitration are such that they make London one of the leading cities in the entire world. The credit goes to institutions like LCIA and a comprehensive and definitive legal system. The growth of arbitration in London dates back to the early 20<sup>th</sup> century; initially, the aim was to resolve disputes in an efficacious manner and to overcome the load on the courts.<sup>38</sup> Therefore, the early cases of arbitration were disputes pertaining to industry and shipping. The Arbitration Act of 1889 provided legal coverage for arbitration.<sup>39</sup> After World War II, the load of international cases gained momentum, and London became the epicenter of arbitration. The rise in the number of international cases is directly proportional to the growth in international trade and commerce, along with the development of science and technology. The reason is the complexity of disputes and the diversity of parties due to globalization.<sup>40</sup> The reliance of parties increases gradually because of the role of courts and the enforceability of awards and agreements that mention arbitration as a dispute resolution resort. Eventually precedents began to form and London started to consider it the best option for dispute settlements. Another breakthrough in the developmental history of arbitration in London is the Arbitration Act, it was a great step in a right direction, which helped in the modernization process made on the principles of international standards and best practices. The advancement in earliest 21st from ad hoc arbitration to institutional arbitration played an important step in the development of LCIA as a primer institution for settling disputes.

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<sup>37</sup> “Guide to Arbitral Institutions and the Seat of Arbitration in London | Insights | Vinson & Elkins LLP,” n.d., <https://www.velaw.com/insights/guide-to-arbitral-institutions-and-the-seat-of-arbitration-in-london/>. (Last assessed August 19, 2024)

<sup>38</sup> Lcia, “History,” LCIA - the London Court of International Arbitration, n.d., <https://www.lcia.org/LCIA/history.aspx>. (Last assessed February 2, 2024)

<sup>39</sup> advocatexhoj.com, “History of the Law in England | Arbitration Act | Law Commission of India Reports | Law Library | AdvocateKhoj,” Copyright 2024, advocatexhoj.com, n.d., <https://www.advocatexhoj.com/library/lawreports/arbitrationact/106.php?Title=Arbitration%20Act&STitle=History%20of%20the%20law%20in%20England>. (Last assessed February 3, 2024)

<sup>40</sup> Melisa Oleschuk, “The History of Arbitration in the United Kingdom, the United States and Its Evolution Into an International Mechanism,” May 16, 2020, <https://www.linkedin.com/pulse/history-arbitration-united-kingdom-states-its-melisa-oleschuk>. (Last assessed July 10, 2024)

## V. Saudi legal and arbitration framework

In the contemporary era, the concept of arbitration in Saudi Arabia is more elaborative due to the country's aim to comply with the international best practices in this field.<sup>41</sup> Modernization of laws is particularly profound in order to make Saudi Arabia one of the best options for arbitration at the international level.<sup>42</sup> With these things in mind, the country decided to update its arbitration law in 2012 as Saudi Arbitration Law, designed in the footsteps of UNCITRAL Model Law.<sup>43</sup> This law was a major milestone in the history of Saudi Arabia and the first step towards making it a viable seat for arbitration at the international level.<sup>44</sup>

The formation of the Saudi Centre for Commercial Arbitration (SCCA) as a major institution is another milestone in promoting access to justices by means other than the conventional judicial system.<sup>45</sup> The institution is established to provide alternative means of dispute resolution, such as arbitration and mediation, with the purpose of harmonizing with the globally recognized laws.<sup>46</sup> The success of any nation depends on the availability of justice based on impartiality and fairness.

The aim to align laws by keeping in mind the vision 2030 is a step to modernize the arbitration laws.<sup>47</sup> The object is to make laws that are updated, friendly judicial system and enforcement of arbitration laws in a speedy manner. By doing so, Saudi Arabia is thriving to become an amazing arbitration Centre for the resolution of international disputes.<sup>48</sup>

However, with the development come certain impediments that need to be addressed in an effective manner.<sup>49</sup> These challenges include an efficacious arbitration framework that may include enforcement of foreign awards, a supportive judicial system, education for the purpose of making experts, and the induction of more specialized people in the arbitration field.<sup>50</sup> By working on these things, there is a possibility to make the Kingdom a regional hub for international arbitration.

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<sup>41</sup> "Saudi Arabia," Global Arbitration Review, n.d., <https://globalarbitrationreview.com/review/the-middle-eastern-and-african-arbitration-review/2024/article/saudi-arabia>. (Last assessed February 23, 2024)

<sup>42</sup> "Saudi Arabia," n.d.

<sup>43</sup> Al Tamimi & Company, "Saudi Arabia Introduces Draft Arbitration Law in Line With the UNCITRAL Model Law - Al Tamimi & Company," March 26, 2013, <https://www.tamimi.com/law-update-articles/saudi-arabia-introduces-draft-arbitration-law-in-line-with-the-uncitral-model-law/>. (Last assessed February 3, 2024)

<sup>44</sup> "Developments in Saudi Arabia as an Arbitral Seat | DLA Piper," n.d., <https://www.dlapiper.com/es-pr/insights/publications/2022/09/developments-in-saudi-arabia-as-an-arbitral-seat>. (Last assessed June 4, 2024)

<sup>45</sup> "The Saudi Centre for Commercial Arbitration's New Arbitration Rules | Young ICCA," n.d., <https://www.youngicca.org/voices/saudi-centre-commercial-arbitrations-new-arbitration-rules>. (Last assessed July 4, 2024)

<sup>46</sup> "About SCCA - Saudi Center for Commercial Arbitration | Arbitrators," n.d., <https://sadr.org/about-scca?lang=en>. (Last assessed February 19, 2024)

<sup>47</sup> Al Tamimi & Company, "Arbitrating in the Kingdom of Saudi Arabia: A New Frontier - Al Tamimi & Company," March 22, 2022, <https://www.tamimi.com/law-update-articles/arbitrating-in-the-kingdom-of-saudi-arabia-a-new-frontier/>. (Last assessed June 3, 2024)

<sup>48</sup> Yarik, Kryvoi, Improving Saudi Arabia's Arbitration Climate: Comparative Study and Recommendations (January 9, 2023). Available at SSRN: <https://ssrn.com/abstract=4640956> or <http://dx.doi.org/10.2139/ssrn.4640956> (Last assessed February 28, 2024)

<sup>49</sup> Abdulelah Alsahli, "Challenges Towards Selecting Saudi Arabia as an Arbitral Seat for Foreign Investors," Deleted Journal 9, no. 2 (July 1, 2023): 1–11, <https://doi.org/10.2478/ajbals-2023-0001>. (Last assessed March 13, 2024)

<sup>50</sup> Alsahli, "Challenges Towards Selecting Saudi Arabia as an Arbitral Seat for Foreign Investors."

## VI. Comparative Analysis

At this moment in time, it is a known fact that the London Court of International Arbitration (LCIA) is a leading institution for handling and resorting cases all over the world.<sup>51</sup> This is also a reality that Saudi Arabia is thriving to update their laws in order to become a major arbitration Centre in the global world.<sup>52</sup> In order to make a comparison, it is necessary to look into the important aspects present in the framework of LCIA and the Saudi arbitration laws; moreover, the procedural and structural features are also taken into consideration while focusing on case management, rules and regulations, infrastructure, and the litigation system. The LCIA is a highly professional institution and has well-established rules and regulations to monitor the entire set-up of arbitration, starting from planning, composition, organization, and arrangements to resolve the disputes.<sup>53</sup> As aforementioned, the institution was formulated in 1892 as an autonomous and self-governing body based on the internationally recognized structure.<sup>54</sup> The whole structure of LCIA is supervised by its court, which governs the rules and regulations pertaining to the selection of arbitrators.<sup>55</sup> Moreover, it tends to administer the cases and monitor trials related to the disputes and tries to settle the issues with efficacy and professionalism.

On the other hand, if one takes a look at the Saudi arbitration framework, then it can be easily observable that recent years have witnessed a considerable change in the arbitration laws, most importantly the Saudi Arbitration Law that was promulgated in 2012, based on the internationally recognized structure that is UNCITRAL Model Law.<sup>56</sup> The arbitration laws are modern and upgraded versions based on the Saudi Vision 2030.<sup>57</sup> Another milestone is the formation of the Saudi Centre for Commercial Arbitration (SCCA) soon after the modernization of laws.<sup>58</sup> 2016 is the year that further enhanced the worth of Saudi Arabia as a new contender internationally. The SCCA aims to look at the administration of arbitration as a mode of dispute resolution, primarily focusing on international as well as local commercial disputes.<sup>59</sup> The rules and regulations of SCCA are formulated to cater to the international community, and the Sharia-based compliance allows the institution to deal with the local community as well.<sup>60</sup>

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<sup>51</sup> Lcia, "Introduction," LCIA - the London Court of International Arbitration, n.d., <https://www.lcia.org/LCIA/introduction.aspx>. (Last assessed February 23, 2024)

<sup>52</sup> "Saudi Arabia," Global Arbitration Review, n.d., <https://globalarbitrationreview.com/review/the-middle-eastern-and-african-arbitration-review/2024/article/saudi-arabia>. (Last assessed February 19, 2024)

<sup>53</sup> Lcia, "Introduction," n.d.

<sup>54</sup> Lcia, "History."

<sup>55</sup> Lcia, "Constitution of the LCIA Arbitration Court," LCIA - the London Court of International Arbitration, n.d., <https://www.lcia.org/LCIA/constitution-of-the-lcia-court.aspx>. (Last assessed February 23, 2024)

<sup>56</sup> Al Tamimi & Company, "Arbitrating in the Kingdom of Saudi Arabia: A New Frontier - Al Tamimi & Company."

<sup>57</sup> "Saudi Arabia Continues to Move Towards Arbitration-friendliness, But," Fenwick Elliott, September 16, 2024, <https://www.fenwickelliott.com/research-insight/annual-review/2022/saudi-arabia-arbitration-friendliness>. (Last assessed September 25, 2024)

<sup>58</sup> "Leveling the Playing Field: An Overview of the New SCCA Arbitration Rules in the Kingdom of Saudi Arabia (KSA)," Global Law Firm | Norton Rose Fulbright, n.d., <https://www.nortonrosefulbright.com/en/knowledge/publications/fac4e289/leveling-the-playing-field>. (Last assessed July 6, 2024)

<sup>59</sup> "About SCCA - Saudi Center for Commercial Arbitration | Arbitrators," n.d., <https://www.sadr.org/about-scca?lang=en>. (Last assessed February 23, 2024)

<sup>60</sup> "About SCCA - Saudi Center for Commercial Arbitration | Arbitrators," n.d.



The Sharia compliance is one of the peculiar features of the Saudi Arbitration System, which is distinctive and makes it different from others, especially from the LCIA, which is more profane and caters to worldly affairs with professionalism. In this context, it is also pertinent to mention that the Saudi court also participates in the arbitration process as compared to the LCIA, where there is the least interference yet high support of the court system. Therefore, it can be easily said that SCCA is working with dedication; however, it is still taking baby steps in the wide scope of arbitration and thriving to make its way in this arena.<sup>61</sup> The LCIA is famous for handling cases proficiently and with the utmost care. The team of trained professionals and dedicated staff make sure that the arbitration process is transparent and well managed.<sup>62</sup> The rules are lucid and intelligible for the parties; inter alia, the support of legal experts is quite visible throughout the procedure.<sup>63</sup> In addition to what has been said, the LCIA is quite advanced in using the technology for the purpose of handling cases proficiently and giving parties the opportunity to present documents via electronic means; moreover, it also allows virtual hearing for the ease of remote clients, particularly after the COVID epidemic.<sup>64</sup>

On the other hand, administration of arbitration cases is done quite professionally in Saudi Arabia; however, it is still in the preliminary stages of development.<sup>65</sup> The SCCA manages the cases based on the internationally recognized structure incorporated in its rules; nevertheless, it is still in the early stages. The institution is trying to level up the capacity to deal with the high demands of international cases. As far as professionalism and use of technology are concerned, Saudi Arabia is not far behind many countries and quite proficient in it. The cases are handled with extreme caution, and maximum care is given by the team of professionals. The SCCA has also incorporated the use of technology in filing electronic documentation and embraces the concept of virtual hearing to aid the parties in remote areas.<sup>66</sup> However, there is still a long way to go. Saudi Arabia, though working hard in the field of arbitration, still faces some of the challenges pertaining to expertise and knowledge of international disputes. They have less insight and understanding of intricate and complex international disputes, which needs more experience and mastery. Apart from that, the country sometimes also faces difficulty in enforcing the awards because, because of the involvement of local courts, it becomes a barrier and lingers on the cases, which causes a significant amount of delays.<sup>67</sup>

If a comparison is made as to handling the cases between the institutions of both countries, then it can be easily said that LCIA is a body that handles intricate and complex international cases with competency, probity, and thoroughness. Having vast experience in the field of arbitration,

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<sup>61</sup> “New SCCA Arbitration Rules: Another Positive Development For,” Fenwick Elliott, July 18, 2023, <https://www.fenwickelliott.com/research-insight/newsletters/international-quarterly/new-scca-arbitration-rules-saudi-arabia/>. (Last assessed March 5, 2024)

<sup>62</sup> Lcia, “Introduction,” n.d.

<sup>63</sup> Lcia, “LCIA Arbitration Rules (2020),” LCIA - the London Court of International Arbitration, n.d., [https://www.lcia.org/Dispute\\_Resolution\\_Services/lcia-arbitration-rules-2020.aspx](https://www.lcia.org/Dispute_Resolution_Services/lcia-arbitration-rules-2020.aspx). (Last assessed February 23, 2024)

<sup>64</sup> Lcia, “LCIA Arbitration Rules (2020).”

<sup>65</sup> Al Tamimi & Company, “KSA Continues Momentum in Arbitration - Al Tamimi & Company,” July 2, 2020, <https://www.tamimi.com/law-update-articles/ksa-continues-momentum-in-arbitration/>. (Last assessed February 23, 2024)

<sup>66</sup> Al Tamimi & Company, “KSA Continues Momentum in Arbitration - Al Tamimi & Company.”

<sup>67</sup> Ayman Fouda, “Enforcement of Arbitral Awards in Kingdom of Saudi Arabia,” شورى للمحاماة والاستشارات القانونية (blog), April 7, 2021, <https://www.shuralawfirm.com/enforcement-of-arbitral-awards-in-kingdom-of-saudi-arabia/>. (Last assessed June 13, 2024)

the reverie institution has already gained fame and reputation in managing diverse cases from all over the world. The edge to SCIA is high support and minimal interference of conventional courts. On the contrary, Saudi Arabia is still optimizing their capacity to deal with international disputes of diverse nature; experience is obviously less as compared to LCIA. As aforementioned, the interference of courts is another factor that distinguishes it from LCIA.

LCIA is a highly honored and esteemed institution among the international community, the reason being its virtuosity, expertise, dispassionate, fair, and equitable way of conducting the arbitration proceedings. Experience is another edge that this prestigious institution has, among others.<sup>68</sup> These attributes make LCIA among the most trusted arbitration bodies worldwide. The diversity of cases the institute manages and enforcement of awards is done according to internationally recognized rules, making it one of the most favored bodies in global legal settings.

Conversely, Saudi Arabia is relatively new in the field of arbitration, and SCCA is working with dedication to meet the internationally recognized standards.<sup>69</sup> The adaptation of new laws is a sign that the country is eager to conform to the international community<sup>70</sup>; however, due to less experience and few professionals, the kingdom is struggling to get the maximum output. The number of local/regional cases is there, but due to the enforceability issue,<sup>71</sup> foreign investors seem to be concerned. Therefore, in order to gain the trust of the international community, there is still a great deal to be done. By juxtaposing both bodies, it is quite clear that LCIA is a renowned and trusted institution among the international community, whereas SCCA is growing to gain the trust of foreigners, especially the western world.

After scrutinizing the points in favor of LCIA, the most important is the long-established global reputation among the international community. The experience of this prestigious institution can be deduced from the number of awards it has successfully delivered along with the enforcement of those decisions. Another important strength of LCIA is the highly flexible and adaptable arbitration rules. The rules are so pliable that they provide ease to the parties to conduct arbitration proceedings in a safe and trusted environment. There is no or minimal court interference, which shows that the body is keen to resolve the dispute, ensuring party autonomy. The cases are managed by a team of professionals with vast experience in the field of arbitration. At LCIA, the complex and intricate cases from all over the world are handled with extreme mastery and professionalism. Moreover, the awards are enforced according to the New York Convention, which is an internationally renowned instrument.

Nonetheless, at LCIA, the parties paid a bit over the odds, but the cost was worth the services provided by the institution. Regional institutes are no doubt cheap; however, the professionalism and dedication of the team are outstanding. In addition, the enforcement of awards is commendable by this arbitral body.

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<sup>68</sup> Linklaters LLP, "LCIA | Arbitral Institutions and Clauses | Arbitration | Dispute Toolkit | Insights | Linklaters," n.d., <https://wissen.linklaters.de/topics-hubs/microsites-landing/dispute-toolkit/arbitration/arbitral-institutions-and-clauses/lcia>. (Last assessed July 5, 2024)

<sup>69</sup> "About SCCA - Saudi Center for Commercial Arbitration | Arbitrators," n.d., <https://sadr.org/about-scca?lang=en>. (Last assessed February 23, 2024)

<sup>70</sup> "Leveling the Playing Field: An Overview of the New SCCA Arbitration Rules in the Kingdom of Saudi Arabia (KSA)," Global Law Firm | Norton Rose Fulbright, n.d.,

<sup>71</sup> Abdulelah Alsahli, "Challenges Towards Selecting Saudi Arabia as an Arbitral Seat for Foreign Investors," Deleted Journal 9, no. 2 (July 1, 2023): 1–11, <https://doi.org/10.2478/ajbals-2023-0001>. (Last assessed June 14, 2024)

The success of any institution depends on the concept of how strong and transparent its laws are, this is a universally accepted phenomenon. The rules that LCIA has incorporated are well drafted to deal with the arbitration disputes. These rules and procedures are upgraded in 2020 at the time of COVID to reform the old 2014 Rules. These rules are drafted in such a way that they become globally acceptable to any arbitral dispute and are mostly utilised in ad hoc arbitrations. The rules are adaptable and adjustable according to the situations and circumstances of the parties. Hence, parties autonomy, confidentiality, and choosing arbitrators are always focused upon. Some revisionary measures include electronic documentation, arbitration in emergency situations, and most importantly, arranging multiple arbitrations.

To the contrary, SCCA rules are also well established and formulated on the internationally recognized structure setup by UNCITRAL Model Law. The unique characteristics of Saudi arbitration laws are their compliance with Sharia principles. The SCCA is the body that regulates and administers these arbitration rules, as already mentioned. The similarities between both countries are that rules are pliable and flexible according to the requirements and situations of the parties. Saudi arbitration laws also cater to electronic documentation, efficacious proceedings, emergency arbitration, and so on and so forth.

## **VII. Challenges/ Problems**

Saudi Arabia can opt for procedural effectiveness, more impartiality in arbitration, the selection of competent arbitrators, and making plausible arbitration rules that must deal with the parties from all over the world. The remodeling of the Saudi Centre for Commercial Arbitration (SCCA) is important because it can handle the diverse cases of complex nature and therefore helps in capacity building of the kingdom. That being said, change always comes with lots of barriers and challenges. The foremost important challenge is the opposition that might come from the stakeholders who are more accustomed to the conventional modes of dispute resolution. Certain parts of society prefer the traditional mode of settling disputes over new methods. As Saudi Arabia is experiencing the modernization process, updating different aspects might receive a lot of criticism.

Secondly, another challenge is how to attract the international community and gain their trust. International investors are usually concerned about the fairness of the trial, impartiality of the judges, and effective enforcement of the award. History shows that arbitration was not free from judicial intervention; there was also political interference and finally conventional modes of dispute resolution. Moreover, there were also concerns about enforcement of awards.

Thirdly, a country like Saudi Arabia, which is in the process of development, needs to improve its infrastructure; therefore, building infrastructure at the international level is another challenge. Building avant-garde and futuristic infrastructure is a requirement of today's world. Hence, for the purpose of operating the latest technology for arbitration hearings, professionals and experts must be incorporated. Moreover, the skilled professionals must at least have command in English and Arabic, because parties can be from different languages. Incorporating all these aspects in a short period of time is definitely a challenge.

## **VIII. Panacea or Corrective measures**

There are certain curative measures to prevent and overcome the problems and challenges stated above.

- A. The first and foremost challenge is the Sharia compliance of arbitration laws. Saudi Arabia is a Muslim country that follows sharia law to deal with civil and criminal cases. As well, all rules and regulations regulating the kingdom of Saudi Arabia must be in compliance with the Sharia principles. Here it is pertinent to mention that although Sharia law is rigid in its principles, it never resisted the change. All things that are not against the basic tenets of Islam are permitted. Therefore, compatibility of arbitration with Islamic laws is quite possible, and it is not a big challenge. The only challenge is to create awareness among the masses and introduce them to the modern ways of settling disputes. If one looks into the history of Islam, then it can easily be found that an impartial third person is used to settle the disputes. Therefore, spreading the knowledge that arbitration is complementary rather than alternative to Sharia is crucial for the country.
- B. Furthermore, Saudi Arabia can establish two separate sets of arbitration rules. One particularly dealing with the foreigners of the international community and the other with the locals based on Sharia. Creating two sets of rules is quite a challenge but a workable one. The set of rules that would deal with the international community can comply with the international norms; however, certain checks can be put in place to see whether the awards violate the laws of the Kingdom or not. For this purpose, an Islamic scholar can be part of the administrative team of arbitration proceedings. Moreover, the Saudi Centre for Commercial Arbitration (SCCA) can be a significant player or body to manage, administer, and implement all the rules and regulations.
- C. As far as interference of courts is concerned, a lesson from LCIA can be learnt in this regard. The judicial support system is like a jugular vein for the LCIA; it strengthens and empowers it. Therefore, the role Sharia courts and civil courts should play is to support, recognize, and enforce the international awards.
- D. As far as building international trust is concerned, it is definitely a crucial aspect if Saudi Arabia aims to transform itself into an arbitration hub. Modernization of laws, building the latest infrastructure, introducing new techniques and technology, least interference of conventional courts, impartiality, transparency, and enforcement of awards are all the factors that influence the international community. Working on these aspects helps to increase trust at the global level. Lowering the costs, efficiency, effective administration, professionalism, and most importantly, awareness among the masses is the key to success.
- E. The SCCA can establish relations with other institutions; collaborating with them will differently create opportunities. Renowned international arbitration institutions such as the LCIA, ICC, and SIAC can provide knowledge. Furthermore, joint programs should be arranged in order to share knowledge and experience. This is beneficial in many ways, as young arbitrators can learn many things from them, plus international parties can have confidence in Saudi Arabia as an authentic seat for arbitration. Furthermore, competent and foreign arbitrators must be appointed to ensure transparency and impartiality.
- F. Lastly, the infrastructure at the international level is also possible, as Saudi Arabia is already modernizing according to its vision 2030. It is not only taking steps to implement the latest technology but also reforming its laws to cater to modern times. Major cities like Riyadh, Jeddah, and Dammam can be the main arbitration centers; these cities are already developed. The latest technology must be inculcated and installed in these facilities to accommodate both in-person and virtual hearings.

### **Conclusion and Recommendations**

Thus, in light of these findings, it is concluded that the best arbitral seat is the one that facilitates parties in every possible way. The effectiveness depends upon accommodating the parties in respect of cost, security, flexibility of laws, and finally enforcement of awards. There is also an economic edge to the country that is conducting arbitration proceedings. Therefore, it is incumbent that any country that aims to transform itself into an arbitration hub must consider these factors in order to reach long-term financial gains. Saudi Arabia, a country full of resources and opportunities ambitious to attract foreign investments according to the vision 2030, is working to make itself an arbitral Centre. An epicenter where parties can get justice and resolution of international disputes based on principles of neutrality, justice, and fairness. In this regard, SCCA is the body that can advance itself to achieve the best for its country. For this purpose, LCIA is the best model to follow. In order to make SCCA an eminent and world-class arbitral center, it is important to learn lessons from LCIA.

It is relatively important to learn lessons from LCIA and all the other successful arbitral centers in order to get better insight. Not only adoption but adapting the best practices from them is wise for Saudi Arabia, and then make changes according to things that suit the nation best. It is always an intelligent approach to modify the laws according to the latest developments happening in the world. Therefore, enhancing legal and regulatory framework work is a big catch for the kingdom. Along with that, SCCA is already developed in Saudi Arabia; it is important to increase its institutional capacity. Moreover, training and teaching arbitrators is a paramount aspect that needs consideration. There should be steps to implement this road map.

Hence, it is recommended that Saudi Arabia, in order to attract attention on international level for the purpose of transforming itself into an arbitral hub must necessarily incorporate the following aspects into its legal system,

1. Firstly and most importantly least involvement of conventional courts, rather supportive judicial system to attract foreign investments (foreign investment is directly proportional to the impartial judicial environment to safe guard their rights).
2. Riyadh must be the main arbitration Centre (SCCA is located in Riyadh), it is the city full of opportunities with regard to investments.
3. SCCA must modify its rules for the purpose of facilitating the parties in every possible way, confidentiality, party's autonomy, impartiality are the internationally accepted rules, which should be focused upon.
4. Safety must be provided to the foreigners, as most successful countries are the one which provided secure environment to the international investors.
5. Most importantly, enforcement of award needs consideration. As Saudi Arabia is struggling to make itself an arbitral center, and a hub is not only a place where all the proceedings would take place rather it is a complete setup where the laws of country would be opted for, if parties choose this place. Therefore, plausibility of laws is important aspect, particularly enforcement of these laws, as weak enforcement effects mindset of parties.
6. Lesson must be learned from other successful arbitration centers.
7. There must be more experienced arbitrators and legal experts that must administer the arbitration proceedings. Strict criteria must be laid down for the induction of the arbitrators.



8. The country should utilize the effective and latest technology and must work more on the betterment of the infrastructure.

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