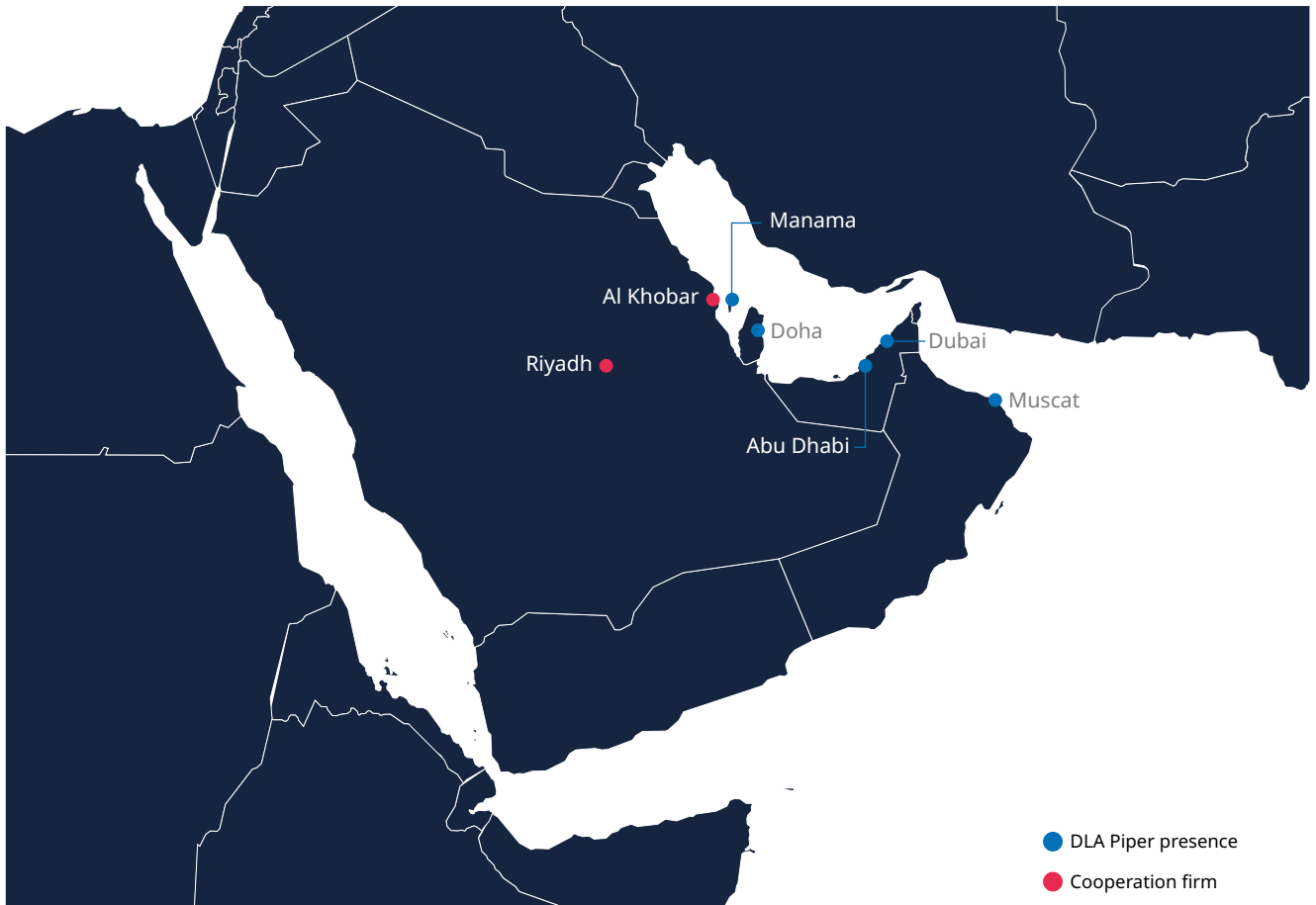




# Guide to Arbitration in the Kingdom of Saudi Arabia (KSA)



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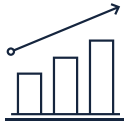
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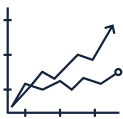
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# Overview of KSA Arbitration Law

1. In 2012, the Kingdom of Saudi Arabia (“**KSA**”) enacted a new arbitration law in the form of KSA Royal Decree No. M/34 (2012) concerning the approval of the Law of Arbitration (“**KSA Arbitration Law**”). This is modelled on the UNCITRAL Model law which is widely recognised as arbitral best practice.
2. The KSA Arbitration Law applies to domestic and international arbitrations (provided those international arbitrations meet the requirements set out in Article 3 of the KSA Arbitration Law). Parties can also agree for the KSA Arbitration Law to apply in commercial arbitration proceedings in respect of which the KSA Arbitration Law would not ordinarily apply (for example, if the governing law of a contract is other than KSA). The parties are however required to agree this.
3. In order to constitute a valid and binding arbitration agreement, per Article 9 of the KSA Arbitration Agreement, it is required to be in writing, though such agreement can be made after a dispute has arisen. Article 11 of the KSA Arbitration Law requires that KSA Courts must decline to hear a dispute that has a valid arbitration clause (provided that this is raised prior to issuing a statement of defence).
4. The KSA Arbitration Law affords the parties autonomy to decide the procedural aspects of the dispute. By way of example, parties are free to agree:
  - The governing law and seat of arbitration;
  - The institutional rules;
  - select the arbitrator(s) determining their dispute. Per Article 14, if the Tribunal consists of one arbitrator, he/she must hold either a university degree in Shari’a or Legal Sciences and if the Tribunal consist of three members, the Chair must fulfil this requirement. Tribunals also have the authority to decide on their own jurisdiction; and
  - the language of the proceedings.
5. Whilst parties are free to choose which law governs the agreement and dispute, Article 38 of the KSA Arbitration Law states that, notwithstanding a choice of law other than that of KSA, any arbitration conducted pursuant to its terms must not contravene the provisions of Shari’a and public policy. For example, awards ordering payment of interest would likely be unenforceable as this is contrary to the tenets of Shari’a.
6. Similarly, Article 25 of the KSA Arbitration Law provides that the procedural rules governing the arbitration are to comply with Shari’a. For instance, witnesses are to take an oath before giving evidence even if this requirement is not mandatory under the institutional rules or the procedural laws of the chosen arbitral institution or seat.



7. Parties cannot agree to arbitrate disputes pertaining to personal status matters (such as divorce proceedings) and matters in respect of which conciliation is prohibited (include criminal matters, matters of public policy, and administrative law matters). Further, Article 10 of the KSA Arbitration Law prohibits government authorities from agreeing to arbitrate unless such arbitration agreement is approved by the Prime Minister or allowed for under other legislation.
8. Article 42 provides that arbitral awards are required to be in writing, provide reasons for their findings and are to be signed by all or the majority of the arbitrators. The award must include, among other things:
- the date of pronouncement;
  - the place of issuance;
  - the names of the parties to the dispute, along with their addresses;
  - the names, nationalities and addresses of the arbitrators; and
  - a summary of the arbitration agreement and terms of reference.
9. Provided that an award complies with the requirements of the KSA Arbitration Act, it is not appealable. A party's only recourse is to attempt to annul the award based on the grounds set out in Article 52 of the KSA Arbitration Law which includes:
- the absence of an arbitration agreement;
  - if a party to the arbitration agreement was entered into by a party without capacity to do so;
  - if the composition of the Tribunal or the appointment of the arbitrators has been made contrary to the provisions of the KSA Arbitration Law or the agreement between the parties.
  - if the award is in conflict with the provisions of Shari'a and public policy.
10. In addition, Saudi Arabia established its arbitration center, the Saudi Center for Commercial Arbitration (the "**SCCA**"), being the first institutional arbitration center in Saudi Arabia. The SCCA is not-for-profit organization established by the Saudi Ministerial Council to administer Alternative Dispute Resolution (ADR) procedures in commercial disputes where parties agree to refer their disputes to SCCA arbitration and Mediation.
1. The relevant legislation governing arbitrations in KSA are:
- KSA Royal Decree No. M/34 (2012) concerning the approval of the Law of Arbitration (**KSA Arbitration Law**);
  - KSA Cabinet Resolution No. 541 of 1438 (2017) approving the Implementing Regulation of the Arbitration Law (**KSA Arbitration Regulations**);
  - KSA Royal Decree No. 53 (2012) concerning the Enforcement Law (**KSA Enforcement Law**); and
  - KSA Resolution No. 9892 (2013) approving the Implementing Regulations for the Enforcement Law (**KSA Enforcement Regulations**).
2. The KSA Arbitration Regulations came into force in 2017 to clarify certain provisions of the KSA Arbitration Law and introduce specific procedures that were not addressed in the KSA Arbitration Law. For instance, it clarifies the procedure to join a third party to proceedings or challenge an award.
3. The KSA Arbitration Law was supplemented by the KSA Enforcement Law to address all aspects of enforcement of domestic and foreign judgments and awards in Saudi Arabia. This law clarifies and expedites the path to enforce awards in KSA. The KSA Enforcement Law created a specialized enforcement court with enforcement judges to streamline the enforcement of judgments and awards in KSA. If a party is seeking an award that is enforceable in KSA, it must be aware of the process for and restrictions against enforcing an award in KSA.
4. In 2013, the KSA Enforcement Regulations came into full force. This new framework remedied some of the difficulties faced by arbitration practitioners when seeking to enforce arbitration awards by limiting the scope to review the merits of an arbitral award. In practice, parties to arbitrations seated in KSA or parties seeking an award enforceable against assets in KSA must ensure the arbitration agreement, the proceedings and the award is compliant with the KSA Arbitration Law and with Shari'a principles.
5. The KSA government has taken steps in recent years to encourage parties to use arbitration as a means to resolving disputes within KSA. It is worth noting that under the KSA Arbitration Law there is no limitation

period applicable to arbitration claims. This creates a rather unusual scenario where a claim that could be time barred if brought before the courts would be allowed if brought in arbitration. Commercial claims brought before the courts are subject to a five year limitation period pursuant to KSA Royal Decree No. M/93 dated 15/08/1441 H (2020). It could be argued that the lack of a limitation period for arbitration claims further demonstrates the government's attempts to promote arbitration in KSA. There is a potential risk however of a challenge at enforcement in the event the award is based on a claim which would have been barred in the courts (but was allowed in arbitration), on the grounds of public policy. As the relevant limitation period in the commercial courts is relatively new, this has not yet been tested. In order to remove any potential risk it would be prudent for parties to commence arbitration prior to the five year expiry date for commercial claims.

6. In 2016, KSA launched its first arbitration centre, the Saudi Center for Commercial Arbitration ("**SCCA**") which is a not-for-profit arbitral institution. Since its creation, SCCA has undergone several developments to continue to update the institution to comply with international best practices and standards. SCCA's transformation is part of KSA's wider Vision 2030 plan which envisages KSA becoming a globally recognised arbitration seat and venue of choice in the Middle East for arbitral disputes by 2030.
7. Indeed, KSA is well underway in achieving its goal. In 2019, SCCA had more enforcement application filed than had been filed between 2013 and 2018 combined which is solid evidence of SCCA's exponential growth within the arbitration industry and rapidly increasing caseload. Even more recently in 2021, it was reported that the KSA courts had enforced 204 domestic and foreign awards, with enforcement proceedings usually resolved within two weeks.

**Andrew Mackenzie**

Partner, Head of Litigation, Arbitration and Investigations (Middle East)

# Recent legal developments

Some notable arbitration developments in KSA include:

1. The SCCA announced in July 2021 that it had upgraded its online dispute resolution offering which aims to provide a platform to resolve low-value disputes. This service is offered to parties whose dispute value does not exceed SAR200,000 (approximately USD53,000). The intention behind the online service is to resolve commercial disputes flexibly as quickly as possible for the lowest cost possible. The accompanying protocol allows for arbitrators to issue an award based on correspondence issued via the electronic platform. Telephone and video conferences are also available for hearings. The SCCA is one of few arbitration centres globally that offer this low cost, virtual dispute resolution service.
2. From September 2021, the SCCA board of directors approved several amendments to Appendix I of the SCCA Arbitration Rules, most notably of which include a significant reduction of its arbitration costs including reducing the initial costs for commencing an arbitration by 50% and reducing arbitrator fees by 30%. Interestingly, and in a move to make parties want to consider arbitrating in KSA, the filing fee has been eliminated. Parties now only need to pay a flat fee of SAR5,000 (approximately USD1,330), unlike other arbitral centres in the Middle East which have a significantly higher upfront cost before proceedings get underway. These reductions in costs makes the SCCA's range of services more accessible and, importantly, affordable to prospective parties.
3. In December 2021, SCCA and the Permanent Court of Arbitration ("**PCA**") signed a cooperation agreement with the shared aim of promoting arbitration and mediation services within KSA. PCA meetings and hearings can now be heard in the SCCA's venues in Jeddah and Riyadh. Both institutions have also begun cooperating through the exchange of information, by holding conferences, specialised events, and moots on arbitration.
4. In May 2022, the SCCA announced a partnership with Qassim Chambers whereby the SCCA will provide technical support for drafting dispute resolution clauses in contracts/agreements of business establishments and Chamber's subscribers. Qassim Chambers and the SCCA have also agreed to cooperate on supporting the professional development of practitioners and increasing best standards for arbitration/mediation.
5. In June 2022, the SCCA announced that its application to join the International Federation of Commercial Arbitration Institutes ("**IFCAI**") was successful. SCCA's membership in IFCAI is evidence of the progress achieved by SCCA and KSA generally in establishing itself as an up-and-coming arbitration centre to consider in the Middle East.
6. Additionally, in June 2022, the SCCA announced a partnership with Riyadh Chambers through a cooperation agreement to assist the Riyadh Province businesses resolve commercial disputes through ADR. As part of the cooperation agreement, the SCCA will provide assistance to Riyadh Chambers by giving guidance and support on drafting dispute resolution clauses for members. Riyadh Chambers will also host SCCA-administered arbitration and mediation sessions at its own venue. Again, as with all alliances made between the SCCA and various established bodies, the overall intention of the collaboration is to promote the ADR industry within KSA.
7. The SCCA have also introduced a code of ethics for arbitrators, mediators, parties and their representatives, board members and staff, further strengthening their framework for arbitration and setting a bar for those practicing in the SCCA.
8. In November 2022 the SCCA announced it would open an office in the Dubai International Financial Centre in the UAE and introduce a new set of arbitration rules in early 2023, following which the SCCA would establish an SCCA Court of 15 arbitration experts. These developments are aimed at promoting consistency and increasing confidence in the SCCA.
9. In May 2023, The SCCA announced a new set of arbitration rules, replacing the 2016 Rules. The most notable developments in the 2023 Rules include the establishment of a new SCCA Court, the streamlining of the arbitration procedure, and the introduction of new rules to help align the SCCA with international best practices. The SCCA Court includes a panel of 15 judges from a range of backgrounds. This Court will help make key administrative decisions in arbitrations administered by the SCCA.
10. In August 2023, KSA deposited its instrument of accession to the United Nations Convention on Contracts for International Sale of Goods (Vienna, 1980) ("**CISG**"). The CISG will enter into force in KSA from 1 August 2024. The CISG will be applicable automatically if both parties are from CISG contracting states.



## Key contacts



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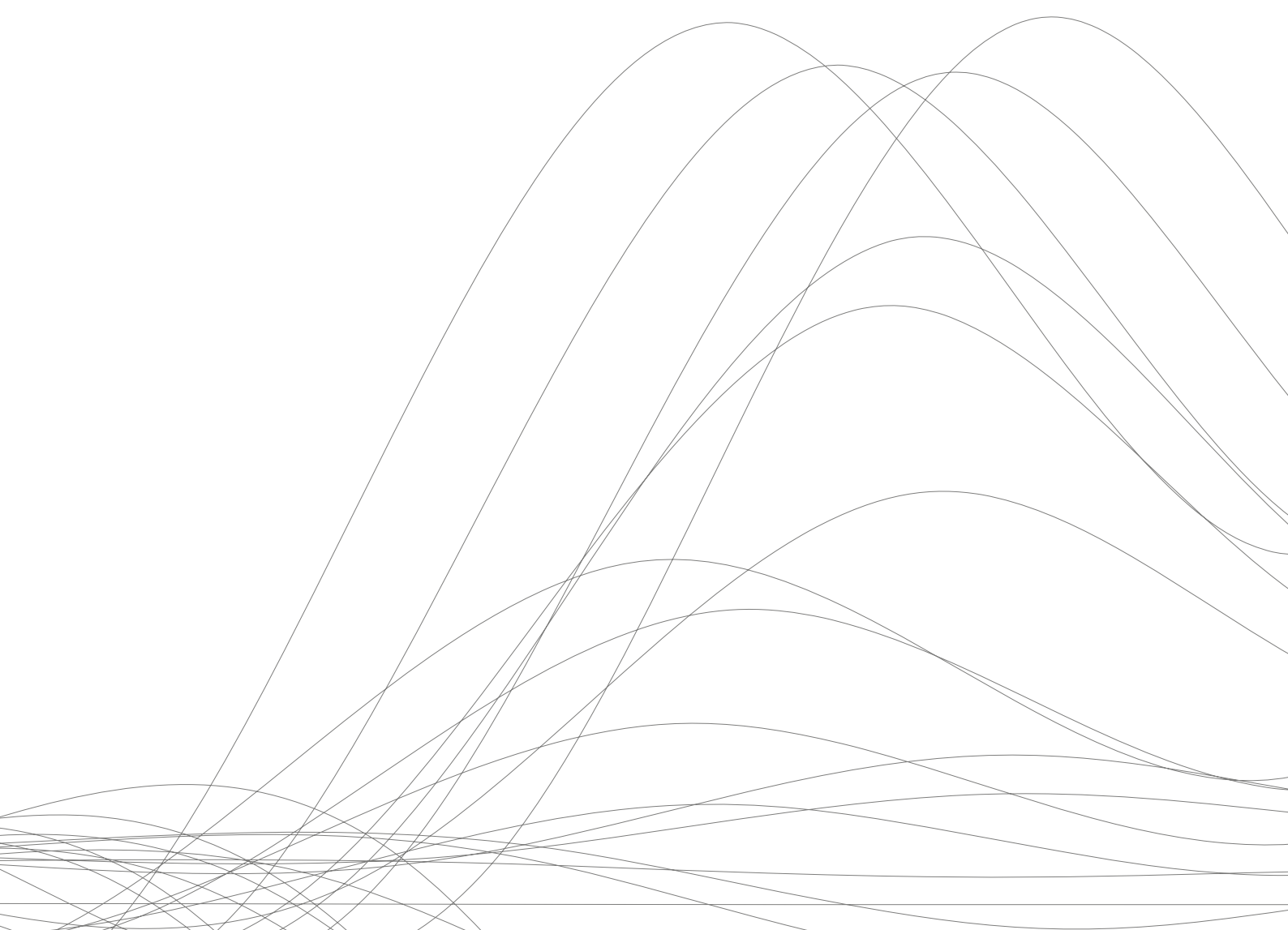
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## Further information

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Scan for further guides to arbitration in the Middle East.



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## **Saudi Arabia Cabinet Resolution No. 156/1433 Approving the Arbitration Law**

*As amended by Cabinet Resolution No. 45/1443 dated 16/01/1443 H.*

### **The Council of Ministers,**

having considered the transaction received from the Royal Court no. 14981 dated 06/03/1433 H, comprising the letter of the Bureau of Experts of the Council of Ministers no. 516 dated 16/02/1431H on the Draft Arbitration Law, prepared based on Paragraph (1) of Clause (13) of the Regulatory Arrangements of Judiciary and Dispute Resolution Bodies issued by Royal Order No. (A14) dated 23/02/1426 H, in respect of which the Resolution of the Shura Council no. (99/77) dated 21/02/1433 H was issued.

after consideration of the reports No. (420) dated 12/10/1431 H, No. (25) dated 27/01/1432 H, No. (204) dated 05/04/1433 H, prepared by the Bureau of Experts of the Council of Ministers,

after consideration of the Decision of the Shura Council No. (99/77) dated 21/02/1433 H,

after consideration of the recommendation of the General Committee of the Council of Ministers no. (339) dated 26/04/1433 H.

### **resolved as follow:**

1. The Arbitration Law is hereby approved in the form annexed hereto. A draft Royal Decree to that effect, a copy of which is annexed hereto, has been prepared.
2. The Ministry of Justice and the Ministry of Commerce and Industry shall, in coordination with the Supreme Judicial Council and other related parties, prepare the draft implementing regulations of this Law, and submit the same for the completion of the statutory procedures in this respect.

**Prime Minister**

# Appendix

## The Arbitration Law

### PART 1 – GENERAL PROVISIONS

#### Article 1

The following terms and expression in this Law shall, unless the context requires otherwise, have the following meanings assigned thereto:

1. **Arbitration Agreement:** an agreement by two or more parties to submit to arbitration all or certain disputes which have arisen, or which may arise between them in respect of a defined legal relationship, whether contractual or not, and whether the Arbitration Agreement is in the form of an arbitration clause in a contract, or in the form of a separate arbitration agreement.
2. **Arbitral Tribunal:** a sole arbitrator or a panel of arbitrators to decide the dispute referred to arbitration.
3. **Competent Court:** the court having jurisdiction to decide the disputes agreed to be referred to arbitration.

#### Article 2

Without prejudice to the provisions of the Islamic Sharia and the provisions of the international conventions to which the Kingdom is a party, the provisions of this Law shall apply to any arbitration, regardless of the nature of the legal relationship subject of the dispute, if this arbitration is conducted in the Kingdom, or if it is an international commercial arbitration which is conducted abroad, and which is subject to the provisions of this Law upon the agreement of both parties.

The provisions of this Law shall not apply to disputes relating to Personal Status Matters or to matters that cannot be submitted to conciliation.

#### Article 3

Under this Law, an arbitration is international if the subject-matter is related to international trade and in the following cases:

1. If the place of business of the two parties to the arbitration is located, at the time of the conclusion of the Arbitration Agreement, in different countries.

However, if a party has more than one place of business, the place is the place of business that has the closest relevance to the subject-matter of the dispute. If a party or the two parties to the arbitration do not have a defined place of business, reference is to be made to his place of habitual residence.

2. If one of the following places is situated at the time of conclusion of the Arbitration Agreement outside the State in which the parties to the arbitration have their places of business:
  - a. The place of arbitration determined in or pursuant to the Arbitration Agreement.
  - b. The place where a substantial part of the obligations arising out of the commercial relationship between the parties is to be performed;
  - c. The place with which the subject-matter of the dispute is most closely connected.
3. If the two parties to the arbitration have agreed to have recourse to a permanent arbitral organization or institution, or to an arbitration center that is headquartered outside the Kingdom.
4. If the subject-matter of the dispute subject to the Arbitration Agreement relates to more than one country.

#### Article 4

Where a provision of this Law leaves the parties to the arbitration free to choose a procedure to be followed in relation to any given matter, each of them shall have the freedom to authorize a third party to make the choice of such procedure. Any individual, institution, organization, or arbitration center inside or outside the Kingdom of Saudi Arabia shall be deemed to be a third party in this respect.

#### Article 5

If the parties to the arbitration agree to make the legal relationship between them subject to the provisions of any document (i.e. model contract, international convention, or any other document), the provisions of such document, including any special arbitration clauses, shall be applicable to the extent not contrary to the provisions of the Islamic Sharia.

**Article 6**

1. Unless otherwise agreed by the parties to the arbitration in respect of the notifications, a notice shall be delivered to the addressee personally, or to his representative, or to his mailing address specified in the contract that is the subject-matter of the dispute, or specified in the arbitration agreement, or in the document regulating the relationship underlying the arbitration.
2. If the delivery of the notice to the addressee according to Paragraph (1) is not possible, the notice shall be deemed to have been delivered if such notice is sent by a registered letter to the last-known place of business, or habitual residence, or mailing address of the addressee.
3. The provisions of this Article shall not apply to judicial notifications related to annulment of arbitral awards before courts.

**Article 7**

A party to the arbitration who knows that any provision of this Law or any requirement under the Arbitration agreement, from which the parties may derogate, has not been complied with and yet proceeds with the Arbitration without stating his objection to such non-compliance by the fixed date or if no such date is agreed upon, within 30 days from the date on which such party became aware of such non-compliance, shall be deemed to have waived his right to object.

**Article 8**

1. The Competent Court of Appeal which has the original Jurisdiction over the dispute shall have the jurisdiction to entertain the action for annulment of the arbitral award and the matters referred by this Law to the Competent Court.
2. If the arbitration is an international commercial arbitration, whether conducted inside or outside the Kingdom, the Competent Court of Appeal which has the original jurisdiction over the dispute in the City of Riyadh shall have jurisdiction, unless the parties to the arbitration agreed to resort to another court of appeal in the Kingdom.

**PART 2 – ARBITRATION AGREEMENT****Article 9**

1. An Arbitration Agreement may be made before a dispute arises, whether in the form of a separate agreement or a clause in a given contract.

An Arbitration Agreement may be made after a dispute has arisen, even if a relevant lawsuit has already been brought before the Competent Court, and in such case, the agreement shall determine the matters to be covered by the Arbitration, otherwise the Agreement shall be null and void.

2. The Arbitration Agreement shall be in writing, otherwise it shall be null and void.
3. The Arbitration Agreement shall be in writing if it is contained in a document issued by the two parties to the arbitration, or in an exchange of authenticated letters, telegrams or other electronic or written means of communication. Any reference in a contract to any document containing an Arbitration clause shall constitute an Arbitration agreement. Any reference in a contract to the terms of a model contract, or international convention, or any other document containing an arbitration clause, where that reference is clear to make such clause part of the contract, constitute a written Arbitration agreement.

**Article 10**

1. An Arbitration Agreement shall be valid only if concluded by such person who has the capacity to dispose of its rights, whether be a natural person, or his representative, or a juristic person.
2. Government entities may agree to arbitration only after the approval of the Prime Minister, unless permitted to do so by a special legal provision.

**Article 11**

1. A court before which an action is brought in respect of a dispute which is the subject of an Arbitration agreement shall, if the defendant so requests prior to submitting any relief or defense in such action, decide not to hear the action.
2. Where an action referred to in the preceding Paragraph has been brought, the commencement or continuation of arbitral proceedings, or the issuance of arbitral award shall not be barred.

**Article 12**

Subject to the provision of Paragraph (1) of Article 9 of this Law, a dispute shall be referred to arbitration if an Arbitration Agreement is made during the consideration of the dispute before the Competent Court.

**PART 3 – ARBITRAL TRIBUNAL****Article 13**

The Arbitral Tribunal shall be composed of a sole arbitrator or more, provided that their number is odd, otherwise the arbitration shall be null and void.

**Article 14**

The arbitrator shall meet the following requirements:

1. Having full legal capacity.
2. Being of good reputation and conduct.
3. Holding at least one university degree in Islamic Sharia or law. If the Arbitral Tribunal is composed of more than one arbitrator, at least the president of such Tribunal shall meet this requirement.

**Article 15**

1. The parties to the arbitration may agree on the selection of arbitrators. In the absence of such agreement, the following shall apply:
  - a. If the Arbitral Tribunal is composed of a sole arbitrator, such arbitrator shall be selected by the Competent Court.
  - b. If the Arbitral Tribunal is composed of three arbitrators, each party shall select one arbitrator, and then the two arbitrators shall agree on the selection of the third arbitrator. If a party fails to appoint his arbitrator within fifteen days of receipt of a request to do so from the other party, or if the two arbitrators so appointed fail to agree on the third arbitrator within fifteen days of the date of the latest appointment, then the Competent Court shall, at the request of a party concerned in accelerating the proceedings, appoint the arbitrator within fifteen days from the date of such request. The Arbitral Tribunal shall be chaired by the arbitrator selected by the two appointed arbitrators, or by the Competent Court. These provisions shall apply where the Arbitral Tribunal is composed of more than three arbitrators.

2. If the two parties to the arbitration fail to agree on the procedures to be followed for the selection of the arbitrators, or if a party violates such procedures, or if the two arbitrators so appointed fail to agree on a matter which requires their agreement, or if a third party fails to fulfil that which is assigned to it in this regard, the Competent Court shall, at the request of a party concerned in accelerating the proceedings, carry out the required action, the necessary action, unless another means for taking such necessary action is stipulated for in the (arbitration) agreement.
3. When selecting an arbitrator, the Competent Court shall have due regard to the requirements agreed upon by the parties, and those set forth in this Law. The decision on the appointment of the arbitrator shall be made within thirty days from the filing date of the request.
4. Without prejudice to the provisions of Articles 49 and 50 of this Law, the decision of the Competent Court on the appointment of the arbitrator according to Paragraphs (1) and (2) of this Article may not be challenged by any means of appeal.

**Article 16**

1. An arbitrator shall have no interest in the dispute, and from the date of his appointment and throughout the arbitration proceedings, shall disclose in writing to the two parties to the arbitration, any circumstances likely to give rise to justifiable doubts as to his impartiality or independence, unless they have already been informed of them by him.
2. An arbitrator shall be barred from considering or hearing the case, even if neither party to the arbitration requests so, in the same cases in which a judge is barred.
3. An arbitrator may be challenged only if circumstances exist that give rise to serious doubts as to his impartiality or independence, or if he does not possess the qualifications agreed upon by the two parties to the arbitration, without prejudice to the provision of Article 14 of this Law.
4. Either Party to the Arbitration may challenge the arbitrator appointed by him, or in whose appointment such party has participated, only for reasons of which he becomes aware after the appointment has been made.

**Article 17**

1. In the absence of such agreement by the parties to the arbitration on the procedures for challenging an arbitrator, an application by way of challenge shall be submitted in writing to the Arbitral Tribunal outlining the grounds for challenge, within five days as from the date on which the challenging applicant becomes aware of the composition of the Arbitral Tribunal or of the circumstances justifying the challenge, and unless the challenged arbitrator withdraws himself from the proceedings, or the other party agrees to the challenge within five days from the filing date, then the Arbitral Tribunal shall decide on the application within fifteen days of the receipt date. The challenging applicant whose application is rejected may submit such application to the Competent Court within thirty days, and its decision in this respect shall be subject to no challenge by any means of appeal.
2. An application by way of challenge shall not be accepted if submitted by a person who has requested the challenge of the same arbitrator in the same arbitration for the same grounds.
3. The filing of an application by way of challenge with the Arbitral Tribunal shall stay the arbitration proceedings while the appeal against the decision of the Arbitral Tribunal to reject the challenge shall not stay the arbitration proceedings.
4. If the arbitrator is recused by a decision from the Arbitral Tribunal or the Competent Court when hearing the appeal, then the arbitration proceedings that have been conducted, including the arbitral award, shall be deemed void ab initio.

**Article 18**

1. If an arbitrator is unable, or fails or ceases, to perform his mandate, resulting in undue delay in the arbitration proceedings, and unless such arbitrator withdraws and unless the two parties agree on his removal, the Competent Court may, upon an application by either of the two parties, remove such arbitrator and its decision in this respect shall be subject to no challenge by any means of appeal.
2. Unless the arbitrator is appointed by the Competent Court, he shall not be dismissed unless by the agreement of the two parties to the arbitration, and that is without prejudice to Paragraph (1) of this Article. The dismissed arbitrator may claim compensation if the dismissal was not due to his own conduct.

**Article 19**

Where the mandate of an arbitrator terminates because of his death, recusal, dismissal, withdrawal from office, incapacity or for any other reason, a substitute arbitrator shall be appointed in accordance with the procedures that were followed for the appointment of the arbitrator whose mandate has terminated.

**Article 20**

1. The Arbitral Tribunal shall rule on any plea that the Arbitral Tribunal does not have jurisdiction, including challenges with respect to the non-existence, forfeiture or nullity of the Arbitration Agreement or that it does not cover the subject-matter of the dispute.
2. A plea that the Arbitral Tribunal does not have jurisdiction shall be raised according to the time limits referred to in Paragraph (2) of Article 30 of this Law.  
  
The appointment, or participation in the appointment, of an arbitrator by either of the two Parties to the Arbitration shall not constitute a waiver by such party of his right to raise any such plea. A plea that the Arbitration Agreement does not cover the matters raised by the other party during the consideration of the dispute, shall be raised immediately, otherwise the right to raise such plea shall be forfeited. In all cases, the Arbitral Tribunal may admit a late plea if it considers the delay to be justified.
3. The Arbitral Tribunal shall decide on the pleas referred to in Paragraph (1) of this Article prior to determining the substantive issues, and it may consolidate such pleas with the substantive issues and decide on them together. If the Arbitral Tribunal rejected the plea, then its decision may only be appealed by filing an action for annulment of the arbitral award terminating the entire proceedings according to Article 54 of this Law.

**Article 21**

An Arbitration clause which forms part of a contract shall be deemed an agreement independent of the other terms of the contract. The nullity, rescission, or termination of the contract containing the arbitration clause shall have no effect on the Arbitration clause incorporated in it if such clause is valid by itself.

**Article 22**

1. Unless otherwise agreed by the parties to the arbitration, the Competent Court may grant interim or precautionary measures at the request of any party to the arbitration before the arbitration proceedings are initiated or at the request of the Arbitral Tribunal in the course of the arbitration proceedings, and such measures may be revoked in the same way.
2. The Competent Court may, at the request of the Arbitral Tribunal, order the issuance of a letter rogatory.
3. The Arbitral Tribunal may request a relevant authority to assist in the arbitration proceedings as the Arbitral Tribunal may deem appropriate for the proper conduct of the arbitration proceedings, including summoning of witnesses or experts, or orders for production or examination of documents or copies thereof, or any other matter, without prejudice to the right of the Arbitral Tribunal to conduct such matter independently.

**Article 23**

1. The two Parties to the Arbitration may agree that the Arbitral Tribunal may, upon application by either party, order a party to take interim or precautionary measures necessitated by the nature of the dispute, as it deems appropriate. The Arbitral Tribunal may request the party seeking such measures to provide an appropriate financial security for the enforcement of the said measure.
2. If a party in respect of whom an order is made fails to comply with it, the Arbitral Tribunal may, at the request of the other party, grant leave to the latter to take the necessary procedures to enforce the same, this being without prejudice to the right of the Tribunal or the other party to seek the competent authority to order the party against whom the order is made to comply with it.

**Article 24**

*Paragraph (1) of this Article was deleted by virtue of Saudi Arabia Cabinet Resolution No. 45/1443 dated 16/01/1443 H, to read as follows:*

1. (deleted)
2. If the arbitrators' fees is not agreed upon between the two parties to the arbitration and the arbitrators, such fees shall be determined by the Competent Court

which shall decide such matter by a decision which may not be subject to any type of appeal. If the arbitrators are appointed by the Competent Court, the arbitrators' fees shall be determined by it.

**PART 4 – ARBITRATION PROCEEDINGS****Article 25**

1. The two Parties to the Arbitration may agree on the procedures to be followed by the Arbitral Tribunal, including subjecting such procedures to the applicable rules of any arbitration organization or institution, or center inside or outside the Kingdom, provided that they are not contrary to the provisions of the Islamic Sharia.
2. In the absence of such agreement, the Arbitral Tribunal may conduct the arbitration proceedings in such manner as it may deem appropriate, subject to the provisions of the Islamic Sharia and the provisions of this Law.

**Article 26**

Unless otherwise agreed by the two parties to the arbitration, the arbitration proceedings shall commence on the date on which a party to the arbitration receives the request for arbitration from the other party.

**Article 27**

The two Parties to the Arbitration shall be treated with equality, and each one shall be provided with full and fair opportunity to present his claim or defense.

**Article 28**

The two Parties to the Arbitration may agree that the place of Arbitration shall be inside or outside the Kingdom. In the absence of such agreement, the Arbitral Tribunal shall determine the place of arbitration having regard to the circumstances of the claim, and convenience of the parties. This shall not prejudice the power of the Arbitral Tribunal to convene at any place it considers appropriate for deliberations among its members, or to hear the statements of the witnesses, experts, or the parties to the dispute, or to inspect the subject-matter of the dispute, or to examine or review documents.



**Article 29**

1. Unless the Arbitral Tribunal determines, or the two parties to the arbitration agree on, another language(s), the arbitration shall be conducted in Arabic. The language so agreed or determined shall apply to the language of any written statements or pleadings, oral hearings, and any decision, communication, or award issued by the Arbitral Tribunal, unless otherwise agreed by the parties or decided by the Arbitral Tribunal.
2. The Arbitral Tribunal may order that all or some written documents submitted in the case shall be accompanied by translation into the language or languages used in the Arbitration. In case there are many languages, the Tribunal may restrict the translation to some of them.

**Article 30**

1. Within the period of time agreed by the two parties or determined by the Arbitral Tribunal, the claimant shall send to the respondent and to each arbitrator, a written statement of his claim, which shall include his name and address, the name and address of the respondent, an explanation of the facts of the claim, relief sought, grounds supporting his claim, and any other matter which the agreement of the parties requires to be mentioned in the statement.
2. Within the period of time agreed by the two parties or determined by the Arbitral Tribunal, the respondent shall send to the claimant and to each arbitrator a written statement of defense in response to the statement of claim, and may include in his answer any claim related to the subject-matter of the dispute, or maintain a right arising therefrom, with the intention of claiming a set-off, and may do so at any subsequent stage of the proceedings if the Arbitral Tribunal considers that the circumstances justify the delay.
3. Either party may submit with the statement of claim or statement of defense, as the case may be, copies of any supporting documents, and may add a reference to the documents or other evidence they will submit, without prejudice to the right of the Arbitral Tribunal, at any stage of the proceedings, to request the production of the original documents or instruments, which either party to the proceedings relies upon, or copies thereof.

**Article 31**

A copy of all statements, documents, or other exhibits submitted by one party to the Arbitral Tribunal shall be communicated to the other party. A copy of any experts' reports and documents submitted to the Arbitral Tribunal and other evidence on which the Arbitral Tribunal may rely in making its award, shall be communicated to both parties.

**Article 32**

Either party to the arbitration may amend or supplement his claim or defense during the arbitration proceedings, unless the Arbitral Tribunal considers it inappropriate, with a view to prevent any delay in the determination of the dispute.

**Article 33**

1. The Arbitral Tribunal shall hold oral hearings to enable each of the two parties to explain the subject-matter of the claim and present his arguments and evidence. The Arbitral Tribunal may decide that presentation of written submissions and documentation should be sufficient, unless the two parties otherwise agree.
2. The parties to the arbitration shall be given sufficient advance notice at their addresses known to the Arbitral Tribunal of any oral hearing, hearing for the pronouncement of the award, or any meeting decided to be held by the Arbitral Tribunal for the purposes of inspection of the subject-matter of the dispute, or any other property, or for inspection of documents.
3. The Arbitral Tribunal shall record the minutes of the hearing to be signed by the witnesses or experts, attending parties or their representatives, and members of the Arbitral Tribunal. A copy of the minutes shall be delivered to both parties, unless otherwise agreed by the parties to the arbitration.

**Article 34**

1. If the claimant fails, without acceptable cause, to submit a written statement of claim in accordance with the paragraph (1) of Article 30 of this Law, the Arbitral Tribunal shall order that the arbitral proceedings be terminated, unless otherwise agreed by the two parties.

2. The respondent fails, without acceptable cause, to submit a statement of defense in accordance with the second paragraph of Article 30 of this Law, the Arbitral Tribunal shall continue with the arbitration proceedings, unless otherwise agreed by the two parties to the arbitration.

#### Article 35

If either party fails to appear at any hearing, after being notified thereof, or to produce the documents requested, the Arbitral Tribunal may continue with the arbitration proceedings and issue the award in the dispute on the evidence before it.

#### Article 36

1. The Arbitral Tribunal may appoint one or more experts to submit a written or oral report to be recorded in the minutes of the hearing in relation to specific issues to be determined by the Arbitral Tribunal and to be notified to each party.
2. Each of the two parties shall provide the expert with any information relevant to the dispute, and allow him to inspect and examine any documents, goods, or other property related to the dispute as the expert requires. The Arbitral Tribunal shall decide on any disagreement arising between the expert and any party in this respect, and its determination shall not be subject to any means of appeal.
3. The Arbitral Tribunal shall send to the parties a copy of the expert's report immediately upon its delivery, and give them the opportunity to express their views on such report. Both parties shall have the right to access and examine the documents on which the expert has relied in making his report, and such expert shall give his final report after reviewing the views expressed by the two parties to the arbitration.
4. After the delivery of the expert's report, the Arbitral Tribunal may, on its own initiative or at the request of any party to the arbitration, decide to hold a hearing to hear the expert's statements, and give the two parties the opportunity to hear him and discuss with him the content of his report.

#### Article 37

If, throughout the arbitration proceedings, any matter falling outside the scope of the jurisdiction of the Arbitral Tribunal is raised, or if a claim of forgery is raised against a document produced, or if criminal proceedings have been initiated involving forgery claim or on any other criminal act, the Arbitral Tribunal may

continue with the consideration of the subject-matter of the dispute if the resolution of such matter, document forgery claim or other criminal act is not necessary to adjudicate the subject-matter of the dispute, otherwise it shall suspend the proceedings pending a final decision in this regard. This shall in return result in the suspension of the effective time limit determined for the issuance of the arbitral award.

### PART 5 – PROCEDURES FOR THE RESOLUTION OF THE ARBITRATION CASE

#### Article 38

1. Without prejudice to the provisions of the Islamic Sharia and the public order of the Kingdom, the Arbitral Tribunal shall during the consideration of the dispute:
  - a. apply the rules agreed by the parties to the arbitration on the substance of the dispute, and if the parties agree to apply the law of a given state, the substantive rules and not the conflict of law rules thereof shall be applied, unless otherwise agreed;
  - b. apply the substantive rules of the law that the Arbitral Tribunal considers most relevant to the substance of the dispute if the two parties to the arbitration have not agreed on the rules of law applicable to the substance of the dispute; and
  - c. decide the dispute in accordance with the terms of the contract, which is the substance of the dispute, and shall take into account the existing customs, usage, and practices applicable to the type of the transaction.
2. The Arbitral Tribunal may decide based on the principles of equity (*ex aequo et bono*) only if the two parties to the arbitration have expressly agreed to authorize it to do so.

#### Article 39

1. Any decision of the Arbitral Tribunal composed of more than one arbitrator shall be made by a majority of its members following a secret deliberation.
2. If there is a difference of opinion among the members of the Arbitral Tribunal and the majority cannot be achieved, the Competent Court shall appoint a casting arbitrator.
3. Questions of procedure may be decided by the presiding arbitrator if so authorized in writing by the two parties to the arbitration or by all the members of the Arbitral Tribunal, unless otherwise agreed by the parties to the arbitration.

4. If the Arbitral Tribunal is authorized to act as an amiable compositeur, the award shall be issued unanimously.
5. The Arbitral Tribunal may, unless otherwise agreed by the parties to the arbitration, issue provisional awards or partial awards in respect of certain claims, prior to the issuance of the award terminating the entire proceedings.

#### **Article 40**

1. The Arbitral Tribunal shall give the award terminating the entire proceedings, within the time limit agreed by the two parties to the arbitration. In the absence of such agreement, the award shall be rendered within twelve months from the date of commencement of the arbitration proceedings.
2. The Arbitral Tribunal may, in all cases, decide to extend the duration of arbitration, provided that such extension does not exceed six months, unless otherwise agreed by the parties to the arbitration.
3. If the arbitral award is not rendered within the time limit referred to in the preceding Paragraph, any party to the arbitration may apply before the Competent Court for give an order determining an additional period or terminating the arbitration proceedings, whereupon, either party may file his case with the Competent Court.
4. If a substitute arbitrator is appointed under the provisions of this Law, the time limit for the award shall be extended by thirty days.

#### **Article 41**

1. The arbitration proceedings shall be terminated by the issuance of the award resolving the dispute or by a decision of the Arbitral Tribunal on the termination of proceedings when:
  - a. the two parties to the arbitration agree on the termination of the arbitration;
  - b. the claimant withdraws from arbitration, unless the Arbitral Tribunal, at the request of the respondent, recognizes a serious interest in continuing the proceedings until the dispute is settled;
  - c. the Arbitral Tribunal finds that the continuation of the arbitration has become unnecessary or impossible for any other reason;
  - d. an order on the termination of the arbitration proceedings is issued according to the provision of Paragraph (1) of Article 34 of this Law.

2. The arbitration proceedings shall not be terminated by the death of any party to the arbitration or by his incapacitation, unless the person who has the capacity in the dispute together with the other party agree on such termination. Nonetheless, the arbitration duration shall be extended for thirty days, unless the Arbitral Tribunal decides to extend such period for a similar period or otherwise agreed by the parties to the arbitration.
3. Subject to the provisions of Articles 49, 50, and 51 of this Law, the mandate of the Arbitral Tribunal shall be terminated by the termination of the arbitration proceedings.

#### **Article 42**

1. An arbitral award shall be made in writing, be justified, and signed by the arbitrators. If the Arbitral Tribunal composed of more than one arbitrator, the signatures of the majority of the arbitrators shall suffice, provided that the reason for the minority's omitted signature must be noted in the minutes.
2. The arbitral award shall include the date of its pronouncement, place of issuance, names and addresses of the parties to the dispute, names and addresses of the arbitrators, their nationalities and capacities, summary of the Arbitration Agreement, summary of the statements and claims of the two parties to the arbitration, their pleadings, arguments, and documents, summary of the expert's report, if any, the operative part of the award, determination of the arbitrators' fees, arbitration costs, and the method of cost distribution among the parties, without prejudice to Article 24 of this Law.

#### **Article 43**

1. The Arbitral Tribunal shall deliver to the two parties to the arbitration a true copy of the arbitral award within fifteen days from the date of its issuance.
2. The arbitral award or any part of the same may not be published save with the written consent of the two parties to the arbitration.

#### **Article 44**

The original award or a signed copy thereof shall, within the period set out in Paragraph (1) of Article 43 of this Law, be deposited by the Arbitral Tribunal with the Competent Court in the language of issue, accompanied by a translation into Arabic certified by an accredited entity if the award is issued in a foreign language.

**Article 45**

If, during the arbitration proceedings, the two parties to the arbitration agree upon a settlement of the dispute, they may request that the terms of the settlement be recorded by the Arbitral Tribunal, which shall, in such event, render a decision incorporating the terms of the settlement and terminating the proceedings. Such decision shall be as enforceable as the arbitrators' awards.

**Article 46**

1. Either party to the arbitration may, within thirty (30) days of receipt of the arbitral award, request the Arbitral Tribunal to give an interpretation of any ambiguity in the operative part of the award. The applicant for interpretation shall give notice to the other party of such request at the address stated in the arbitral award before such request is submitted to the Arbitral Tribunal.
2. The interpretation shall be provided in writing within thirty days from the date on which the interpretation request is filed with the Arbitral Tribunal.
3. The decision on the interpretation shall be considered supplementary to the interpreted arbitral award and shall be subject to the rules applicable to it.

**Article 47**

1. The Arbitral Tribunal shall correct any material errors in its award, whether clerical errors or errors in computation, by a decision issued of its own motion or at the request of any party to the . The Arbitral Tribunal shall make such correction, without a hearing, within fifteen days following the issuing date of the award or the date of the application for correction, as the case may be.
2. The correction decision shall be issued in writing by the Arbitral Tribunal and shall be notified to the two parties to the arbitration, within fifteen days of its issuance. If the Arbitral Tribunal acts beyond the scope of its authority to correct, the nullity of such decision may be asserted in an action for annulment to be governed by Articles 50 and 51 of this Law.

**Article 48**

1. The two Parties to the Arbitration may, even after expiry of the Arbitration duration, apply to the Arbitral Tribunal, within thirty (30) days following the receipt of the arbitral award, to issue an additional arbitral award in respect of

claims presented in the proceedings, but were omitted by the arbitral award. Such application shall be notified to the other party at the address stated in the arbitral award, before it is submitted to the Arbitral Tribunal.

2. The Arbitral Tribunal shall render its award within sixty days from date of the application, and may extend this time limit for another thirty days, if necessary.

**PART 6 – ANNULMENT OF THE ARBITRAL AWARD****Article 49**

An arbitral award issued in accordance with the provisions of this Law may not be subject to appeal by any means of recourse prescribed by law, except the action for annulment of the arbitral award, according to the provisions of this Law.

**Article 50**

1. No action for annulment of an arbitral award shall be admissible save in the following cases:
  - a. no Arbitration Agreement exists, or such agreement is invalid, voidable, or expired.
  - b. a party to the Arbitration Agreement was, at the time of its conclusion, under complete or partial incapacity according to the law governing his legal capacity.
  - c. party to the arbitration was unable to submit his defense on the ground that he was not given a proper notice of the appointment of an arbitrator or the arbitration proceedings, or for any other reason beyond his control.
  - d. the arbitral award has not applied the legal provisions agreed by the parties to the arbitration to be applicable to substance of the dispute.
  - e. the composition of the Arbitral Tribunal or the appointment of the arbitrators has been made contrary to the provisions of this Law or to the agreement of the parties.
  - f. the arbitral award decided on matters not contemplated by the Arbitration Agreement; however, if the parts of the award related to the matters subject to arbitration can be separated from those not contemplated by the same, then only the parts that are not contemplated by the Arbitration Agreement may be set aside.
  - g. the Arbitral Tribunal fails to meet the requirements of the award in such a way affecting the content of the award or if the award is based on invalid arbitration proceedings in a manner that affecting the award.

2. The Competent Court hearing the action for annulment shall of its own motion annul the arbitral award if the award is contrary to the Islamic Sharia and the public order of the Kingdom, or the matters agreed upon by the two parties to the arbitration, or if it finds that the subject-matter of the dispute is a matter that may not be submitted to arbitration under this Law.
3. The Arbitration Agreement shall not be invalidated by the issuance of the decision of the Competent Court on the annulment of the arbitral award, unless the two parties to the arbitration so agreed or a judgment held the Arbitration Agreement as null and void.
4. The Competent Court shall examine the action for annulment of an arbitral award in the cases referred to in this Article without having the right to look into the facts and subject-matter of the dispute.

#### **Article 51**

1. An action for the annulment of the arbitral award shall be filed by any party within sixty days following the date on which the said party is notified of the award.

The waiver by the party claiming nullity of the right to file an action for annulment before the issuance of the arbitral award shall not preclude the admissibility of the action for annulment.

2. If the Competent Court upholds the arbitral award, it shall order its enforcement, and its judgment in this respect shall be subject to no appeal by any means of recourse. If the court decides to annul the arbitral award, its judgment may be appealed within thirty days from the day following the notification.

### **PART 7 – RES JUDICATA FORCE AND ENFORCEMENT OF THE ARBITRAL AWARDS**

#### **Article 52**

Subject to the provisions set out in this Law, the arbitral award issued in accordance with this Law shall have a res judicata force and shall be enforceable.

#### **Article 53**

**The Competent Court, or its appointee, shall issue an order for the enforcement of the arbitral award. An application for the award enforcement shall be accompanied by the following:**

1. The original award or a certified copy thereof;
2. A true copy of the Arbitration Agreement;
3. A translation into Arabic of the arbitral award certified by a duly accredited entity if such award is issued in another language.
4. Evidence on the deposit of the award with the Competent Court according to Article 44 of this Law.

#### **Article 54**

An action for annulment shall not stay the enforcement of the arbitral award. The Competent Court may, however, order a stay of enforcement if the claimant applies for the same in the statement of claim and the application is founded on serious grounds.

The Competent Court shall rule on the application for a stay of enforcement within fifteen days as of the filing date of the application. If the court orders a stay of enforcement, the court may require a guarantee or security for property to be provided. If the court orders a stay of enforcement, it shall determine the action for annulment within one hundred and eighty days as from the date of making such order.

#### **Article 55**

1. An application for the enforcement of an arbitral award shall not be admissible unless the time limit for the action for annulment of the award expired.
2. The enforcement of the arbitral award may not be ordered under this Law unless the following is verified:
  - a. That the arbitral award is not in conflict with a judgment or decision issued by a court, committee, or authority having the jurisdiction to decide on the subject-matter of the dispute in the Kingdom of Saudi Arabia.
  - b. That the arbitral award does include any matter that is in conflict with the provisions of the Islamic Sharia and the public order of the Kingdom, and if an award is severable with regard to the invalid parts, the remaining valid parts may be enforced.
  - c. That the arbitral award was duly notified to the person against whom it is rendered.
3. An order to enforce an arbitral award may not be subject to any appeal; however, with regard to any order rejecting the enforcement, such order may be subject to appeal before the competent authority, within thirty days as from the date of its issuance.

**PART 8 – FINAL PROVISIONS**

**Article 56**

The Council of Ministers shall issue the Executive Regulation of this Law.

**Article 57**

This Law shall replace the Arbitration Law promulgated by Royal Decree No. M46 dated 12/07/1403 H.

**Article 58**

This Law shall enter into effect thirty days after the date of its publication in the Official Gazette.

*This Law was published in Umm Al-Qura Gazette – issue No. 4413 dated 18/07/1433 H.*



