E-ISSN 2410-8693
ISSN 2410-3918

Academic Journal of Business, Administration Law and Social Sciences

Vol. 9 No. 2
July, 2023

sciendo

Research Article

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Challenges towards selecting Saudi Arabia as an arbitral seat for foreign investors

Dr. Abdulelah Alsahli
College of Law and Judicial Studies, University of Jeddah, Kingdom of Saudi Arabia

DOI: https://doi.org/10.2478/ajbals-2023-0001

Abstract

Identifying the seat of arbitration jurisdiction is of great significance to the arbitral procedure. Countries seek to develop their arbitration laws and harmonize the cross-border arbitral regimes in order to modernize the practices and increase foreign direct investments nationally. Foreign parties aim to select an arbitral seat that is efficient and conforms to international arbitration practices. The parties' choice of seat dictates the arbitral procedure adopted on the dispute and influences the boundaries of the arbitral awards. This paper evaluates Saudi Arabia as an arbitral seat for foreign investors and considers the key factors affecting the parties' selection. Further, the paper analyses the legal barriers faced by the parties in association with selecting the Kingdom as a seat for arbitration. The purpose of the paper is to outline the challenges and present recommendations to develop the practices of arbitration in Saudi Arabia to increase its level of conformity to international arbitration standards.

Keywords: Arbitration, arbitral seat, arbitral procedure, foreign investors, dispute resolution methods.

1. Introduction

The use of arbitration as an effective dispute resolution method amongst foreign investors is increasingly growing and recognized as the preferred mechanism to settle disputes (Yannaca-Small, 2010). Countries aiming to promote investment and particularly attract foreign investors, seek to reform its arbitration law in alignment with international practices. The Saudi government have issued its 2030 vision which sets out its future goals and objectives.

An essential objective of the vision is to attract foreign direct investments and conform to international business practices. Arbitration in Saudi Arabia has historically presented legal challenges that hindered its conformity to international arbitration practices. Allocating the seat of arbitration (*lex arbitri*) is of significance importance to

the arbitral process.

The parties aim to select a seat that they consider fair, effective and timely settle the dispute, with limited interference from national courts (Born, 2022). The reformed Saudi Arbitration Law was introduced in 2012 and was influenced by the UNCITRAL Model Law (Bhatti, 2018).

Nevertheless, there are significant distinctions between the practices of arbitration in Saudi Arabia under the current law and other developed countries, such as England and France. Those distinction are mainly related to the possible breaches of Sharia principles and violation of public policy. This paper will identify the legislative approach related to the foreign parties' freedom to select an arbitral seat. Furthermore, the paper will identify the challenges faced by the parties if selecting Saudi Arabia as the arbitral seat.

Finally, a recommendation will put forth the necessary development to ensure the effectiveness of the Saudi Arbitration Law as an efficient mean of dispute resolution settlement form for foreign investors.

2. Arbitration in Saudi Arabia

Arbitration can be defined as a "private and generally informal trial procedure by which parties can adjudicate disputes" (Carbonneau, 2014). It is an alternative dispute resolution method to litigation. Whilst there are other dispute resolution methods such as mediation and negations, commercial arbitration considered the preferred mechanism to resolve disputes for foreign investors (Yannaca-Small, 2010).

This preference stems from the effectiveness of arbitration as fair and speedy method that results in an enforceable judgment within national courts. The development of arbitration in the international sphere had increasingly influenced its adaptation within national jurisdiction due to its vast benefits. Such benefits include attracting foreign investments and relieving the number of cases faced in national courts. The history of modern-day arbitration in Saudi Arabia, known as *Tahkim*, can be traced to the Law of Commercial Court 1931 (Altawyan, 2018).

The law permitted foreign oil companies and traders to select arbitration as a dispute resolution method in the country. However, the first Saudi arbitration law was released in 1983. The 1983 law was strongly influenced by the principles of Sharia and the practices of national courts. Based on the Law from 1983, Saudi Arabia limited the parties' ability to select the arbitral panel and required an arbitrators qualification to be similar to judges under Sharia principles.

Therefore, an arbitrator must be male, muslim and holds the required qualification under Sharia principles. Undoubtably, the old law limited the parties' choice and rights as practiced internationally. Furthermore, the 1983 law provided national courts, *diwan almazalim*, powers to intervene in the arbitral procedures that mostly resulted to an arbitral award deemed null and unenforceable due to breaches of Sharia principles or public policy. The wide interpretation powers provide for the Saudi judicial branch under the previous practices through the judicial use of *Ijtihad*, as a decision-making method for judges, deemed the practices of arbitration to be inefficient. It was challenging for the old law to conform to international arbitration

practices or attract foreign investors.

The Saudi old Arbitration Law can be said to be hostile towards international arbitration and specifically foreign arbitral awards (Aramco, 1958). The foreign award in the Aramco case was considered negative in Saudi Arabia, since the arbitral tribunal overlooked the principles of Sharia in its final decision.

Thus, governmental bodies in Saudi Arabia were not allowed to sign an arbitration agreement and settle its disputes through arbitration as an alternative dispute resolution method without the approval of the Council of Ministers President.[1] Limiting the ability of governmental bodies to arbitrate alongside the negative reaction to arbitration has limited the development of arbitration as an effective dispute resolution method. Nevertheless, Saudi Arabia has become a signatory to the New York convention of 1958 in 1994. The convention is considered one of the most effective treaties internationally with more than 160 signatory nations concerning the recognition and enforcement of foreign arbitral awards.[2]

Saudi Arabia was bound to reform its Arbitration Law to effectively utilize the benefits of arbitration and adopt an internationally competitive and practical advantage. The difficulty of reforming the arbitration law in accordance with developed arbitration practices is finding the balance between Sharia principles and international standards. Saudi Arabia is a Sharia practicing country and will not enforce or allow foreign arbitral awards that are contrary to the principles of Sharia. For instance, arbitral awards that contain regulations somehow contrary to Sharia will not be enforced in Saudi Arabia. This is contrary to most national jurisdictions and restricts the use of arbitration in the country by foreign parties.

Nonetheless, the new and reformed Saudi Arbitration Law was introduced by the legislators in 2012. Interestingly, the law was based on the UNCITRAL Model Law on International Commercial Arbitration (Bhatti, 2018). The Model law aided national legislators that seek to modernize and reform their arbitral procedure law. Many nations reformed its arbitration laws with specific consideration to the UNCITRAL Model Law.

The main advantage of the enactment of the model law within national jurisdictions is the unification of international practices with regards to arbitration procedures. Ideally, this would create a standardized international practice that is beneficial for foreign parties and recognized internationally. The Saudi arbitration law of 2012 based on the UNCITRAL Model Law is considered a major positive shift to the use of arbitration in the country. The 2012 law upholds the parties' right of choice in the arbitration agreement and recognizes essential arbitration principles, such as the separability of arbitration agreement[3] and competence-competence.[4] The thirty

[1] Article 3 of The Saudi Arbitration Law (1983) provides: "*Government Agencies are not allowed to resort to arbitration for settlement of their disputes with third parties except after having obtained the consent of the President of the Council of Ministers. This ruling may be amended by resolution of the Council of Ministers*".

[2] New York Convention. (n.d.). In Brief » New York Convention. https://www.newyorkconvention.org/in+brief

[3] Article 21 of The Saudi Arbitration Law (2012) provides: "*An arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. The nullification, revocation or termination of the contract which includes said arbitration clause shall not entail nullification of the arbitration clause therein, if such clause is valid*".

[4] Article 20 of The Saudi Arbitration Law (2012) provides: "*1. The arbitration tribunal shall decide on any*

decades awaited reform since the enactment of the first Saudi arbitration law in 1983 was necessary, since the first law significantly limited the use of arbitration in the country and restricted the effective and efficient practices of arbitration as applied internationally.

The changes adopted by the 2012 Arbitration Law was most needed and welcomed. It provided a friendlier approach to arbitration in contrast to the previous hostile approach. As mentioned earlier, foreign investors prefer arbitration to settle their disputes. Adopting a friendly and internationally practiced arbitration framework will certainly attract foreign investors to the country. This is aligned with the 2030 objective which seeks to attract FDI to Saudi Arabia.[5]

Although the current Saudi arbitration law is based on the model law its article and practices are expected to not breach Sharia principles. Foreign investors generally are hesitant to submit their disputes to national laws they are not familiar with. Thus, the question to be asked here is whether Saudi Arabia can become a preferred arbitral procedure choice for foreign investors in light of its Sharia principles practices and exceptions?

This will be further analyzed in the following sections to determine the shortfalls. Nonetheless, arbitration in Saudi Arabia generally developed during the past decade. The use of institutional arbitration in the country, such as under the SCCA, or Ad hoc arbitration have been enabled under the current arbitration law. The current practices and regulation signify a positive shift towards the use of arbitration in comparison to the previously adopted negative shift under the old law.

3. Arbitration procedure

The autonomy of parties to select the arbitral procedure is recognized under national laws and international conventions (Born, 2020). Such right is well expressed under Article 25 of the Saudi Arbitration Law 2012[6] and Article 2 of the New York convention 1958.[7] An arbitral agreement represents the parties to the contract choice to settle their disputes via arbitration rather than litigation or other disputes resolution methods. Such an agreement may include specific details related to the arbitral procedures.

For instance, the parties could agree whether the arbitral panel is formed of one or three arbitrators. Furthermore, it provides the parties with the right to select specific

pleas related to its jurisdiction, including those based on absence of an arbitration agreement, expiry or nullity of such agreement or non-inclusion of the dispute subject-matter in the agreement".

[5] See: *Saudi Arabia Financial Sector Development Program (2022) Program Charter at https://www.vision2030.gov.sa/media/ntsismld/financial-sector-development-program-delivery-plan-en-new.pdf*

[6] Article 25 of The Saudi Arbitration Law (2012) provides "*The two parties to arbitration may agree on procedures to be followed by the arbitration tribunal in conducting the proceedings, including their right to subject such proceedings to effective rules of any organization, agency or arbitration center within the Kingdom or abroad, provided said rules are not in conflict with the provisions of Sharia".*

[7] Article II of the New York Convention provides: "*3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed*".

procedural and applicable law outside of their national jurisdiction. The party's freedom of choice is what differentiates arbitration form litigation, as the last is bound by national laws. The party's right to select the arbitral procedure provides flexibility of choice for foreign investors and allows them to avoid national courts.

Therefore, the party's selected arbitral seat is of considerable importance to the arbitral procedure since it is closely connected to the national jurisdiction. Countries will apply international arbitration in accordance with its system of law and public policy (Vial, 2017).

For example, arbitration in Saudi Arabia must conform to Sharia principles, whilst in France international public policy is of great consideration to the arbitral procedure (Pointon, Delvolvé & Rouche, 2009). As a result, the parties' arbitration choice of seat are of great importance and connected to the type of dispute and the required procedures.

Arbitration procedures and rules are nationally and internationally under constant development and legislative reforms. The parties selected procedure varies depending on the type of arbitration. Categorising such differences relays on whether the held arbitration is national or international and whether the parties submit to an intuitional or ad hoc arbitration. Typically, Ad hoc arbitration provides the parties with more freedom to select the arbitral procedures then institutional arbitration.

However, it could be said that institutional arbitration rules provide a more constructed and organised mechanism for the parties in arbitration. The first Saudi Arbitration law suffered from a strict and narrow interpretation of the parties' right, to select the arbitral procedure. Party autonomy under the old law was met with strict judicial intervention and interpretation (Al-Fadhel, 2009). Furthermore, there was no concept of international arbitration under the old law or the acceptance of international arbitration procedures. The procedure is expected to fully conform with the Saudi legal system and the Saudi arbitration law. The freedom of the parties was under judicial scrutiny by the authorised judicial body.

Furthermore, limitation towards the use of arbitration under the old law includes the need for a clause in the contract. Submission agreements later to the contract are not considered valid. The strict procedural requirements adopted by the old Saudi arbitration law undoubtably discouraged foreign investors selecting Saudi Arabia as a seat for arbitration and lacked conformity to international practices.

As mentioned above, the new Saudi Arbitration Law has shifted away from the level of strict interpretation adopted by the old law. Party autonomy under the current law is well recognized and respected. Thus, the parties' right to select the seat and procedure of arbitration under Saudi law is in conformity with international practices. The current law shifts away from the strict requirement of an arbitrational clause and considers a submission agreement to be valid.[8]

[8] Article 1 of the Saudi Arbitration Law (2012) provides: *"1. Arbitration Agreement: it is an agreement between two or more parties to refer 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 non-contractual. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate arbitration agreement".*

The party's choice of seat, whether national or international, is sensitive to the arbitration process. There is a distinction between *lex arbitri* and the venue of hearing. The selected seat of arbitration is associated with the procedure of arbitration adopted by the arbitral panel and agreed by the parties, whilst the venue of hearing can be in multiple places and will not affect the selected procedural law (Henderson, 2014). Such distinction is well founded under legislations and case laws.[9] The selected seat of arbitration will impact the arbitral procedure from its commencement until the enforcement of the award. The seat chosen by parties will affect the level of courts supervisory powers over arbitration, how is the conflict of laws approached under the selected state jurisdiction, the enforcement of the arbitral awards and many other procedural rules (Henderson, 2014).

To further clarify, if the parties select France as the arbitral seat international public policy will be of great consideration to the arbitral procedure. However, if the arbitration parties select Saudi Arabia as the arbitral seat, Sharia principles and Saudi public policy will be the dominant factor to the arbitral procedure. Therefore, the type of arbitral procedure anticipated by the parties is dictated by the selected arbitral seat. Foreign investors in Saudi Arabia are hesitant to litigate in Saudi Arabia. This has been a concern related to attracting foreign direct investments. The perception of litigating under the rules of Sharia principles was clouded by negativity in the past. However, the new Saudi Arbitration Law has allowed the use of arbitration as an alternative dispute resolution method, which is preferred by foreign investors. Such investors would rather select the procedural and applicable law they prefer then submit to a jurisdiction they deem complicated or surrounded by ambiguity. A well-developed arbitration law in countries will similarly have well developed arbitration institutions. Such institutions constantly reform their rules, in order to attract the parties to select arbitration as an alternative dispute resolution method. An example of such rules development and reforms are the ICC arbitration rules 2021[10] and the SCC arbitration rules 2023.[11] Similarly, the Saudi Center for Commercial Arbitration (SCCA) has updated its rules in 2023.[12] This development represents Saudi Arabia eagerness to develop the use of institutional arbitration and conform to international standards. The cases settled under the SCCA have significantly increased from a handful in 2016 to above 80 cases in 2021.

MacPherson (2022) states that Saudi Arabia is currently considered an "arbitration-friendly jurisdiction" with an increasing number of international arbitration. Submitting to arbitration at the SCCA must conform to its rules, which will subsequently conform to Sharia principles. An important factor of arbitration and which significantly affect the choice of seat is the arbitrability of the subject matter and the jurisdictions public policy. This will be analyzed in the next section to consider whether Saudi Arabia can be an attractive seat for foreign investors.

[9] See: PT Garuda Indonesia v Birgen Air [2002] 1 SLR(R) 401.

[10] ICC 2021 Arbitration Rules at:https://iccwbo.org/dispute-resolution/dispute-resolution-services arbitration/r ules-proc edure/2021-arbitration-rules/

[11] SCC 2023 Arbitration Rules at:https://sccarbitrationinstitute.se/en/resource-library/rules-and-policies/scc-rules

[12] SCCA 2023 Arbitration Rules at: https://www.sadr.org/ADRServices-arbitration-arbitration-rules?lang=en

4. Factors affecting selecting Saudi Arabia as the arbitral seat

Selecting Saudi Arabia as the arbitral seat by foreign parties requires the understanding of the country applicable procedure on arbitration. The procedures may differ from a state to another. However, the influence of Sharia principles on Saudi law may represent challenges upon the arbitral procedures experienced by foreign parties. Arbitrability, public policy and the enforcement procedures are three essential factors associated with the arbitral procedures of the selected seat of arbitration. Arbitrability is concerned with the ability to submit the subject matter of the dispute to arbitration. Although most disputes can submit to arbitration, there are a number of exemption where the dispute subject matter are considered non-arbitrable. In such cases the subject matter of the dispute is expected to be litigated under the designated national legal system. The arbitrability of a dispute is differently approached in each country. The French civil law subjects arbitrability to substantive principles of international arbitration (Ziade & Peterson, 2016). Thus, what can be submitted to arbitration under French law is based on its application of international public policy and the parties' consent to arbitration. This is a very broad view of the arbitrability of disputes in comparison to other jurisdictions. The French law accommodates an international prospective which allows the parties to submit commercial disputes to arbitration with limited restrictions. Nonetheless, the Saudi arbitration law provides restrictions upon the arbitrability of certain disputes. Article 5 of the Saudi arbitration law 2012 states that: *"If both parties to arbitration agree to subject the relationship between them to the provisions of any document (model contract, international convention, etc.), the provisions of such document, including those related to arbitration, shall apply, provided that this is not in conflict with the provisions of Sharia".*[13] Whilst the legislators recognized the parties' right to subject their arbitration and its proceedings to international conventions or rules, it further provides a requirement for the parties' choice not to be in conflict with Sharia principles. This is a more restricted approach in comparison to the French approach that adheres to international practices. Conflicts that are against the principles of Sharia are not arbitrable under Saudi law. For instance, this includes business relations between the parties that are forbidden under Sharia principles, such as contractual relations that include interest, known as *Riba*, or gambling business. Other non-arbitrable subjects under Saudi law are personal status issues, criminal cases, and any issue conflicts with Saudi public policy. Nonetheless, it is Sharia principles that dictate the parties right to arbitrate a subject matter. This has been further emphasized under article 25 of the Saudi arbitration law. Article 25 states that: "*1. The two parties to arbitration may agree on the procedures to be followed by the arbitration tribunal in conducting the proceedings, including their right to subject such proceedings to the enforced rules of any organization, agency, or arbitration center within the Kingdom or abroad, provided that said rules are not in conflict with the provisions of Sharia. 2. In the absence of such agreement, the arbitration tribunal may, subject to the provisions of Sharia and this Law, adopt the arbitration proceedings it deems fit".* The article grants the

[13] Article 5 of the Saudi Arbitration Law (2012).

parties' right to select the procedures they desire yet in a similar approach to Article 5 it must not conflict with Sharia principles.

Sharia principles are the dominant factor to arbitrating in Saudi Arabia. The parties' arbitral procedures and disputed subject matter must adhere to the principles of Sharia under the Saudi arbitration law. The concern that may arise from foreign investors is what determines the principles of Sharia. Under Saudi law the judicial branch may utilize the function of *ijtihad* to determine whether a conflict of Sharia principles occurred. This function provides the judicial branches with the right to interpret the matter at question. This right of interpretation may differ from one judge to another. As a result, decisions can vary and may lack coherency depending on the appointed judicial authority. Foreign parties that are aiming to select Saudi Arabia as the arbitral seat must consider whether the subject matter of the contract or dispute can be arbitrable under Saudi law and will not conflict with Sharia principles. Their current approach will certainly deter specific or hesitant foreign investors from selecting Saudi Arabia as a selected seat of arbitration. Public policy is of considerable importance and a factor that is closely associated with the arbitral procedure and the final arbitral award. The New York convention recognizes states right to refuse the enforcement of arbitral awards by signatory states due to conflict with a state public policy.[14] Saudi public policy and Sharia principles are interconnected.

Therefore, what is contrary to Sharia principles also conflicts with Saudi public policy. An arbitral procedure under Saudi law is expected to abide by the country public policy. Otherwise, the reached arbitral award will not be enforced. There is no precise definition of what constitutes a breach of public policy in Saudi Arabia. This provides a high level of interpretation for the judicial branches in relation to the parties adopted procedures and the refusal of the award. The French application is very different in the way that it differs the criteria for breaches of public policy. The court of appeal in Paris found that concrete, effective and flagrant violation of public policy must occur for an arbitral award to be found null (Ferrari & Rosenfeld, 2023). Saudi Arabia holds a broader view in relation to violation of public policy. This view is associated with the practices of Sharia principles and the available judicial interpretation powers. As a result, selected Saudi Arabia as the arbitral seat subjects' foreign investors arbitral procedures to abide by Saudi public policy and Sharia principles. This may have an effect that is contrary to what the arbitration parties expect in the final award. For instance, a final arbitral award will not include expected payable interest as those are not considered enforceable under article 50 of the Saudi arbitration law.[15]

[14] Article 5 of the New York convention 1958 provides: "*2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that: (a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or (b) The recognition or enforcement of the award would be contrary to the public policy of that country."*

[15] Article 50 of the Saudi arbitration law (2012) provides: "*The competent court considering the nullification action shall, on its own initiative, nullify the award if it violates the provisions of Sharia and public order in the Kingdom or the agreement of the arbitration parties, or if the subject matter of the dispute cannot be referred to arbitration under this Law"*.

This is due to the violation of public policy and Sharia principles. Matters relating to interest, damages and its recoverability in Saudi Arabia are not expressed under the Saudi arbitration law 2012 or under the Saudi Enforcement law 2013. Interest and damages are of significant calculations in drafting the final arbitral awards. Other countries that adopt Sharia principles, such as the UAE, have identified the type of interested that are recoverable under its jurisdiction.[16] Identifying what type of interest is recoverable under Saudi law will likely attract more foreign investors to select Saudi Arabia as an arbitral seat.

Many developed countries allow the parties to claim and recover interest. Identifying recoverable interest under a reformed Saudi arbitration law will certainly increase its conformity to international practices.

The final award stage and its enforcement is the third factor concerned with selecting Saudi Arabia as an arbitral seat for foreign investors in this paper. As mentioned above, Sharia principles and public policy are critical in relation to the arbitral procedure and its enforcement. The arbitration seat procedures influence the formation of the award by the arbitral tribunal. For a valid award to be reached it must comply with the seat or arbitration legal system. Therefore, an award that breaches the seat of arbitration laws will not be recognized or enforced by the relevant enforcement authority.

Article 55 of the Saudi arbitration law confirms that an award which violates Sharia principles or breaches public policy will not be enforced by the competent authority.[17] Foreign arbitral awards that partially violate Sharia principles or breach Saudi public policy will, are only enforceable if those violations or breaches can be separated. Therefore, the enforcement court will not enforce an award where violation of Sharia principles or breaches of public policy cannot be separated from the award. For example, if the arbitral tribunal award damages an interested party the award will not be enforced in accordance with Article 55.

In practice, for such an award to be enforced the arbitral tribunal must separately identify each judgment with reasoning for the Saudi enforcement court to identify the sections of the award that are enforceable. The approach can be sophisticated since there are no coherent or narrow context to identify what type of interest within an award may constitute a violation of Sharia principles. Nonetheless, if foreign parties select Saudi Arabia as the arbitral seat the arbitral tribunal are bound by the Saudi arbitral procedures. As a result, judgments related to damages and interest that are considered a violation of Sharia principles will not be calculated or recovered. It is irrelevant whether the enforcement authority is other than Saudi Arabia since one of the parties may claim that the award violates the public policy in accordance with the Saudi arbitration law.

The three factors affecting the selection of Saudi Arabia as an arbitral seat by foreign parties is of essential consideration in international commercial arbitration. Countries such as France and Singapore have developed its arbitration practices that limits

[16] See Article 293 and Article 389 of the UAE Civil Code (1985).

[17] Article 55 of the Saudi Arbitration Law (2012) provides: *"…. b) The award does not violate the provisions of Sharia and public order in the Kingdom. If the award is divisible, an order for execution of the part not containing the violation may be issued".*

judicial intervention and is practiced in conformity to international standards.
Developing and reforming the outlined factors by the Saudi legislators, with accordance to international arbitration practices would certainly increase the number of foreign investors and foreign parties selecting Saudi Arabia as the arbitral seat. A study conducted by Myburgh and Paniagua (2016) found that international commercial arbitration is associated with promoting foreign direct investments in a country. The study further outlines that "the improvement in countries' arbitration regimes tends to have a larger effect on the volume of FDI investments, rather than the number of foreign projects". Such improvement in Saudi Arabia is essential to realize the optimum benefits of arbitration in the country and reach the objectives of its 2030 vision.

5. Conclusion

In summary, Saudi Arabia has shifted away to a more positive and internationally friendly attitude to arbitration. The restrictions under the old Arbitration Law have been overhauled by the new Arbitration Law, which is based on the UNCITRAL Model Law of international arbitration. The selected arbitral seat influences the arbitral procedures and the arbitral award. Foreign investors prefer the use of arbitration rather than litigation to settle their disputes. Conformity to international commercial arbitration practices in a country will promote foreign direct investment. Selecting Saudi Arabia as the arbitral seat might influence the foreign parties desired procedures.
The arbitrability of the subject matter, possible violation of public policy and the drafted final awards are factors influenced by the selected arbitral procedures. The Saudi Arbitration Law and its practices have yet to reach a high level of conformity to international arbitration practices. The current Saudi Arbitration Law considers breaches of Sharia principles and violation of Saudi public policy as reasons to annul the arbitral award. The use of judicial interpretation powers granted to the competent authority might differ from one judge to another. Considering the uncertainties, foreign investors would be hesitant to select Saudi Arabia as the arbitral seat. As a result, it is recommended for a reformed Saudi Arbitration Law that limits judicial interpretation and intervention on the arbitral process. Furthermore, a coherent and specific definition of Sharia principles is required for a clear understanding and a narrow interpretation. This should include what type of interest and damages are recoverable under Saudi law. Similarly, defining what aspects constitute breaches of public policy within the arbitral procedure or the drafted arbitral award is essential under the reformed law. Reforms of the aforementioned factors will surely increase Saudi Arabia's conformity to international arbitration practices. Moreover, foreign investors will consider selecting Saudi Arabia as the arbitral seat to other competitive international jurisdictions and certainly will increase FDI in the country.

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