

## Starting an Arbitration at the SCCA

---

Type	Practical Guidance
Document type	Practice Note
Date	29 Aug 2023
Jurisdiction	Saudi Arabia
Copyright	LexisNexis

---

Document link: [https://www.lexismiddleeast.com/pn/SaudiArabia/Starting\\_an\\_Arbitration\\_at\\_the\\_SCCA](https://www.lexismiddleeast.com/pn/SaudiArabia/Starting_an_Arbitration_at_the_SCCA)



## Overview

- KSA, a country whose laws are based largely on Islamic law, has begun to utilise arbitration officially as a method of dispute resolution increasingly. Arbitration is not new to the region and has been prevalent in the Middle East for centuries. It has roots in Islamic Law, evidenced as a form of dispute resolution in the Qur'an (the Holy Book) and the Sunnah (Prophetic Tradition).
- Saudi Arabia Cabinet Decision No. 511/1441 Approving the Commercial Courts Law has emphasised the importance of alternative dispute resolution in commercial cases, making it a pre-cursor to filing certain commercial disputes in court.
- KSA's first arbitration institution, the SCCA was officially launched in 2016 and was established by Saudi Arabia Ministerial Decision No. 257/1435. This was amended by Saudi Arabia Ministerial Decision No. 107/1437. It was founded to administer civil and commercial disputes.
- KSA's main legislation in regard to arbitration laws consists of the following:
  - a. Saudi Arabia Royal Decree No. M34/1433 Arbitration Law and its implementing regulations, Saudi Arabia Cabinet Decision No. 541/1438 Approving the Implementing Regulation of the Arbitration Law; and
  - b. Saudi Arabia Royal Decree No. M53/1433 Related to the Saudi Arabia Execution Law read with Saudi Arabia Cabinet Decision No. 261/1433 on the Approval of the Execution Law, and its implementing regulations issued by Saudi Arabia Ministerial Decision No. 9892/1434 Approving the Implementing Regulation of the Execution Law.
- Saudi Arabia Royal Decree No. M34/1433 and the institutional rules of the SCCA are based on the [UNCITRAL Model Law on International Commercial Arbitration](#)<sup>[1 p.6]</sup>.
- Under Saudi Arabia Royal Decree No. M53/1433 (Saudi Arabia Cabinet Decision No. 261/1433), an arbitral award, to which an enforcement order is attached, allows for compulsory enforcement of the award, as it is considered as a writ of enforcement. KSA is also a party to the 1958 [New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards](#)<sup>[2 p.6]</sup>, since 1994.
- This Practice Note examines how to start an arbitration at the SCCA and the SCCA's key features.

## Definitions

- *AAA-ICDR*: American Arbitration Association's International Centre for Dispute Resolution.
- *KSA*: The Kingdom of Saudi Arabia.
- *ODR*: Online Dispute Resolution.
- *SAR*: Saudi Arabian Riyals.
- *SCCA*: Saudi Centre for Commercial Arbitration.
- *SCCA Rules*: [Saudi Centre for Commercial Arbitration Institutional Arbitration Rules 2018](#)<sup>[3 p.6]</sup>.
- *UNCITRAL*: United Nations Commission on International Trade and Law.

## Practical Guidance

The Saudi Centre for Commercial Arbitration Institutional Arbitration Rules 2018 (SCCA Rules) were created by utilising international institutional arbitration best practice and in conjunction with the SCCA's international partner the American Arbitration Association's International Centre for Dispute Resolution (AAA-ICDR).

There are a number of options when starting an arbitration under the SCCA Rules, all of which can be found in the institution's handbook of 2018 (SCCA Rules). As well as the regular arbitration route, which is the most common method used, the SCCA also offers three other arbitration options which follow the same institutional rules, but are adapted for different circumstances and cases:

- the expedited procedure route;
- the emergency arbitrator route; and
- the online arbitration route.

## The arbitration route

### *Initiation of procedure*

The party initiating the arbitration, i.e., the claimant, must file with the SCCA a notice of arbitration by including the relevant arbitration provision that refers the dispute to the SCCA, whether in the form of an arbitration clause or submission agreement. Article 11 of the SCCA Rules details cases in which claims from multiple contracts may be included in one request for arbitration. The request to the SCCA must meet the criteria of article 4 of the SCCA Rules and must be accompanied by the appropriate filing fee. The fee will differ in accordance with the amount in dispute. The amount is non-refundable and will be

allocated to the claimant's portion of the deposit for costs of the arbitration. Article 4(1) of the SCCA Rules now offers details regarding ways of sending the notice. Previously, it simply stated to whom the notice will be sent. Under the SCCA Rules, an arbitral tribunal is able to reallocate costs at the end if required.

The notice of arbitration may be sent by ways of communication that provide a record of the transmission, including means of technology. The notice of the arbitration must also be sent by the claimant to the respondent.

Upon receiving the notice of arbitration, the administrator at the SCCA will prepare an initiation letter confirming receipt of the case and request the respondent to respond to the notice of arbitration within 30 calendar days from the commencement of the case. According to article 4(2) of the SCCA Rules, The notice of arbitration will be sent to the party or its authorised representative to the designated physical or electronic address, or by other means stipulated in article 4(2) of the SCCA Rules . The respondent has the right to file a response or counterclaim. Upon filing any counterclaim, the respondent will also be responsible for advance filing fees. Without full payment of fees, the claim or counterclaim, will not be registered by the SCCA.

#### *Administrative call*

The initiation letter sent to all parties will detail the schedule for an administrative conference call by the SCCA with all parties, discussing the procedure for the upcoming arbitration and the SCCA institutional rules in more detail. If the parties have no procedure for selection of arbitrators in place, cannot agree to a procedure or, have not selected arbitrators, the SCCA will provide a list to all parties of prospective arbitrators alongside their curriculum vitae after the administrative call.

#### *Arbitrator selection*

After the administrative call, the administrator may assist the parties with arbitrator appointments and will require a response within 15 calendar days of receiving any arbitrator list from the SCCA. Parties will need to indicate any objections and state their preferences with the remaining arbitrators on the list (article 16 of the SCCA Rules). The arbitrators will be nominated within 30 days after the arbitration has commenced, unless otherwise agreed between the parties. If not, the SCCA Court will appoint the arbitrators, upon the written request by one of the parties. The administrator carries the discretion to appoint the arbitrator(s) if none are appointed following the appointment procedure by the parties. No additional lists will be provided by the SCCA for this purpose, unless otherwise agreed by the parties.

According to the SCCA Rules (article 16 of the SCCA Rules), in case the matter can be settled by a *sole arbitrator*, the parties will jointly nominate the arbitrator. The nomination must occur within 30 days after the commencement of the arbitration. Otherwise, the SCCA Court will appoint the arbitrator instead. If the matter is to be settled by three arbitrators (arbitral tribunal) each party will nominate an arbitrator. The administrative final fee and the arbitrator(s) fees must be paid prior to the next stage in accordance with articles 34 to 37 of the SCCA Rules.

#### *Preliminary hearing*

After selection of the arbitrator(s), a preliminary hearing will be held with all parties and all arbitrators, as well as the SCCA. This may be conducted by conference call or in person. The purpose of this hearing is to set a schedule for the arbitral proceedings and for the exchange of information, setting deadlines for responses and organising any other preliminary issues. The outcome of this preliminary hearing is a procedural order which will serve as the framework for all parties for the arbitral proceedings going forward.

#### *Exchange of information*

The timescale and documentation required is set by the procedural order. By the end of this stage, and at least 15 calendar days prior to the hearings, the parties must provide details of any witnesses who will be required to provide their testimony to the SCCA, as per article 24(2) of the SCCA Rules.

#### *Hearings*

Hearings are private unless otherwise agreed, and will conclude upon the arbitrator(s) determination that all parties have had sufficient opportunity to present their case.

The tribunal may settle a dispute on a "*document-only basis*". However, if a party requested a hearing the tribunal might accept it (article 29 of the SCCA Rules).

#### *The award*

Awards are made no later than 60 calendar days from the closing of the hearing.

## **The expedited procedure route**

This has been available since 15 October 2018 and is a fast-track procedure designed for efficiency and cost reduction. It is applicable if:

- the aggregate amount in dispute does not exceed SAR 4,000,000, not inclusive of the costs of arbitration;
- the arbitration agreement was concluded after 15 October 2018; and
- by agreement of the parties.

There is the option to opt out of this procedure or opt in for higher value cases. The main advantage this offers is that arbitration can be concluded based on the submission of the parties only, without any hearings and an expedited appointment of arbitrator and filing process.

The award, in this case, is made 30 calendar days after the closure of the hearings and, in any event, within 180 calendar days from the date of the composition of the tribunal, subject to minor exceptions.

Further information can be found in appendix II of the SCCA Rules.

## The emergency arbitrator route

This has been available since 15 October 2018 and is available to those parties who wish to seek emergency relief and appoint an emergency arbitrator for this, as opposed to awaiting the composition of a tribunal. It is available pursuant to article 7 of the SCCA Rules and is applied concurrently or following the notice of arbitration but prior to the composition of the tribunal. Article 7 of the SCCA Rules details emergency measures of protection. The emergency arbitrator is appointed within one business day of receipt of the request by the SCCA. Within two business days after the emergency arbitrator has been appointed, they will create a schedule that allows parties to be heard. Such proceedings may be concluded by means of technology. The emergency arbitrator has the full authority vested in the arbitral tribunal pursuant to article 24 of the SCCA Rules. The power of the emergency arbitrator ceases after the arbitral tribunal is constituted, and the arbitral tribunal has the authority to alter or reconsider any decision or interim award issued by the emergency arbitrator. This route is not applicable if the request was submitted after the composition of the tribunal, the parties agreed to opt out, or the parties have agreed to another emergency provision that provides similar relief.

Further information can be found in appendix III of the SCCA Rules.

## The online arbitration route

The SCCA launched its ODR service through a specially designed platform which incorporates guidance provided by UNCITRAL technical notes on online dispute resolution. The entire arbitration can be managed online from case filing to the final award. All parties must agree to the online arbitration and the case must not exceed SAR 200,000, exclusive of any costs of arbitration. All documents are exchanged through an online portal and any hearing can also be held online. The award is rendered 30 calendar days after the appointment of the arbitrator.

## Related Content

### Legislation

- Saudi Arabia Royal Decree No. M34/1433 Arbitration Law
- Saudi Arabia Royal Decree No. M53/1433 Related to the Saudi Arabia Execution Law
- Saudi Arabia Cabinet Decision No. 261/1433 on the Approval of the Execution Law\*
- Saudi Arabia Cabinet Decision No. 541/1438 Approving the Implementing Regulation of the Arbitration Law
- Saudi Arabia Ministerial Decision No. 9892/1434 Approving the Implementing Regulation of the Execution Law
- Saudi Arabia Cabinet Decision No. 511/1441 Approving the Commercial Courts Law
- Saudi Arabia Cabinet Decision No. 156/1433 Approving the Arbitration Law

### International Conventions

- [New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards](#)<sup>[2 p.6]</sup>
- [UNCITRAL Model Law on International Commercial Arbitration](#)<sup>[1 p.6]</sup>

### SCCA Links

- [SCCA](#)<sup>[4 p.6]</sup>
- [Saudi Centre for Commercial Arbitration Institutional Arbitration Rules 2018](#)<sup>[3 p.6]</sup> (SCCA Rules)
- [SCCA Arbitrator and Administrator Fee Schedule](#)<sup>[5 p.6]</sup>
- [SCCA Arbitration Procedures Guide](#)<sup>[6 p.6]</sup>
- [SCCA Arbitration Request Form](#)<sup>[7 p.6]</sup>
- [SCCA Code of Ethics for Arbitrators](#)<sup>[8 p.6]</sup>

## Author

### **Dr. Sairah Narmah-Alqasim**

*Senior Legal Consultant, Dentons (Jeddah, KSA)*

[sairah.narmahalqasim@dentons.com](mailto:sairah.narmahalqasim@dentons.com)<sup>10</sup>[9 p.6]

### **Education**

- Mini MBA, Kings College London, UK
- Specialist Certificate in Corporate Governance, University of Manchester, UK
- Doctor of Legal Practice, Nottingham Law School, Nottingham, UK
- Specialist Certificate (BA Equiv.) Arabic and Foundations of Islamic Sharia, Umm Al-Qura University, Makkah, KSA
- LPC, College of Law, Birmingham, UK
- LL.B (Hons.), Law with Business, University of Birmingham, Birmingham, UK

### **Memberships**

- Admitted as a Solicitor of the Senior Courts of England and Wales
- Admitted as a Member of the Chartered Institute of Arbitrators (MCIArb)
- Admitted as an Associate of the International Compliance Association (AICA)
- Admitted as a Member of the Association of Corporate Counsel (ACC)
- Member of the British Association of Islamic Studies (BRAIS), International Chamber of Commerce- Young Arbitrators Forum (ICC-YAF), International Society for Islamic Legal Studies (ISILS), Legal Education Research Network (LERN) and The Society of Legal Scholars (SLS)

### **Biography**

Dr. Sairah Narmah-Alqasim is a British lawyer and academic with over 15 years of professional experience in the United Kingdom (UK) and the Kingdom of Saudi Arabia (KSA). Dr. Narmah-Alqasim has trained at top 20 international law firms in the UK and acted as in-house counsel in the dispute resolution department at one of the world's largest international banks. Dr. Narmah-Alqasim is a former Vice Dean of one of the largest law schools in Saudi Arabia and holds a Doctorate in Legal Practice. She is currently based in KSA as a Senior Legal Consultant at Dentons KSA. She advises clients on a range of corporate, commercial and litigation matters. She also leads Knowledge Management for Dentons KSA and provides managerial support in the Jeddah KSA office.

---

### **Tala Sabahi**

*Trainee Lawyer, Dentons, (Jeddah, Saudi Arabia)*

[tala.sabahi@dentons.com](mailto:tala.sabahi@dentons.com)

+966 59 503 7048

### **Education**

- Bachelor of Law and a minor in International Relations from Dar Al-Hekma University (*Jeddah, Saudi Arabia*). Graduated with honors.

### **Biography**

Tala is a Trainee Lawyer at Dentons Middle East.

## Notes

1. <sup>^</sup> [p.2] [p.4] [https://uncitral.un.org/en/texts/arbitration/modellaw/commercial\\_arbitration](https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration)
2. <sup>^</sup> [p.2] [p.4] <https://www.newyorkconvention.org/>
3. <sup>^</sup> [p.2] [p.4] [https://drive.google.com/file/d/100NLqTesQi0lBBBkaV00DU9eTb8bFED\\_/view](https://drive.google.com/file/d/100NLqTesQi0lBBBkaV00DU9eTb8bFED_/view)
4. <sup>^</sup> [p.4] <https://www.sadr.org/>
5. <sup>^</sup> [p.4] [https://www.sadr.org/assets/uploads/imagefiles/Arbitration\\_Fees\\_EN.pdf](https://www.sadr.org/assets/uploads/imagefiles/Arbitration_Fees_EN.pdf)
6. <sup>^</sup> [p.4] [https://www.sadr.org/assets/uploads/imagefiles/Arbitration\\_Procedures\\_Guide\\_EN.pdf](https://www.sadr.org/assets/uploads/imagefiles/Arbitration_Procedures_Guide_EN.pdf)
7. <sup>^</sup> [p.4] <https://www.sadr.org/ADRService-arbitration-arbitration-request?lang=en>
8. <sup>^</sup> [p.4] [https://www.sadr.org/assets/uploads/imagefiles/Code\\_of\\_Ethics\\_EN.pdf](https://www.sadr.org/assets/uploads/imagefiles/Code_of_Ethics_EN.pdf)
9. <sup>^</sup> [p.5] [sairah.narmahalqasim@dentons.com](mailto:sairah.narmahalqasim@dentons.com)
10. <sup>^</sup> [p.5] <mailto:sairahalqasim@hotmail.com>